

ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672

2695 SLC HB 62 - HB 126

those with whom it will deal, and to fix the terms and conditions upon which it will make needed purchases." *Perkins v. Lukens Steel Co.*, 310 U.S. 113, 127, 60 S.Ct. 869, 876, 84 L.Ed. 1108 (1940). See also *Heim v. McCall*, 239 U.S. 175, 191, 36 S.Ct. 78, 83, 60 L.Ed. 206 (1915).

The State asserts that equal protection guaranties are not applicable when the state acts in its proprietary capacity as a purchaser of goods. Relying on *Heim*, other state courts have upheld statutory in-state purchasing preferences against both equal protection and commerce clause challenges. See, e.g., *City and County of Denver v. Bossie*, 83 Colo. 329, 266 P. 214 (1928) ("the state may buy of whom it will"); *State ex rel. Collins v. Senatobia Blank Book & Stationery Co.*, 115 Miss. 254, 76 So. 258 (1917) (rejecting equal protection challenge to a statute prohibiting state contracting with nonresident bidders).

In this case, we need not go so far as to hold that because a contract is public and requires expenditure of public funds the legislature may, without reasonable basis, grant a preference. Here, as later discussed, a reasonable basis exists for the preference sufficient to withstand constitutional attack.

We conclude the preference statute is most closely allied with economic legislation requiring only rational basis scrutiny.

From reading *Equitable* it is clear that, without the six percent preference, the contract undoubtedly would have been awarded to *Equitable*. However, by its decision, the court, in effect, held that it was a legitimate state purpose to favor in-state corporations and contractors.

All three principles relied upon by *Reeves* and other courts recognize the unique constitutional status of states when they distribute state benefits rather than regular private activity. Each principle respects states, as members of a federal form of

government, where states practice primary state purposes. The Washington statute is justified by these doctrines.

The privileges and immunities clause guarantees to nonresidents those rights of residents which properly belong to everyone. As *Baldwin* summarized, rights uniquely linked to residency such as suffrage, candidacy, and access to state services are not rights to which the privileges and immunities clause is directed. Distinctions favoring residents in these cases "merely reflect the fact that this is a Nation composed of individual States, and are permitted". *Baldwin*, at 383, 98 S.Ct., at 1860.

II

The majority's reliance upon the rationale and precedent of *Hicklin v. Orbeck*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978) is misplaced. The "Alaska Hire" law in *Hicklin* created an employment preference favoring Alaska residents for "all employment which is a result of oil and gas leases" and other legal arrangements to which the State of Alaska was lessor. Alaska Stat. Ann. § 38.40.050(a) (1977). The Supreme Court emphasized the broad reach of the Alaska law in *Hicklin*, at 530-31, 98 S.Ct., at 2489-90:

Under this provision, Alaska Hire extends to employers who have no connection whatsoever with the State's oil and gas, perform no work on state land, have no contractual relationship with the State, and receive no payment from the State. The Act goes so far as to reach suppliers who provide goods or services to subcontractors who, in turn, perform work for contractors despite the fact that none of these employers may themselves have direct dealings with the State's oil and gas or ever set foot on state land. . . . In sum, the Act is an attempt to force virtually all businesses that benefit in some way from the economic ripple effect of Alaska's decision to develop its oil and gas resources to bias their employment practices in favor of the State's residents.

(Footnote omitted.)

In *Hicklin*, the court stated the purpose of the statute at 526-28, 98 S.Ct., at 2487-88:

Alaska Hire was enacted to remedy, namely, Alaska's "uniquely high unemployment." Alaska Stat. Ann. § 38.40.050 (1977). What evidence the record contains indicates that the major cause of Alaska's high unemployment was not the influx of nonresidents seeking employment, but rather the fact that a substantial number of Alaska's jobless residents—especially the unemployed Eskimo and Indian residents—were unable to secure employment either because of their lack of education and job training or because of their geographical remoteness from job opportunities; and that the employment of nonresidents threatened to deny jobs to Alaska residents only to the extent that jobs for which untrained residents were being prepared might be filled by nonresidents before the residents' training was completed.

. . . Alaska Hire simply grants all Alaskans, regardless of their employment status, education, or training, a flat employment preference for all jobs covered by the Act. A highly skilled and educated resident who has never been unemployed is entitled to precisely the same preferential treatment as the unskilled, habitually unemployed Arctic Eskimo enrolled in a job-training program. If Alaska is to attempt to ease its unemployment problem by forcing employers within the State to discriminate against nonresidents—again, a policy which may present serious constitutional questions—the means by which it does so must be more closely tailored to aid the unemployed. If the Act is intended to benefit Eskimos, a statute granting an employment preference to unemployed residents or to residents enrolled in job-training programs might be permissible, Alaska Hire's across-the-board grant of a job preference to all Alaskan residents clearly is not.

(Footnote omitted.)

Hicklin concluded at 533-34, 98 S.Ct. at 2491-92:

Even when public welfare laws were regularly stricken, the Supreme Court allowed states to place beneficial labor conditions on public works contracts. *Atkin v. Kansas*, 191 U.S. 207, 24 S.Ct. 124, 48 L.Ed. 148 (1903). The *Atkin* court could not imagine a possible ground limiting the right of a state to set 8-hour workdays on public works projects. The court concluded this right "belongs to the State, as the guardian and trustee for its people, and having control of its affairs, to prescribe the conditions upon which it will permit public work to be done on its behalf, or on behalf of its municipalities". *Atkin*, at 222-23, 24 S.Ct., at 127-28. See also *Equitable Shipyards, Inc. v. State*, 93 Wash.2d 465, 611 P.2d 396 (1980), quoting *Perkins v. Lukens Steel Co.*, 310 U.S. 113, 127, 60 S.Ct. 869, 876, 84 L.Ed. 1108 (1940). Under the same theory, states may require state printing to be done by in-state companies. *American Yearbook Co. v. Askew*, 339 F.Supp. 719, 721-22 (M.D. Fla.), *aff'd*, 409 U.S. 904, 93 S.Ct. 230, 34 L.Ed.2d 168 (1972).

In 1980, this court upheld the constitutionality of a statute granting a bidding preference to in-state companies for ferry construction contracts. *Equitable Shipyards, Inc. v. State*, *supra*. The statute was challenged only under the equal protection clause. However, the court found that the purpose of the state preference passed "constitutional muster" in part because "construction of ferries within the state strengthens state and local economies". *Equitable*, at 479, 611 P.2d 396. We stated at 476-78, 611 P.2d 396:

We have held the federal equal protection clause and the state privileges and immunities clause (Const. art. 1, § 12) are substantially identical. *Olsen v. Delmore*, 48 Wash.2d 545, 295 P.2d 324 (1956). While the State objects to considering the equal protection claim as not raised by *Equitable* in the trial court, we believe the issue should be addressed.

In other contexts, the United States Supreme Court has stated that government, like private individuals and businesses, "enjoys the unrestricted power to produce its own supplies, to determine

those with whom it will deal, and to fix the terms and conditions upon which it will make needed purchases." *Perkins v. Lukens Steel Co.*, 310 U.S. 113, 127, 60 S.Ct. 869, 876, 84 L.Ed. 1108 (1940). See also *Heim v. McCall*, 239 U.S. 175, 191, 36 S.Ct. 78, 83, 60 L.Ed. 206 (1915).

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In this case, we need not go so far as to hold that because a contract is public and requires expenditure of public funds the legislature may, without reasonable basis, grant a preference. Here, as later discussed, a reasonable basis exists for the preference sufficient to withstand constitutional attack.

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All three principles relied upon by *Reeves* and other courts recognize the unique constitutional status of states when they distribute state benefits rather than regular private activity. Each principle respects states, as members of a federal form of

Although the fact that a state-owned resource is destined for interstate commerce does not, of itself, disable the State from preferring its own citizens in the utilization of that resource, it does inform analysis under the Privileges and Immunities Clause as to the permissibility of the discrimination the State visits upon nonresidents based on its ownership of the resource. Here, the oil and gas upon which Alaska hinges its discrimination against nonresidents are of profound national importance. On the other hand, the breadth of the discrimination mandated by Alaska Hire goes far beyond the degree of resident bias Alaska's ownership of the oil and gas can justifiably support. The confluence of these realities points to but one conclusion: Alaska Hire cannot withstand constitutional scrutiny.

(Footnote omitted.)

The Washington statute has no such reach. Unlike Alaska Hire, (1) it is limited to projects to which state or local governments are direct contracting parties; (2) it applies only to those private employers who themselves contract with government and those employees who work directly on public jobs; and (3) the Washington statute regulates only those who receive direct economic benefit from public-funded government projects.

CONCLUSION

RCW 39.16 assures that state residents enjoy the benefits of state spending. The limiting of benefits to those who fund the state treasury and for whom the State was created to serve affects the essential and patently unobjectionable purpose of State government—to serve the citizens of the state.

Moreover, the State should be deemed free to deal with its own residents when it builds public works. It is the "owner" of the job creating the employment. If it built the sewer system itself, the City of Aberdeen would not violate any "right to travel" by requiring its employees to be residents. Since that right is accepted, the

City should be permitted to put the same condition on work it contracts out.

The statute does not interfere with a nonresident's right to ply his or her trade within Washington state. General restrictions on private employment unconnected with state funds or projects are invalid. *Ward v. Maryland*, 79 U.S. (12 Wall.) 418, 20 L.Ed. 449 (1871). RCW 39.16 has no effect on the private labor market since it applies to work created by public agencies. As noted, unlike the Alaska Hire statute in *Hicklin* it does not expend public money to seek to control private employment. Nonresidents are precluded only from public works.

The Washington statute is confined to the reach justified by its interest as sovereign and owner of the project. *Hicklin* extensively distinguished Alaska Hire from such a narrow law. As later explained in *Reeves*, the public works employment statute affects interests which the privileges and immunities clause reserves to state control. Had Equitable Shipyards known that this court would declare RCW 39.16 unconstitutional, it could have arranged to go into right-to-work states and secure personnel to construct the job, underbidding the local company or contractor who is required to hire union employees. In the future, local contractors and subcontractors bidding on public works will be at an extreme disadvantage when competing with out-of-state corporations which can base their bids on nonunion labor and substantially undercut the bids of Washington contractors. At last report, Grays Harbor had an unemployment rate in excess of 30 percent. Such communities, when they own the public works project themselves, should be able to require that the work be done by unemployed union workers who are residents of the community. Even worse, at a time when statewide unemployment has hit an all-time high of over 12 percent, the majority precludes the Legislature from enacting legislation establishing proprietary public works projects for unemployed residents as a partial solution for our state's unemployment problem. Such a narrow interpretation of our constitution is not justified.

City should be permitted to set condition on work it contracts on.

The statute does not interfere with nonresident's right to ply his or her trade within Washington state. General provisions on private employment contracts with state funds or projects. *Ward v. Maryland*, 79 U.S. (12 Wall.) 67, 2 L.Ed. 449 (1871). RCW 89.16 has no effect on the private labor market. It is not to work created by public agencies. As noted, unlike the Alaska Hire Statute in *Hicklin* it does not expend public money to seek to control private employment. Nonresidents are precluded only from public works.

The Washington statute is confined to the reach justified by its interest as sovereign and owner of the project. It is extensively distinguished Alaska Hire from such a narrow law. As later explained in *Reeves*, the public works employment statute affects interests which the privilege and immunities clause reserves to state control. Had *Equitable Shipyards* known this court would declare RCW 89.16 unconstitutional, it could have arranged to hire into right-to-work states and secure personnel to construct the job, underbidding the local company or contractor who is required to hire union employees. In the future, local contractors and subcontractors competing on public works will be at an extreme disadvantage when competing with out-of-state corporations which can base their bids on nonunion labor and substantially undercut the bids of Washington contractors. As last report, Grays Harbor had an unemployment rate in excess of 30 percent. In communities, when they own the public works project themselves, should be able to require that the work be done by unemployed union workers who are residents of the community. Even worse, at a low-time high of over 12 percent, the majority precludes the Legislature from enacting legislation establishing proprietary public works projects for unemployed residents as a partial solution for our state's unemployment problem. Such a narrow interpretation of our constitution is not justified.

STATE v. PARRIS

2 P.2d Wash., 654 P.2d 77

uphold the constitutionality of the statute and reverse the judgment of the court.

ROSELLINI and PEARSON,



STATE of Washington, Respondent,

v.

John PARRIS, Petitioner.

No. 43180-6.

Court of Washington, In Banc.

Nov. 24, 1982.

Petitioner was convicted in the Superior Court, Thurston County, Gerry L. Alexander of unlawful delivery of a controlled substance and the Court of Appeals, 2 Wash. App. 268, 633 P.2d 914, affirmed. Petitioner's petition for review was granted. The Supreme Court, Rosellini, J., held that out-of-court statements made by a co-defendant during the course of the drug transaction are admissible as statements against penal interest.

Affirmed as modified.

William H. Williams, J., filed a dissenting opinion in which Cunningham, J. pro tempore and Utter, J., joined.

Criminal Law 662(1)

Main and essential purpose of confrontation is to secure for opponent the opportunity of cross-examination and purpose of confrontation is to test perception, memory and credibility of witnesses and it serves purpose of testing witnesses' narrative power.

2. Criminal Law 662(1)

Where witness is unavailable to testify, right of confrontation may be violated if other witnesses testify to substance of his statements, but on the other hand, constitutional right to confrontation does not invariably exclude hearsay implicating the accused.

3. Criminal Law 662(1)

It is only when out-of-court statement is offered for truth of its content that confrontation problems arise.

4. Criminal Law 419(1)

Guidelines in determining trustworthiness of extrajudicial statements are: whether there is apparent motive to lie; general character of declarant; whether more than one person heard statements; whether statements were made spontaneously; and timing of declaration and relationship between declarant and witness.

5. Criminal Law 417(15)

Out-of-court statements against penal interest are admissible only if they are corroborated, both where they are offered to inculcate and exculpate accused. ER 804(b)(3).

6. Criminal Law 417(15)

In order to qualify as statement against penal interest, declaration need not have been clear and unequivocal admission of criminal conduct. ER 804(b)(3).

7. Criminal Law 417(15)

While it is not fact that declaration is against penal interest but declarant's awareness of fact which gives statement against penal interest significance, it may be assumed that reasonable man would be aware of disserving nature of his remarks even when they are made to supposed friend. ER 804(b)(3).

8. Criminal Law 417(15)

In prosecution of accomplice for unlawful delivery of controlled substance, out-of-court statements made by principal offender to police informant during course of drug deal were admissible as statements against penal interest, since statements were made

62 TITLE & SPONSOR SUMMARY 14:58 6/04/84 PAGE 1 OF 3
 ENDED TITLE: SCS SSMB 62(L&C)(FLD 5)
 ACT RELATING TO THE USE OF PUBLIC MONEY FOR THE PAYMENT
 NONRESIDENT INDIVIDUALS OR BUSINESSES

GENERAL DOLLARS: 1236,200 (F. NOTE)

THE SPONSOR: LINDAUER.

OTHER DOLLARS: 40

CO-SPONSORS: GROSSEDDORF.

CURRENT STATUS: 6/26/83 FAILED (S)

62 HOUSE ACTION 14:58 6/04/84 PAGE 2 OF 3
 LEGISLATIVE ACTION

DATE	SEQ	PAGE	LEGISLATIVE ACTION
5/28/83	01	1033	FIRST READING -- COMMITTEE REPORTS
5/26/83	02	1034	S.A. -- DP02, DNP01, PR03, OTHER01
5/26/83	03	1034	S.A. F/NOTE HSE SUPPL #46
5/09/83	04	1034	FIN -- DP04, NR01, OTHER01
5/09/83	05	1034	FIN F/NOTE HSE SUPPL #57
5/11/83	06	1203	SECOND READING
5/11/83	07	1203	ADVANCED TO 3RD READING BY UNAN CONSENT
5/11/83	08	1203	THIRD READING
5/11/83	09	1204	PASSED BY DIV 27-12-01
5/11/83	10	1204	NOTICE OF RECONSIDERATION GIVEN
5/12/83	11	1320	RECONSIDERATION NOT TAKEN UP

*** **

62 SENATE ACTION 14:58 6/04/84 PAGE 3 OF 3
 LEGISLATIVE ACTION

DATE	SEQ	PAGE	LEGISLATIVE ACTION
5/13/83	12	0973	FIRST READING -- COMMITTEE REPORTS
5/22/83	13	1435	L&C -- DNP01, CS01, NR02
5/24/83	14	1494	MOVED FROM FIN TO RLS BY UNAN CONSENT
5/26/83	15	1529	RLS --
			TAKEN UP IMMEDIATELY
5/26/83	16	1532	SECOND READING
5/26/83	17	1532	L&C CS ADOPTED BY UNAN CONSENT
5/26/83	18	1532	ADVANCED TO 3RD READING BY UNAN CONSENT
5/26/83	19	1532	THIRD READING
5/26/83	20	1532	FAILED BY DIV 02-14-01

*** **

COMMITTEE REPORT

SENATE

FURTHER:

FINANCE

5/13/63

Date:

6-21-63

Mr. President:

The Committee on

LABOR & INDUSTRY

has had

SS SB 62

Use of public money for the payment of nonresident individuals or businesses.

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

do pass

do not pass

do pass with attached amendments(s)

replace with CS for

CS SS HR 62

same title
 new title

and recommends

AND attaches a "Letter of Intent"

New Fiscal Note

reports it back without recommendation

referred to the

Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

11

CHAIRMAN

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

May 23, 1983

TO: Senator Edward Eliason
Chairman Labor & Commerce Committee

FROM: Gerald Wilkerson, CPA *GLW*
Legislative Auditor
Division of Legislative Audit

SUBJECT: Sponsor Substitute for House Bill No. 62

At your request the following comments are provided on SSHB 62:

1. Line 23 through 27 requires that a written report be filed with the Office of the Governor, the Department of Education, the University of Alaska, and the Legislative Audit Division.

Unless this requirement is intended to be a "paper deterrent" from doing business with non-residents, the filing requirements appear excessive. The requirement of filing one copy with the Department of Administration, the State's record-keeping agency, would be adequate, in my opinion.
2. If filed with the Department of Administration, the records could be readily reviewed and accessible to the Legislative Audit Division.
3. Your committee may consider adding a "sunset" provision which would mandate legislative oversight in future years to determine if this law was effective or still needed.

If you would like to further discuss these comments, please contact me at 465-3830.

Alaska State Legislature

Representative John Lindauer
District 10-A
3933 Geneva Place
Anchorage, AK 99508



While in Juneau
Pouch V
Juneau, AK 99811
465-3709

House of Representatives

May 26, 1983

To: Senate Labor and Commerce Committee
From: Representative John Lindauer *J.L.*
Re: Fiscal note attached to SSHB 62

I have just seen the fiscal note to SSHB 62 received by the Senate. It is totally inappropriate. The bill does not require any filing or compilation of forms. It is not the intent of the sponsor or co-sponsor that forms be filed and compiled and turned into information at state expense.

This appears to be a gimmick of the Department of Administration to get more money into their budget and discourage the adoption of the bill.

These efforts to discourage the bill strongly suggest that DOA is, in fact, engaging in the kinds of practices that this bill is attempting to discourage. I suggest that the State of Alaska can no longer afford to have the Department of Administration channel money outside under circumstances which they are too embarrassed to have revealed to the press and to the public.

cc: Commissioner Lisa Rudd

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

DIVISION OF GENERAL SERVICES AND SUPPLY

Bill Sheffield, Governor

POUCH C (MS 0210)
JUNEAU, ALASKA 99811

(907) 465-2150

March 8, 1982

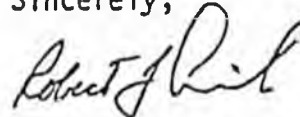
Honorable John Lindauer
Alaska State Legislature
House of Representatives
Pouch V (MS 3100)
Juneau, AK 99811

Dear Representative Lindauer:

Re: HB 62

After discussion with you and further thought I find that I agree with your points regarding HB 62. Though it would be easier to apply if "resident" and "expertise or services" were defined, it would not be impossible to implement the bill as is.

Sincerely,



Robert Link
Acting Director

RL/dlr
6/0308-01/6GSS2
cc: Commissioner Lisa Rudd
Department of Administration

Alaska State Legislature

Representative John Lindauer
District 10-A
3933 Geneva Place
Anchorage, AK 99508



While in Juneau
Pouch V
Juneau, AK 99811
465-3709

House of Representatives

June 16, 1983

MEMORANDUM

To: Senator Dick Eliason

From: Representative John Lindauer *J. L.*

Re: HB 62 -- relating to the use of public money for the payment of nonresident individuals or businesses

I appreciate your interest and analysis. The problem, as I see it, is that the Department of Administration is trying to maintain its ability to hire outsiders instead of Alaskans, despite Governor Sheffield's commitment to provide jobs for Alaskans.

Specifically:

- 1) HB 62 is not aimed merely at professional services as defined in AS 36.98.080. The inclusion of the word professional, as requested by DOA, substantially limits the bill's scope and application in terms of giving Alaskans first crack at state jobs.
- 2) The definition of an Alaskan resident should be left, as it would be left automatically, to regulation in order that it remain legally acceptable in an ever-changing world.

I suggest that the word "professional" be deleted on line 21 and that section 1 be deleted in its entirety and the subsequent sections renumbered.



OFFICIAL BUSINESS

ALASKA STATE LEGISLATURE - SENATE

COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811
(907) 463-3844

MEMORANDUM

TO: Rep. John Lindauer

FROM: Sen. Dick Eliason *DE*

DATE: June 16, 1983

RE: HB 62----relating to the use of public money for the payment of nonresident individuals or businesses

The Senate Labor and Commerce Committee hearing on June 14, 1983, included HB 62 on the agenda, and the proposed Senate Labor and Commerce Committee substitute was discussed. Attached is the revised draft of the proposed committee substitute.

At the hearing you raised the question of why the proposed draft was limited to "professional services" (see attached draft, page 1, line 11 and line 22). Senate Labor and Commerce Committee staff contacted Bob Link, Director of the Department of Administration's Division of General Services and Supply to discuss this language. A definition of "professional services" appears in AS 36.98.080 (2). This chapter has been attached for your convenience. According to this section, "professional services" means professional, technical, or consultant's services that are predominantly intellectual in character and that (A) include analysis, evaluation, prediction, planning, or recommendation; and (B) result in the production of a report or the completion of a task. From this definition it may be construed that professional services are those which are not product-oriented, and in practice the definition excludes such contract services as janitorial, leasing, security, court reporting, and even the laundry done for the ferry system in Seattle. The inclusion in the proposed substitute of the word "professional" to describe the services affected by HB 62 would seem consistent with the findings and purpose section of the original bill, which states "the state often employs nonresident consultants, advisors, and businesses to provide expertise and services...".

Also, as a definition of "resident" is not provided in this bill, how is "Alaska resident" presumed to be defined for the purposes of this legislation? I would appreciate a response from you on this so that we can resolve this question as soon as possible.

Alaska State Legislature

Representative John Lindauer
District 10-A
3933 Geneva Place
Anchorage, AK 99508



While in Juneau
Pouch V
Juneau, AK 99811
465-3709

House of Representatives

May 26, 1983

To: Senate Labor and Commerce Committee

From: Representative John Lindauer *JL.*

Re: Fiscal note attached to SSHB 62

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This appears to be a gimmick of the Department of Administration to get more money into their budget and discourage the adoption of the bill.

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cc: Commissioner Lisa Rudd

Alaska
MUNICIPAL
League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

May 24, 1983

To: Senate Labor and Commerce Committee
From: Ginny Chitwood, AML Executive Director
Re: HB 62 - Nonresident Individuals and Businesses

The Alaska Municipal League lauds the purpose of SSHB 62, but does not believe it will be accomplished by the proposed legislation. It appears that the main result of the bill would be a lot of paper handling.

We ask your consideration of an amendment to the definition of "state", starting on line 6 of page 2 to delete everything after university. Local officials should have control over the employment of consultants, advisors, and businesses on the local level.

The Alaska Municipal League supports local hire and Alaska preference, but believes the approach taken in SSSB 174 and the "joint venture" bills, HB 415 and SB 293, will prove more effective than this bill.

Alaska State Legislature

Representative John Lindauer
District 10-A
3933 Geneva Place
Anchorage, AK 99508



While in Juneau
Pouch V
Juneau, AK 99811
465-3709

House of Representatives

May 19, 1983

TO: Senate Labor and Commerce Committee

FROM: Representative John Lindauer *JL*

RE: Sponsor Substitute for House Bill #62: "An Act relating to the use of public money for the payment of nonresident individuals or businesses."

The purpose of this bill is to assist the state and its educational institutions in the identification of the career opportunities and educational needs of the youth of Alaska.

It is the state's policy to encourage our youth to stay in Alaska. For that reason, we have for some years forgiven a portion of our student loans in the event that student borrowers reside in Alaska after graduation.

The retention of Alaska's youth requires that we provide them with an educational system which trains them for the jobs which exist in the Alaskan economy. This requires that the state identify those areas for which there are not enough trained Alaskans. This bill will identify the occupational areas and training where our scarce educational dollars can be best concentrated.

SECTIONAL ANALYSIS OF SPONSOR SUBSTITUTE OF HB 62

Section 1 of SSHB 62 states the legislative findings and purpose of the proposed legislation.

Section 2 of SSHB 62 amends AS 37.05 to add a new section:

Sec. 37.10.110.

- a) Public monies may not be spent to employ or contract with a non-resident person unless a written report is filed with the Governor's office, the Department of Education, the University of Alaska, and the legislative audit division. The report shall include:
 - 1) a brief description of the work to be done;
 - 2) reasons for failing to identify an Alaskan person to perform service;
 - 3) efforts made to locate qualified Alaskan person;
 - 4) recommendation for development of qualified Alaskan persons to satisfy projected future needs.
- b) Defines 'state' in this section to include any state department, state agency, state university, borough, city, village, school district or other state subdivision.

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE BUDGET AND AUDIT COMMITTEE

May 23, 1983

TO: Senator Richard Eliason
Chairman, Labor & Commerce Committee

FROM: Gerald L. Wilkerson, CPA *GLW*
Legislative Auditor
Division of Legislative Audit

SUBJECT: Sponsor Substitute for House Bill No. 62

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2. If filed with the Department of Administration, the records could be readily reviewed and accessible to the Legislative Audit Division.
3. Your committee may consider adding a "sunset" provision which would mandate legislative oversight in future years to determine if this law was effective or still needed.

If you would like to further discuss these comments, please contact me at 465-3830.

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While in Juneau
Pouch V
Juneau, AK 99811
465-3709

House of Representatives

May 19, 1983

TO: Senate Labor and Commerce Committee

FROM: Representative John Lindauer *JL*

RE: Sponsor Substitute for House Bill #62: "An Act relating to the use of public money for the payment of nonresident individuals or businesses."

The purpose of this bill is to assist the state and its educational institutions in the identification of the career opportunities and educational needs of the youth of Alaska.

It is the state's policy to encourage our youth to stay in Alaska. For that reason, we have for some years forgiven a portion of our student loans in the event that student borrowers reside in Alaska after graduation.

The retention of Alaska's youth requires that we provide them with an educational system which trains them for the jobs which exist in the Alaskan economy. This requires that the state identify those areas for which there are not enough trained Alaskans. This bill will identify the occupational areas and training where our scarce educational dollars can be best concentrated.

SECTIONAL ANALYSIS OF SPONSOR SUBSTITUTE OF HB 62

Section 1 of SSHB 62 states the legislative findings and purpose of the proposed legislation.

Section 2 of SSHB 62 amends AS 37.05 to add a new section:

Sec. 37.10.110.

- a) Public monies may not be spent to employ or contract with a non-resident person unless a written report is filed with the Governor's office, the Department of Education, the University of Alaska, and the legislative audit division. The report shall include:
 - 1) a brief description of the work to be done;
 - 2) reasons for failing to identify an Alaskan person to perform service;
 - 3) efforts made to locate qualified Alaskan person;
 - 4) recommendation for development of qualified Alaskan persons to satisfy projected future needs.

- b) Defines 'state' in this section to include any state department, state agency, state university, borough, city, village, school district or other state subdivision.

HB

108

#1

ination unless the questions are to be used in future examinations.
(§ 18 ch 144 SLA 1960; am § 5 ch 112 SLA 1982)

Effect of amendments. — The 1982 amendment, effective July 1, 1982, substituted the present provisions of this section for the provisions set out in the main pamphlet.

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Article 2. Coverage of Personnel.

Section

- 90. Coverage of chapter
- 110. Exempt service
- 120. Partially exempt service

Section

- 130. Extension of partially exempt and classified services

Sec. 39.25.090. Coverage of chapter. This chapter and the rules adopted under it apply to all positions in (1) the classified service, and (2) the exempt and partially exempt service as specifically provided.
(§ 3 ch 144 SLA 1960; am § 6 ch 112 SLA 1982)

Effect of amendments. — The 1982 amendment, effective July 1, 1982, inserted "exempt and" in item (2).

Sec. 39.25.110. Exempt service. Unless otherwise provided by law, the following positions in the state service constitute the exempt service and are exempt from the provisions of this chapter and the rules adopted under it:

- (1) persons elected to public office by popular vote or appointed to fill vacancies in elected offices;
- (2) justices, judges, magistrates, and employees of the judicial branch including employees of the Judicial Council;
- (3) employees of the state legislature and its agencies;
- (4) the head of each principal department in the executive branch;
- (5) officers and employees of the University of Alaska;
- (6) certificated teachers and noncertificated employees employed by a regional educational attendance area established and organized under AS 14.08.031 — 14.08.041 to teach in, administer, or operate schools under the control of a regional educational attendance area school board;
- (7) certificated teachers employed by the Department of Education as correspondence teachers or teachers in skill centers operated by the Department of Education;
- (8) patients and inmates employed in state institutions;
- (9) persons employed in a professional capacity to make a temporary or special inquiry, study or examination as authorized by the governor;
- (10) members of boards, commissions, or authorities;

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(1) the officers and employees of the following boards, commissions, and authorities:

- (A) Alaska Gas Pipeline Financing Authority;
- (F) Alaska Permanent Fund Corporation;
- (C) Alaska Energy Center;
- (D) Alaska Industrial Development Authority;
- (E) Alaska Commercial Fisheries Entry Commission;
- (F) Alaska Commission on Postsecondary Education;

(12) the executive secretary and legal counsel of the Alaska Municipal Bond Bank Authority;

(13) licensed physicians, as defined in AS 47.30.340(9), employed by the state;

(14) petroleum engineers and petroleum geologists employed in a professional capacity by the Department of Natural Resources and by the Oil and Gas Conservation Commission, except for those employed in the division of geological and geophysical surveys in the Department of Natural Resources;

(15) officers, agents, and employees of the Alcoholic Beverage Control Board granted limited peace officer powers by the Alcoholic Beverage Control Board under AS 04.06.110;

(16) persons employed by the division of marine transportation as masters and members of the crews of vessels who operate the state ferry system and who are covered by a collective bargaining agreement provided in AS 23.40.040;

(17) officers and employees of the state who reside in foreign countries;

(18) employees of the Alaska Seafood Marketing Institute;

(19) firefighters employed by the Department of Natural Resources for a fire emergency;

(20) employees of the Office of the Governor and the office of the lieutenant governor, including the staff of the governor's mansion;

(21) [Repealed June 30, 1988] Employees of the Citizens' Advisory Commission on Federal Areas in Alaska (AS 41.37.010). (§ 5 ch 144 SLA 1960; am § 1 ch 48 SLA 1961; am § 1 ch 133 SLA 1961; am § 3 ch 93 SLA 1962; am § 3 ch 24 SLA 1966; am § 31 ch 46 SLA 1970; am § 65 ch 69 SLA 1970; am § 13 ch 113 SLA 1970; am § 3 ch 78 SLA 1971; am § 18 ch 78 SLA 1974; am § 42 ch 127 SLA 1974; am § 2 ch 32 SLA 1975; am § 2 ch 79 SLA 1975; am § 37 ch 124 SLA 1975; am § 1 ch 157 SLA 1976; am § 3 ch 90 SLA 1978; am § 7 ch 18 SLA 1980; am § 43 ch 106 SLA 1980; am § 10 ch 131 SLA 1980; am § 4 ch 148 SLA 1980; am § 4 ch 106 SLA 1981; am §§ 2, 3 ch 37 SLA 1982; am § 7 ch 112 SLA 1982)

Effect of amendments. — The 1981 amendment added a paragraph (26), relating to employees of the Alaska Seafood Marketing Institute. These provi-

sions are now contained in paragraph (18) of this section as amended by ch. 112, SLA 1982.

Section 2 of the first 1982 amendatory

Sec. 47.30.310. Transfer of patients previously committed. A mental patient committed from this state under Title 48 U.S.C., § 46 et seq., and P.L. 830, 84th Congress, 2nd Session, may be transferred to a designated hospital or other facility designated by the department to the extent and in the manner that a patient can be transferred who is committed under AS 47.30.010 — 47.30.340. (§ 132 ch 87 SLA 1957)

Sec. 47.30.320. Purpose. The purpose of AS 47.30.010 — 47.30.340 is to establish and provide modern procedures for the commitment, hospitalization, care and treatment of the mentally ill. All rights and safeguards provided by AS 47.30.010 — 47.30.340 apply to all patients in a public or private hospital without regard to whether or not the cost of care or treatment of the patient is paid in whole or in part from state funds. (§ 100 ch 87 SLA 1957)

Sec. 47.30.330. Criminal penalties. A person who intentionally causes, or attempts to cause, or conspires with another person to cause an individual to be committed to a hospital under AS 47.30.010 — 47.30.340, knowing or having reasonable grounds for believing that the individual is not mentally ill and in need of hospitalization, is punishable by a fine of not more than \$10,000, or by imprisonment for not less than one year nor more than 10 years, or by both. The court may order all or part of the fine paid to the injured individual. (§ 133 ch 87 SLA 1957; am § 37 ch 43 SLA 1964)

Amendment of section applicable to offense committed before October 1, 1964.
— See 1964 Op. Att’y Gen., No. 8.

Sec. 47.30.340. Definitions. In AS 47.30.010 — 47.30.340, unless the context otherwise requires,

- (1) "court" means the superior court;
- (2) "department" means the Department of Health and Social Services or its designee;
- (3) "designated examiner" means a licensed physician designated by the department as specially qualified, under standards established by it for the purpose of AS 47.30.010 — 47.30.340, in the diagnosis of mental illness, except that for areas in which no licensed physician so qualified is available, any licensed physician may be designated;
- (4) "designated hospital" means a "hospital" which is designated and authorized by contract with the department to provide care and treatment of the mentally ill;
- (5) "head of a hospital" means the individual in charge of a hospital, or his designated representative, except that when the individual or his designee in charge of a hospital is not a licensed physician, authority placed in the head of a hospital by AS 47.30.010 — 47.30.340 which involves in major part the exercise of medical judgment shall be exercised by a licensed medical official of the hospital who is designated by the individual in charge of the hospital;

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§ 47.30.340 WELFARE, SOCIAL SERVICES AND INSTITUTIONS § 47.30.340

(6) "hospital" means a public or private hospital or institution located in the state or in another state equipped and qualified to provide care and treatment for the mentally ill;

(7) "individual," as used in AS 47.30.020, 47.30.030 and 47.30.070, means a resident of or a person in the state;

(8) "interested party" means an interested, responsible adult including the legal guardian, spouse, parent, adult children, or next of kin of an allegedly mentally ill individual or patient;

(9) "licensed physician" means (A) an individual licensed under the laws of the state to practice medicine, (B) a medical officer of the government of the United States while in the state in the performance of his official duties, (C) a medical officer of the state, or (D) a physician licensed under the laws of another state;

(10) "mentally ill individual" means an individual having a psychosis or senile changes which substantially impair his mental health to the degree that he is a danger to himself or others; the definition does not include an individual suffering from acute alcoholism or drug addiction;

(11) "patient" means a resident of or a person in the state qualified under AS 47.30.010 — 47.30.340 for hospitalization as a mentally ill individual;

(12) "peace officer," when used in connection with cases which involve individuals who, because of mental illness, are likely to injure themselves or others if allowed to remain at liberty, includes a state police officer, municipal or other local police officer, state, municipal, or other local health officer, public health nurse, U.S. Marshal or Deputy U.S. Marshal, or a person authorized by a court;

(13) "resident" means a person who is residing in the state; a married woman may establish a residence apart from her husband, and an unemancipated minor takes the residence of the parent or guardian with whom he is living;

(14) "state" includes a state of the United States, the District of Columbia, the territories and possessions of the United States, and the Commonwealth of Puerto Rico, and, with the approval of the United States Congress, Canada. (S 101 ch 87 SLA 1957; am §§ 1, 2 ch 127 SLA 1959; am § 1 ch 115 SLA 1961; am § 65 ch 32 SLA 1971; am § 6 ch 104 SLA 1971; am § 3 ch 165 SLA 1978)

Cross reference. — As to persons with handicaps by reason of mental or physical disabilities, see AS 47.80.

Effect of amendment. — The 1978 amendment deleted "a mentally deficient and severely mentally retarded person whom the commissioner of health and social services or his designee admits for treatment subject, however, to all the other admission and discharge procedures provided for in §§ 10 — 340 of this chapter"

following "danger to himself or others" in paragraph (10).

Editor's note. — As to intent of 1978 amendatory act, see § 1, ch. 165, SLA 1978, effective July 1, 1978, in the 1978 Temporary and Special Acts and Resolutions.

Legislative history report. — For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

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FEB 3 1983

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

LEGISLATIVE FINANCE REQUEST

Bill/Resolution No. House Bill 108/Senate Bill 64
Title Inclusion in state exempt service of licensed physicians
Requested by Commissioner's Office Date 1/24/83

II. FISCAL DETAIL

Agency Affected Health & Social Services
Program Category Affected Mental Health & Developmental Disabilities
BRN, Program, Or Subprogram(s) Affected _____
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL TIME						
PART TIME						
TEMPORARY						

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

No cost impact is foreseen to the Department of Health & Social Services as a result of this legislation.

Thomas R. Bradlee

IV. DATE 1/25/83

PREPARED BY Robert W. Marshall, M.D., Director
AGENCY Health & Social Services/Mental Health & DD
PHONE 465-3370

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

33-001 (Rev. 12/82)

OMB Reviewed by: Nancy Dunn

Nancy Dunn

PROPOSED TITLE:

AN ACT RELATING TO THE INCLUSION IN THE STATE EXEMPT SERVICE OF LICENSED PHYSICIANS EMPLOYED BY THE DIVISION OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES, DEPARTMENT OF HEALTH AND SOCIAL SERVICES

GENERAL DOLLARS: \$0 (P. NOTE)

PRIME SPONSOR: HOUSE RULES COMMITTEE.

OTHER DOLLARS: \$0

CO-SPONSORS:

CURRENT STATUS: 4/29/83 CHAPTER 0011 SLA 03

DATE	SEQ	PAGE	LEGISLATIVE ACTION
01/21/83	01	0081	FIRST READING -- COMMITTEE REPORTS
02/08/83	02	0205	HSS -- DP07
02/08/83	03	0205	L&C CMTE P/NOTE EQUALS ZERO
02/28/83	04	0362	FIN -- DP08, NR01
02/28/83	05	0365	SECOND READING
02/28/83	06	0365	ADVANCED TO 3RD READING BY UNAN CONSENT
02/28/83	07	0365	THIRD READING
02/28/83	08	0366	PASSED BY DIV 39-00-01
04/13/83	17	0860	TRANSMITTED TO GOVERNOR
04/29/83	18	1147	SIGNED BY GOVERNOR-CH0011, EFF 07/28/83
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DATE	SEQ	PAGE	LEGISLATIVE ACTION
03/01/83	09	0288	FIRST READING -- COMMITTEE REPORTS
03/11/83	10	0371	L&C -- DP03
03/30/83	11	0529	FIN -- DP05
04/12/83	12	0670	RLC -- OTHER04
04/13/83	13	0683	SECOND READING
04/13/83	14	0683	ADVANCED TO 3RD READING BY UNAN CONSENT
04/13/83	15	0683	THIRD READING
04/13/83	16	0683	PASSED BY DIV 16-02-02
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SENATE LABOR AND COMMERCE
STANDING COMMITTEE
March 10, 1983
1:35 p.m.

Members Present: Senator Dick Eliason, Chair
Senator Bob Mulcahy
Senator Pat Rodey

Members Absent: Senator Don Bennett
Senator John Sackett

COMMITTEE CALENDAR

HB 108

"An Act relating to the inclusion in the state exempt service of licensed physicians employed by the Division of Mental Health and Developmental Disabilities, Dept. of Health and Social Services."

SB 145

"An Act relating to the Board of Marine Pilots."

SB 154

"An Act repealing the municipal exemption option to the Public Employment Relations Act."

WITNESS REGISTER

(HB 108)

Terry Cramer, Administrative Assistant to the Blue Ribbon Commission (on the State Personnel Act)

Pouch YG

Juneau, Alaska 99811

465-4442

Position statement: Does not oppose legislation, and knows of no opposition.

T.R. Branton, Deputy Director of Division of Mental Health and Developmental Disabilities, Dept. of Health and Social Services

Pouch H

Juneau, Alaska 99811

465-3370

Position statement: Psychological and medical staff of Division support bill; poses no problem to Division.

(SB 145)

Joseph Merrill, Manager, Southwest Alaska (Marine) Pilots Association

P. O. Box 977

Homer, Alaska

235-8753

Position statement: Supports SB 145, and continuation of Board of Marine Pilots.

Harry Treager, Director, Div. of Occupational Licensing, Dept. of
Commerce and Economic Development

Pouch D

Juneau, Alaska 99811

465-2534

Position statement: Conveyed administrative support and division
support for continuation of Board.

(SB 154)

Senator Bettye Fahrenkamp, prime sponsor SB 154

Pouch V

Juneau, Alaska 99811

465-3762

Position statement: As prime sponsor, strongly urges passage of SB 154.

Barbare Steckel, Municipality of Anchorage

Pouch 6-650

Anchorage, Alaska 99501

264-4433

Position statement: Municipality does not support SB 154.

Marlene Neve, AFL-CIO

SR Box 20948

Fairbanks, Alaska 99701

456-2030

Position statement: Supports SB 154.

Marilyn Miller, Alaska Municipal League

204 N. Franklin

Juneau, Alaska 99801

586-1325

Position statement: Opposes SB 154.

Bill Hao, Fairbanks Firefighters

P. O. Box 867

Fairbanks, Alaska 99701

456-6458

Position statement: Strongly supports SB 154.

Mike Pulice, Fairbanks Police Dept. Employees Assn.

1635 Kivalina St.

Fairbanks, Alaska 99701

452-6652

Position statement: Supports SB 154.

Barry Haight, Fairbanks Firefighters

S.R. Box 20184

Fairbanks, Alaska 99701

455-6293

Position statement: Supports SB 154.

Lee Sharp, City Attorney, City and Borough of Juneau

155 S. Seward St.

Juneau, Alaska 99801

586-3300

Position statement: Opposes SB 154.

Greg O'Claray, Inland Boatman's Union District Union Seafarers
International Union of North America AFL CIO (IBUSIU), representing
Juneau municipal employees

124 Front St.

Juneau, Alaska 99801

585-9711

Position statement: Supports SB 154.

Jim Wakefield, Laborers Local #942

369 S. Franklin St.

Juneau, Alaska 99801

586-3880

Position statement: Supports SB 154.

Tom Cashen, IBEW Local 1547 (International Brotherhood of Electrical
Workers)

124 Front Street

Juneau, Alaska 99801

586-3050

Position statement: Supports SB 154.

James Robison, Commissioner, Dept. of Labor

Box 1149

Juneau, Alaska 99802

465-2700

Position statement: Provided information on fiscal impact.

Cherie Shelley, Alaska Public Employees Association

340 N. Franklin St.

Juneau, Alaska 99801

586-2334

Position statement: Supports SB 154.

PREVIOUS ACTION

No previous action in Labor and Commerce.

ACTION NARRATIVE

Tape #8

Number 007

Senator Eliason called the meeting to order, with Senators Mulcahy and Rodey in attendance. Senator Eliason outlined the agenda, and brought up House Bill 108, concerning returning licensed physicians employed by the state to the classified service, with the exception of those physicians and a few other medical staff in the Division of Mental Health and Developmental Disabilities.

Number 20

Terry Cramer, Administrative Assistant to the Blue Ribbon Commission, testified on HB 108, stating that last year a revision of the statute had placed all licensed physicians employed by the states in the exempt service. The Department has had no problem in attracting and retaining doctors, and this bill would return the law to the status quo preceding last session, limiting those in the exempt service to the physicians in the Division of Mental Health and Developmental Disabilities. In response to Sen. Eliason's question asking if she knew of anyone opposed to the legislation, Terry Cramer responded that she did not.

T.R. Branton, Deputy Director of the Division of Mental Health and Developmental Disabilities (DHSS), testified on HB 108, stating that the psychological and medical staff in the division are in favor of the legislation, and that it "poses no problem to us".

Sen. Mulcahy moved that HB 108 be passed out of committee with individual recommendations. Sen. Rodey seconded the motion and recommended "Do Pass".

Number 115

The committee took up SB 145, concerning continuation of the Board of Marine Pilots, as part of their "sunset" review of the board.

Joseph Merrill, Manager of the Southwest Alaska Pilots Association, testified in support of SB 145, continuing the Board of Marine Pilots. He gave a sketch of the historical background of marine pilots and referred to legislation before Congress this session which concerns marine safety and regulation. He stated that Alaska, with half of the coastal area of the U.S., should continue to regulate its marine pilots. The Alaska economy is highly dependent on water transportation, and Alaska has an outstanding record of safety. He urged retention of the board for the benefit of the public. In closing, Joseph Merrill introduced Captain Hendricks Elsensohn, head of the Southeast Alaska Pilots Association.

Sen. Eliason commended the marine pilots for the excellent job they are doing and for their great record.

Number 208

Harry Treager, Director of the Division of Occupational Licensing, conveyed administrative support for the Board of Marine Pilots. He had previously supplied the committee with the data they had requested, and supports continuation of the Board.

Sen. Eliason explained that in order to comply with the "sunset" provisions, the committee would prepare a letter to the President of the Senate, and they would recommend that the Board be continued. The committee is waiting for the bill providing for the continuation of the Board of Marine Pilots to come over from the House.

Number 235

Senate Bill 154, a bill to repeal Section 4 of the Public Employment Relations Act (municipal opt-out provision), was taken up for consideration.

Number 243

Senator Fahrenkamp, prime sponsor of SB 154, testified on the measure, clarifying her reasons for introducing the bill. She stated that the bill attempts to address basic rights guaranteed to State employees since 1972 passage of PERA. As enacted the PERA envisioned general applicability of its provisions to all boroughs and political subdivisions. The PERA is the rule; the Koslosky amendment exemption is the exception to the rule. A signal was sent to local governments saying that while they were being provided the opportunity to exercise local employer prerogatives, it was fully expected that they would adopt ordinances which upheld and guaranteed basic employee rights similar to those enacted by the PERA. The declaration of policy statement contained in the PERA recognized that public employees should share in the decision-making process affecting their wages, working conditions and the like. There are examples of political subdivisions of the state which have adopted personnel systems embracing the principles of the PERA, such as the Municipality of Anchorage, which has made a strong commitment to employee rights. (Point of law: the right and power of a city or municipality to reject the PERA has been found to be subordinate to the rights of the employees.) As long as good faith bargaining continues, then the intent of the PERA is being met.

Sen. Fahrenkamp expressed surprise at the size of the fiscal note, and suggested that maybe the fact that many employees, especially in Anchorage and Fairbanks, are already organized had been overlooked.

Number 349

Barbara Steckel, representing the Municipality of Anchorage, testified on SB 154, stating that Anchorage adopted an ordinance to address the rights of public employees at the time that the Municipality opted out. She expressed the opinion that local control over bargaining should be maintained, and that to disallow local government the option of local control will harm employees.

Number 376

Sen. Eliason inquired about the kind of relationship between Anchorage employees and the Municipality, and Barbara Steckel responded that it was good.

Number 392

Sen. Rodey provided historical background for SB 154, stating that the PERA opt-out provision was effected by the Kosloski amendment which was offered on the floor of the Senate. It received no hearing and was a matter of horse trading rather than a well-thought-out process.

Number 411

Marlene Neve, representing AFL-CIO, stated that she had submitted written testimony and would not take up the committee's time. PERA was adopted in June, 1972, and was modelled after a federal act. The issue is not really one of local autonomy. If the rest of the municipalities were exercising the leadership displayed by Anchorage, there would not have been a need for SB 154. Several employers in Alaska have evaded the issue, and after opting out have failed to put an ordinance into practice, thus denying the employees' rights. She asked the committee's approval of SB 154.

Number 464

Marilyn Miller, representing the Alaska Municipal League, read an excerpt from the League's policy statement, strongly opposing any attempt to force the municipalities to participate in PERA. They maintain that a municipality at any time should be able to reject or withdraw from the terms of PERA.

Number 610

Bill Hao, City of Fairbanks Firefighter for the past 12 years, testified in support of SB 154, stating that an employee under their personnel system is treated in an arbitrary manner. He favors labor agreements, not personnel ordinances. The City of Fairbanks uses its exemption from PERA to disaffect (?) its employees, and Bill Hao favors passage of SB 154 because it will mean fair and just treatment of employees.

Senator Eliason confirmed that Fairbanks bargains collectively, but with select groups (such as IBEW) but not all.

Number 668

Mike Pulice, with the City of Fairbanks Police Department Employees' Association, testified on SB 154, citing problems encountered by City employees trying to negotiate with the City of Fairbanks. The City would not recognize their bargaining unit and there were abuses of the system in terms of pay ranges, promotions, etc., resulting in low morale and lack of any mutual trust. Mike Pulice regards the situation as an infringement on the rights of the employees.

Number 720

Barry Haight, with the Fairbanks Firefighters Association, a professional organization that represents its members in collective bargaining, testified in support of SB 154 and the right of employees to collectively bargain with their employer (City of Fairbanks): it worked well that way for 10 years. The Association is anxious to see the original intent of the law (subverted by the Koslosky amendment) reinstated. It is in the public interest to protect the Firefighters program, and guarantee their right to bargain.

Number 779

Lee Sharp, City Attorney for the City and Borough of Juneau, conveyed the City and Borough's opposition to SB 154, on the grounds that it "runs counter to this sound Constitutional policy" of maximum local self-government with a minimum of local government units. Juneau opted out of PERA and adopted its own comprehensive employee relations ordinance, similar to the state act but adapted to meet local needs "as perceived by our local elected officials." Employees have rights guaranteed by U.S. Constitution assuring them of the right for a hearing and fair treatment whenever an adverse action affecting the employee is to be taken. The legislature should not impose a system on all local governments to deal with what may be perceived as a problem in one community. In addition, if residents of a municipality believe that their municipal employees should be under PERA, they may, by referendum, repeal the ordinance or resolution by the which the opt out was effected. Local elected officials in best position to deal with local problems.

Number 838

Greg O'Claray, (IBUSIU/AFL CIO), representing the municipal employees of Juneau, testified in favor of SB 154, stating that the ordinance passed by Juneau does not work. There is no binding arbitration provision. He discussed the time-consuming nature of the procedure required just to get certified (each section, some of only three persons, must have an election) which results in spending more time getting the election process going than in representing people. He objects to the ordinance and to the way in which the City and Borough relates to their employees.

Side 2
Number 041

Jim Wakefield, with the Laborers Local 942 of Fairbanks, gave some historical background on bargaining, citing the Wagner Act which gave employees the right to bargain collectively. In 1972 the Alaska Legislature gave the same right to public employees. He believes in local autonomy, but some municipalities which have opted out of PERA have not passed an ordinance. Jim Wakefield urged the committee's favorable consideration of SB 154.

Number 134

James Robison, Commissioner of the Dept. of Labor, testified on SB 154, substantiating the fiscal note on the grounds that the department's labor relations services would be greatly expanded by passage of the measure. The department would become the labor relations agency for all political subdivisions of the state on a continuous basis. The department's position paper states that they support the concept of collective bargaining for all public employees, and Commissioner Robison stated that all employees should have that right. The department does not have the staff or financial resources to assume the expanded services inherent in SB 154 without the funds requested in the fiscal note. The position paper states that "this administration feels that labor relations are more effectively maintained at the local level. However, amendments to encourage or mandate political subdivisions to

recognize their collective bargaining responsibilities for this group of public employees is recommended."

Number 348

Cherie Shelley, APEA, testified in favor of SB 154. Their experiences with municipalities which have opted-out of PERA indicates that the expenses associated with elections to which Dept. of Labor alludes would not be as high as the department believes. This is due in part to "consent elections". APEA has also had negative experiences with municipalities which express an interest in bargaining, then discover the opt-out provision and "hedge". Also, there have been cases of a city determining the degree of their desire to bargain on the basis of how much they liked the bargaining agent. PERA does not remove local control, it merely sets rules for playing the game. If management has no money, all labor relations can do is make them sit down and negotiate.

Number 410

Sen. Eliason stated that public hearings would be held in Anchorage on SB 154, and a teleconference would also be held before the committee took action on the bills.

Number 424

Meeting adjourned.



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

MEMORANDUM

January 25, 1983

TO: House Health, Education & Social Services Committee

FROM: Teresa B. Cramer *Teresa B. Cramer*
Administrative Assistant

SUBJECT: HB 108, Licensed Physicians in the Department of Health and Social Services

An unintended change created by an amendment to the State Personnel Act last session has caused some question in the Department of Health and Social Services. Prior to the amendment, licensed physicians employed by the Division of Mental Health and Developmental Disabilities were placed in the exempt service. Other physicians working for the department were members of the classified service. This system worked well. The exception for those working in the mental health field was necessary in order to attract and pay qualified staff.

The amendment placed all licensed physicians, as defined in AS 47.30.340(9), employed by the state into the exempt service. Title 47.30 addresses mentally ill and insane persons but the definition section defined "licensed physician" in general terms. The department brought to the commission's attention an unforeseen situation. There were two employees in the Division of Public Health serving as Regional Health Officers. One was a medical doctor and the other a licensed veterinarian. Under the amended version of the State Personnel Act, the doctor could be placed in the exempt service and the veterinarian would remain in the classified service. Both have the same duties, though in different locations.

The commission recommends that legislation be adopted to return all medical doctors except those employed by the Division of Mental Health and Developmental Disabilities to the classified service.

Bill Analysis

The bill amends the section of the State Personnel Act which lists membership in the exempt service to place only those physicians employed by the Division of Mental Health and Developmental Disabilities in the exempt service.

TBC:lmk
Attachment

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES
OFFICE OF THE COMMISSIONER

POUCH H 01
JUNEAU, ALASKA 99811
PHONE: 465-3030

December 14, 1982

The Honorable Bill Ray, Chairman
Blue Ribbon Commission on the State Personnel Act
Pouch YG, Mail Station 3123

Attention: Terry Cramer, Administrative Assistant

Subject: Licensed Physicians - Department of Health & Social Services

Dear Senator Ray:

Subsequent to the December 7 meeting of the Blue Ribbon Commission, and at its direction, the Department of Health & Social Services considered the circumstances surrounding the statutory language relating to licensed physicians employed by the state. The original purpose for the inclusion of licensed physicians in the exempt service under AS 39.25.0110 (19) was to provide for recruitment and retention of qualified and competent staff within the Division of Mental Health & Developmental Disabilities. That situation has worked well since that time.

The amendments to that statute as adopted under HCS CSSB 193 in 1982 eliminated that particular distinction. As presently written, that statute could be interpreted to include licensed physicians in the Division of Public Health. That action is not adjudged to be in the best interests of the state and those employees. It should be noted that in 1981, AS 47.30.340 was repealed in its entirety and AS 47.30.915 was added. That section again defined "licensed physician" in the legislative reference to mental health programs.

It is therefore respectfully requested that the language in AS 39.25.110 (13) be amended to read as follows: "licensed physicians, as defined in AS 47.30.915 (11), employed by the Division of Mental Health & Developmental Disabilities, Department of Health & Social Services.

Thank you for your consideration of this matter.

Sincerely,



Allen K. Korhonen
Acting Commissioner



Alaska Public
Employees Association **APEA**

State Headquarters: 340 N. Franklin, Juneau, AK 99801 (907) 586-2334

FACT SHEET

FROM: Cherie Shelley, Executive Director
Alaska Public Employees Association (APEA)

TO: Representatives Milo Fritz and Mae Tischer
Co-Chairpersons, HESS House Committee

SUBJECT: House Bill No. 108

DATE: February 4, 1983

APEA position concerning HB 108

APEA favors the passage of HB 108.

Employees groups referred to in HB 108

Classified - are those employees who meet state requirements and can be fired only for "just cause".

Exempt - are those employees in the state political hierarchy and can be fired without "just cause".

Physicians affected by HB 108

Physicians in "Exempt" group - are those physicians employed by the Division of Mental Health and Developmental Disabilities, Department of Health and Social Services. This group is comprised of psychiatrists and one medical physician, working mainly out of API in Anchorage. They have been and still are in the "Exempt" group.

Physicians in "Classified" group - are five medical physicians, Department of Health and Social Services, (not psychiatrists) working throughout the state. There are two Public Health Medical Specialists, a Medical Specialist/Child Development Services, a Regional Medical Officer and a Regional Health Officer in Fairbanks who is a veterinarian. They have been and still are in the "Classified" group.

Salary Schedule for "Exempt" group - the one medical physician is in range 27. The psychiatrists are in ranges 28 and 29. The Director is a range 30. Their salary is based on the F step plus five percent.

Salary Schedule for "Classified" group - the five medical physicians are in ranges 26 and 27.

Fairbanks Field Office
825-D College Road
Fairbanks, AK 99701
Telephone: (907) 456-5412

Anchorage Field Office
833 Gambell Street, Suite A
Anchorage, AK 99501
Telephone: (907) 274-1688

Juneau Field Office
227 4th Street
Juneau, AK 99801
Telephone: (907) 586-6305

Note "Exempt" group wages are higher than "Classified" group.

Legislation background

Last year SB 193, sponsored on behalf of the Blue Ribbon Commission of which I am a member, proposed the following as part of an effort to clarify the State Personnel Rules: "(15) Licensed physicians, as defined in AS 47.30.340(9), employed by the division of mental health and developmental disabilities, Department of Health and Social Services..."

SB 193 was amended by the Senate State Affairs Committee. The portion amended was AS 39.25.110, which lists the membership of the exempt service to include: "(13) all licensed physicians as defined in AS 47.30.340(9) employed by the state...."

The amendment was merely a means to shorten the language content. AS 47.30 is entitled "Mentally Ill and Insane Persons". AS 47.30.340(9) referred to physicians (psychiatrists) working for Division of Mental Health. Therefore it was redundant to state "employed by the division of mental health and development disabilities, Department of Health and Social Services..." However, AS 47.30.340(9), when read out of context with AS 47.30, entitled "Mentally Ill and Insane Persons" with articles dealing with the mental health program - could be interpreted to mean all physicians working for the state and not just the psychiatrists.

HB 108

HB 108 corrects the unintentional implication of the amendment language change. The intent of the legislation was not to move all physicians from the "Classified" to the "Exempt" group. The intent was to leave those physicians (medical) in the "Classified" group and to leave those physicians (psychiatrists) in the "Exempt" group.

Reason for APEA's involvement

Physicians that could be affected if this legislation does not pass are the medical doctors (not psychiatrists), employed by the Division of Public Health. As APEA members, they have contacted the Association to voice their concern about the amendment last session of the State Personnel Act (SB 193). APEA has spoken with three of the five physicians. They wish to remain in the "Classified" employee group. It is our understanding that the physicians (psychiatrists) in the "Exempt" employee group wish to remain there as set forth in the legislation.

Passage of Bill

Would satisfy physicians (medical and psychiatrists) now working for the state - would not cost the state anything as salary schedules would remain the same - and would appear to be the most practical and expedient method of correcting an inadvertent language error in the amendment.

HB 108

House bill 108 changes the current statute back to the original wording of the statute in 1980. AS 39.25.110 (19), in October, 1980, included as exempt employees the licensed physicians employed by the division of health and developmental disabilities, Department of Health and Social Services.

The October, 1982 revision of the statute changed the wording to include all licensed physicians employed by the state as exempt employees.

The language of HB 108 returns licensed physicians to the classified service, except for those working within the division of health and developmental disabilities, of the DHSS.

This affects psychiatrists, primarily, but also includes other specialists within the Alaska Psychiatric Institute. The justification for placing psychiatrists in the exempt category is that they demand salaries in excess of the established salary range for the classified service. Rather than change the salary range, the proposal is to revert to the previous exempt status. Those people categorized as exempt serve at the pleasure of the governor, and are not subject to the personnel rules.

Bill Fact Sheet

Date Received 3/1/83

Bill Number HB108 Title Inclusion exempt svc /physicians

Fiscal Note - Date Requested 1/21/83 Date Received 2/3/83

- Of Whom Norma Lang

Dept. Position Paper - Date Requested 1/21 Date Received _____

- Of Whom Norma Lang

Resource People

Initial Hearing - Date no quorum
3/8/83, 3/10/83
People Contacted

Terry Kramer - 4442 - 3/4 - 3/9
Norma Lang - 3030 - Dept of H+SS - 3/4
Dick Branton - 3370 - Mental Health - 3/4 3/9
APEA - Sherrin - 586-2334 - 3/4 3/9

Follow-up Hearing - Date _____

Final Action passed L+C Date 3/10/83

H B

100

#

2

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Rec'd
FEB 22 1983

Bill No: HB 180 Page 1 of 2 Date on Bill: 2/9/83
Title: "An act relating to eligibility for Veteran's Interest Rates"
Sponsor: Liska et al
Requestor: House Special Committee on Loans

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

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

b. Revenues:

Revenue				

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

3. Assumptions:

On July 27, 1982, the Board of Directors of Alaska Housing Finance Corporation adopted a resolution doing away with the one year and five year residency requirement for veterans that is currently in the statutes. The resolution was based on an Attorney General's opinion dated July 14, 1982, which stated that the U.S. Supreme Court's decision in the Zobel case made the residency requirements in 18.56.101 constitutionally defective.

AHFC would suggest the AG's office be contacted regarding the definition and parameters of "resident" as used in 18.56.

It is difficult to measure the financial impact caused by the expansion of the group of widows and widowers of veterans as the Corporation has no way of determining potential applicants who have not been eligible in the past. A review of previous lending activity to widows and widowers, as currently allowed, suggests the proposed change in eligibility will have an insignificant fiscal impact on the Corporation.

4. Disclaimer:

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

Prepared By: Mary Reifed, Spec. Asst.
Division: Comm. Office

Phone: 465-2300
Date: 2/22/83

Approved by Commissioner: Kathleen O'Brien
Department: Revenue

Date: 2/22/83

HB 100 TITLE & SPONSOR SUMMARY

14:42 5/22/84 PAGE 1 OF 3

AMENDED TITLE:

AN ACT RELATING TO ELIGIBILITY FOR VETERANS' INTEREST RATES ON LOANS MADE UNDER THE SPECIAL MORTGAGE LOAN PURCHASE PROGRAM (AS 19.56.098) BY THE ALASKA HOUSING FINANCE CORPORATION

GENERAL DOLLARS: \$0 (F. NOTE)

PRIME SPONSOR: LISKA.

OTHER DOLLARS: \$0

CO-SPONSORS: RUSSELL, FLOOD, FRITZ, LACHER, LINDAUER, PESTINGER, PHILLIPS, TISCHER, UEHLING, WARD, FURNACE, BARNES.

CURRENT STATUS: 5/17/83 IN (C) LABOR & COM REFERRAL: FINANCE

HB 100 HOUSE ACTION 14:42 5/22/84 PAGE 2 OF 3

DATE SEQ PAGE LEGISLATIVE ACTION

DATE	SEQ	PAGE	LEGISLATIVE ACTION
02/09/83	01	0213	FIRST READING -- COMMITTEE REPORTS
02/23/83	02	0322	LOAN -- DP04
02/23/83	03	0322	LOANS CMTE ZERO F/NOTE
04/12/83	04	0821	FIN -- DP08, NR02
05/15/83	05	1364	RLS -- DP06, NR02
			TAKEN UP IMMEDIATELY
05/16/83	06	1365	SECOND READING
05/16/83	07	1365	ADVANCED TO 3RD READING BY UNAN CONSENT
05/16/83	08	1365	THIRD READING
05/16/83	09	1365	PASSED BY DIV 38-00-02
***	**	**	*** *** ***

HB 100 SENATE ACTION 14:42 5/22/84 PAGE 3 OF 3

DATE SEQ PAGE LEGISLATIVE ACTION

DATE	SEQ	PAGE	LEGISLATIVE ACTION
05/17/83	10	0998	FIRST READING -- COMMITTEE REPORTS
			LABOR & COMMERCE
			FINANCE
			RULES
***	**	**	*** *** ***

Alaska State Legislature
House of Representatives



Official Business

While in Session
Pouch V
Juneau, Alaska 99811
(907) 465-3733

Home - District 15
P.O. Box 421
Eagle River, Alaska 99577
(907) 688-2526

John J. Liska

PROPOSED AMENDMENTS
House Bill 180
April 26, 1983

Because of the continuing legal questions about residency, and in keeping with the opinion presented by the Attorney General, I would like to offer the following amendments to House Bill 180:

- 1) On page 1, delete lines 19 through 29, Subsections (A) and (B)
- 2) On page 2, line 5, place a semicolon (;) after the word "state". Delete everything after the semicolon through the end of of line 6.

These amendments would eliminate references to residency requirements which are now in question.

John J. Liska
Representative - District 15

BY LISKA, BUSSELL, FLOOD, FRITZ,
LACHER, LINDAUER, PESTINGER,
PHILLIPS, TISCHER, UEHLING, WARD,
FURNACE AND BARNES

1 IN THE HOUSE

2

HOUSE BILL NO. 180

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to eligibility for veterans' interest rates on loans made under the special mortgage loan purchase program (AS 18.56.098) by the Alaska Housing Finance Corporation."

7

8

9

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

11

* Section 1. AS 18.56.101 is amended to read:

12

Sec. 18.56.101. ELIGIBILITY FOR VETERANS' INTEREST RATES. (a)

13

The following persons are eligible veterans for the purposes of AS 18.56.098(g) and (h):

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15

(1) a person who served in the armed forces of the United States for 90 days or more, or whose service was for less than 90 days because of injury or disability incurred in the line of duty, after April 6, 1917,

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[(A) who at the time of induction into the service was a resident of the territory or state, who had been a resident for not less than one year immediately before [HIS] induction, and who returned to the territory or state within one year after discharge as a resident with the intention of remaining in the territory or state; or

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(B) who, not being a bona fide resident of the territory or state at the time of entry into the service, has been a resident of the territory or state for at least one year at the time of the loan application [AND HAS BEEN A RESIDENT OF THE TERRITORY OR STATE FOR AT LEAST FIVE YEARS]; and]

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27

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29

1 (C) whose discharge was under honorable conditions;

2 (2) the widow or widower of a member of the armed forces or
3 of a [AN ELIGIBLE] veteran if

4 (A) the member or veteran was a resident of the terri-
5 tory or state; for at least one year before the death of the
6 member or veteran [INDUCTION INTO THE SERVICE];

7 (B) the member or veteran served in the armed forces
8 for at least 90 days after April 6, 1917; and

9 (C) in the case of a widow or widower of a veteran,
10 the veteran's [HIS] discharge was under honorable conditions;

11 (3) a person who has served in the Alaska Army National
12 Guard, the Alaska Air National Guard, or the Alaska Naval Militia or
13 who has served in a reserve unit of the United States armed forces in
14 Alaska if the reserve unit required, as a minimum, one weekend each
15 month of duty and 15 consecutive days of active duty training each
16 year for not less than five years and whose discharge was under honor-
17 able conditions.

18 * Sec. 2. AS 18.56.101 is amended by adding a new subsection to read:

19 (b) In this section

20 (1) "widow or widower of a member of the armed forces"
21 means the widow or widower of a person who died while serving in the
22 armed forces; and

23 (2) "widow or widower of a veteran" means the widow or
24 widower of a person who was a veteran of the armed forces at the time
25 of death.

Alaska State Legislature
House of Representatives

While in Session
Pouch V
Juneau, Alaska 99811
(907) 465-3733



Official Business

John J. Liska

Home - District 15
P.O. Box 421
Eagle River, Alaska 99577
(907) 688-2526

February 21, 1983

TO: House Special Committee on State Loans, Rick Uehling, Chairman

FROM: John J. Liska, Representative - District 15 *JL*

SUBJECT: House Bill 180, "An Act relating to eligibility for Veterans' interest rates on loans made under the special mortgage loan purchase program (AS 18.56.098) by the Alaska Housing Authority."

Briefly, House Bill 180 has been introduced in order to provide widows and widowers of Veterans a more equitable statute protecting their rights and eligibility for veteran's rates on mortgage loans.

According to the current statute referenced above, Section 18.56.101, widowers and widows of eligible veterans are required to fulfill one more eligibility requirement than their spouses, ie., they are required to have been married to veterans who resided in the State of Alaska at least one year prior to their induction into the services. This was not necessarily a requirement for the veteran himself (herself).

The intent of this Bill as introduced, is to allow the widow or widower of an eligible veteran to more equitably inherit the mortgage loan benefits earned by his or her spouse.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

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

February 22, 1983

Honorable Rick Uehling
Representative
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: HB 180 (veterans' loans)

Dear Representative Uehling:

This is a response to your February 16 request for our review of HB 180 "to determine the legality of the residency requirement in the bill." In fact, the bill does not impose any residence requirements at all. Rather, it would amend AS 18.-56.101 to delete a five-year residence requirement for eligibility for special veterans' interest rates on Alaska Housing Finance Corporation (AHFC) loans. The bill leaves unchanged several other one-year residence requirements for eligibility for the same program.

In our view, the deletion of the five-year residence requirement does not raise any legal or constitutional problems. On the other hand, while reasonable arguments can be raised in defense of the remaining one-year residence requirements, we believe a much safer approach would be to substitute a subjective bona fide residence test with a durational presence requirement of 30 days. However, in light of the fact that no residence requirement whatsoever is imposed on nonveteran applicants for AHFC loans, even a 30-day requirement for veterans may be difficult to successfully defend.

We have enclosed a copy of our July 14, 1982 opinion which concludes that the current one-year residence requirements could not withstand constitutional scrutiny. See specifically pages 22 -- 26 of that opinion.

We are currently working with the governor's office on legislation to eliminate the vulnerable residence requirements

Honorable Rick Uehling
Representative

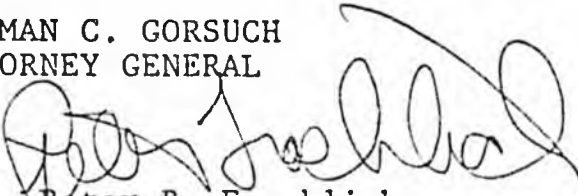
February 22, 1983
Page 2

now on our statute books.

Please contact this office again if we can provide you
further assistance.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
Peter B. Froehlich
Assistant Attorney General

PBF:eja

Enclosure:

ALASKA

STATE LEGISLATURE

MEMORANDUM

*Support
Back-up*

February 18, 1983

TO: House Special Committee on State Loans, Rick Uehling,
Chairman

FROM: John J. Liska, Representative - District 15 *JJL*

SUBJECT: House Bill 180, "An Act relating to eligibility for
Veterans' interest rates on loans made under the special
mortgage loan purchase program (AS 18.56.098) by the
Alaska Housing Authority."

The following authorities have reviewed this proposed bill:

Denna Cline, AHFC, Anchorage:

Only 4 women were turned down for Veteran's Rates Home Loans in 1982 and January of 1983. These widows were not eligible under the existing statute. Ms. Cline's experience leads her to believe that the fiscal impact of this proposed legislation would be negligible.

- * Trish Hurley Smith, Executive Director, Anchorage Board of Realtors
- * Mark Korting, President, Realtors Political Action Committee

* See Attached Telegram

TELEGRAM

ALASCOM, INC.
PHONE: 486-6442
JUNEAU, AK 99802

Realtor

FEB 21 PM 5 00

#

02014 NL ANCHORAGE ALASKA 50 02-21 1455P AST

PMS REPRESENTATIVE JOHN LISKA

POUCH V

1279

JUNEAU AK 99811

ALASKA ASSOCIATION OF REALTORS PRESIDENT MARK KORTING AND
LEGISLATIVE CHAIRMAN JESS COOK HAVE REVIEWED HB130 AND THEY
SUPPORT THE RESIDENCY REQUIREMENT CHANGE FROM 5 YEARS TO 1
YEAR AND THE INCLUSION OF WIDOWS AND WIDOWERS UNDER STATE
VETERAN ELIGIBILITY PROVISIONS. THANK FOR YOU THIS OPPORTUNITY
TO COMMENT.

TRISH HURLEY SMITH EXECUTIVE OFFICER

ANCHORAGE BOARD OF REALTORS

HB

116

BILL SHEFFIELD
GOVERNOR

HB 116



C^o

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 24, 1983

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

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill which increases the fee that the commissioner of commerce and economic development may assess a financial institution for investigation and examination costs. It raises the existing maximum of \$7,500 to a maximum of \$12,000 per examination. The fee increase is necessary because costs associated with these examinations have risen more than 50 percent since 1978 when the \$7,500 maximum fee was first established. An additional, technical amendment is included, rewriting but not changing the substance of the last sentence of AS 06.01.010(b).

Sincerely,

A handwritten signature in cursive script that reads "Bill Sheffield".

Bill Sheffield
Governor

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 11/9/83

I. REQUEST

Bill/Resolution No.: HB 116
 Title: An Act relating to bank examination
 Sponsor: House Rules Committee
 Requestor: Governor
 Date of Request: _____

II. FISCAL DETAIL

Agency Affected: Commerce and Economic Dev
 Program Category Affected: Consumer Protec
 BRU, Program of Subprogram(s) Affected: Banking and Securities

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE	12.0	12.0	12.0	12.0	12.0	12.0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						
TOTAL						

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

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Willis F. Kirkpatrick
 Division: Banking and Securities

Phone: 465-2521

Date: 11/9/83

Approved by Commissioner: _____
 Department: Commerce and Economic Development

Date: 12/29/83

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)

Fiscal Note

9/14/83

HB 116 TITLE & SPONSOR SUMMARY

16:57 6/04/84 PAGE 1 OF 3

PROPOSED TITLE: CSHE 116(FIN)

AN ACT RELATING TO FINANCIAL INSTITUTION EXAMINATIONS AND EXAMINATION FEE ASSESSMENTS, AND PROVIDING FOR AN EFFECTIVE DATE

GENERAL DOLLARS: \$0 (F. NOTE)

PRIME SPONSOR: HOUSE RULES COMMITTEE.

OTHER DOLLARS: \$0

CO-SPONSORS:

CURRENT STATUS: 4/25/84 IN (3) FINANCE

HB 116 HOUSE ACTION

16:57 6/04/84 PAGE 2 OF 3

DATE SEQ PAGE

LEGISLATIVE ACTION

01/24/83	01	0098	FIRST READING -- COMMITTEE REPORTS
01/24/83	02	0098	FISCAL NOTE EQUALS ZERO
01/24/83	03	0097	GOV TRANSMITTAL LETTER
05/06/83	04	1208	L3C -- DP04, NR01
01/27/84	05	2371	FIN -- CS09
01/27/84	06	2371	FIN F/NOTE USE SUPPL #87
01/30/84	07	2394	SECOND READING
01/30/84	08	2394	FIN CS ADOPTED BY UNAN CONSENT
01/30/84	09	2394	ADVANCED TO 3RD READING BY UNAN CONSENT
01/30/84	10	2394	THIRD READING
01/30/84	11	2395	PASSED BY DIV 33-06-01
01/30/84	12	2395	EFFECTIVE DATE VOTE SAME AS PASSAGE

*** ** ** ** **

SB 116 SENATE ACTION

17:00 6/04/84 PAGE 3 OF 3

DATE SEQ PAGE

LEGISLATIVE ACTION

07/31/84	13	1093	FIRST READING -- COMMITTEE REPORTS
08/25/84	14	2816	L3C -- RP03
			FINANCE
			RULES

*** ** ** ** *

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

April 24, 1984

Honorable Richard I. Eliason
Chairman
Senate Labor & Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason:

Re: HB 116

Enclosed per your request is the schedule of examination cost for the period of June 1982 to December 1983 (Exhibit A). I would like to remind you that our only intent of the bill is to recover some of the increased costs of examinations by raising the maximum chargeable to banks from \$7,500 to \$12,000.

When this proposed legislation failed to move in the last Legislature, we were told that it was because state-chartered banks had to pay for examinations twice, once to the State and then again to the FDIC, while nationally-chartered banks only paid once to the Comptroller of Currency. This premise is not like it is. All FDIC insured banks, state or national banks, pay a semiannual insurance assessment of 1/2 of 1/12 of 1% of the assessment (liability) base. Any examinations by the FDIC is charged to their insurance fund.

National banks pay for the total cost of the Comptroller of Currency's office by a semiannual assessment (Exhibit B). Note that national banks with assets of \$50-\$100 million pay \$11,800 (plus) a year (\$5,925 semi-annually) and those with \$100-\$500 million in assets pay \$17,850 (plus) a year.

Whenever possible, the State conducts joint examinations with the Federal Deposit Insurance Corporation in order to cut the cost of the examinations and better utilize the State's examining force. However, with the FDIC not examining the better rated banks for up to 36 months, it is now the responsibility of the State to monitor the condition of the State-chartered banks during this three-year period of time. It is also the position of this office that, instead of an examination for every bank

Honorable Richard I. Eliason

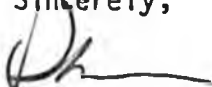
-2-

April 24, 1984

once a year, more attention could be given those banks which are poorly managed. Therefore, give interim visitations to higher rated banks and concentrate the examination effort on those banks that have been rated more poorly.

We would appreciate any consideration to the passage of this proposed legislation by your committee.

Sincerely,



Richard A. Lyon
Commissioner

RAL/mc1/4
Enclosure
42384b

Expenses and Revenues of Examination for the
Period June 1982 to December 1983

	Asset Size (in Millions)	Type of Exam	Cost of Exam	Amount Paid by Instit.	% of Cost Paid
<u>Commercial Banks:</u>	\$ 29.5	J	\$ 4,311	\$4,311	100
	452.6	S	32,350	7,500	23
	182.8	J	12,545	7,500	60
	160.6	J	17,039	7,500	44
	64.8	J	10,258	7,500	73
	109	S	17,488	7,500	43
	394.0	J	13,230	7,500	57
	74.4	J	9,176	7,500	82
	284.7	J	7,812	7,500	96
<u>Mutual Savings Bank:</u>	74.6	J	6,365	6,365	100
<u>Savings and Loan:</u>	8.7	J	1,601	1,601	100
	16.8	J	6,132	6,132	100
	27.3	S	7,867	7,500	95
<u>Bank Holding Co.:</u>	8.4	S	495	495	100
	9.3	S	396	396	100
	19.6	S	1,346	1,346	100
	33.4	S	912	912	100
<u>Trust Companies:</u>		S	985	985	100
<u>Credit Unions:</u>	3.2	S	2,603	2,603	100
<u>Small Loan Companies:</u>		S	363	363	100
		S	306	306	100
		S	416	416	100
<u>Premium Finance Co.:</u>		S	523	523	100
		S	532	532	100
		S	667	667	100
		S	493	493	100
		S	493	493	100
		S	567	567	100
		S	558	558	100
		S	467	467	100

Expenses and Revenues of Examination for the
 Period June 1982 to December 1983

(Cont'd)

	Asset Size (in Millions)	Type of Exam	Cost of Exam	Amount Paid by Instit.	% of Cost Paid
<u>Premium Finance Co.:</u> (Cont'd)		S	550	550	100
		S	489	489	100
		S	703	703	100
		S	443	443	100
		S	194	194	100
		S	703	703	100
		S	611	611	100
		S	512	512	100

J = Joint Examination with Federal Insurer
 S = State Examination

Part 8—Assessment of Fees: National Banks, District of Columbia Banks, Federal Branches and Agencies

[12 CFR 8]

- Sec.
- 8.1 Scope and application
- 8.2 Semiannual assessment
- 8.3 Filing fee for new bank charter applications and initial Federal branches and Federal agencies in a State (Deleted)
- 8.4 Filing fee for a domestic bank branch or additional Federal branches or agencies within a State (Deleted)
- 8.5 Filing fee for applications for mergers and consolidations (Deleted)
- 8.6 Daily rate for examination of affiliates and for special examinations and investigations
- 8.7 Daily rate for trust examinations

AUTHORITY: R.S. 5240, as amended, 12 USC 481, 482, 12 USC 3103, and in Section 3, 47 Stat. 1566, 26 D.C. Code 102.

§8.1 Scope and application

The assessments contained in this part are made pursuant to the authority contained in R.S. 5240, as amended, 12 USC 482, 12 USC 3102, and in section 3, 47 Stat. 1566, 26 D.C. Code 102.

§8.2 Semiannual assessment

(a) Each national bank and each district bank shall pay to the Comptroller of the Currency on or before January 31 and July 31 of each year a semiannual assessment fee for the six-month period beginning thirty days before each payment date. The amount of the semiannual assessment paid by each bank is computed as follows:

If the bank's total assets (consolidated and domestic and foreign subsidiaries) are—		The assessment is—		
Over—	But not over—	This amount—	Plus—	Of excess over
Million	Million			Million
0	\$1	0	0.0001000	0
\$1	10	\$1,000	00.125	\$1
10	50	2,125	.000095	10
50	100	5,925	0.000060	50
100	500	8,925	0.000050	100
500	1,000	28,925	.000045	500
1,000	3,000	51,425	0.000040	1,000
3,000	10,000	131,425	0.000034	3,000
10,000	20,000	369,425	.000032	10,000
20,000	689,425	.000021	20,000

Each semiannual assessment is based upon the total assets shown in the bank's "Consolidated Report of Condition (Including Domestic and Foreign Subsidiaries)"

most recently preceding the payment date. The assessment shall be computed in the manner and on the form provided by the Comptroller of the Currency. Each bank subject to the jurisdiction of the Comptroller of the Currency on the date of the second or fourth condition reports is subject to the full assessment for the next six month period without proration for any reason.

(b) Each Federal branch and each Federal agency shall pay to the Comptroller of the Currency on or before January 31 and July 31 of each year a semiannual assessment fee for the six month period beginning thirty days before each payment date.

The amount of the semiannual assessment paid by each Federal branch and Federal agency shall be computed at the same rate as provided in the Table in 12 CFR Part §8.2(a); however, only the total domestic assets of the Federal branch or Federal agency shall be subject to assessment.

Each semiannual assessment of each Federal branch or Federal agency is based upon the total assets shown in the Report of Condition most recently preceding the payment date. The assessment shall be computed in the manner and on the form provided by the Comptroller of the Currency. Each Federal branch or Federal agency subject to the jurisdiction of the Comptroller of the Currency on the date of the second or fourth condition reports is subject to the full assessment for the next six month period without proration for any reason.

§8.3 [Deleted]

§8.4 [Deleted]

§8.5 [Deleted]

§8.6 Daily rate for examination of affiliates and for special examinations and investigations

The assessment rate for examinations of affiliates and for special examinations and investigations is \$140 a day for the Examiner-in-Charge and \$80 a day for each additional Examiner. A separate charge will not be made for a regular examination of any operating subsidiary if the assets of such subsidiary are included in the consolidated report of the parent bank or Federal branch or agency.

§8.7 Hourly rate for trust examinations

(a) The assessment contained in this subpart is made pursuant to authority contained in R.S. 5240, as amended, 12 USC 481, 482 and in section 3, 47 Stat. 1566, 26 D.C. Code 102. Those statutes provide that the Comptroller assess fees adequate to cover the cost of each trust examination.

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Expenses and Revenues of Examination for the
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(Cont'd)

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J = Joint Examination with Federal Insurer
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Part 8—Assessment of Fees: National Banks, District of Columbia Banks, Federal Branches and Agencies

[12 CFR 8]

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Over—	But not over—	This amount—	Plus—	Of excess over
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Each semiannual assessment is based upon the total assets shown in the bank's "Consolidated Report of Condition (Including Domestic and Foreign Subsidiaries)"

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Each semiannual assessment of each Federal branch or Federal agency is based upon the total assets shown in the Report of Condition most recently preceding the payment date. The assessment shall be computed in the manner and on the form provided by the Comptroller of the Currency. Each Federal branch or Federal agency subject to the jurisdiction of the Comptroller of the Currency on the date of the second or fourth condition reports is subject to the full assessment for the next six month period without proration for any reason.

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(a) The assessment contained in this subpart is made pursuant to authority contained in R.S. 5240, as amended, 12 USC 481, 482 and in section 3, 47 Stat. 1566, 26 D.C. Code 102. Those statutes provide that the Comptroller assess fees adequate to cover the cost of each trust examination.

H B

126

8 126 TITLE & SPONSOR SUMMARY 17:00 6/04/84 PAGE 1 OF 3

RENDED TITLE: SCSHB 126(JUD)AM S

FACT LIMITING THE LIABILITY OF AIRCRAFT OWNERS OR OPERATORS
OR PERSONAL INJURY OR DEATH TO GUEST PASSENGERS

PRIME SPONSOR: HURLBERT.

CO-SPONSORS: COWDERY, RUSSELL.

CURRENT STATUS: 1/16/84 EXPIRED 1ST SESSION

8 126 HOUSE ACTION 17:00 6/04/84 PAGE 2 OF 3

DATE	SEQ	PAGE	LEGISLATIVE ACTION
1/26/83	01	0113	FIRST READING -- COMMITTEE REPORTS
4/14/83	02	0857	L&C -- DP01, DNP01, NR03
4/14/83	03	0857	L&C F/NOTE EQUALS ZERO
5/17/83	04	1382	JUD -- DNP01, DP(AH)04, NR02 TAKEN UP IMMEDIATELY
5/17/83	05	1388	SECOND READING
5/17/83	06	1390	AM01 ADOPTED BY DIV 38-00-02
5/17/83	07	1391	AM02 NOT ADOPTED BY DIV 14-24-02
5/17/83	08	1391	ADVANCED TO 3RD READING BY UNAN CONSENT
5/17/83	09	1391	THIRD READING
5/17/83	10	1392	PASSED BY DIV 24-12-04
5/23/83	25	1942	CONCURRED IN SENATE AMS BY DIV 38-02-06
5/25/83	23	2018	TRANSMITTED TO GOVERNOR
7/18/83	27	2153	VETOED BY GOVERNOR
1/16/84	28	0000	EXPIRED FIRST SESSION
***	XX	XX	*** **

8 126 SENATE ACTION 17:00 6/04/84 PAGE 3 OF 3

DATE	SEQ	PAGE	LEGISLATIVE ACTION
5/19/83	11	1034	FIRST READING -- COMMITTEE REPORTS
5/15/83	12	1315	L&C -- CS02, NR02
5/21/83	13	1407	JUD -- DNP01, CS02, NR01
5/22/83	14	1437	RLS -- OTHER01 TAKEN UP IMMEDIATELY
5/22/83	15	1444	SECOND READING
5/22/83	16	1444	JUD CS ADOPTED BY UNAN CONSENT
5/22/83	17	1444	ADVANCED TO 3RD READING BY UNAN CONSENT
5/23/83	22	1470	AM01 ADOPTED BY UNAN CONSENT
5/23/83	23	0000	ADVANCED TO 3RD READING BY UNAN CONSENT
5/23/83	13	1444	THIRD READING
5/22/83	17	1445	PASSED BY DIV 11-09-00
5/23/83	20	1445	NOTICE OF RECONSIDERATION GIVEN
5/23/83	21	1470	RETURNED TO 2ND READING BY UNAN CONSENT
5/23/83	24	1471	PASSED ON RECONSIDERATION BY DIV 12 07-01
***	XX	XX	*** **

COMMITTEE REPORT

SENATE

FURTHER:

JURISDICTION

1978

Date: 1-14

President:

The Committee on

LABOR & COMMERCE

has had

45 126 01

limiting the liability of aircraft owners or operators for personal injury or death to guest passengers.

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

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

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

I. REQUEST

Bill/Resolution No.: HB 126
 Title: "...liability of aircraft owners..."
 Sponsor: Repr. Hurlburt
 Requestor: House Labor & Commerce

II. FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: General Govt.
 BRU, Program of Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

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

N/A

IV. ANALYSIS: Attach a separate page for any analysis

Prepared By: Richard I. Peques Director
 Division: Administrative Services Division
 Approved by Commissioner: Richard I. Peques / for
 Department: Department of Law

Phone: 465-3672
 Date: April 13, 1983
 Date: April 13, 1983

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)

HR 126
Fiscal Note
Analysis

The liability of aircraft owners or operators for personal injury or death to guest passengers and the limitation thereof, is a matter between private parties. Such matters, unless they involve social concerns for which the state has provided some form of statutory protection, generally do not involve the Department of Law. Consequently, no fiscal impact will occur to the department's operations.

PATRICK M. RODEY
3271 MONTCLAIRE CT
ANCHORAGE, AK 99503



DURING SESSION
POUCH V
JUNEAU, AK 99811
(907) 465-3717

ALASKA STATE SENATE

June 8, 1983

TO : Senator Dick Eliason
Chairman, Senate Labor & Commerce Committee

FROM: Senator Patrick Rodey *PMR*

RE : House Bill 126 (Aircraft guest statute)

I am enclosing a copy of the letter and enclosed materials
I just received from Bernard Kelly regarding House Bill 126.

I wanted to bring this information to your attention to
include in any further committee deliberations on HB 126.

Enclosures

LAW OFFICES

KELLY & LUCE

A PROFESSIONAL CORPORATION

1015 WEST SEVENTH AVENUE

ANCHORAGE, ALASKA 99501

(907) 279-9571

BERNARD P. KELLY
L. AMES LUCE
GREGORY J. GREBE

June 2, 1983

Senator Patrick Rodey
State Senate
Juneau, AK 99801

Dear Senator Rodey:

I am enclosing a package of materials which was generated by Michael Schneider to the House Judiciary Committee on House Bill 126 (the Aircraft Guest Statute). The thesis of these documents is to show that this passenger bill would be unconstitutional.

We believe that there are other reasons for defeating this bill. It is like MICA where there may be unaffordable insurance coverage. I am sure it can be established that the insurance is too high because writing individual coverage for certain types of risks is something the insurance industry doesn't like to do and therefore they charge inordinant premiums for such situations. I think a better solution can be found than taking away people's rights. If the guest passenger statute were passed, there are many situations, such as people who pay for part of the gas for the airplane ride or who make a business arrangement of some kind with the pilot, such as a salesman and accountant or lawyer and client, etc., which situations avoid the guest statute. Private pilots who want the legislation are seeking a liability picture where they don't have to pay for any insurance. Yet, to my way of thinking, this is a trap for the pilot because the guest statute might be avoided on one of the basis outlined above or the statute might be held unconstitutional. Pilots in those situations would be lulled into a false sense of security and as a result could lose their personal assets.

In the meantime, the victims, widows and survivors of deceased passengers in air rafts may have to be demeaned by going on welfare or public assistance. This legislation treats them as an underprivileged class as compared to victims in other types of vehicular accidents, such as boats and cars.

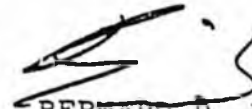
We would like to be kept apprised regarding a hearing on this bill. I will arrange to either be personally present or have a knowledgeable fellow attorney come down to argue against this legislation.

Senator Patrick Rodey
June 2, 1983
Page Two.

Thank you for any information you can provide us
on hearings, time tables and the like.

Very truly yours,

KELLY, LUCE & GREBE



BERNARD P. KELLY

BPK/llm

Enclosures

*Alstas & Schneider, P.C.*DENNIS M. MESTAS
MICHAEL J. SCHNEIDER880 'N' STREET, SUITE 202
ANCHORAGE, ALASKA 99501ARCA CODE 907
277-4551

April 14, 1983

Joseph Brewer
Staff Counsel
House Judiciary Committee
Pouch V
Juneau, AK 99811

Re: House Bill 126 (Aircraft Guest Statute)

Dear Joe:

As I mentioned in our phone conversation the other day, the above bill makes it necessary for a passenger in a private aircraft to prove the pilot was grossly negligent or intoxicated before that passenger can maintain a successful claim for personal injury or death. This bill would appear to be terrible public policy as passengers are rarely, if ever, in a position to assess the risks of any given flight in any given aircraft. Indeed, the control of critical decisions regarding weather, terrain, and performance capabilities of the aircraft is always in the hands of the pilot no matter what the passenger's opinion on the matter might be.

Legislation of this type has been held unconstitutional in a number of states. The first group of cases that I will refer to deal specifically with airplane guest statutes:

1. Messmer v. Ker, 524 P.2d 536 (Idaho 1974), airplane guest statute held unconstitutional.
2. Longnecker v. Noordyk Mooney, Inc., 232 N.W.2d 654 (Mich. 1975), exception for guest passenger requiring proof of gross negligence or wilful and wanton misconduct is unconstitutional.
3. Lightenburger v. Gordon, 510 P.2d 865 (Nev. 1973).

Identical constitutional and public policy issues are raised by automobile guest statutes. Automobile guest statutes have been consistently held unconstitutional by recent cases:

1. Brown v. Merlo, 506 P.2d 212 (1973), plaintiff-guest was injured when host's Jeep crossed centerline of highway and collided with embankment on

opposite side of road; court held classification which car guest statute created between those allowed and those denied recovery for injuries due to negligence does not have a substantial and rational relationship to statute's purpose of protecting hospitality of host driver and preventing collusive lawsuits and therefore, as applied to negligently-injured guest, the guest statute violates equal protection guarantees of California and United States Constitutions; judgment for defendant reversed.

2. Newman v. Coleman, 524 P.2d 541 (Idaho 1974).

3. Manistee Bank & Trust Co. v. McGowan, 232 N.W.2d 636 (Mich. 1975), to deny guest's recompense for negligently-inflicted injury, death, or loss cannot be justified as reasonable means to promote hospitality, foster gratitude, prevent collusion, perjury or fraud, reduce insurance premiums, or protect generous drivers from vexacious litigation by ungrateful guests or conniving hitchhikers.

4. Stanfill v. Powers, 243 N.W.2d 24 (1976), auto guest statute violative of equal protection clause of Michigan Constitution.

5. Lakonen v. 8th Judicial District Court, 538 P.2d 574 (Nev. 1975), Nevada's automobile guest statute unconstitutional as denying equal protection of the laws.

6. McGeehan v. Bunch, 540 P.2d 238 (N.M. 1975), classifications created by guest statutes, as between those who are denied and those who are permitted recovery for negligently-inflicted injuries, do not bear substantial and rational relation to statute's purpose of protecting hospitality of host driver and preventing collusive lawsuits; statute is unconstitutional and void as denial of equal protection of law.

7. Johnson v. Hassett, 217 N.W.2d 771 (N.D. 1974).

8. Primes v. Tyler, 331 N.E.2d 723 (Ohio 1975).

9. Nehring v. Russell, 582 P.2d 68 (Wyo. 1978), an action arising out of injuries sustained by plaintiff while riding as passenger in vehicle driven by defendant, court held that Wyoming's guest statute violates state constitution which requires "uniform operation of laws;" reasons for prohibition imposed upon guest from suing host to promote hospitality and gratuity and to prevent possible collusion were no longer viable, as party to be protected by guest statute today is unsure, not host and judicial system is well armed with numerous implements for prevention and detection of fraud.

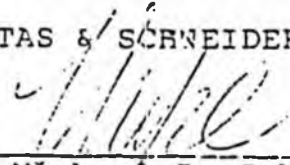
I hope the above convince you, as they have convinced me, that House Bill 126 suffers from irreparable State and Federal Constitutional infirmity. As a former president of the Alaska Academy of Trial Lawyers and the present Chairman of the Alaska Action Trust, I can assure you and the members of the House Judiciary Committee that the plaintiff's trial bar in this State is much opposed to this legislation. More

importantly, this legislation promotes the interests of a very limited group of people to the detriment of the public in general.

Thanks very much for your time and consideration of my thoughts with regard to this bill.

Sincerely,

MESTAS & SCHNEIDER, P.C.

By 
Michael J. Schneider

MJS:nh

P.S. What wonders arrive in the mail!! Since dictating this, I received (and have enclosed) a comprehensive treatment of the guest statute issue by an independent research group. Hope it helps.

LEGAL RESEARCH ANALYSIS
AND ADVICE FOR ATTORNEYS

2401 IVY ROAD
POST OFFICE BOX 7187
CHARLOTTESVILLE, VIRGINIA 22909

801 446-1870

IN VIRGINIA NH 977-3600

April 4, 1983

Michael J. Schneider, Esquire
880 North Street, Suite 202
Anchorage, Alaska 99501

Dear Mr. Schneider:

As you may know, The Research Group is a firm of 65 specialized attorneys which provides lawyers across the nation with professional legal support in the areas of legal research, writing, and analysis.

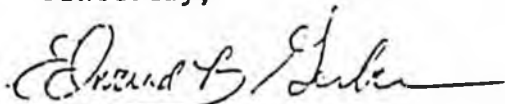
In addition, and of more immediate concern to the Alaska Trial Lawyer's Association, we have broad experience in preparing national and state surveys and other major studies. For example, we researched and wrote a seven volume study for The Commerce Department evaluating the status of American products liability law.

We are often commissioned to draft independent, objective studies of selected legal areas which our clients utilize in presentations to legislative and other governing bodies. Most recently, we conducted a national comparative study of various components of Indiana tort law for the Indiana Trial Lawyers Association.

The benefits to your organization of utilizing our attorneys for such studies are the economies of our service and the persuasive weight which attends an independent study performed by a nationally recognized firm which specializes in legal research and analysis. To aid you in evaluating the potential usefulness of our "major study" work product, I am enclosing an excerpt from a recently completed study.

We would be happy to discuss with you ways in which we can be of assistance to your organization. Please contact me directly (toll-free 800-446-1870) should you desire further information relative to our services or to receive a cost estimate for a specific project.

Sincerely,



Edward B. Gerber
Vice President

EBG/ntt
Enclosure

The Research Group



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