ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672
2703 SLC HB 211 (FILE 3) - HB 218

made to the Division of Occupational Licensing at its principal office, be permitted:

(1) Access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant, who may have counsel present, regarding any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees, and agents of such defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to the Division of Occupational Licensing at its principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested. The Antitrust Division of the United States Department of Justice will be considered a person who has filed a request for notice of proposed regulation actions by the defendant under AS 44.62.190 (a)(2) and will therefore be sent notice of those actions.

XI.

This Final Judgment shall remain in effect until ten (10) years from the date of entry.

XII.

Jurisdiction is retained by the Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of its provisions, for its enforcement or compliance, and for the punishment of any violation of its provisions.

XIII.

Entry of this Final Judgment is in the public interest.

Entered:

_____

United States District Court Judge

APPENDIX A

Re: United States v. Alaska Board of Registration for Architects, Engineers, and Land Surveyors, (Civil No. A82-423 CIV. D. AK.)

Dear Alaskan or Other Interested Party:

The Alaska Board of Registration for Architects, Engineers, and Land Surveyors has recently entered into a stipulation with the United States Department of Justice to settle an antitrust case filed against the Board. That case, United States v. Alaska Board of Registration for Architects, Engineers, and Land Surveyors (Civil No. A82-423 CIV.) concerned the Board's regulation 12 AAC 36.230(b) which does not allow an architect, engineer or land surveyor to "knowingly solicit or submit proposals for professional services on the basis of competitive bidding." Under the terms of the Final Judgment entered by the Court according to the stipulation, 12 ACC 36.230(b) has been deleted entirely. All Board Certficate of Registration holders will now be able to solicit work or submit proposals on the basis of competitive bidding and will be able to offer price quotations, hourly rates, or price estimates to all potential customers whether or not that customer requested a price quotation or competitive bid.

In addition, the Final Judgment, which was entered by Federal District Court Chief Judge von der Heydt, prevents the Board from adopting in the future any new regulation, rule, or policy statement which would prevent, discourage or label as unprofessional the use, submission or solicitation of price quotations and competitive bids. The Final Judgment, which is enforceable in federal court, prohibits the Board from discouraging or disparaging competition which is, in part, based on price, cost, or hourly charges.

A copy of the entire Final Judgment is available upon request from any office of the Division of Occupational Licensing or the Alaska Attorney General.

Sincerely yours,

Harry D. Traeger
Director
Division of Occupational Licensing
Department of Commerce and Economic Development
State of Alaska

Michael R. Spaan
U.S. Attorney
Federal Building and United States Courthouse
Room C-252, Mail Box 9
701 C Street
Anchorage, Alaska 99513

Edward D. Eliasberg, Jr.
Carolyn L. Davis,
United States Department of Justice
10th & Pennsylvania Ave., N.W.
Washington, D. C. 20530
Telephone: (202) 633-2582
Attorneys for Plaintiff



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

| | |
|---|---|
| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>ALASKA BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS, AND LAND SURVEYORS,<br><br>Defendant. | Civil No. A 82-423-CIV<br><br>COMPETITIVE IMPACT STATEMENT |

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

## I.

## NATURE AND PURPOSE OF THE PROCEEDING

On October 12, 1982, the United States filed a civil antitrust complaint alleging that, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, defendant Alaska Board of Registration for Architects, Engineers and Land Surveyors

("Board") and co-conspirators have been engaged in a combination and conspiracy to restrain competition in the sale of architectural, professional engineering, and land surveying services in Alaska.

The Complaint alleged that the substantial terms of this agreement, understanding, and concert of action have been and are that the Board promulgate, adopt, publish and distribute a provision in its Rules of Professional Conduct, 12 Alaska Administrative Code 36.230(b) ("Rule 36.230(b)" or "Rule"), prohibiting Board certificate of registration holders and other architects, professional engineers and land surveyors practicing in Alaska from knowingly soliciting or submitting proposals for professional services on the basis of competitive bidding. The Complaint further alleged that the effect of the conspiracy has been to suppress and eliminate competition in the sale of architectural, professional engineering, and land surveying services in Alaska.

The relief sought in the Complaint was that the Board be required to cancel its ban on competitive bidding and every other resolution or statement of policy which has as its purpose or effect the suppression or elimination of competitive bidding by Board certificate of registration holders. The Complaint also asked that the Board be enjoined from adopting or suggesting any rule prohibiting competitive bidding or any practice, plan, program or device having a similar purpose or effect. The Complaint further asked that the Board be required to notify all holders of Board certificates of registration,

Alaska city, borough, and state officials, and the general public of the rule change.

Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction over the matter for further proceedings which may be required to interpret, enforce or modify the Judgment, or to punish violations of any of its provisions.

II.

DESCRIPTION OF PRACTICES INVOLVED IN THE ALLEGED VIOLATION

Defendant is a state licensing board consisting entirely of architects, engineers, and land surveyors who are also private practitioners. Under Alaska law, individuals may not practice or offer to practice the profession of architecture, professional engineering, or land surveying unless they hold a current certificate of registration from the Board to practice architecture, professional engineering, or land surveying.

In 1974, the Board adopted "Rules of Professional Conduct" intended to regulate the practice of architecture, professional engineering, and land surveying in Alaska. The Board can suspend, refuse to renew, or revoke the certificate of registration of any certificate of registration holder who violates any of the Board's Rules of Professional Conduct.

Among the Rules which the Board adopted in 1974 is Rule 36.230(b), which provides that an architect, professional engineer, or land surveyor may not knowingly solicit or submit proposals for professional services on the basis of competitive

bidding. This Rule is still in effect. In December, 1980, the Board voted to retain Rule 36.230(b) despite the recommendation of the Alaska Attorney General that it be repealed. In May 1982, the Board refused to repeal the Rule on an emergency basis. In September 1982, the Board voted to retain the Rule.

Had this case gone to trial, the United States would have offered evidence to show that the Rule has had an adverse impact on consumers of architectural, engineering and land surveying services in Alaska by restricting practitioners' ability to compete and thereby raising prices. As a result of the Board's ban on competitive bidding, certificate of registration holders have refused to submit competitive bids although purchasers have requested such bids, and architectural, professional engineering, and land surveying associations have made reference to the ban in an attempt to discourage purchasers in Alaska from requesting or insisting upon competitive bids. Had this case gone to trial, the Government would also have adduced evidence that the Board informed potential purchasers that competitive bidding was in violation of its Rules and took other steps to ensure compliance with its Rules.

## III.

## EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the Board have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h). The proposed Final Judgment provides that its

entry does not constitute any evidence against or admission by either party with respect to any issue of fact or law.

Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(e), the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. Section XIII of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is intended to ensure that the Board completely eliminates all formal or informal rules, policy statements, or ethical codes proscribing or discouraging competitive bidding. It is also intended to ensure that Board certificate of registration holders and purchasers of architectural, professional engineering and land surveying services in Alaska are made aware that competitive bidding is now permissible.

A. Prohibited Conduct

Section IV of the proposed Final Judgment prohibits three categories of conduct. First, it enjoins the Board from directly or indirectly entering into, continuing, adopting, advocating, or furthering any plan, agreement, program, or course of action which has the purpose or effect of suppressing, restraining, or discouraging Board certificate of registration holders from submitting competitive bids. Second, Section IV enjoins the Board from promulgating, adopting, maintaining, or seeking adherence to any rule, guideline, statement of principle, policy, or collective statement which has the purpose or effect of suppressing, restraining, or

discouraging Board certificate of registration holders from submitting competitive bids or price quotations, or which states or implies that competitive bidding or quoting prices is prohibited, unethical, unprofessional, or contrary to any policy of the Board. Finally, the Board is also enjoined from refusing to issue a certificate to any applicant, or rescinding, suspending or refusing to renew a certificate of any holder, because of use or submission of competitive bids or price quotations, or solicitation of proposals for professional services on the basis of competitive bidding.

Section V provides that nothing in the proposed Final Judgment shall prohibit the Board from advocating or seeking legislation concerning competitive bidding, provided that such advocacy or discussion makes clear that the Board is not thereby suppressing, restraining, or discouraging board certificate of registration holders from submitting competitive bids or price quotations.

B. Affirmative Obligations

The affirmative obligations of the proposed Final Judgment are found in Sections VI-VIII.

Section VI declares Rule 36.230(b) null and void and requires its deletion from the Alaska Administrative Code within 60 days from entry of the proposed Final Judgment. Section VI also requires the Board to delete any other provision in its Rules of Professional Conduct, by-laws, resolutions, and policy statements, whether formal or informal, that prohibits, limits, or otherwise discourages the use or

submission of competitive bidding or price quotations or which implies that the use, submission, or solicitation of competitive bids or price quotations is prohibited, unethical, unprofessional, or contrary to any policy of the Board.

Section VII of the proposed Final Judgment requires the Board within 60 days from entry of the proposed Final Judgment to insert in the place of the text of Rule 36.230(b) and any other provision deleted pursuant to Section VI a statement that Rule 36.230(b) or other such provision has been deleted and the date of the deletion. The Board is also required within 60 days from entry of the proposed Final Judgment to insert in the Alaska Administrative Code on the page where Rule 36.230(b) previously appeared a statement that the Rule was deleted in accordance with the proposed Final Judgment and that the proposed Final Judgment also prohibits further enforcement of any ban or Board policy against competitive bidding.

Section VIII contains various requirements for dissemination of the proposed Final Judgment. First, Section VIII provides that within 60 days from entry of the proposed Final Judgment notice of the proposed Final Judgment consisting of a letter on the letterhead of the Division of Occupational Licensing of the Alaska Department of Commerce and Economic Development with a text identical to that of Appendix A of the proposed Final Judgment shall be sent to (1) each current Board certificate of registration holder, (2) each state, city, and borough entity in Alaska which may purchase architectural, engineering, or land surveying services and to which the

Board's roster is mailed under Alaska Statute 08.48.061, and (3) each trade association for contractors in the State of Alaska. Second, Section VIII further provides that within 60 d[illegible] entry of the proposed Final Judgment this notice will a[illegible]blished in the general readership sections of various pub[illegible]ions and newspapers in Alaska. Third, this Section also requires that this notice be sent to each new Board certificate of registration holder and to all other persons who normally receive the Board's roster each year for the next ten years. Finally, the Section also provides that the letter will also be published in every printing of the Board's pamphlet of statutes and regulations for the next 10 years.

C. Scope of Final Judgment

Section XI provides that the proposed Final Judgment will remain in effect for 10 years. Section III provides that the proposed Final Judgment applies to the Board and to the Board's officers, directors, agents, employees, successors, and assigns, and to all other persons in active concert or participation with the Board who shall have received actual notice of the proposed Final Judgment by personal service or otherwise.

## IV.

## COMPETITIVE EFFECT OF THE PROPOSED FINAL JUDGMENT

The relief in the proposed Final Judgment is designed to permit competitive bidding with regard to architectural, professional engineering, and land surveying services in Alaska.

Three methods for determining compliance with the terms of the Final Judgment are provided. First, Section IX requires that the Board file within 120 days after entry of the Final Judgment an affidavit as to the fact and manner of its compliance with Sections VI, VII and the first paragraph of Section VIII of the Final Judgment. Second, Section X provides that, upon reasonable notice, the Department of Justice shall be given access to any of the Board's records relating to matters contained in the Final Judgment and permitted to interview any officers, directors, employees, or agents of the Board. Third, Section X also provides that, upon written request, the Department of Justice may require the Board to submit written reports about any matters relating to the Final Judgment. Finally, Section X provides that, pursuant to Alaska Statute 44.62.190(a)(2), the Department of Justice will be sent notice of proposed regulation actions by the Board.

The Department of Justice believes that this proposed Final Judgment contains adequate provisions to prevent further violations of the type upon which the Complaint is based and to eradicate the effects of the alleged conspiracy.

## V.

## REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as

costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing or such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the judgment has no prima facie effect in any subsequent lawsuits that may be brought against the Board.

## VI.

## PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to John W. Poole, Jr., Chief, Special Litigation Section, Antitrust Division, U.S. Department of Justice, 10th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. Section XII of the proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation or enforcement of the Final Judgment.

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VII.

ALTERNATIVE TO THE
PROPOSED FINAL JUDGMENT

The alternative to the proposed Final Judgment considered by the Department of Justice was a full trial of the issues on the merits and on relief. The Department considers the proposed Final Judgment to be of sufficient scope and effectiveness to make a trial unnecessary, since it provides appropriate relief against the violation alleged in the Complaint and is the identical relief that would have been sought at trial.

VIII.

DETERMINATIVE MATERIALS
AND DOCUMENTS

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), were considered in formulating the proposed Final Judgment.

Dated:

Respectfully submitted,

Edward S. Eliasberg, Jr. dgs
EDWARD S. ELIASBERG, JR.

Carolyn L. Davis
CAROLYN L. DAVIS

Attorneys, United States
Department of Justice
10th & Constitution Ave., N.W.
Washington, D.C. 20530
Telephone - (202) 633-2582

CERTIFICATE OF SERVICE

I, Mark R. Davis, attorney for Plaintiff United States of America, hereby certify that on November 18, 1983, I caused a copy of the attached Stipulation, Competitive Impact Statement and Proposed Final Judgment to be served by express mail on Peter B. Froehlich, attorney for Defendant, State of Alaska, Department of Law, Pouch K-State Capitol, Juneau, Alaska 99811.

Mark R. Davis
Assistant United States
Attorney
District of Alaska
United States Attorney's Office
C-252 Federal Building, Box 9
701 C Street
Anchorage, Alaska 99513

Anch Daily News
Thurs. 29, Dec. 83

# Kids glued to games as robber gets cash

A man armed with a small revolver robbed the Qwik Stop grocery at 324 Boniface Parkway on Tuesday night while two teen-agers, oblivious to the theft, played on the store's video games near the front counter.

According to an Anchorage police report, the man walked up to the store clerk just before 10 p.m. and opened his coat to display the weapon tucked in his belt. He asked her to stay quiet and hand over cash.

The thief then ran from the store and sped off in a light-colored station wagon.

The entire robbery went undetected by two 14-year-olds who were busy with a video game. Only when the clerk said what had happened did the boys look up to catch a glimpse of the getaway car.

The suspect is described as a black man in his 20s, and 5 feet, 7 inches tall. He wore sunglasses, a maroon hat, blue jacket and jeans. The belt holding his weapon also sported a large, silver buckle.

# Judge finds unconstitutional architect immunity statute

The Associated Press

A state statute designed to protect architects and contractors from construction liability six years after a project is completed has been ruled unconstitutional by a superior court judge.

The law unfairly grants immunity to designers, planners, supervisors and builders from lawsuits after the six-year period, and it leaves property owners or tenants liable for personal injury or wrongful death lawsuits from the design or construction of a structure, said Judge James Hanson of Anchorage.

Hanson said the statute violates the equal protection provision of the state constitution because it grants special immunity to certain people.

"This special statute of 'limitations' is actually a grant of immunity, a bar to causes of action arising out of design or construction deficiencies that cannot be discovered until injuries occur (often after the end of the magic 6-year period)," Hanson wrote in his decision.

The ruling came Friday in a $3 million lawsuit filed by David M. Stiles in 1982. Stiles says he was hit on the head by a piece of steel while working on an oil drilling platform in Cook Inlet.

Named in the lawsuit are Arco, part owner of the platform; Mine Safety Appliances Co., designers of the hard hat Stiles was wearing; and J. Ray McDermott and Co. Inc. and Earl and Wright Consulting Engineers.

McDermott and Earl and Wright claimed they were immune from the lawsuit because six years had passed since the platform was completed.

# Assembly redu

By GREG GADBERRY
Daily News reporter

When he or she begins work early next year, the new Anchorage ombudsman will find an office with less than half the staff and money it was allowed in 1983.

The reduction in funding — mandated by the city's post-Proposition 24 budget — will probably result in a reduction in customer service, according to the acting city ombudsman.

"The question is, who is going to suffer because of this (funding cut)?" said acting ombudsman Greg Jefferies. "Well, it's the public."

Earlier this year, former Ombudsman Wayne Mabry led a four-person staff funded with $197,000.

Prior to leaving in November, Mabry requested about $242,000 to run the office in 1984. That money would have paid for four staff members and a new office outside the Municipal-Hill Building.

Instead, the assembly allocated the office $108,860, which will pay for one full-time ombudsman and a secretary.

"The minumum to do this job is three people," Jefferies said this week. "We need the power to monitor situations all over the municipality."

Anchorage has had three ombudsmen since the city and borough were unified in 1975. The office has responded to an increasing number of citizen complaints about government.

In 1982, the ombudsman's office had 2,520 "contacts" with the public, records show. Most of those contacts were handled with a few minutes on the telephone, Jefferies said. Only 113 contacts prompted formal investigations.

Records for 1983 are not completed. But probably show 3,400 people call Jefferies said.

He estimated t ber of public con will be more tha ing the office's manpower that severe.

Since Mabry's in November, th been led by Jeff sistant ombudsm chorage Assembl appoint a new early next year.

Jefferies, who two years in the he isn't sure he w job.

He said limited leave the new ci man with little ch phase out much of investigative work two people to han workload next y may be little or r in-depth probes, he

Answering the alone could bec whelming, he said.

The municipalit gives the ombuds derable scope — t power. An ombu examine files in t pality and issue a tive subpoenas t backed up with th a superior court.

People who "wil der" the ombudsm charged with a mi and fined up to $500

But there are li ombudsman's powe investigate acts of mayor or the assem appoints him. His

# Peninsula mayor seeks re-election

Our Peninsula bureau

SOLDOTNA — Kenai Peninsula Borough Mayor Stan Thompson, who has served seven years as mayor, said



CHRI
F

First Nat'l Bank, Sup. Ct. Op. No. 4[illegible] (File No. 929), 444 P.2d 777 (1968).

**Slipping on ice as breach of implied contractual duty.** — Where, in a suit for injuries suffered by plaintiff when she slipped and fell on ice which had accumulated near the entrance to a lodge where she had been a paying guest, plaintiff contended that she was injured by reason of defendants' breach of their implied contractual duty as innkeepers to keep their premises in reasonably safe condition for their guests and, therefore, that the six-year statute of limitations should control, it was held that the controlling statute of limitations was the two-year statute governing tort actions, and not the six-year statute relating to actions on contract. Silverton v. Marler, Sup. Ct. Op. No. 186 (File No. 341), 389 P.2d 3 (1964).

**Applied** in State v. Reefer King Co., Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976), modified on rehearing on other grounds, 562 P.2d 702 (1977); Clary v. Stack Steel & Supply Co., Sup. Ct. Op. No. 2093 (File No. 4194), 611 P.2d 80 (1980); Municipality of Anchorage v. Sisters of Providence of Wash., Inc., Sup. Ct. Op. No. 2343 (File Nos. 5017, 5018, 5329), 628 P.2d 22 (1981); Roberts v. Brooks, Sup. Ct. Op. No. 2544 (File No. 5616), 649 P.2d 710 (1982).

**Quoted** in King v. First Nat'l Bank, Sup. Ct. Op. No. 2525 (File No. 5380), [illegible] P.2d [illegible] (1982).

**Stated** in Walker v. White, Sup. Ct. Op. No. 2196 (File No. 4574), 618 P.2d 567 (1980).

**Cited** in Oaks v. Rojcewicz, Sup. Ct. Op. No. 318 (File No. 580), 409 P.2d 8[illegible] (1966); Paliy v. Hepp, Sup. Ct. Op. No. 51[illegible] (File No. 942), 448 P.2d 310 (1968); Alaska Airlines v. Lockheed Aircraft Corp., 430 F. Supp. 134 (D. Alaska 1977); Straight v. Hill, Sup. Ct. Op. No. 2256 (File No. 4610), 632 P.2d 425 (1981); Northern Power & Eng'g Corp. v. Caterpillar Tractor Co., Sup. Ct. Op. No. 2286 (File No. 4698), 623 P.2d 324 (1981); State, N.S.E. Regional Aquaculture Ass'n v. Alex, Sup. Ct. Op. No. 2488 (File Nos. 5065, 5086, 5142), 646 P.2d 203 (1982).

[illegible]imely suit to enforce policy as [illegible]errupting limitations against claims [illegible]s amended pleading to reform it, or [illegible] versa, 92 ALR2d 168.

[illegible]hat statute of limitations governs [illegible]on by contractee for defective or



improper performance of work by private building contractor, 1 ALR3d 914.

Validity of contractual time period shorter than statute of limitations, for bringing action, 6 ALR3d 1197.

When does cause of action accrue, for purposes of statute of limitations, against action based upon encroachment of building or other structure upon land of another, 12 ALR3d 1265.

Statutes of limitation concerning actions of trespass as applicable to actions for injury to property not constituting a common-law trespass, 15 ALR3d 1228.

Application of statute of limitations to damage actions against public accountants for negligence in performance of professional services, 26 ALR3d 1438.

Time limitations as to claims based on uninsured motorist clause, 28 ALR3d 580.

Insurer's failure to pay amount of admitted liability as precluding reliance on statute of limitations, 41 ALR3d 1111.

What statute of limitations covers action for indemnity, 57 ALR3d 833.

What statute of limitations governs action for interference with contract or other economic relations, 58 ALR3d 1027.

What statute of limitation applies to action for surplus of proceeds from sale of collateral, 59 ALR3d 1205.

Choice of law as to applicable statute of limitations in contract actions, 78 ALR3d 639.

When statute of limitations begins to run against action to recover money paid by mistake, 79 ALR3d 754.

Limitation of action against attorney for breach of contract to defend, 96 ALR3d 1193.

What statute of limitations governs action arising out of transaction consummated by use of credit card, 2 ALR4th 677.

What statute of limitations governs physician's action for wrongful denial of hospital privileges, 3 ALR4th 1214.

When statute of limitations begins to run against action based on unwritten promise to pay money where there is no condition or definite time for repayment, 14 ALR4th 1385.

When statute of limitations begins to run as to cause of action for nuisance based on air pollution, 19 ALR4th 456.

**Sec. 09.10.055. Certain actions relating to construction in six years.** (a) No action, whether in contract (oral or written, sealed or unsealed), in tort or otherwise, to recover damages (1) for a deficiency in the design, planning, supervision or observation of construction or construction of an improvement to real property; (2) for injury to property, real or personal, arising out of a deficiency; or (3) for injury to the person or for wrongful death arising out of such deficiency, may be brought against a person performing or furnishing the design, planning, supervision or observation of construction, or construction of an improvement more than six years after substantial completion of an improvement.

(b) Notwithstanding the provisions of (a) of this section, in the case of an injury to property or the person or an injury causing wrongful death, which injury occurred during the sixth year after substantial completion, an action in tort to recover damages for the injury may be brought within two years after the date on which the injury occurred, but in no event may action be brought more than eight years after the substantial completion of construction of an improvement.

(c) Nothing in this section shall be construed as extending the period prescribed by the laws of this state for the bringing of any action.

(d) The limitation prescribed by this section shall not be asserted by way of defense by a person in actual possession or control, as owner, tenant, or otherwise of an improvement at the time a deficiency in an improvement constitutes the proximate cause of the injury or death for which it is proposed to bring an action.

# Bill Freeing Doctors, Other Professionals From FTC Regulation Is Passed by House

By a Wall Street Journal Staff Reporter

WASHINGTON—The House approved a measure granting doctors, dentists and other state-licensed professionals blanket exemption from Federal Trade Commission scrutiny or prosecution.

The exemption provision, which Rep. James Florio (D., N.J.) warned would "fan the flames of health-care cost inflation," was adopted on a 245-155 vote. The American Medical Association and the American Dental Association lobbied vigorously for the measure, and their political action committees contributed handsomely to the 1982 campaign coffers of a majority of representatives.

The proposal was one part of reauthorizing legislation for the FTC. The House dealt the agency a further setback by cutting its budget from the current $68 million level to $60 million for fiscal 1983, $55 million for fiscal 1984 and $54.6 million for fiscal 1985. In addition, the House voted to maintain its prerogative to veto any FTC rule, despite a recommendation from the House Rules Committee that it relinquish that authority. Congress gave itself legislative veto power over the FTC in 1980, and the question of whether Congress has the constitutional authority to veto agency regulations now is before the Supreme Court.

The vote on the exemption measure came after advocates of the exemption narrowly defeated a compromise measure that would have permitted the FTC to continue policing the business practices of professionals while restricting licensing and standard-setting to the purview of state authorities. The compromise, offered by Rep. James Broyhill (R., N.C.), and supported by the White House, was defeated on a 208-195 vote.

The FTC's defenders, including Reps. Broyhill and Florio, had hoped to delay consideration of the issue until the new Congress, with its larger Democratic majority, convened in January. The ultimate outcome of the battle over the professionals' exemption remains unclear, but yesterday's House vote was clearly a blow to the FTC's backers. A similar measure is awaiting action in the Senate, where it won Commerce Committee approval by a two-to-one margin in May.

Rep. Florio said yesterday he also thought the FTC's backers would have done better if the vote had been taken before the November election. "Before an election, there might have been more sensitivity as to how their vote would be read by the people at home," he said. After extensive publicity about the AMA's hefty campaign contributions, a substantial number of Democratic and Republican members successfully urged the leadership this fall to delay consideration of this issue until after the election. The AMA's political action committee gave more to the 1982 congressional campaigns than any group other than the nation's Realtors.

The FTC's supporters said late yesterday they will try to block full congressional action on the FTC's reauthorization—including the professionals' exemption—during the current post-election session. If they are successful, the legislative process on all these FTC-related issues will have to start from scratch in January.

The chief sponsor of the exemption proposal, Rep. Thomas Luken (D., Ohio), said his measure would prevent the agency from "encroaching" on state officials' authority to regulate state-licensed professions. And, he maintained, there isn't any way to do what Rep. Broyhill's proposal sought to do—to draw a line between those activities of doctors and other professionals that affect the quality of care and those activities that amount to business or commercial practices.

Among the actions the FTC has taken in the health-care area are orders forbidding the AMA and the dentists' group from interfering with its members' desire to advertise or work for prepaid health-care plans. The FTC also issued a rule striking down many state and private restrictions on how and where eyeglasses can be sold; the rule is credited with having reduced the cost of eyeglasses and contact lenses nationwide.

The exemption provision doesn't invalidate such previous FTC actions, as the doctors had wanted, but it does preclude the agency from following up on its earlier orders with actions against smaller professional groups. Recently, the agency has challenged local doctors' and dentists' groups for imposing on themselves and their colleagues certain "ethical" restrictions and agreements that chill competition.

## House of Fabrics Inc.

SHERMAN OAKS, Calif.—House of Fabrics Inc. said it expects to report that net income for the fiscal third quarter, ended Oct. 31, rose 39% to $3.7 million, or 70 cents a share, from $2.6 million, or 53 cents a share, a year earlier.

Third-quarter revenue grew about 31% to some $62.6 million from $47.7 million a year earlier, Chairman David I. Sofro said in an interview.

Net for the nine months climbed about 54% to $7.3 million, or $1.41 a share, from

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

DAVID M. STILES,

Plaintiff,

vs.

ATLANTIC RICHFIELD CO.; MINE SAFETY APPLIANCES COMPANY; J. RAY McDERMOTT & COMPANY, INC; EARL & WRIGHT CONSULTING ENGINEERS,

Defendants.



No. 3AN-82-6892 CIV.

ORDER RULING A.S. 09.10.055 UNCONSTITUTIONAL

Plaintiff's motion in this case has directly challenged the constitutionality of a statute, A.S. 09.10.055, which immunizes certain classes of defendants from any liability six years after substantial completion of any improvement to real property (eight years in the event of wrongful death occurring during the sixth year). This statute, entitled "Certain actions relating to construction in six years"[1],

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1. Sec. 09.10.055. "Certain actions relating to construction in six years." (a) No action, whether in contract (oral or written, sealed or unsealed), in tort or otherwise, to recover damages (1) for a deficiency in the design, planning, supervision or observation of construction or construction of an improvement to real property; (2) for injury to property, real or personal, arising out of a deficiency; or (3) for injury to the person or for wrongful death arising out of such deficiency, may be brought against a person performing or furnishing the design, planning, supervision or observation of construction, or construction of an improvement more than six years after substantial completion of an improvement.

(b) Notwithstanding the provisions of (a) of this section, in the case of an injury to property or the person or an injury causing wrongful death, which injury occurred during the sixth year after substantial completion, an action in tort to recover damages for the injury may be brought within two years after the date on which the injury occurred. In no event may action be brought more than eight years after the substantial completion of construction of an improvement.

(c) Nothing in this section shall be construed as extending the period prescribed by the laws of this state for the bringing of any action.

(d) The limitation prescribed by this section shall not be asserted by way of defense by a person in actual possession or control, as owner, tenant, or otherwise of an improvement at the time a deficiency in an improvement constitutes the proximate cause of the injury or death

enacted by the legislature in 1967, grants absolute immunity from legal actions ("whether in contract...tort or otherwise") to designers, planners, supervisors, and builders of improvements to real property. Such special "limitation" is denied to owners and tenants of such property, who may still be sued within the usual period that does not begin to run until a personal injury action accrues (until a design or construction "deficiency" results in an injury). The Alaska statute does not distinguish between patent and latent deficiencies; it averts the "discovery" doctrine, under which defective construction would become actionable at the time it was discovered or should have been discovered (usually the time of injury).[2] Unlike the more rational classification of limitations statutes--i.e., classification based on the type of liability asserted (contract, negligence, defamation, etc.)--the statute challenged here turns upon the type of defendant being sued. Thus the statute is contrary to the basic precept that the same law should apply to all who are similarly situated and

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for which it is proposed to bring an action.
(e) In this section, "person" means an individual, corporation, partnership, business trust, unincorporated organization, association, or joint-stock company.
(§ 2 ch 61 SLA 196 )

2. Such statutes in some other jurisdictions at least distinguish between patent and latent defects; e.g., Martinez v. Traubner, 653 P.2d 1046 (Calif. 1982). The Tennessee courts evidently distinguished between "hidden" dangerous conditions and those openly "visible," Wallace v. Knoxville, 568 S.W.2d 107 (1978). Other states have also sought to ameliorate the harsh effect of such statutes of limitation/immunization by refusing to apply them to personal injury and wrongful death actions. Martinez, supra. Some state legislatures have modified such statutes with this significant clause: "Unless the parties to the contract agree otherwise," as in Wyoming's Code of Civil Procedure §1-? 111 (Wyoming Statutes Annotated [1983 Cumulative Supplement]), which has not yet been tested in court; the original statute was struck down as unconstitutional by the Supreme Court of Wyoming in 1980. Some state legislatures have also refused to extend such limitation/immunization to designers or builders guilty of fraud or concealment of such a cause of action. E.g., §15-3-670 of the South Carolina Code of Civil Remedies and Procedures. Later, the Supreme Court of South Carolina struck down as unconstitutional that state's corollary to our statute in Broome v. Truluck, 241 S.E.2d 739 (1978). In sum, it seems that Alaska's statute is unmitigated in its harshness especially in comparison with the statutes of various other jurisdictions.

no one should be granted special immunity in the courts.[3] Moreover, and what may be more objectionable, this statute has the obvious effect of cutting off an existing right of action--in many instances the common law right of action for negligence--inasmuch as the statute shortens the period of limitation to a time that has already run out.[4] Therefore, this court finds that the challenged statute violates both the equal protection and due process provisions of the Alaska Constitution (Article I, §1 and Article I, §7, respectively).[5] In ruling A.S. 09.10.055 unconstitutional, this court rules that those hitherto protected--designers, planners, supervisors, and builders of improvements to real property--are subject to the same scope of liability to which other professionals, and ordinary citizens in general, are subject to in Alaska. In particular, A.S. 09.10.050 and A.S. 09.10.070, which set forth the respective periods of limitations for contract and

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3. See McClanahan v. American Gilsonite Co., 494 F.Supp. 1334 (USDC, D.Colo. 1980).

4. See Saylor v. Hall, 497 S.W.2d 218, 225 (Court of App.s, Kentucky, 1973): "The right of action for negligence proximately causing injury or death, which is constitutionally protected in this state, requires more than mere conduct before recovery can be attempted. Recovery is not possible until a cause of action exists. A cause of action does not exist until the conduct causes injury that produces loss or damage. The action for negligence evolved chiefly out of the old common-law form of action on the case, and it has always retained the rule of that action, that proof of damage was an essential part of the plaintiff's case. See Prosser, Handbook of the Law of Torts, section 30, page 143 (4th Edition 1971)."

. . .

"It is not within the power of the legislature, under the guise of a limitation provision, to cut off an existing remedy entirely, since this would amount to a denial of justice, and, manifestly, an existing right of action cannot be taken away by legislation which shortens the period of limitation to a time that has already run." 51 Am.Jur.2d, Limitations of Actions, section 28, page 613. Surely then, the application of purported limitation statutes in such manner as to destroy a cause of action before it legally exists cannot be permissible if it accomplishes destruction of a constitutionally protected right of action.

5. This court need not address the plaintiff's assertion that the statute is also a "local or special act" in violation of Article II, §19 of our Constitution.

tort actions, now apply to actions arising out of defective construction of improvements to real property, including actions for indemnity or contribution brought by owners or occupiers of such improvements. Finally, this court reiterates the well-established rule that such statutes of limitations begin to run at the time the cause of action accrues,[6] even in cases concerning deficient design or construction.

Given the impact of this order and the likelihood of an appeal to the Supreme Court of Alaska, this court takes this opportunity to explain this ruling further. Although this issue arose in the context of motions for summary judgment in this case, it is hoped that this decision to strike down the statute will not be viewed as summary. Both the plaintiff's and the defendants' attorneys adequately addressed the basic issues in their respective briefs and in oral argument. As a result, this court has reviewed varying commentaries on the subject and examined comparable statutes from virtually every jurisdiction in this country (statutes that have been held constitutional, statutes held unconstitutional, statutes "reenacted" with substantial court-inspired changes, statutes not yet tested), along with the considerable case law on the subject.[7] Notably, just as the parties to this case disagree on the exact breakdown of statutes upheld and statutes struck down, commentators come up with varying counts and, perhaps predictably, different judges dwell upon different authorities. This court does not peg its decision upon a simple tally of "pro" and

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6. Silverton v. Marler, 389 P.2d 3 (Alaska 1964); Howarth v. First Nat'l Bank, 540 P.2d 486 (Alaska 1975), aff'd on reh., 551 P.2d 934 (1976).

7. E.g.: Knapp & Lee, "Application of Special Statutes of Limitations Concerning Design and Construction," 23 St. Louis Univ. L. J. 351; Acret, Architects and Engineers: Their Professional Responsibility, 255-266 (1977); Note, "Actions Arising Out of Improvements to Real Property: Special Statutes of Limitations," 1981 N.Dakota L.Rev. 43; Note, "Limitation of Actions--Statute of Limitations for Architects and Builders as Special Legislation," 16 Land & Water L.Rev. 313 (1981); Sisson & Kelley, "Statutes of Limitations for the Design and Building Professions--Will They Survive Constitutional Attack?" April 1982 Ins. Counsel J. 243; Witherspoon, "Architects' and Engineers' Tort Liability," 16 Def. L.J. 409 (1967).

"con" jurisdictions.[8]

The brief factual background of this case is as follows. The plaintiff is said to have sustained severe and permanent head injuries allegedly as a result of an accident that occurred while he was working on the King Salmon Drilling Platform, a structure designed and constructed by defendants Earl & Wright Consulting Engineers and defendants J. Ray McDermott & Company. That platform is owned by a consortium of oil corporations, including the defendant ARCO. Plaintiff alleges that he was injured as a result of a defect in the design or construction of part of the platform, which caused a large metal hole cover to fall from a work floor above him, and that the defendants should be liable for such a defect. The defendants, Earl & Wright and McDermott, entered respective motions for summary judgment and pleaded the protection of the statute applicable to "certain actions relating to construction within six years" inasmuch as more than six years had elapsed since the "substantial completion" of the King Salmon Platform. Plaintiff submitted a motion for an order declaring that statute unconstitutional, in violation of Article I, §1(equal protection), Article I, §7 (due process) and Article II, §19 (proscription of "local or special" acts).[9]

If the statute were upheld and applied literally, designers and builders could not be liable for a defect (or

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8. The fate of this sort of statute seems to have been about evenly split in recent cases, and the modern trend seems to be toward findings of unconstitutionality, for various violations. Rulings often depend upon the particular provisions of the statutes at issue and the differences among constitutions of different states. See, e.g.: Rosenberg v. Town of North Bergen, 293 A.2d 662 (N.J. 1972); Overland v. Sirmons, 369 So.2d 572 (Fla. 1979); Martinez v. Trauber, 653 P.2d 1046 (Calif. 1982); Bagby v. McBride, 291 So.2d 306 (Ala. 1974); Skinner v. Anderson, 231 N.E.2d 588 (Ill. 1967).

9. Defendant ARCO, an owner of the allegedly defective structure, has neither joined in nor opposed the plaintiff's motion to have the statute ruled unconstitutional.

breach of implied warranty) due to negligent design or construction, once six years had elapsed since the substantial completion of the improvement to the real property--whether or not the defect were in some part of a structure that should reasonably be expected to last only a short while or in some part that should reasonably be expected to last a very long time.

In recent years many appellate courts have had to examine statutes more or less similar to the one at issue here, almost always in the context of a constitutional challenge. The statutes vary in scope (some apply only to contract actions, but do not immunize the protected class of defendants from personal injury or wrongful death suits); and they vary in the length of limitations periods (from four to twelve to twenty years). Nevertheless, the cases cited herein concern statutes sufficiently similar to Alaska's so as to have some useful bearing upon the case before this court.

The plaintiff dwells primarily upon Article I, §1, emphasizing a violation of equal protection. To address a threshold question, this court acknowledges the defendants' contention that the plaintiff lacks standing to challenge the statute on equal protection grounds. However, the Supreme Court of Alaska has often liberally construed the judicial limitation of standing and has "favored increased accessibility to the courts." State v. Lewis, 559 P.2d 630 (Alaska 1977); Moore v. State, 553 P.2d 8 (Alaska 1976); Wagstaff v. Superior Court, 535 P.2d 1220 (Alaska 1975). Moreover, various courts in other jurisdictions have allowed challenges to such statutes based on equal protection arguments even when advanced by parties not within the class discriminated against by the statute (i.e., not an owner or occupant or materialsman/supplier, typically excluded from the protection of such statutes). E.g., Skinner v. Anderson,

231 N.E.2d 588 (Ill. 1967); Kallas v. Square, 225 N.W.2d 454 (Wisc. 1975); Broome v. Truluck, 241 S.E.2d 739 (S. Carolina 1978). Although the foregoing cases did not delve into the standing issue, a United States District Court did do so in finding such a special statute of limitations in violation of the equal protection clauses of both the United States Constitution and the Constitution of the State of Colorado. McClanahan v. American Gilsonite, 494 F.Supp. 1334 (USDC, D. Colo 1980). In McClanahan the court discussed the United States Supreme Court's opinion in Singleton v. Wulff[10], which discussed the reasons for the general rule that one may not claim standing to vindicate the constitutional rights of a third party:

> "First, the courts should not adjudicate such rights unnecessarily, and it may be that in fact the holders of those rights either do not wish to assert them, or will be able to enjoy them regardless of whether the in-court litigant is successful or not. . . . Second, third parties themselves usually will be the best proponents of their own rights. The courts depend on effective advocacy, and therefore should prefer to construe legal rights only when the most effective advocates of those rights are before them."
> 428 U.S. at 113-14, 96 S.Ct. at 2874.

In view of the facts of this case and the reasoning of the United States Supreme Court in Singleton, this court concludes that the plaintiff in this case is an adequate party to assert an equal protection challenge against the statute at issue. I believe that the plaintiff's interest in challenging the statute for violation of equal protection is great enough to assure adequate advocacy. Although those in the specifically discriminated-against class--owners, suppliers and occupiers--could assert their own rights and mount such a challenge to this statute, the underlying objective is to assure that the party in court is the best available advocate of that challenge. Moreover, as the U.S. Supreme Court noted, the rule that one party may not

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10. 428 U.S. 106, 112 (1976).

assert the rights of some other person "has not been imposed uniformly as a firm constitutional restriction on federal court jurisdiction." Flast v. Cohen, 392 U.S. 83, 99, n.20 (1968). Such a rule should not be uniformly imposed to over-restrict this court either. I therefore find that the plaintiff is a proper advocate to advance an equal protection argument against A.S. 09.10.055.

Article I, §1 of the Alaska Constitution provides that "all persons are equal and entitled to equal rights, opportunities, and protection under the law." Whereas the scrutiny a statute receives under federal equal protection depends on the characterization of affected right as fundamental or non-fundamental, under the Alaska Constitution's equal protection provisions a stricter "rational basis" equal protection test applies to statutes that do not affect fundamental rights, as in the statute at issue before this court, a "more demanding standard which will be applied in future cases if the compelling state interest test is found inappropriate." Hilbers v. Municipality of Anchorage, 611 P.2d 31, 39 (Alaska 1980). As the Alaska Supreme Court explained in Hilbers:

> As a result, we will no longer hypothesize facts which would sustain otherwise questionable legislation as was the case under the traditional rational basis standard. Thus, under the new test
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> > Judicial deference to a broad range of conceivable legislative purposes and to imaginable facts that might justify classifications is strikingly diminished. Judicial tolerance of overinclusive and underinclusive classifications is notably reduced. Legislative leeway for unexplained pragmatic experimentation is substantially narrowed.
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> Isakson v. Rickey, 550 P.2d 359, 372 (Alaska 1976) (footnotes omitted).

The defendants, among others, have argued that the legislature's purpose in enacting this statute was to protect certain classes of persons in the construction industry

from the increased exposure to liability due to, among other factors, the demise of the rule that construction contractors were not liable to third parties injured after a building had been completed and accepted by an owner. A primary purpose advanced has been to avoid the evidentiary problems that come with the passage of time. However, if this is really the statute's purpose, it is surely promoted in a discriminatory manner. On this point it is worthwhile to note the Illinois Supreme Court's views expressed in Skinner v. Anderson, supra, considered a leading decision on the subject of such special statutes of limitations:

> "[O]f all those whose negligence in connection with the construction of an improvement to real estate might result in damage to property or injury to persons more than four years after construction is completed, the statute singles out the architect and contractor and grants them immunity. It is not at all inconceivable that the owner or person in control of such an improvement might be held liable for damage or injury that results from a defective condition for which the architect or contractor is in fact responsible. Not only is the owner or person in control given no immunity; the statute takes away his action for indemnity against the architect or contractor.
>
> "The arbitrary quality of the statute clearly appears when we consider that architects and contractors are not the only persons whose negligence in the construction of a building or other improvement may cause damage to property or injury to persons. If, for example, four years after a building is completed a cornice should fall because the adhesive used was defective, the manufacturer of the adhesive used is granted no immunity. And so it is with all others who furnish materials used on constructing the improvement. But if the cornice fell because of defective design or construction, for which an architect or contractor was responsible, immunity is granted. It cannot be said that the one event is more likely than the other to occur within four years after construction is completed." Skinner v. Anderson, supra, 231 N.E.2d at 591.

The Illinois Supreme Court's reasoning applies in the case before this court as well.[11] As the Wyoming Supreme Court

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11. Other jurisdictions have followed the Skinner Court in striking down such statutes as violations of equal protection. E.g.: Fujioka v. Kam, 514 P.2d 568 (Hawaii 1973); Kallas, supra, (Wisconsin 1975); Loyal Order of Moose v. Cavaness, 563 P.2d 143 (Okla. 1977).

stated in its thorough opinion in Phillips v. ABC Builders: "We cannot agree that the architects' and contractors' lots in the business world are so onerous as to entitle them to an immunity denied to all others."[12]

I add in passing that within the Ninth Circuit several states have upheld their respective statutes, however distinguishable from Alaska's (to varying degrees): Washington, Oregon, and Utah. I agree with the Wyoming Supreme Court's remark on those decisions: "Those cases are extremely conclusory in their holdings and they do not add appreciably to the difficult and technical discussion warranted by these troublesome statutes."[13]

In the case before this court the plaintiff has also argued that the statute at issue violates Article I, §7 of the Alaska Constitution, which provides for the due process of law. I find that this statute does violate due process in that it effectively operates to destroy a common law right of action that existed at the time the statute was enacted--a right of action for negligence that proximately causes personal injuries. This special statute of "limitations" is actually a grant of immunity, a bar to causes of action arising out of design or construction deficiencies that cannot be discovered until injuries occur (often after the end of the magic 6-year period). On this issue I concur with the view expressed by the Florida Supreme Court in Overland Construction v. Sirmons, 369 S.2d 572 (1974)[14]:

> We recognize the problems which inhere in exposing builders and related professionals to potential liability for an indefinite period of time after an improvement to real property has been completed. Undoubtedly, the passage of time does aggravate the difficulty of producing reliable evidence, and it is likely that advances in technology tend to push industry standards inexorably higher. The impact of

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12. Phillips v. ABC Builders, 611 P.2d 82, 830 (Wyoming 1980).

13. Id. at 830.

14. The Florida court actually focuses on its state constitutional "right of access to the courts," but that concept is related to due process considerations.

> these problems, however, is felt by all litigants. Moreover, the difficulties of proof would seem to fall at least as heavily on injured plaintiffs, who must generally carry the initial burden of establishing that the defendant was negligent. In any event, these problems are not unique to the construction industry, and they are not sufficiently compelling to justify the enactment of legislation which, without providing an alternative means of redress, totally abolishes an injured person's cause of action. The legislation impermissibly benefits only one class of defendants, at the expense of an injured party's right to sue, and in violation of our constitutional guarantee of access to courts.

Furthermore, as indicated earlier in this opinion, I also find support in the decision of the Kentucky Court of Appeals in Saylor v. Hall, which found that a comparable statute of limitations pertaining to injuries caused by construction deficiencies would improperly destroy a common law right of action.[15]

Finally, although the plaintiff has not argued that this statute may even violate Article II, §13 of the Alaska Constitution ("one subject...expressed in the title"), A.S. 09.10.055 invites the same criticism expressed by the Alabama Supreme Court in declaring a comparable statute unconstitutional. That court held that the statute's title did not clearly express the subject matter, because its title stated that it was a statute to regulate the time during which construction-defect actions must be commenced, whereas the statute actually contained both a period of limitations and a provision abolishing certain rights of action against architects and builders after seven years.[16] However, having already ruled the statute to be in violation of due process and equal protection, this court need not decide whether A.S. 09.10.055 violates Article II, §13 or,

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15. The Kentucky court dealt with its state constitutional provision pertaining to pre-existing rights of action. Such a provision also involves due process considerations.

16. Bagby v. McBride, 291 So.2d 306 (Alabama 1974).

as plaintiff argued, Article II, §19 ("no local or special act").[17]

THEREFORE, IT IS ORDERED that A.S. 09.10.055, entitled "Certain actions relating to construction within six years," is an unconstitutional violation of equal protection and due process. IT IS FURTHER ORDERED that A.S. 09.10.050 and 09.10.070, which set forth the respective periods of limitations for contract and tort actions, now apply to actions arising out of defective design or construction of improvements to real property, including actions for indemnity or contribution.

DATED: December 22, 1983.

SUPERIOR COURT JUDGE

12-23-83
a copy of the above was mailed to each of the following at their address of record: See below
Ellen L Mueller
Secretary to Judge Hanson

M. Flanigan
C. Hagans
O Thomas
P Hunsinger
J. Conway

17. As the Alaska Supreme Court stated in Suber v. Alaska State Bond Committee, 414 P.2d 546 (1966), among the purposes of Article II, §13 is "to guard against inadvertence, stealth and fraud in legislation."

HB

211

#4

Offered: 4/14/83
Referred: Judiciary

ATTACHMENT 1

Original sponsors: Furnace, Abood,
Barnes, et al

Furnished by Brian Emerick

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 211 (L&C) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to contracts for architectural, engineering, and land surveying services; and providing for an effective date."

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

* Section 1. AS 36.98 is amended by adding a new section to read:

Sec. 36.98.041. ARCHITECTURAL ENGINEERING AND LAND SURVEYING CONTRACTS. (a) Notwithstanding the provisions of AS 36.98.010(3) and AS 36.98.040, the state shall select persons or firms for the performance of architectural, engineering, or land surveying services and award contracts for these services at fair and reasonable prices only on the basis of demonstrated competence and qualification for the type of professional services required.

(b) In awarding a contract for the services of an architect, engineer, or land surveyor registered under AS 08.48 the state shall select the person or firm best qualified to perform the desired work on the basis of demonstrated competence and professional qualifications. An attempt shall be made to negotiate a contract with the person or firm selected at a price that is fair and reasonable. Before selection and negotiation, the state may not request or consider any statement, bid or estimate of fees or charges for architectural, engineering, or land surveying services for the proposed project or request any other submission or action that would violate AS 08.48 or a regulation adopted under AS 08.48.

(c) Subject to the criteria in (b) of this section, a particular

procedure for the selection of architects, engineers, or land surveyors or for the award of contracts is not required. The state may publicly rank proposals or offers received in response to a request for services. The state may attempt to negotiate a fair and reasonable price with the contractor best qualified to perform the desired work and to negotiate a fair and reasonable price with other contractors, in order of ranking, if negotiations with the first-ranked contractor are not successful. The state may reject all or part of a proposal.

(d) This section does not apply to contracts awarded in an emergency if the person responsible for execution of the contract on behalf of the state certifies in writing that an emergency exists.

(e) In this section "state" includes political subdivisions of the state and agencies of the state and its political subdivisions.

* Sec. 2. AS 36.98.080 is amended by adding a new paragraph to read:

(6) "emergency" means a condition of imminent danger to the public health, safety or welfare or a condition that requires immediate action to prevent harm to a person or property.

* Sec. 3. AS 37.05.240 is amended by adding a new subsection to read:

(c) A contract for architectural, engineering, or land surveying services shall be awarded in accordance with AS 36.98.041.

* Sec. 4. AS 37.05.230 is amended by adding a new paragraph to read:

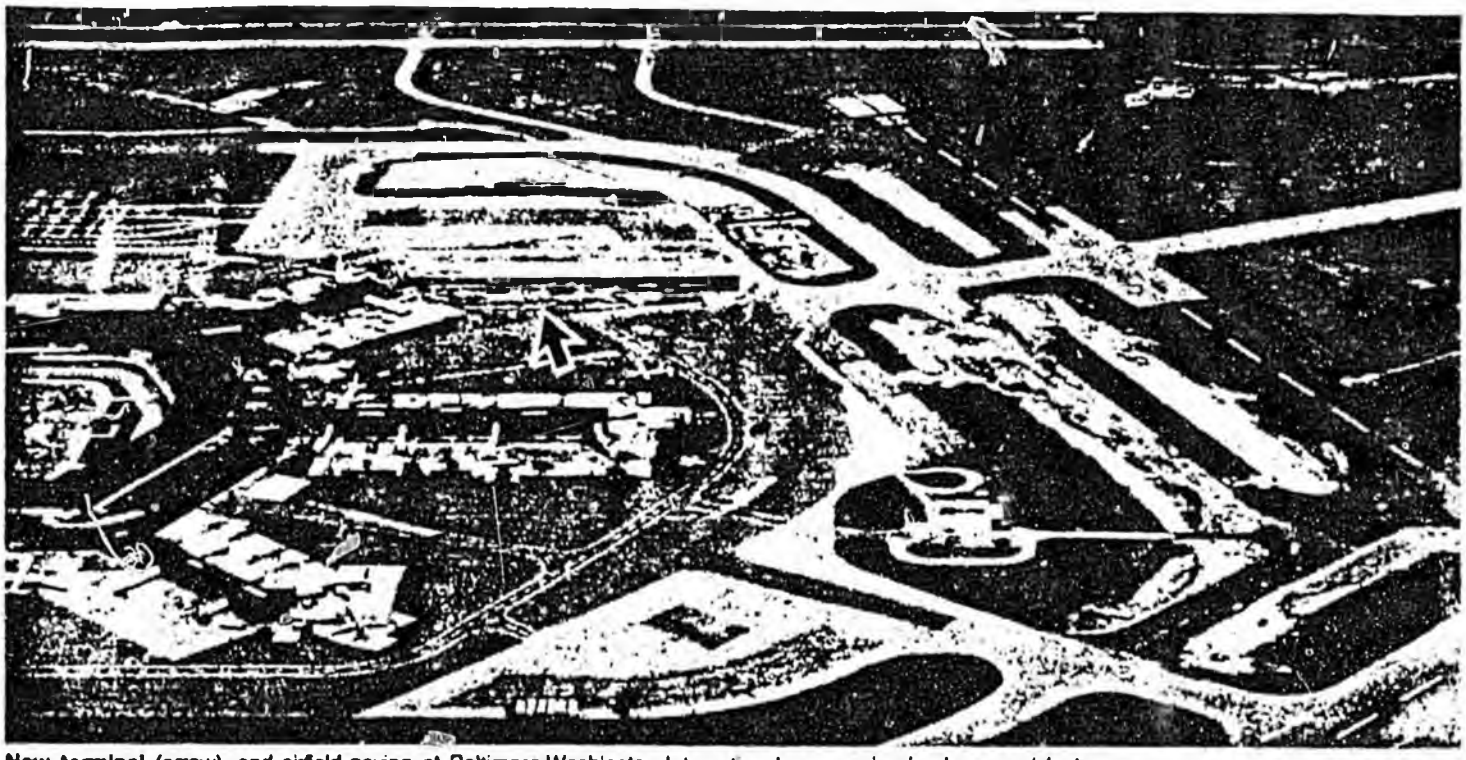
(11) requests for and acceptance of bids or other proposals for architectural, engineering, or land surveying services shall comply with AS 36.98.041.

* Sec. 5. This Act applies to requests for bids or proposals for architectural, engineering, and land surveying services issued after the effective date of this Act.

* Sec. 6. This Act takes effect immediately in accordance with

ATTACHMENT 2

# Fast-tracked airport job pays off



New terminal (arrow), and airfield paving at Baltimore-Washington International are coming in cheap and fast.

In what it calls a super fast-track operation, a construction manager expects to bring in an airport terminal wing almost three months early and more than 10% under budget.

The Ralph M. Parsons Co., Pasadena, Calif., was informed of the project, an expansion promised Piedmont Airlines at Baltimore-Washington International Airport, on a Saturday last February. Two days later Maryland's State Aviation Administration (SAA) informed the firm that it had been selected as CM. And five days later Parsons and SAA, using only schematic plans, were interviewing design-constructors.

The highest ranked firm, The Whiting-Turner Contracting Co., Baltimore, was asked to submit a negotiable proposal, using what Charles C. Lutman, a Parsons' vice president and the project manager, calls "cartoons" instead of final designs. Parsons and Whiting then haggled, with SAA acting as intermediary, over specific cost items and settled on a fixed-ceiling-cost design-build contract covering a range of $8.7 million to $8.9 million. Whiting will get half of any savings below $8.7 million.

**Quick start.** Whiting poured foundations in March right behind the designer, subcontractor Greiner Engineering Sciences, Inc., Baltimore. With plans being produced almost like as-built drawings, the design work kept one jump ahead of construction during the whole job.

Besides the 128,000 sq ft of terminal work, Parson's supervised conventionally bid construction contracts for 342,000 sq ft of apron and taxiway—won by Marbro Co., Inc., Beltsville, Md., for $5.3 million—and fabrication and installation of 12 airplane loading bridges—won by Jetway Division, Ogden, Utah, for $2.6 million.

The SAA-CM-contractor team pushed to the first deadline. SAA had promised Piedmont that two terminal gates would be open for use by July 15. Piedmont was able to use five. The second target date, Jan. 1, 1984, for completion of all 13 gates, looks as if it will be bested by almost two months—Lutman predicts an Oct. 10 finish date. All that remains is the punch list of final alterations and corrections.

**Costs reined.** Tight scheduling and close supervision not only helped bring the job in early, but saved on escalation and cost-plus items, holding cost growth on all three contracts to about 1.8%. The project had originally been budgeted for $20.9 million and is projected to come in at $18.5 million, including CM and preliminary design fees.

SAA officials point out that the job has gone so well not only because it had a good CM but because it also had selected good contractors—one of the advantages of being able to negotiate a design-build job. T. James Truby, SAA administrator, adds that the very tight schedule helped everyone work as a team. He says, "People were forced to concentrate their energies on getting the job done." ■

# Appendix A

## PUBLIC LAW 92-582; 92ND CONGRESS, H. R. 12807; OCTOBER 27, 1972

AN ACT

To amend the Federal Property and Administrative Services Act of 1949 in order to establish Federal policy concerning the selection of firms and individuals to perform architectural, engineering, and related services for the Federal Government

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.* That the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) is amended by adding at the end thereof the following new title:[1]

"TITLE IX—SELECTION OF ARCHITECTS AND ENGINEERS

"*Definitions*

"Sec. 901. As used in this title—

"(1) The term 'firm' means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

"(2) The term 'agency head' means the Secretary, Administrator, or head of a department, agency, or bureau of the Federal Government.

"(3) The term 'architectural and engineering services' includes those professional services of an architectural or engineering nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.[2]

"*Policy*

"Sec. 902. The Congress hereby declares it to be the policy of the Federal Government to publicly announce all requirements for architectural and engineering services, and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

"*Requests for data on architectural and engineering services*

"Sec. 903. In the procurement of architectural and engineering services, the agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him, no less than three of the firms deemed to be the most highly qualified to provide the services required.

"*Negotiation of contracts for architectural and engineering services*

"Sec. 904. (a) The agency head shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the Government. In making such determination, the agency head shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof.

"(b) Should the agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price he determines to be fair and reasonable to the Government, negotiations with that firm should be formally terminated. The agency head should then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency head should terminate negotiations. The agency head should then undertake negotiations with the third most qualified firm.

"(c) Should the agency head be unable to negotiate a satisfactory contract with any of the selected firms, he shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached."[3]

Approved October 27, 1972.

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[1] Architects and engineers. Federal selection policy, establishment. 63 Stat. 377; 82 Stat. 1104.

[2] 86 Stat. 1278.

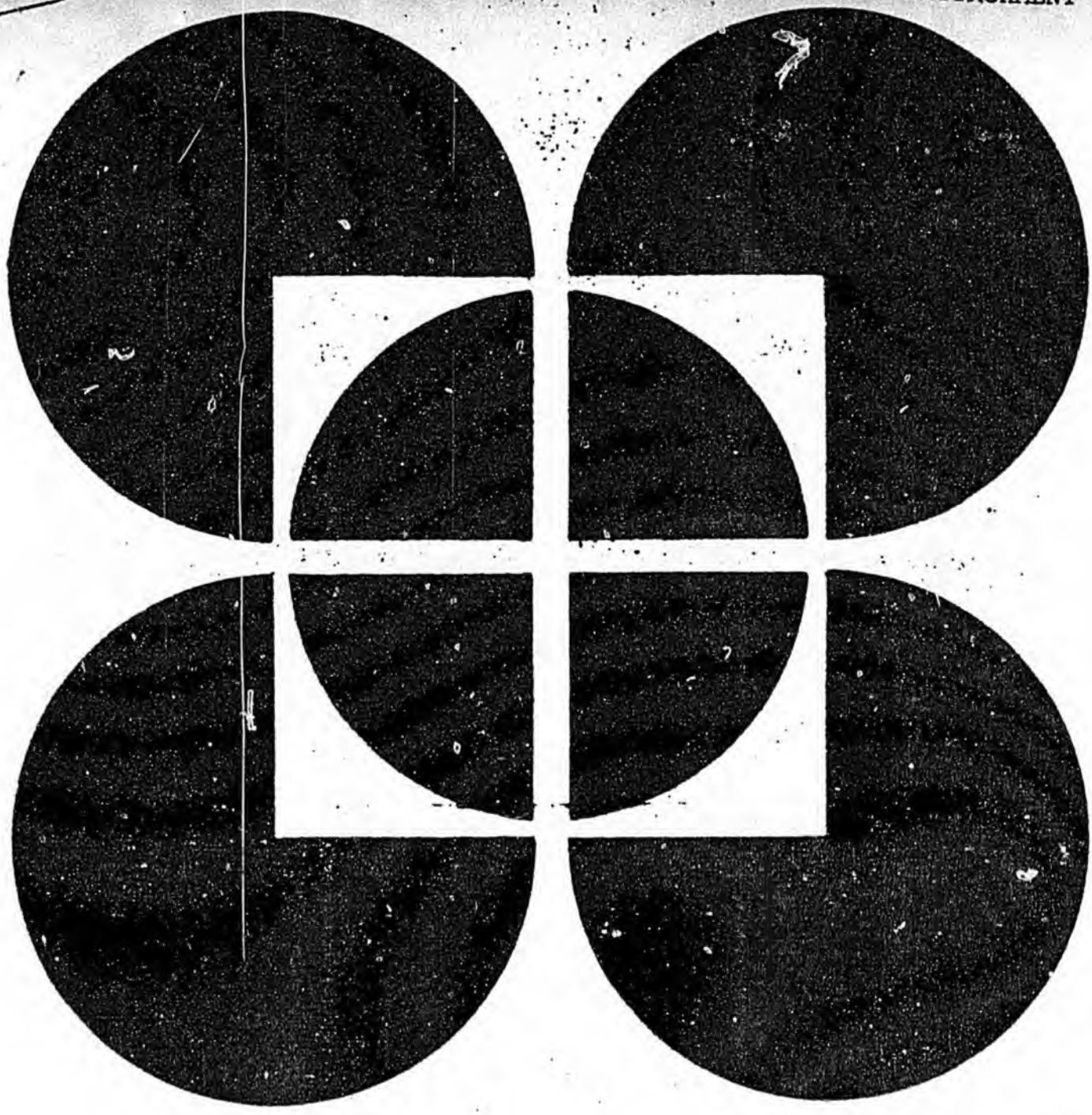
[3] 86 Stat. 1279.

*LEGISLATIVE HISTORY:*

HOUSE REPORT, No. 92-1188 (Comm. on Government Operations)

SENATE REPORT, No. 92-1219 (Comm. on Government Operations)

CONGRESSIONAL RECORD, Vol. 118 (1972): July 26, considered and passed House. Oct. 14, considered and passed Senate.



# REPORT OF THE

# GSA SPECIAL STUDY COMMITTEE ON THE SELECTION OF ARCHITECTS & ENGINEERS

## JUNE 1974

## BACKGROUND

On October 10, 1973, Arthur F. Sampson, the Administrator of the General Services Administration, announced his intention to appoint a "Special Study Committee to scrutinize the architect-engineer selection process of the agency."[1] He made it clear that his decision was not prompted by a belief that the GSA system was defective. Rather, he wanted to confirm his opinion that the basic system was sound and, in the process, receive any suggestions for improvement.[2]

The Administrator convened a joint meeting of the GSA National Public Advisory Panel on Architectural and Engineering Services and the GSA Public Advisory Council on October 15, 1973 and requested their advice regarding the scope, structure and membership of the Special Study Committee.

The Study Committee first met with Mr. Sampson on December 10, 1973. Members had been chosen from the architectural, engineering and legal professions, private industry, government, the academic community, and the press. Gerald D. Hines, a developer/builder from Houston, was appointed Chairman. The Committee was asked to conduct an "independent and comprehensive study of GSA's existing procedures", to make whatever recommendations for improvements deemed necessary, and to report to the Administrator by June, 1974.[3]

In order to carry out its assignment, the Special Study Committee focused on the GSA procedure rather than specific contract awards.[4] The Chairman appointed several subcommittees and asked them to undertake the following:

1. Collect and analyze Federal statutes, regulations and instructions governing the award of A-E contracts. Document the authority for GSA's A-E selection process. Identify and evaluate differences between GSA procedures and those of other agencies.
2. Collect and analyze the A-E selection procedures of states and foreign governments.
3. Collect and analyze A-E selection policies of a representative number of quasi-governmental authorities, major corporations and private entrepreneurs.
4. Collect and analyze studies of A-E procurement made by the Congress, the Commission on Government Procurement, Federal agencies, local and state governments and professional societies.
5. Collect and analyze information that describes and defines competitive bidding as applied to A-E procurement. Determine whether competitive bidding would improve the GSA process.
6. Assess the public image of GSA's A-E selection process.

In carrying out their assignments, the Subcommittees and/or staff prepared a statistical analysis of GSA projects awarded during 1970-1973,[5] conducted comprehensive research in their areas of concern, held public hearings,[6]

conducted interviews,[7] utilized questionnaires[8] and attended a round-table discussion with knowledgeable individuals.[9] Extensive public notice was given to all elements of the Committee's work to encourage participation by all interested parties. In addition, Committee members and staff attended Advisory Panel and Evaluation Board meetings in order to observe the selection process in operation.[10]

The findings, conclusions and recommendations that follow relate directly to the Administrator's study request and are documented in the subcommittee reports. In addition, the subcommittee and related reports contain other information and suggestions concerning A-E procurement. Each of these reports is an integral part of the Committee's work and must be read to obtain a clear understanding of those recommendations adopted by the full Committee.

In developing recommendations to improve the GSA process for the selection of A-Es, Subcommittees were instructed to measure any recommendation against the following criteria:

- Will it minimize or eliminate the opportunity for unethical or illegal practices?
- Does it recognize the economics of Federal construction[11] and the necessity of safeguards built into the public construction process?
- Does it improve the design and functional quality of Federal construction?

## Feasibility of Competitive Bidding

Based on testimony presented at a public hearing, interviews with key individuals on both sides of the issue and a review of available opinion on this subject, the Committee found that price is one of the factors in awarding an A-E contract by both government agencies and private entrepreneurs. Those who procure A-E services seem to be sophisticated buyers who, for the most part, engage in serious price discussions after selecting the firm most qualified to perform the particular project. Price bidding was found to be a factor in the selection process only in rare instances when the work was of a quasi-professional nature and capable of accurate and complete specification in advance. [18]

The data and opinion offered favored the negotiated procurement process followed by the General Services Administration. No facts were presented to suggest that this method led to unsatisfactory results or higher A-E fees. Those testifying in favor of price competition argued that price should be a factor only when the scope of services was "adequately defined" and when firms were "equal" in ability.[19] Those opposed to price competition testified that the scope of services could not often be defined in advance and that purchasing professional services by low bid might create an adversary relationship between the client and low bidder which could be counterproductive to ultimate life-cycle cost.[20]

## CONCLUSIONS

### General

The Study Committee believes that the basic concepts of GSA's A-E selection process is a good one. There is a great deal of interest in and competition for GSA work among the design professionals. Well qualified architects and engineers are selected for GSA projects. Firms without previous Government experience have a fair opportunity to obtain GSA contracts.[25]

The Committee is of the opinion that several modifications in GSA's procedures should be made which would improve the selection process consistent with the public interest. These improvements are particularly necessary in light of the need to maintain public confidence in the A-E procurement process.

*Part E*—Architect-Engineer and Land Surveying Services

## §5-501 Architect-Engineer and Land Surveying Services.

(1) *Applicability.* Architect-engineer and land surveying services shall be procured as provided in this Section except as authorized by Section 3-204 (Small Purchases), Section 3-205 (Sole Source Procurement), and Section 3-206 (Emergency Procurements).

(2) *Policy.* It is the policy of this [State] to publicly announce all requirements for architect-engineer and land surveying services and to negotiate contracts for architect-engineer and land surveying services on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

(3) *Architect-Engineer Selection Committee.* In the procurement of architect-engineer and land surveying services, the Chief Procurement Officer or the head of a Purchasing Agency shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. [The Chief Procurement Officer or the head of a Purchasing Agency, the Procurement Officer, and [the State Architect]] shall comprise the Architect-Engineer Selection Committee for each architect-engineer and land surveying services contract over [$_____]. The Selection Committee for architect-engineer and land surveying services contracts under this amount shall be established in accordance with regulations promulgated by the Policy Office. The Selection Committee shall evaluate current statements of qualifications and performance data on file with the [State], together with those that may be submitted by other firms regarding the proposed contract. The Selection Committee shall conduct discussions with no less than three firms regarding the contract and the relative utility of alternative methods of approach for furnishing the required services, and then shall select therefrom, in order of preference, based upon criteria established and published by the Selection Committee, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(4) *Negotiation.* The Procurement Officer shall negotiate a contract with the highest qualified firm for architect-engineer or land surveying services at compensation which the Procurement Officer determines in writing to be fair and reasonable to the [State]. In making this decision, the Procurement Officer shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the Procurement Officer be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the Procurement Officer determines to be fair and reasonable to the [State], negotiations with that firm shall be formally terminated. The Procurement Officer shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Procurement Officer shall formally terminate negotiations. The Procurement Officer shall then undertake negotiations with the third most qualified firm. Should the Procurement Officer be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the Procurement Officer shall select additional firms in order of their competence and qualifications, and the Procurement Officer shall continue negotiations in accordance with this Section until an agreement is reached.

**COMMENTARY:**

**(1) This Section applies to procurement of all services within the scope of architecture, professional engineering, or land surveying as defined by the laws of the State whether or not construction is involved.**

(2) The principal reasons supporting this selection procedure for architect-engineer and land surveying services are the lack of a definitive scope of work for such services at the time the selection is made and the importance of selecting the best qualified firm. In general, the architect-engineer or land surveyor is engaged to represent the [State's] interests and is, therefore, in a different relationship with the [State] from that normally existing in a buyer-seller situation. For these reasons, the qualifications, competence, and availability of the three most qualified architect-engineer or land surveying firms are considered initially, and price negotiated later.

(3) It is considered more desirable to make the qualification selection first and then to discuss the price because both parties need to review in detail what is involved in the work (for example, estimates of man-hours, personnel costs, and alternatives that the architect-engineer or land surveyor should consider in depth). Once parameters have been fully discussed and understood and the architect-engineer or land surveyor proposes a fee for the work, the recommended procedure requires the [State] to make its own evaluation and judgment as to the reasonableness of the fee.

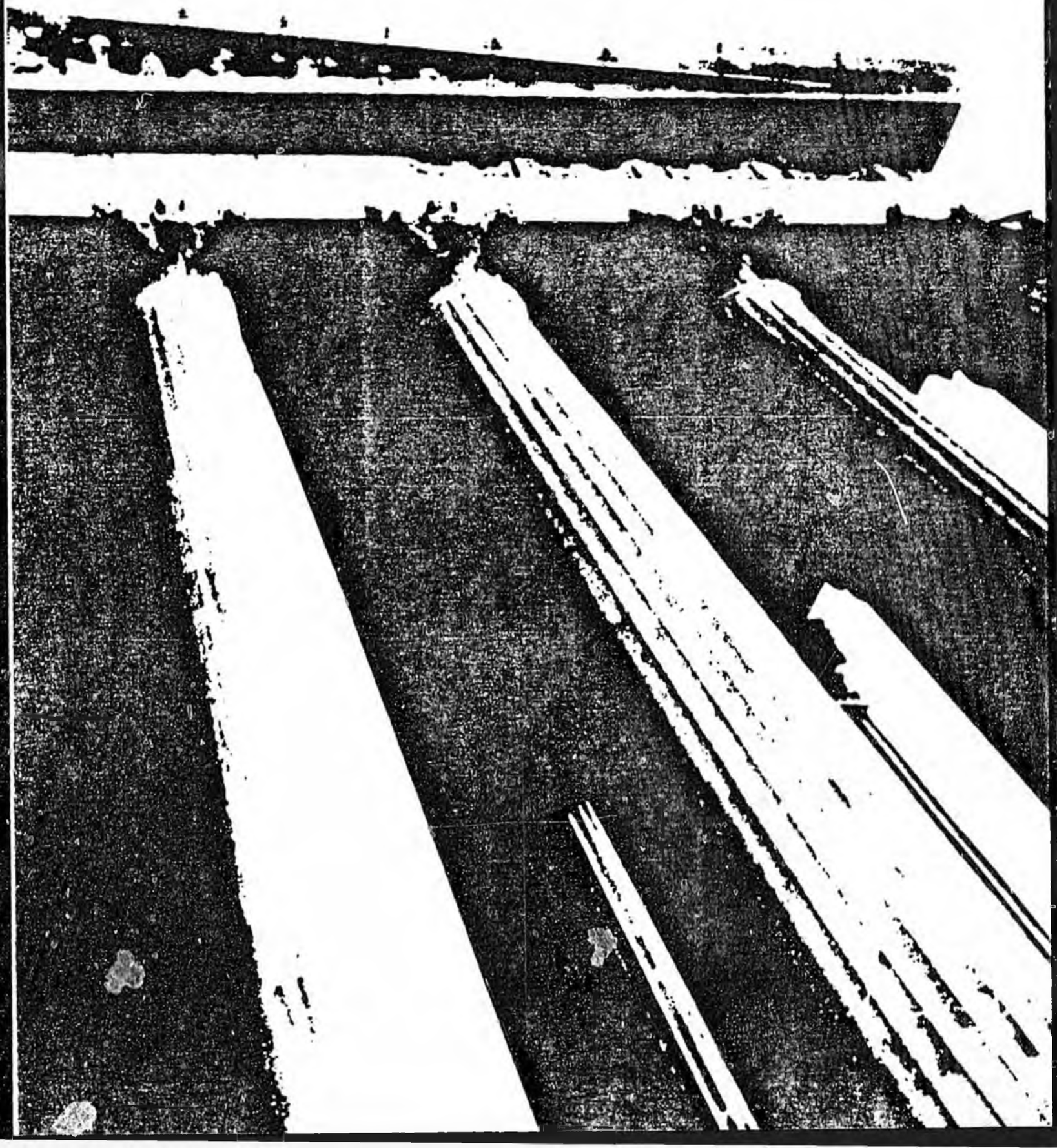
(4) If the fee is fair and reasonable, award is made without consideration of proposals and fees of other competing firms. If the fee cannot be negotiated to the satisfaction of the [State], negotiations with other qualified firms are initiated. Thus price clearly is an important factor in the award of the architect-engineer or land surveying services contract under this procedure. The principal difference between the recommended procedure for architect-engineer and land surveyor selection and the procedures used in most other competitive source selections is the point at which price is considered.

(5) If an enacting jurisdiction desires to use a different selection process, then it may consider the following language:

> **"The Procurement Officer shall negotiate with the highest qualified firms for a contract for architect-engineer or land surveying services at compensation which the Procurement Officer determines in writing to be fair and reasonable to the [State]. In making such determination, the Procurement Officer shall take into account, in the following order of importance, the professional competence of offerors, the technical merits of offers, and the price for which the services are to be rendered."**

ATTACHMENT 7

# SELECTING ARCHITECTS FOR PUBLIC PROJECTS



# SELECTING ARCHITECTS FOR PUBLIC PROJECTS

## A Guide for Local, State and Federal Officials

THE AMERICAN INSTITUTE
OF ARCHITECTS

**When you embark on a major construction program,**

you are committing your agency and the taxpayers to what may be a multi-million-dollar investment in an unknown quantity. While it is possible to define the proposed facility in terms of size, function and certain other requirements, which together make up the functional program for the project, there are many unknowns.

How long and how well will the facility serve its intended purpose? Will it be responsive to its users and the community? Will it lend itself to economical, energy-efficient operation? Will it be a facility that its owners—the public—can be proud of?

The architects you select to design the facility will be a major determinant in answering those questions. Investing in a construction project is unlike purchasing a commodity. Only a known need and a few ideas exist at the outset to define the scope of the project. These ideas and requirements become the basis for the architectural program, the conceptual design, and ultimately, the working drawings and specifications from which the facility will be constructed.

The person primarily responsible for this process is the architect who serves as adviser, coordinator and synthesizer as well as creative artist. The decisions made by the architect during the design process will largely determine the functional and esthetic, and to some extent, the financial success of the project. With so much at stake, selecting the right architect should not be a casual or off-hand process.

The selection of an architect should be an exciting and gratifying experience. The following guidelines are offered to government officials at all levels who are charged with the responsibility of designer selection.

# What selection process works best?

Public agencies have two primary objectives in selecting design professionals: first, to see that the taxpayers get the best available design services for their money, and second, to insure that the selection process is carried out fairly and that all interested and qualified professional firms receive consideration for agency work.

To make sure these objectives are met, the federal government, many states,[1] and some municipalities have enacted laws governing the procurement of architect/engineer (A/E) services. While these laws differ in their specifics, most provide for the following elements:

**Announcement** of the proposed project should be made either in an official government publication or in the general press. Announcements typically include an indication of the type of project to be designed; the scope of services required; budget and time constraints; evaluation criteria; the form in which statements of interest and qualifications are to be submitted; and the submittal deadline.

**Submittals** made by interested firms are the second step in the process. To simplify the task of comparing the relative qualifications and experience of various firms, many agencies have adopted the use of standard forms for A/Es to use in providing this information. Some have adapted the U.S. General Services Administration's standard forms SF 254 and 255,[2] used by federal government agencies.

SF 254, which is generally updated annually by firms interested in government work and kept on file by the agencies, provides an overall profile of the firm's size, experience, volume of business and area of specialization, if any.

SF 255, which is submitted in response to the announcement of a specific project, deals with the firm's experience with projects of similar type and scope, and with the special expertise of personnel who would be assigned to the project.[3] Firms also may be required by the agency to provide additional detailed information in specific response to the request for proposal.

**Evaluation** of submittals is the third step in the selection process. Evaluation criteria[4] generally include relevant experience and expertise, performance on previous projects, experience of consultant team and staff, availability of key personnel, and current and projected workloads that would affect the firm's ability to perform the required work on schedule.

The purpose of this preliminary evaluation is to select a manageable number of firms for personal interviews. The number of firms to be interviewed depends in part on the size, scope and complexity of the project, and also on the time available to complete the selection process.

Great care should be taken to insure the ability of prescreening panels to select the best firms to be interviewed for specific projects. The final selection can be only as good as the original screening.

Inquiries to previous clients can help determine a firm's ability to perform with regard to budget, schedule and adherence to program requirements. It should be kept in mind that outside factors—many of them not within the design professional's control—can affect the outcome of an individual project. By talking to a number of former clients, it is possible to assess overall performance. If a majority report general satisfaction, the firm should not be rejected on the basis of, for example, one slipped schedule.

Since each firm should be given enough time—up to an hour or more—to present its qualifications, and since interviews may represent a considerable investment in travel and/or the loss of billable time for the firm's personnel, only those that appear qualified to take on the project should be interviewed. (Prescreening to limit the number of interviews is clearly to the advantage of the agency as well.)

Firms invited to interview should be given as much information as possible about project scope, the size and makeup of the interviewing panel, division of time between formal presentation and question/answer period, etc.

**Interviews** are conducted after the evaluation process has identified a number of firms with the appropriate experience and qualifications for the project. The interviews provide an opportunity to compare the design philosophies, approaches to the design process and interpretations of the specific program. They also allow for the comparison of the personal styles of each firm's managers and key personnel—an important consideration, since the firm selected will be closely associated with the agency's staff over a period of months or years.

For that reason, agencies frequently request that key personnel who would actually be assigned to the project appear at the interview.

Firms with complementary experience and qualifications sometimes join together in joint venture to seek a specific project. In such a situation, the interviewers should be prepared to determine the proposed division of responsibilities between the joint-venture firms, to insure that all the needed expertise will be available and that all required services will be performed.

For an unusually large or complex project, two rounds of interviews are sometimes held, with three to five of the first round firms asked to return for a second interview.

**Ranking** of the top firms to identify the best qualified firm is the fifth step. Ranking criteria might include such items as design ability and philosophy, experience, demonstrated interest in the project, understanding of unique requirements of a public project, relevance of previous projects presented during the interview, availability of key personnel, schedule and budget performance on previous projects, etc.

**Selection of the top-ranked firm is then made.** Discussions with the firm follow to determine its ability to perform the necessary work, on time, within budget and at the expected level of quality.

**Negotiation of the architect's compensation normally completes the procurement process.** Some jurisdictions may mandate the method of compensation (as a percentage of construction cost, cost-plus-fixed-fee, lump sum or some other formula). However, it is important to understand that design professionals base their compensation on their direct and indirect costs of providing services, plus a normal profit margin. Thus, if the compensation asked by the top-ranked firm is higher than the amount the agency can or will pay, it might be reasonable to review the scope of services to determine whether all the services requested are in fact necessary, and whether any of the required services can be provided by the agency itself or some other entity apart from the design firm. (For more on the subject, see "Your Architect's Compensation," N902, Publications Fulfillment, The AIA, 1735 New York Ave., N.W., Washington, D.C. 20006-5292, (202) 626-7475.)

If agreement on the scope of services and compensation cannot be reached, negotiations with the first-ranked firm are formally terminated, and the agency enters into negotiations with the firm that was ranked second.

**Notification of unsuccesful firms** should be made as soon as negotiations with the successful firm are complete. Unsuccessful firms frequently request a "debriefing" meeting with agency representatives, in an effort to learn why they were not selected. This debriefing, if requested, is a courtesy that should be granted, at least to the contenders in the final round of interviews. A candid debriefing can be useful to the agency as well as to the "also-ran" firms, since it provides an opportunity to educate the firm about the agency's goals and standards in selecting design professionals, and thus helps upgrade the quality of submittals for future projects.

The procedure outlined above is typical of the selection methods that have been adopted by many government agencies and local jurisdictions. If your agency is interested in developing a formal procedure, the local chapter or state component of The American Institute of Architects can offer valuable advice and counsel.

One special type of selection process—*the design competition*—is much more commonly used for public than for private projects (although it is sometimes used by clients in the private sector when the project is of unusual scope and high public visibility, such as a corporate headquarters). In an *open competition*, a complete building program, specific as to site, function and other constraints, is made available to all interested design firms, who then develop a proposed design solution, with drawings and other documentation, for submittal to the competition's sponsors. The same rules apply to *limited competitions* which restrict eligibility to compete, usually by geographic means such as those licensed to practice in a particular state.

A third type of architectural competition is the *invited competition* in which the competing firms are chosen by the sponsor and compensated for their expenses. Most competitions are run in one design phase, but large projects may suggest the holding of *a two-stage competition*, in which firms surviving a first-round evaluation are asked to develop further their design solutions for a second round of judging. For those interested in more information about design competitions, the AIA's "Handbook of Architectural Design Competitions" (J500) is a useful reference.

Design competitions can serve a number of worthy purposes, including the advancement of talented designers who might not otherwise get a chance to compete for major work. However, there are a number of reasons why the method is not suitable for every project.

*Competitions are generally more expensive than other selection methods.* Expenses include the preparation of a more-than-usually complete program statement. A professional adviser should be retained to administer the competition. The adviser is generally a well-known and highly esteemed professional, and is compensated accordingly. The expenses of convening a jury must be considered. And finally, in invited competitions and the second stage of two-stage competitions, the unsuccessful competitors are compensated for the time and effort expended in developing a comprehensive design solution.

*Competitions generally take more time than other selection methods, for obvious reasons.*

Finally, there is the chance that *even though a winning design may be selected, it may require modification* before it can be built – which again involves more time and greater cost. This is because design competitions often lead to the selection of a designer rather than a specific design solution. Once selection is made in this manner, the architect can then work closely with the client to develop the design concept into a final design, meeting the detailed needs and budget of the client.

Competitions have traditionally produced some of the world's most monumental architecture – capitol buildings, opera houses and concert halls, memorials, etc. However, they have been held to produce designs for all types of projects such as urban planning, neighborhood renovation, or the adaptive re-use of historic buildings. When they are held, competitions generally attract considerable public interest.

# Why not contract for architectural services on a competitive-bid basis?

Agency representatives who are experienced in the procurement of commodities are used to taking competitive bids from vendors, selecting contractors and awarding contracts on the basis of price. They may wonder why the bidding process is seldom used to procure professional design services.

There are good reasons why the federal government, and many states, have formalized their A/E procurement procedures with laws that specifically exclude A/E procurement from competitive bidding requirements.

Public-sector building projects involve public health and safety considerations. The agency that builds a facility is responsible to the taxpayers for obtaining the best project possible. To insure that the public interest is being properly served, the designers selected should be talented in both design and management.

The successful purchase of goods or services on a competitive-bid basis depends on the ability to provide the would-be supplier with a very complete set of specifications as to what is required.

At the start of an architectural project, the exact nature and scope of services can rarely be defined, since much depends on the type of project, the capabilities within the agency itself, and how much groundwork has already been done.

Also, professional design services involve many intangibles such as technical knowledge, esthetic judgment and decision-making skills that are difficult to compare on an "apples and apples" basis.

The American Bar Association (ABA), in developing a model procurement code for state and local governments,[4] recognized the unique character of professional design services. Article 5 of the code deals specifically with procurement of construction, architect-engineer and land surveying services. In a commentary on Article 5, the ABA stated, "The principal reasons supporting this selection procedure (i.e., selection based on qualifications and negotiation rather than on low bid) . . . are the lack of a definitive scope of work . . . and the importance of selecting the best qualified firm."

One purpose for competitively bidding goods and services is to keep the selection process free from political influences. But bidding isn't the only way to avoid political problems. Alternative procedures such as open records and the public announcement of projects can effectively keep the selection process out of the political arena, while still obtaining the best available design talent.

Procurement of design services on the basis of their costs can also be extremely shortsighted. Most agencies have begun to calculate the cost of their physical facilities on a life-cycle basis; that is, initial construction cost plus operating cost over the building's anticipated useful life.

A recent article in Dun's Review calculates the intial cost of a building with a 40-year life as one-seventh of its life-cycle cost, with the remaining six-sevenths representing maintenance and operation costs.

With professional fees that come to only a small percentage of construction cost, it is easy to see that they represent a much smaller proportion of life-cycle cost. Yet a particular type of expertise on the part of the architect—in energy-efficient design, for example—can have a dramatic effect on maintenance and operating costs, year after year.

Clients should also consider that the bidding process is time consuming, and that time spent in preparing bidding documents, holding prebid conferences, etc., can be extremely costly, given the constant escalation in material and labor costs characteristic of an inflationary economy.

Architects do not oppose competition. In fact, the architectural profession is extremely competitive, and competition is a healthy and desirable factor for architects in marketing their services. But they realize that to serve the needs of their clients and the users of the buildings they design, they must compete on the basis of their skills, experience and ability to perform the services required—not on the illusory "economy" that a low-bid may seem to provide.

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[1]Appendix A contains the text of Public Law 92-582 the Architect/Engineer Selection Act passed by the U.S. Congress in 1972. Representative state laws in effect in California and Minnesota are set out in Appendix B.

[2]Copies of SF 254 and 255 may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 or calling (202) 783-3238. Cost for SF 254, 25 copies/$7.50; SF 255, 20 copies/$8. Enclose payment with order. Visa and MasterCard charges accepted.

[3]Appendix C contains a representative project announcement from the state of California to illustrate typical evaluation criteria and other architect selection procedures.

[4]Appendix D contains the text of Section 5-501 Architect Engineer and Land Surveying Services of the American Bar Association Model Procurement Code for State and Local Government.

# Bibliography

The American Institute of Architects has published documents which may be of further interest. These are available by writing the Institute, 1735 New York Ave., N.W., Washington, D.C. 20006-5292, or calling (202) 626-7475, or contacting offices of the local AIA chapters in each state and major city (be sure to inquire about the latest edition of these publications):

Owner-Contractor Agreement Form – Stipulated Sum (A101)
Owner-Contractor Agreement Form – Stipulated Sum – Construction Management Edition (A101/CM)
Short Form for Small Construction Contracts – Stipulated Sum (A107)
Owner-Contractor Agreement Form – Cost Plus Fee (A111)
General Conditions of the Contract for Construction (A201)
General Conditions of the Contract for Construction – Construction Management Edition (A201/CM)
General Conditions of the Contract for Furniture, Furnishings and Equipment (A271)
Contractor's Qualification Statement (A305)
Recommended Guide for Bidding Procedures and Contract Awards (A501)
Guide for Supplementary Conditions (A511)
Instructions to Bidders (A701)
Standard Form of Agreement Between Owner and Architect (B141)
Standard Form of Agreement Between Owner and Architect – Construction Management Edition (B141/CM)
Abbreviated Owner-Architect Agreement Form (B151)
Standard Form of Agreement Between Owner and Architect for Designated Services (B161)
Scope of Designated Services (B162)
Standard Form of Agreement for Interior Design Services (B171)
Duties, Responsibilities and Limitations of Authority of the Architect's Project Representative (B352)
Architect's Qualification Statement (B431)
Standard Form of Agreement Between Owner and Architect for Special Services (B727)
Standard Form of Agreement Between Owner and Construction Manager (B801)
Handbook of Architectural Design Competitions (J500)

the prospective client to compare services on the basis of price prior to selection, and it presumes that the contract will go to the qualified firm submitting the lowest price.[1] Of the 29 states which have statutes on A/E selection, 21 are similar to the Brooks bill and the Model Code; twelve specifically exempt A/E selection from competitive bidding; two prohibit bidding for A/E services by law; one permits agencies to request price proposals at their discretion (Georgia); and one requires price proposals (Maryland). Table 1 summarizes these state statutes.

TABLE 1

SUMMARY OF STATE LAWS

States which prohibit competitive bidding for A/E services in Law:

| | |
|---|---|
| Tennesee | Texas |

States which exempt A/E services from general bidding requirements:

| | |
|---|---|
| California | New Jersey |
| District of Columbia | New York - by state |
| Hawaii | comptroller's opinion |
| Illinois | Ohio |
| Kentucky | Oklahoma |
| Mississippi-by attorney general's ruling | Pennsylvania |
| | Wyoming |

States calling for selection based on qualification:
(with procedure requiring ranking of firms, negotiation on scope of project and fee with the top firm. If no contract can be reached, negotiations are terminated and taken up with the second ranked firm, etc.)

| | | | |
|---|---|---|---|
| California | (1973) | Nebraska | (1978) |
| Connecticut | (1979) | New Hampshire | (1973) |
| Colorado | (1979) | New York State | (1980) |
| Delaware | (1976) | Oklahoma | (1974) |
| Florida | (1973) | Pennsylvania-building construction offices | (1975) |
| Kansas As and Es | (1977) | | |
| Kentucky | (1978) | South Carolina | (1974) |
| Louisiana | (1975) | Texas | (1971) |
| Maine | (1979) | Utah | (1980) |
| Massachusetts | (1975) | Virginia | (1980) |
| Minnesota | (1975) | Washington | (1981) |

[1]"Report of the GSA Special Study Committee on the Selection of Architects and Engineers," Part IV, Appendix F, p. 1 (June 1974).

HB

218

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: Senate Bill No. 145 Date on Bill: February 24, 1983
Title: "An Act relating to the Board of Marine Pilots."
Sponsor: Labor and Commerce Committee
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

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

b. Revenues:

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Revenue | | | | | | | | | |

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

3. Assumptions: No additional fiscal impact will be incurred with this State Bill.

Funding to be continued and provided for in the Department's FY-84 budget.

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: Darrell Miller (Darrell Miller) Phone: 465-2535
Division: Occupational Licensing Date: March 2, 1983

Approved by Commissioner: Richard A. Lyon Date: 3/9/83
Department: Commerce & Economic Development

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

must be performed during periods of darkness.



They also discussed scratching the word "unlimited" under 12 AAC 56.030. Discussed adding "submit proof of radar observor certification" under 12 AAC 56.030 (2).

The board defined a trip as in and out of a port. Juneau, Petersburg, Ketchikan would be considered three trips. Captain Oldow felt that 20 trips as a pilot have to be performed within the last year in addition to the observor trips to show you are current in the area.

On a motion duly made by Captain Oldow, seconded and passed unanimously, (Mr. Treager did not have to vote), it was:

> RESOLVED that under 12 AAC 56.030(5)(a) a minimum of 10 dockings and 10 undockings, of which five dockings and five undockings must be on any vessel requiring an Alaska State pilot and five dockings and five undockings of a vessel of over 1,000 gross tons; and (b) would read correspondently instead of 10, it would be 20 dockings and undockings of which 10 dockings and 10 undockings must be on any vessel requiring an Alaska State pilot and 10 dockings and 10 undockings of a vessel over 1,000 gross tons.

On a motion duly made by Mr. George, seconded and approved by Mr. George, Mr. Barrington, Mr. Taylor and Mr. Treager; disapproved by Captain Oldow, Captain Maroni and Mr. Peavyhouse, it was:

> RESOLVED (under 12 AAC 56.030(5)(A), to have a minimum of one year as master or pilot of a vessel in the waters for which applying and have executed under the direct supervision of a licensed pilot under AS 08.62.100 a minimum of 10 dockings....

Captain Oldow felt that Mr. Treager's yes vote (to break a tie) has destroyed the pilotage for the State of Alaska.

Mr. George felt that the regulation just passed is more restructive than the present regulation.

On a motion duly made by Mr. George, seconded and passed unanimously, it was:

> RESOLVED that no pilot may pilot a vessel in excess of the tonnage limit endorsed by the board upon his license. Tonnage limits are 2K, 10K, 20K, 40K, 60K or any gross tons.

This will fall under 12 AAC 56.030.

On a motion duly made by Captain Oldow, seconded and approved unanimously, it was:

> RESOLVED, that 2,000 gross tons is the initial entry level pilotage increment, unless higher tonnage exposure is present.

> The board will determine the initial tonnage limit by considering the applicant's experience, ability, limitations upon his Coast Guard license and such other information as the board deems relevant. An applicant seeking an initial license in excess of 2,000 gross tons shall additionally have executed one-half of his required dockings and undockings supervised by a qualified, licensed pilot upon a vessel of comparable tonnage for the tonnage limit level sought.
>
> Any pilot acting in a supervisory capacity for dockings and undockings, as set forth above, must have a tonnage limit in excess of the applicant's requested limit by at least one step.

This motion would also fall under 12 AAC 56.030(5)(d).

On a motion duly made by Mr. Taylor, seconded and passed unanimously, it was:

RESOLVED that upgrading the incremental tonnage limitation level must be accomplished in accordance with the following scale outlining the required number of round trips as a licensed master/mate/observer on vessels of the appropriate gross tonnages, must be performed while holding a State license of the prior step. At least 1/3 of the round trips must be performed during periods of darkness. In addition, the indicated number of trips as a pilot of vessels must be performed during the maximum time indicated. The above must be performed on the waters of Alaska.

| | Round Trip | Gross Tons | Trips as Pilot | Max. Time |
|---|---|---|---|---|
| Step 1 to 2 | 12 | over 2,000 | 20 | 1 year |
| Step 2 to 3 | 8 | over 10,000 | 20 | 1 year |
| Step 3 to 4 | 7 | over 20,000 | 20 | 1 year |
| Step 4 to 5 | 4 | over 40,000 | 20 | 1 year |
| Step 5 to 6 | | over 60,000<br>500 points as per ~~USCG~~ U.S. Coastguard schedule | | |

A point system is used to evaluate the experience presented. A total of 500 points are required for step 6 (ANY GROSS TONS) certification.

Points are awarded as follows:

(a) Master of vessels over 60,000 GT - 10 points per month (36 months maximum credit)

(b) Sea service in a licensed deck capacity on vessels over 60,000 GT, not as master - 5 points per month (32 months maximum credit)

(c) Simulator training - maximum 200 points

(Approved Simulator Facilities)

1. CAORF, Kings Point
2. MSI La Guardia
3. Port Revel-Grenoble, France
4. Delft-Holland

(d) Pilot observer round trips on vessels over 60,000 GT - 10 points per round trip (minimum 5, maximum 30)

(e) Pilot of vessel of between 20,000 and 40,000 GT - 10 points per round trip - 10 round trips (maximum credit)

(f) Pilot of vessel between 40,000 and 60,000 GT - 10 points per round trip - 20 round trips (maximum credit)

This motion should fall under 12 AAC 56.030(e).

On a motion duly made by Captain Oldow, seconded and passed unanimously, it was

RESOLVED to repeal 12 AAC 56.050 in its entirety.

FURTHER RESOLVED that in all regulations, whenever there is "unlimited" or "limited," change the wording to "pilot"; under definitions for "pilot" define as meaning individuals licensed under 12 AAC 56.030 of this chapter; but does not include channel pilot as defined under 12 AAC 56.050.

Mr. Miller advised the board that they will need to publish all regulation changes for a new public notice to be heard in December, 1983 because the board has gone far beyond amending the docking and undocking requirements.

# CHAPTER 56. BOARD OF MARINE PILOTS

Article

1. Administration of Board (12 AAC 56.010–12 AAC 56.020)
2. Licensing (12 AAC 56.030–12 AAC 56.080)
3. Inside Waters (12 AAC 56.090–12 AAC 56.120)
4. Rates (12 AAC 56.130–12 AAC 56.158)
5. General Provisions (12 AAC 56.160–12 AAC 56.190)

## ARTICLE 1. ADMINISTRATION OF BOARD

Section

10. Quorum
20. Meetings

12 AAC 56.010. QUORUM. (a) For the purpose of approving applications for examination and administering the examination for a license, two members of the board constitute a quorum.

(b) For the purpose of board meetings, hearings, and conducting all other board business, except examinations, a majority of the board constitutes a quorum. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42; am 4/15/81, Reg. 78)

Authority: AS 08.62.040(b)

12 AAC 56.020. MEETINGS. The annual meeting of the board shall be in December on the date, time and place designated by the chairman. Special meetings will be held at times and places designated by the chairman with approval of the governor and members of the board. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.030
AS 08.62.040(b)

## ARTICLE 2. LICENSING

Section

30. Qualifications for unlimited pilot's license.
40. Qualifications for limited pilot's license.
50. Qualifications for channel pilot's license.
60. Temporary license
70. Examinations
80. Biennial license renewal

12 AAC 56.030. QUALIFICATIONS FOR UNLIMITED PILOT'S LICENSE. An applicant for an unlimited pilot's license shall apply on a form provided by the Department of Commerce

(1) pay the required fee; and

(2) submit a full-sized, certified reproduction of a valid United States Coast Guard license as first-class pilot upon the waters for which applying; and

(3) submit a full-sized, certified reproduction of a valid United States Coast Guard license for master of steam or motor vessels of 500 gross tons or better including tow boat or freighting vessels, but excluding fishing vessels; and

(4) have practical knowledge of the navigation of vessels and of the conditions of navigation in the waters for which he is applying, which will be determined by oral and written examination before the board from topics listed in 12 AAC 56.070;

(5) have met the following requirements:

(A) have a minimum of one year as a master or pilot of a vessel in the waters for which applying, and have executed under the direct supervision of a pilot holding an unlimited pilot's license under AS 08.62.100 a minimum of 10 dockings and 10 undockings while holding a United States Coast Guard license as a first-class pilot upon the waters for which applying and a United States Coast Guard license for master of steam or motor vessels of 500 gross tons or better including tow boat or freighting vessels, but excluding fishing vessels. No more than five of the

required dockings or undockings may have been under the direct supervision of the same supervisory pilot; or

(B) have executed under the direct supervision of a pilot holding an unlimited pilot's license under AS 08.62.100 a minimum of 20 dockings and 20 undockings while holding a United States Coast Guard license as a first-class pilot upon the waters for which applying and a United States Coast Guard license for master of steam or motor vessels of 500 gross tons or better including tow boat or freighting vessels, but excluding fishing vessels. No more than five of the required dockings or undockings may have been under the direct supervision of the same supervisory pilot; and

(C) all dockings and undockings must be certified as having been made within two years prior to the date of application; and

(6) have satisfactorily completed a physical examination within 30 days of the date of application. The physical examination required of all pilots shall demonstrate that he is in all respects physically fit to perform his duties as a pilot and shall include an examination of his eyesight, hearing, blood pressure and anything else necessary in the opinion of the examining physician; and

(7) be at least 25 years of age. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42)

Authority: AS 08.62.040(a)(2)

**12 AAC 56.040. QUALIFICATIONS FOR LIMITED PILOT'S LICENSE.** (a) A limited pilot's license is a license to pilot vessels of 2,000 gross tons or less.

(b) An applicant for a limited pilot's license shall apply on a form provided by the Department of Commerce

(1) pay the required fee; and

(2) submit a full-sized, certified reproduction of a valid United States Coast Guard license for first-class pilot upon the waters for which applying; and

(3) submit a full-sized, certified reproduction of a valid United States Coast Guard license for master; and

(4) have practical knowledge of the navigation of vessels and of the conditions of navigation in the waters for which he is applying, which will be determined by oral and written examination before the board from topics listed in 12 AAC 56.070(b) and (c); and

(5) have satisfactorily completed a physical examination within 30 days of the date of application; the physical examination required of all pilots shall demonstrate that he is in all respects physically fit to perform his duties as a pilot and shall include an examination of his eyesight, hearing, blood pressure and anything else necessary in the opinion of the examining physician; and

(6) be at least 25 years of age; and

(7) submit evidence satisfactory to the board of

(A) having had a minimum of one year as a master or pilot of a vessel in the waters for which applying, and of having executed under the direct supervision of a pilot holding an unlimited pilot license under AS 08.62.100 a minimum of 10 dockings and 10 undockings while holding a United States Coast Guard license as a first-class pilot upon the waters of which applying and a United States Coast Guard license for master of steam or motor vessels of 500 gross tons or better including tow boat or freighting vessels, but excluding fishing vessels; or

(B) having executed under the direct supervision of a pilot holding an unlimited pilot license under AS 08.62.100, a minimum of 20 dockings and 20 undockings while holding a United States Coast Guard license as a first-class pilot upon the waters for which applying and a United States Coast Guard license for master or steam or motor vessels of 500 gross tons or better including tow boat or freighting vessels, but excluding fishing vessels; and

(8) submit certification that all dockings and undockings required under (7) of this subsection have been made within two years before the

date of application and that no more than five of the required dockings and five of the required undockings were under the direct supervision of the same supervisory pilot.

(c) Repealed 4/15/81.
(Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42; am 4/15/81, Reg. 78)

Authority: AS 08.62.040(a)(2)

12 AAC 56.050. QUALIFICATIONS FOR CHANNEL PILOT'S LICENSE. A channel pilot's license is a license to pilot in main ship channels only. A channel pilot may perform docking and undockings only under the direct supervision of a pilot holding an unlimited pilot's license. An applicant for a channel pilot's license shall apply on forms provided by the Department of Commerce. An applicant shall

(1) pay the required fee; and

(2) submit a full-sized, certified reproduction of a valid United States Coast Guard license for first-class pilot upon the waters for which applying; and

(3) submit a full-sized, certified reproduction of a valid United States Coast Guard license for master of steam or motor vessel of 500 gross tons or better including tow boat or freighting vessels, but excluding fishing vessels; and

(4) have practical knowledge of the navigation of vessels and of the conditions of navigation in the water for which he is applying, which will be determined by oral and written examination before the board from topics listed in 12 AAC 56.070(b) and (c); and

(5) have completed satisfactorily a physical examination within 30 days of the date of application; the physical examination required of all pilots shall demonstrate that he is in all respects physically fit to perform his duties as a pilot and shall include an examination of his eyesight, hearing, blood pressure and anything else necessary in the opinion of the examining physician; and

(6) be at least 25 years of age. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42; am 6/19/74, Reg.50)

Authority: AS 08.62.040(a)(2)

12 AAC 56.060. TEMPORARY LICENSE. (a) A temporary license may be issued to a person applying for an unlimited, limited or channel pilot's license upon

(1) submission of the required application; and

(2) submission of the temporary license fee of $50; and

(3) submission of proof that he meets all requirements for the license for which he is applying except the examination requirement; and

(4) successful passing of a written examination consisting of 20 questions with a score of at least 75 percent; the questions will be taken from a list of 100 questions prepared previously by the board; this examination will not be considered as part of the oral and written examination given by the board under 12 AAC 56.070, but will cover the same topics.

(b) A temporary license will be valid until the results of the next scheduled examination are received. If for a valid reason the applicant was unable to appear for the next scheduled examination, the board may extend the temporary license until the next scheduled examination after the one for which the applicant was unable to appear. The temporary license shall not be extended more than once nor shall a second temporary license be issued.

(c) An applicant for an extension of route may receive a temporary permit by appearing before two board members and taking a written and oral examination for the requested area. If the applicant passes the examination, a temporary extension of route permit will be issued which will remain in effect until the next scheduled meeting of the board when the application will be reviewed for permanent licensure. The applicant need not appear at the scheduled meeting. If permanent licensure is approved, the area will be added to the license; if it is disapproved, the temporary permit is void as of the date of disapproval. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42; am 6/19/74, Reg. 50; am 6/30/78, Reg. 66)

Authority: AS 08.62.040(a)(2)

12 AAC 56.070. EXAMINATIONS. (a) The examination required by 12 AAC 56.030, 12 AAC 56.040 and 12 AAC 56.050 will be given at least once a year at the time and place designated by the chairman of the board with prior approval of the other board members. All applications for examination must be submitted to the board at least 60 days before the date of examination.

(b) An applicant must pass the written portion of the examination with a score of at least 75 percent in each topic with the exception of (1) of this subsection, international rules, which must be passed with a score of at least 90 percent. The written examination may consist of, but not be limited to, the following topics:

(1) international rules;

(2) aids to navigation;

(3) courses, distances, and distances passed abeam at change of course points between given points;

(4) important and essential cable areas;

(5) dredged channel widths and depths;

(6) bridge signals, widths, regulations, and closing periods;

(7) ship handling, docking problems, seamanship by actual observation, use of tow boats and anchors;

(8) Alaska Pilotage Act and rules of the board;

(9) location of anchorages;

(10) duties of a pilot;

(11) relationship between master and pilot;

(12) practical operation and use of marine radar, including use of maneuvering board;

(13) currents and tides;

(14) dock headings, lengths, depths of water alongside pier locations and berth numbers;

(15) U.S. Government Public Health Quarantine regulations;

(16) prohibited areas, restricted areas, explosive anchorages;

(17) chart knowledge, including chart symbols and abbreviations;

(18) use of navigational and bridge instruments;

(19) engine order and rudder commands for

(A) U.S. merchant vessels;

(B) U.S. naval vessels;

(C) foreign flag merchant vessels.

(c) An applicant for licensure as an unlimited, limited or channel pilot will be orally interviewed by the board on his safety record and elaboration of his seagoing background as listed on his application. In addition, the applicant must pass the oral examination required by 12 AAC 56.030, 12 AAC 56.040 and 12 AAC 56.050 with a score of at least 75 percent in the following topics:

(1) knowledge of the local harbor conditions and local regulations in the area applied for;

(2) signals; and

(3) rules of the road. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42; am 6/19/74, Reg. 50; am 11/14/80, Reg. 76)

Authority: AS 08.62.040(a)(2) and (b)

12 AAC 56.080. BIENNIAL LICENSE RENEWAL. (a) All licenses expire on December 31 of even-numbered years. In order to renew the biennial license, all licensees must submit the renewal application with

(1) proof of having satisfactorily completed a physical examination within 30 days of the renewal date; and

(2) the biennial license fee of $200.

(b) In addition, a licensee

(1) holding an unlimited pilot's license must submit proof of having worked in a licensed deck officer capacity for two months in the area for which he was licensed during the last biennial period;

(2) holding either a limited pilot's license or a channel pilot's license must have worked in a capacity which in the opinion of the board has kept him currently knowledgeable in the area for which his license was originally issued;

(3) who has not worked during the last two biennial periods in an area for which he was licensed shall petition the board to determine that he has sufficient knowledge and experience to resume pilotage in that area and is restricted from doing so until such a determination has been made. (Eff. 6/11/71, Reg. 38; am 6/19/74, Reg. 50; am 5/12/78, Reg. 66)

Authority: AS 08.62.040(a)(2) and (b)

## ARTICLE 3.
## INSIDE WATERS

Section



**12 AAC 56.090. GENERAL RULE FOR DETERMINING BOUNDARIES OF INSIDE WATERS OF ALASKA.** At all buoyed entrances from seaward to bays, sounds, rivers, or other estuaries for which specific lines are not described in this chapter, the waters inshore of a line drawn approximately parallel with the general trend of the shore, drawn through the outermost buoy or other aid to navigation of any system of aids, are inside waters. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.040(a)(1) and (b)

**12 AAC 56.100. ESTABLISHED BOUNDARIES OF INSIDE WATERS OF ALASKA.** (a) The boundaries for Southeastern inside waters are as follows: A line drawn from Cape Spenser Light due south to a point of intersection which is due west of the southernmost extremity of Cape Cross; thence to Cape Edgecumbe Light; thence through Cape Bartolome Light and extended to a point of intersection which is due west of Cape Muzon Light; thence due east to Cape Muzon Light; thence to a point which is one mile, 180° true, from Cape Chacon Light; thence to Barren Island Light; thence to Lord Rock Light; thence to the southernmost extremity of Garnet Point, Kanagunut Island; thence to the southeasternmost extremity of Island Point, Sitklan Island. A line drawn from the northeasternmost extremity of Point Mansfield, Sitklan Island, 40° true, to where it intersects the mainland.

(b) The boundaries for Southwestern inside waters are as follows:

(1) Prince William Sound. All waters of Prince William Sound inside a line drawn from Cape Puget to Point Elrington; thence to Cape Clear; thence Zaikof Point to Cape Hinchinbrook Light; thence Point Bentinch Light to Point Whitshed;

(2) Resurrection Bay. The waters of Resurrection Bay north of latitude 59° 59.0′ north;

(3) Cook Inlet. All waters of Cook Inlet inside a line drawn from Cape Douglas (latitude 58° 51.2′ north, longitude 153° 14.9′ west) through Cape Elizabeth Light at latitude 59° 08.9′ north, longitude 151° 52.5′ west to the Kenai Peninsula shoreline. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.040(a)(1) and (b)

**12 AAC 56.110. EXCLUSIONS FOR ENTERING INSIDE WATERS OF ALASKA.** Vessels are excluded from the use of a licensed marine pilot for inside waters only when proceeding directly from points outside Alaska inside waters to an established pilot station or pickup point. These exclusions are as follows:

(1) Southeastern Alaska:

(A) travel via Clarence Strait to Guard Island at a point located at latitude 55° 26.7′ north, longitude 131° 52.8′ west;

(B) travel via Clarence Strait to a point located approximately one mile east to Point McCartey Light at latitude 55° 06.8′ north, longitude 131° 42.3′ west;

(C) travel via Cape Bartolome in Bucareli Bay to Cabras Island located at latitude 55° 20.3′ north, longitude 133° 23.4′ west;

(D) travel via Cape Ommaney in Chatham Strait to a point in the vicinity of Point Retreat located at latitude 58° 25.0′ north, longitude 134° 59.0′ west;

(E) travel via Sitka Sound to a vicinity close aboard Eckholms Light at latitude 57° 00.6′ north, longitude 135° 21.4′ west. This exclusion applies only to those vessels going to the port of Sitka; and

(F) Travel via Revillagigedo Channel to the vicinity about one mile north of Twin Islands light at latitude 55° 10.0′ north longitude 131° 12.0′ west; this exclusion applies to ships traveling on Behm Canal only during the period May 1 through September 30; in transitting Revillagigedo Channel, ships must stay west of longitude 131° 05.0′.

(2) Southwestern Alaska:

(A) travel via Prince William Sound to the Cordova Pilot Station located approximately two miles south of Sheeps Point at latitude 60° 37.0′ north, longitude 146° 00.0′ west;

(B) travel via Prince William Sound to the Valdez Pilot Station located approximately 2.3 miles north of Busby Island Light (60° 53.8′ north, 146° 48.9′ west);

(C) travel via Prince William Sound to the Whittier Pilot Station located approximately one mile south of Pigot Point Light (60° 48.1′ north, 148° 21.3′ west);

(D) travel via Cook Inlet to the Homer Pilot Station located approximately one mile south of Homer Spit Light on Coal Point (59° 36.2′ north, 151° 24.5′ west); and

(E) travel to the Kodiak City or Womens Bay Pilot Station located approximately one mile eastward to St. Paul Harbor lighted buoy No. 14 (57° 44.5′ north, 152° 24.3′ west). (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42; am 6/30/78, Reg. 66; am 4/15/81, Reg. 78)

Authority: AS 08.62.040(a)(1) and (b)

**12 AAC 56.120. PILOT STATIONS OR PICKUP POINTS.** (a) The established pilot stations for Southeastern Alaska are as follows:

(1) Guard Island (55° 26.7′ north, 131° 52.8′ west);

(2) Point McCartey – located approximately one mile east of Point McCartey (55° 06.8′ north, 131° 42.3′ west);

(3) Cabras Island, Bucareli Bay (55° 20.3′ north, 133° 23.4′ west);

(4) Sitka Sound – to a point close aboard Eckholms Light (57° 00 5′ north, 135° 21.4′ west);

(5) Point Retreat – to a point in the vicinity of Point Retreat (58° 25.0′ north, 134° 59.0′ west); and

(6) repealed 6/30/78;

(7) Twin Islands – to a point in vicinity one mile north of Twin Islands (Lat. 55° 10.0′ N, 131° 12.0′ W); this is a seasonal station open only during the period May 1 through September 30.

(b) The established pilot stations for Southwestern Alaska are as follows:

(1) Cordova – located approximately two miles south of Sheeps Point (60° 37.0′ north, 146° 00.0′ west);

(2) Valdez – located approximately 2.3 miles north of Busby Island Light (60° 53.8′ north, 146° 48.9′ west);

(3) Whittier – located approximately one mile south of Pigot Point Light (60° 48.1′ north, 148° 21.3′ west);

(4) Seaward – located one mile southeasterly

from Caines Head Light (59° 59.0′ north, 149° 23.1′ west);

(5) Cook Inlet – located near Homer approximately one mile south of Homer Spit Light on Coal Point (59° 36.2′ north, 151° 24.5′ west);

(6) Kodiak (city) or Womens Bay – located approximately two miles 100° true from St. Paul Harbor entrance light (57° 44.4′ north, 152° 25.7′ west);

(7) Cold Bay – located approximately three miles southward of Cold Bay entrance buoy No. 1 (55° 05.6′ north, 162° 31.8′ west);

(8) Dutch Harbor – located one mile east of Ulakta Head Light (53° 55.5′ north, 166° 30.4′ west);

(9) Adak – located two miles east of Gannet Rocks Light (51° 52.1′ north, 176° 36.4′ west);

(10) Discoverer Bay – located two miles north of Posliedni Point (58° 28′ north, 152° 20′ west);

(11) Port Wakefield – located one mile northwest of Kekur Point (57° 52′ north, 152° 49′ west);

(12) Port Bailey – located one mile north of Dry Spruce Bay Light (57° 58.4′ north, 153° 06.3′ west);

(13) Uganik – located 1.5 miles west of East Point (57° 50.5′ north, 153° 31.5′ west);

(14) Larsen Bay – located one mile east of Harvester Island (57° 39′ north, 153° 57′ west);

(15) Alitak – located two miles southeast of Cape Alitak (56° 49′ north, 154° 15′ west);

(16) Old Harbor – located one mile east of Cape Liakik (57° 07′ north, 153° 25′ west);

(17) Chignik – located one mile north of Chignik Spit Light (56° 19.5′ north, 158° 22.6′ west);

(18) Sand Point-Squaw Harbor – located 2.5 miles southwest of Popof Head (55° 13′ north, 160° 24′ west);

(19) King Cove – located one mile southeast of Morgan Point Light (55° 01.5′ north, 162° 19′ west);

(20) False Pass – located 1.5 miles northwest of Ikatan Point (54° 47.5′ north, 163° 13′ west);

(21) Akutan – located one mile east of Akutan Point (54° 09′ north, 165° 42′ west);

(22) Attu – located 1.3 miles south of Murder Point (52° 46.4′ north, 173° 11′ east);

(23) St. Paul Harbor – located four miles west of Reef Point (57° 06′ north, 170° 25′ west);

(24) Port Moller-Herendeen Bay (56° 05′ north, 160° 43′ west);

(25) Port Heiden (56° 58′ north, 158° 55′ west);

(26) Uhashik Bay (57° 38′ north, 157° 52′ west);

(27) Egegik (58° 15.5′ north, 157° 42′ west);

(28) Naknek – located four miles northwest of Middle Bluff Light (58° 39.5′ north, 157° 21′ west);

(29) Nushagak Bay – located close aboard Nushagak Bay Entrance Lighted Bell Buoy #2 (58° 33.7′ north, 158° 24.2′ west);

(30) Kulukak Bay – located three miles south of Kulukak Point (58° 47′ north, 159° 39′ west);

(31) Togiak – located one mile south of Summit Island (58° 48′ north, 160° 12′ west);

(32) Goodnews Bay – located 7.5 miles southwest of Platinum (58° 55′ north, 162° 00′ west);

(33) Yakutat – located close aboard Yakutat

Bay Entrance Lighted Whistle Buoy 2 (59° 31.9′ 31.9′ north, 139° 57.1′ West);

(34) Icy Bay – located nine miles south of Claybluff Point Light (59° 49′ north, 141° 35′ west).

(c) For those areas not having an established pilot station or pickup point, pickups will be made only by specific arrangement with the ship's agent and pilots. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42; am 5/12/78 and 6/30/78, Reg. 66; am 11/14/80, Reg. 76; am 4/15/81, Reg. 78)

Authority: AS 08.62.040(a)(1) and (b)

## ARTICLE 4.
## RATES

Section
130. General rules for determining rates
140. Consent to rate deviation
150. Rate adjustment
152. Notice of audit
154. Standards for rate adjustment
156. Modifications
158. Effective date

**12 AAC 56.130. GENERAL RULE FOR DETERMINING RATES.** If no rate for an area has been established, the rate mutually agreed on by the parties will be used until a rate is established by the board. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.040(a)(4) and (b)

**12 AAC 56.140. CONSENT TO RATE DEVIATION.** If parties to a piloting contract are dissatisifed with the rates established for an area, the parties may agree to a higher rate. This rate mutually agreed upon must be submitted to the board for approval. No deviations from the published rate may be used until approved by the board. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.040(1)(4)(a) and (b)

**12 AAC 56.150. RATE ADJUSTMENT.** A party having a material interest in the rate structure desiring a rate change for an area may file a request for a rate adjustment. A request must be filed at least 90 days before the next meeting of the board. (Eff. 6/11/71, Reg. 38; am 4/15/81, Reg. 78)

Authority: AS 08.62.040(a)(4) and (b)

**12 AAC 56.152. NOTICE OF AUDIT.** Upon receipt of a request from a party seeking a rate adjustment under 12 AAC 56.150, the board will notify all parties having a material interest in the proceeding of the request and will, upon its own motion or at the request of an interested party for good cause shown, immediately schedule and pay for an audit of the information required in 12 AAC 56.154 to be submitted to the board. An interested party may request an audit at his or her own expense within 10 days after submission of the information required in 12 AAC 56.154(a). Audits must be submitted to the board at least 10 days before the meeting. (Eff. 4/15/81, Reg. 78)

Authority: AS 08.62.040(a)(4) and (b)

**12 AAC 56.154. STANDARDS FOR RATE ADJUSTMENT.** (a) The party seeking a rate adjustment under 12 AAC 56.150 shall, at least 40 days before the meeting, submit the following information to the board:

(1) historical cost data showing the actual costs of the party for a period of not less than 10 months preceding the date notice was given for the request of the rate adjustment;

(2) data projecting the costs for the remaining two months of the year in which the request is made;

(3) cost projections of the party for 12 months following the one-year period described in (2) of this subsection;

(4) a statement of the difference between the historical annualized 12-month cost data described in (1) and (2) of this subsection and the projected cost data for the following 12 months, including a statement explaining reasons for the difference in the costs;

(5) supporting documentation for the figures required in (1) – (4) of this subsection, including a statement of the average change in the consumer price index for Anchorage, Alaska for the five quarters preceding the date of the request as reported by the U.S. Bureau of Labor Statistics;

(6) balance sheet and profit and lossstatement;

(7) schedule showing pro forma adjustments to expenses;

(8) schedule showing pro forma adjustment to revenues;

(9) statement showing the number of pilots providing services in the test year and showing

(A) travel days;

(B) standby days;

(C) piloting days;

(D) any other time category necessary to show the total number of hours the pilot was considered in service during the year, identifying by footnotes the purpose of the time category;

(E) the actual salary each pilot received during the test year; and

(F) any pro forma adjustment of pilot travel, standby, piloting, or other time, identifying in footnotes the reason for the adjustments;

(10) any other information requested in writing by the board.

(b) A party having a material interest in the rate structure opposing the request for rate adjustment shall, at least 10 days before the meeting of the board at which the request will be considered, submit to the board and to the party seeking the rate adjustment a statement, including supporting documentation, of the reasons for opposing the adjustment, which may include an analysis of the effect of the adjustment upon the cost structure of the shippers affected by the adjustment.

(c) At the meeting, the board will consider the evidence filed by the party seeking the adjustment and any opposition statements filed in accordance with (a) or (b) of this section. The board will accept, reject, or modify the proposed tariff adjustment after consideration of all of the evidence, including but not limited to cost projections and the effect of the cost adjustment on the cost structure of the shippers. Nothing in this section may be construed as a presumption that proposed tariff adjustments are valid or are to be granted by the board. (Eff. 4/15/81, Reg. 78)

Authority: AS 08.64.040(a)(4) and (b)

12 AAC 56.156. MODIFICATIONS. Time periods specified in 12 AAC 56.150, 12 AAC 56.152, and 12 AAC 56.154 will, at the discretion of the board for good cause shown, be shortened or lengthened at the request of an interested party. (Eff. 4/15/81, Reg. 78)

Authority: AS 08.64.040(a)(4) and (b)

12 AAC 56.158. EFFECTIVE DATE. Rate adjustments granted by the board under 12 AAC 56.154 take effect in accordance with AS 44.62.180. (Eff. 4/15/81, Reg. 78)

Authority: AS 08.64.040(a)(4) and (b)

## ARTICLE 5.
## GENERAL PROVISIONS

Section
160. Duties of pilots
170 Physical incapacitation
180. Registration of operators
190. Definitions

12 AAC 56.160. DUTIES OF PILOTS. (a) A pilot shall be on duty piloting the vessel at all times when the vessel is in transit in pilotage waters.

(b) Passenger vessels in transit of the inside waters of Southeast Alaska except as set forth in 12 AAC 56.110 are required to carry two pilots on board for continuous alternating duty.

(c) In any case where a vessel being piloted by a state licensed pilot goes aground, collides with another vessel or dock, or meets with any casualty, or is injured or damaged in any way, the pilot shall, within 10 days thereafter, make written report thereof to the board, and the board may thereupon, either with or without complaint being made against the pilot, investigate the matter reported upon. In any case of apparent damage being sustained or caused by a vessel under his charge, the pilot shall file his report as soon as possible after returning to shore.

(d) Pilots will report to the Aids to Navigation officer of the United States Coast Guard, all changes in lights, range lights, buoys, and any dangers to navigation that may come to their knowledge.

(e) Any pilot who fails, neglects or refuses to

make a report to the board as required by the pilotage laws of the state, or by 12 AAC 56, for a period of 10 days after the date when the report is required to be made, is subject to having his license suspended at the discretion of the board.

(f) Pilots when so notified in writing shall report in person to the board at any meeting specified in the notice.

(g) Any pilot summoned to testify before the board shall appear in accordance with the summons and shall answer, under oath, any questions put to him which deal with any matter connected with the pilot service, or of the pilotage waters over which he is licensed to act. He is entitled to have his attorney or advisor present during any such appearance and testimony.

(h) A pilot on boarding a ship, if required by the master, shall exhibit his state license or photostatic copy of it.

(i) Pilots on board passenger vessels shall be provided access to an operable radio on the bridge at all times to use on frequency 2182 kHz for security purposes.

(j) Repealed 5/12/78.

(k) All pilots shall report on a quarterly basis the names of all vessels served that were subject to the services of a licensed pilot. (Eff. 6/11/71, Reg. 38; am 6/19/74, Reg. 50; am 5/12/78, Reg. 66)

Authority: AS 08.62.040(a)

**12 AAC 56.170. PHYSICAL INCAPACITATION.** Any pilot who is physically incapacitated as a pilot for a period of 90 days or more shall not return to service as an active pilot until he has passed a physical examination by a physician approved by the board. (Eff. 6/11/71, Reg. 38; am 8/2/73, Reg. 47)

Authority: AS 08.62.040(a)(1) and (2) AS 08.62.040(b)

**12 AAC 56.180. REGISTRATION OF OPERATORS.** All agents of owners and agents of operators whose vessels are subject to AS 08.62 must register with the board and keep the board advised of any changes of names and addresses. (Eff. 6/11/71, Reg. 38; am 4/15/81, Reg. 78)

Authority: AS 08.62.040(a)(3) AS 08.62.187

**12 AAC 56.190. DEFINITIONS.** In this chapter

(1) "agent" means a person residing within the state who acts on behalf of the owner or operator of a vessel with actual or apparent authority for the purposes of securing pilotage services;

(2) "incompetent" means the exercise of pilotage duties in a manner which endangers life or property or failure to exercise the requisite knowledge and skill required of a pilot;

(3) "misconduct" means the knowing violation of a provision of AS 08.56 or regulations adopted under it by a person during the course of his employment;

(4) "pilotage waters" means all inside waters of Alaska except those described in 12 AAC 56.110. (Eff. 6/11/71, Reg. 38; am 4/15/81, Reg. 78)

Authority: AS 08.62.040(b)

# CHAPTER 60.
# BOARD OF PSYCHOLOGIST AND PSYCHOLOGICAL ASSOCIATE EXAMINERS

Article



## ARTICLE 1.
## APPLICATIONS

Section



**12 AAC 60.010. APPLICATION FORMS; SUPPORTING EVIDENCE.** An application for initial licensure as a psychologist must be submitted on a form provided by the department with

(1) a check or money order in the amount specified in AS 08.86.140;

(2) transcripts from all undergraduate and graduate schools attended by the applicant;

(3) a certified copy of the applicant's doctoral degree diploma awarded with primary emphasis on psychology by a school accredited by a regional accrediting association;

(4) a complete vita from the date of high school graduation to the time of application, including dates and places of residency;

(5) a copy of the applicant's doctoral dissertation abstract;

Supervise dockings

In order to upgrade license, they have to do docking

SWAPA

Southwest

individual - upgrade

change regulation

12. AC 56.040.

B7

Supervised

"anti-trust"

Problem is to verify licenses without restricting upward mobility

STATE OF ALASKA

PUBLIC NOTICE
NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF
THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
BOARD OF MARINE PILOTS

Notice is hereby given that the Department of Commerce and Economic Development, Board of Marine Pilots, under authority vested by AS 08.62.040, proposes to adopt regulations in Title 12 of the Alaska Administrative Code dealing with licensing and definitions to implement AS 08.62.040, AS 08.62.080, AS 08.62.090 and AS 08.62.100 as follows:

1. Article 2, Licensing, is being amended to reflect a change in the licensing of Marine Pilots to include a Radar endorsement on a U.S. Coast Guard license, repealing all references to Limited and Unlimited licenses and replace with a license by tonnage increments system, providing a point system for progression to the license category "any gross tons," and replacing words of gender reference with appropriate language.

2. Article 6, General Provisions, is being amended by adding new paragraphs providing definitions of language incorporated into the proposed regulations on the new licensing by tonnage increments.

Notice is also given that any person interested may present written or oral statement or arguments relevant to the action proposed at a public hearing to be held in Room C-121/122, Federal Building, 701 C Street, Anchorage, Alaska from 8:30 a.m. to 12:00 Noon, December 6, 1983.

Notice is also given that any person interested may present written statements or arguments relevant to the action proposed by mailing or delivering them, so they are received before 4:30 p.m., December 2, 1983, to:

Department of Commerce & Economic Development
Board of Marine Pilots - Regulations
Pouch D-LIC
Juneau, Alaska 99811

This action is not expected to require an increased appropriation.

Copies of the proposed regulations may be obtained by writing to the above address, or by telephoning (907) 465-2535.

The Department of Commerce and Economic Development, Board of Marine Pilots, upon its own motion, or at the instance of any interested person, may thereafter adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Richard A. Lyon, Commissioner

DATE: 10/19/83

BOARD OF MARINE PILOTS

PROPOSED REGULATIONS

CHAPTER 56

(Note: Words underlined indicate new language being inserted. Words [CAPITALIZED AND BRACKETED] indicate language being deleted.)

12 AAC 56.030 is amended to read:

12 AAC 56.030. QUALIFICATIONS FOR [UNLIMITED] PILOT'S LICENSE. An applicant for a [AN UNLIMITED] pilot's license shall apply on a form provided by the Department of Commerce and Economic Development; and

(1) pay the required fee; and

(2) submit a full-sized certified reproduction of a valid United States Coast Guard license , with radar endorsement, as first class pilot upon the waters for which applying; and

(3) submit a full-sized certified reproduction of a valid United States Coast Guard license for master of steam or motor vessels of 500 gross tons or better including tow boat or freighting vessels, but excluding fishing vessels; and

(4) have practical knowledge of the navigation of vessels and the conditions of navigation in the waters for which [HE IS] applying, which will be determined by oral and written examination before the board from topics listed in 12 AAC 56.070;

(5) have met the following requirements:

(A) have a minimum of one year as a master or pilot of a vessel in the waters for which applying, and have executed under the direct supervision of a licensed pilot [HOLDING AN UNLIMITED PILOT'S LICENSE] under AS 08.62.100 a minimum of 10 dockings and 10 undockings, of which five dockings and five undockings must be on any vessel requiring an Alaska pilot and five dockings and five undockings of a vessel of over 1,000 gross tons, while holding a United States Coast Guard license as a first-class pilot upon the waters for which applying and a United States Coast Guard license for master of steam or motor vessels of 500 gross tons or better including tow boat or freighting vessels, but excluding fishing vessels. No more than five of the required dockings and undockings may have been under the direct supervision of the same supervisory pilot; or

(B) have executed under the direct supervision of a licensed pilot [HOLDING AN UNLIMITED PILOT'S LICENSE] under AS 08.62.100 a minimum of 20 dockings and 20 undockings, of which 10 dockings and 10 undockings must be on any vessel requiring an Alaska pilot and 10 dockings and 10 undockings of a vessel of over 1,000 gross tons, while holding a United States Coast Guard license as a first-class pilot upon the waters for which applying and a United States Coast Guard license for master of steam or motor vessels of 500 gross tons or better including tow boat or freighting vessels, but excluding fishing vessels. No more than five of the required dockings or undockings may have

been under the direct supervision of the same supervisory pilot; and

(C) all dockings and undockings must be certified as having been made within two years prior to the date of application; and

(D) 2,000 gross tons is the initial entry level pilotage increment, unless a higher tonnage exposure is present. The board will determine the initial tonnage limit by considering the applicants experience, ability, limitations upon the Coast Guard license, and such other information as the board deems relevant. An applicant seeking an initial license in excess of 2,000 gross tons shall additionally have executed one-half of the required dockings and undockings supervised by a qualified, licensed pilot upon a vessel of comparable tonnage for the tonnage limit sought.

Any pilot acting in a supervisory capacity for dockings and undockings, as set forth above, must have a tonnage limit in excess of the applicants requested entry limit by at least one step.

(E) gross tonnage increment steps for State pilot license are:

Step 1: Not more than 2,000 gross tons.
Step 2: Not more than 10,000 gross tons.
Step 3: Not more than 20,000 gross tons.
Step 4: Not more than 40,000 gross tons.

Step 5: Not more than 60,000 gross tons.

Step 6: Any gross tons.

(F) upgrading the incremental tonnage license limitation level must be accomplished in accordance with the following scale outlining the required number of round trips as a licensed master/mate/observer on vessels of the appropriate tonnage that must be performed while holding a state license of the prior limit. At least one-third of the round trips must be performed during periods of darkness and the required number of trips must be performed within the maximum time allowed. All trips must be performed on the waters of Alaska.

| | Round Trips | Gross Tons | Trips as Pilot | Maximum Time |
|---|---|---|---|---|
| Step 1 to 2 | 12 | over 2,000 | 20 | 1 year |
| Step 2 to 3 | 8 | over 10,000 | 20 | 1 year |
| Step 3 to 4 | 7 | over 20,000 | 20 | 1 year |
| Step 4 to 5 | 4 | over 40,000 | 20 | 1 year |
| Step 5 to 6 | | over 60,000<br>500 points | | |

A point system is used to evaluate the experience presented. A total of 500 points is required for any gross ton certification (Step 6).

Points are awarded as follows:

(i) Master of vessels over 60,000 gross tons. 10 points per month. (36 months maximum credit)

(ii) sea service in a licensed deck capacity on vessels over 60,000 gross tons, not as master. 5 points per month (32 months maximum credit)

(iii) simulator training- maximum 200 points (approved simulator facilities)

1. CAORF, Kings Point
2. MSI La Guardia
3. Port Revel - Grenoble, France
4. Delft - Holland

(iv) pilot observer round trips on vessels over 60,000 gross tons. 10 points per round trip. (Minimum 6 trips - Maximum 30 trips)

(v) pilot of vessel between 20,000 and 40,000 gross tons. 10 points per round trip. (10 round trips maximum credit)

(vi) pilot of vessel between 40,000 and 60,000 gross tons. 10 points per round trip. (20 round trips maximum credit)

(6) have satisfactorily completed a physical examination within 30 days of the date of application. The physical examination required of all pilots shall demonstrate that the applicant [HE] is in all respects physically

fit to perform the [HIS] duties as a pilot and shall include an examination of [HIS] eyesight, hearing, blood pressure and anything else necessary in the opinion of the examining physician; and

(7) be at least 25 years of age; and

(8) no pilot may pilot any vessel in excess of the tonnage limit endorsed by the board upon the pilot's license. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42; am / / , Reg. )

Authority: AS 08.62.040(a)(2)
AS 08.62.080
AS 08.62.090

12 AAC 56.040 is repealed. (Eff. / / , Reg. )

12 AAC 56.050 is amended to read:

12 AAC 56.050. QUALIFICATIONS FOR CHANNEL PILOT'S LICENSE. A channel pilot's license is a license to pilot in main ship channels only. A channel pilot may perform dockings and undockings only under the direct supervision of a licensed pilot. [HOLDING AN UNLIMITED PILOTS LICENSE] An applicant for a channel pilot's license shall apply on forms provided by the Deparmtent of Commerce and Economic Development. An applicant shall:

(1) pay the required fee; and

(2) submit a full-sized certified reproduction of a valid United States Coast Guard license for first-class pilot upon the waters for which applying; and

(3) submit a full-sized certified reproduction of a valid United States Coast Guard license for master of steam or motor vessel of 500 gross tons or better including tow boat or freighting vessels, but excluding fishing vessels; and

(4) have practical knowledge of the navigation of vessels and the conditions of navigation in the water for which applying, [HE IS] which will be determined by oral and written examination before the board form topics listed in 12 AAC 56.070(b) and (c); and

(5) have completed satisfactorily a physical examination within 30 days of the date of application; the physical examination required of all pilots shall demonstrate that the applicant [HE] is in all respects physically fit to perform the [HIS] duties as a pilot and shall include an examination of [HIS] eyesight, hearing, blood pressure and anything else necessary in the opinion of the examining physician; and

(6) be at least 25 years of age. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42; am 6/19/74, Reg. 50; am / / , Reg. )

Authority: AS 08.62.040(a)(2)
AS 08.62.080
AS 08.62.090
AS 08.62.100

12 AAC 56.060(a) is amended to read:

(a) A temporary license may be issued to a person applying for a pilot [AN UNLIMITED, LIMITED] or channel pilot's license upon:

12 AAC 56.060(a)(3) is amended to read:

(3) submission of proof that the applicant [HE] meets all requirements for the license for which [HE IS] applying except the examination requirement; and [Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42; am 6/19/74, Reg. 50; am 6/30/78, Reg. 66; am / / , Reg. )

Authority: AS 08.62.040(a)(2)

12 AAC 56.070(a) is amended to read:

(a) The examination required by 12 AAC 56.030 and 12 AAC 56.050 [12 AAC 56.040] will be given at least once a year at the time and place designated by the chairman of the board with prior approval of the other board members. All applicants for examination must be submitted to the board at least 60 days before the date of examination.

12 AAC 56.070(c) is amended to read:

(c) An applicant for licensure as a pilot [AN UNLIMITED, LIMITED] or channel pilot will be orally interviewed by the board on the applicant's [HIS] safety record and elaboration of the applicant's seagoing background as listed on the [HIS] application. In addition, the applicant must pass the oral examination as required by 12 AAC 56.030

and 12 AAC 46.050 [12 AAC 56.040] with a score of at least 75 percent in the following topics:

(1) knowledge of the local harbor conditions and local regulations in the area applied for;

(2) signals; and

(3) rules of the road. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42; am 6/19/74, Reg. 50; am 11/14/80, Reg. 76; am / / , Reg. )

Authority: AS 08.62.040(a)(2)
and (b)

12 AAC 56.190 is amended by adding new paragraphs to read:

(7) "pilot" means a person licensed under 12 AAC 56.030, but does not include any person licensed as a channel pilot under 12 AAC 56.050.

(8) "trip" means movement of a vessel into and out of a port.

(9) "round trip" means departure from a given location enroute to a final destination and return to the point of departure. (Eff. 6/11/71, Reg. 38; am 4/15/81, Reg. 78; am 12/17/82, Reg. 84; am 7/24/83, Reg. 87; am / / , Reg. )

Authority: AS 08.62.040(b)

# MEMORANDUM State of Alaska

TO: Shelia Petersen
Legislative Aide to
Senator Eliason

DATE: November 22, 1983

FILE NO:

TELEPHONE NO:

FROM: Harry D. Treager, Director
Division of Occupational Licensing
Department of Commerce and
Economic Development

SUBJECT: 1. Barber and Hairdresser Survey
2. Marine Pilots (Dockings and Undockings)

Attached is the information you requested.

Board of Barbers and Hairdressers Examiners:

During the month of June 1983, a two part survey was sent to barbers, hairdressers and cosmetologists (approximately 1,954).

One portion addressed the "sunset" provisions.

The response was overwhelmingly in favor of continuation of the board. However, of the 1,954, only 119 responded. Some of the responses were in petition format with an average of 25 individual signatures. Of the 119, 5 returns supported termination of the board.

There was a variety of expressions and concerns noted if the board was terminated.

Current licenses are as follows:

| | | |
|---|---|---|
| 1. | Hairdressers | 1,521 |
| 2. | Barbers | 296 |
| 3. | Schools | 8 |
| 4. | School Owners | 7 |
| 5. | Instructors | 58 |
| 6. | Shop Owners | 289 |
| 7. | Cosmetologists | 137 |

The second portion of the survey addressed the need for a test (State vs. National) and solicitation of the professionals' opinion regarding test questions.

I did plan to copy the responses for the committee's perusal during the legislative "sunset" hearings. They are presently available for review in my office.

Attached are samples of the letters sent in June.

Board of Marine Pilots:

Attached for your review is a copy of the unadopted minutes of the board's May 23-25, 1983 meeting. They will be reviewed for adoption at their December 5-6 meeting.

The board's position is to change the "docking and undocking" scheme to reduce the number of supervised dockings-undockings, plus trips and tonnage.

Because of the expanded regulatory subjects. another regulation project was started. It presently is in the period for public comment. Responses received, to date, have been from Southeast licensed pilots who oppose the changes based on the tonnage requirements.

Marine Pilots in Southeast are restricted because of the vessel size. The size of vessels traveling into Western Alaska are of various tonnage because of the oil tanker traffic and larger fish processors. Southeast does not now have the traffic or vessel tonnage to validate or allow one to meet the requirements as proposed.

On December 5 and 6, the board will be meeting in Anchorage. The 6th is for public participation on the proposed regulations. The regulations are as stated above.

I will keep you informed as to the board's decision.

HDT/wfs1/13
112283b
Attachments

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT**

*DIVISION OF OCCUPATIONAL LICENSING*

*POUCH D*
*JUNEAU, ALASKA 99811*
*PHONE: (907) 465-2534*

DATE: June 9, 1983

TO: All Licensed Barbers, Hairdressers and Cosmetologists

The Board of Barbers and Hairdressers is now under Sunset Legislation and is due to terminate on June 30, 1984. Professionals licensed by the board are asked to submit their opinions on whether the board should be terminated or continued. Additionally, we are seeking suggestions for improvements to the Board of Barbers and Hairdressers. All responses will be given serious consideration.

Please address all replies to me at the following:

State of Alaska
Department of Commerce & Economic Development
Division of Occupational Licensing
Pouch D-LIC
Juneau, Alaska 99811

Harry D. Treager, Director

KCM/cw#21P10
6983A

08-H8LH