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Interim correspondence

Senator Vic Fischer
Alaska State Legislature
Pouch V • Juneau, Alaska 99811 • (907) 465-4954

MEMORANDUM

TO: Senate State Affairs Committee

FROM: Senator Vic Fischer, Chair
Senate State Affairs Committee

RE: SCS CSHB 609 (State Affairs)

DATE: May 15, 1984

Attached is a copy of the proposed CS for HB 609 Relating to the State Bond Committee. The changes to the bill are as follows:

page 1, lines 13-15, the Bond Committee would remain a three member committee with the same members. The location of the State Bond Committee would be moved to Revenue. In the bill that came to committee the State Bond Committee had five members;

page 3, lines 2-8, the Bond Committee's report was expanded.

page 3, lines 10-12, requires the State Bond Committee to publicize the report and make it available to the public;

page 3, lines 13-22, breaks down the policies and guidelines into three parts-- (c), (d), and (e). The policies apply only to debt of the state.

If you have any specific concerns with the proposed CS, please let me know as soon as possible.

Thanks.

Senator Vic Fischer
Alaska State Legislature
Pouch V • Juneau, Alaska 99811 • (907) 465-4954

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Official Business

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chair • Pouch V
Juneau, Alaska 99811
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Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • 1024 W. 6th Ave., Suite 204 C,
Anchorage, Alaska 99501
(907) 278-3654

Official Business

Governor Bill Sheffield
Pouch A
Juneau, Alask. 99811

Oct. 3, 1983

Dear Governor Sheffield;

Currently in the Senate State Affairs Committee which I chair are SB 310-- establishing April 20 as Bob Bartlett day, and SB 311-- creating Ernest Gruening day on February 6. I would appreciate your support and written endorsement on these two bills to facilitate their movement during the opening days of the upcoming session.

Recognition of these two statespersons will create an atmosphere of democratic unity while honoring two of the most well known Alaskan public servants.

Thanks as usual for your time and attention.

Best regards,

Senator Vic Fischer

/st

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • 1024 W. 6th Ave., Suite 204 C,
Anchorage, Alaska 99501
(907) 278-3654

Official Business

October 10, 1983

Senator Fritz Pettyjohn
1024 W 6th Ave
Anchorage, Alaska 99501

Dear Fritz,

I'm sorry about this belated response to your letter of July 13 about SB 38-- holding legislative sessions outside Juneau. I'm only now catching up on accumulated correspondence and assure you that no slight to you is intended by the delay.

I had hoped to defer consideration of this bill as long as possible, principally to let the furor over the capital move die down as much as possible. As you will have noted, Szymanski's bill has inflammed all the old passions, and opened many sore wounds. I am glad they, the House, did it, not we.

I do anticipate house passage of Mike's bill. Assuming that happens, this is probably a matter we will end up with, and my intent would certainly be to consider your bill and that one together.

Best regards,

Sentor Vic Fischer

cc: Senator Sturgulewski
Senator Rodey

Enclosures

letter to pettyjohn in response to his, attached

dear fritz,

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best regards,

bcc to arliss, rodey with fritz' letter

UF/81
SB

Alaska State Legislature

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

July 13, 1983

Senator Vic Fischer
Chairman State Affairs Committee
Re: SB 38, Location of Legislative Sessions

Dear Vic,

SB 38 was introduced on January 18, 1983 by Senator Paul Fischer and myself. It was referred to the State Affairs Committee. I am unaware of any hearing held or scheduled on this bill.

My constituents have reacted rather strongly to the events of this year's session. They are not telling me to revive the capital move, but are interested in seeing legislative sessions take place outside Juneau.

I urge and encourage you to schedule hearings on this bill this summer or fall. I believe there would be substantial public interest in it.

Cordially

Senator Fritz Pettyjohn

cc: Senator Paul Fischer

Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

FOR IMMEDIATE RELEASE:
November 3, 1983

VIC FISCHER CALLS HEARINGS

ON MINORITY CONTRACTING PLAN

ANCHORAGE, AK. -- Saying that federal rejection of Alaska's plan for minority contracting is "most unfortunate", State Senator Vic Fischer has called for public hearings on the matter. The hearings will be sponsored by the Senate State Affairs Committee which Fischer chairs.

The hearings will be held November 17, from 1:30 p.m. to 5 p.m. in the first floor conference room of the Legislative Information Offices, located at 1024 West 6th Avenue here.

"The state Department of Transportation and Public Facilities made a good faith effort to increase the number of highway contracts going to firms owned by Blacks, Natives, and women", Fischer said today. "And the fact that some Washington, D.C. bureaucrats didn't sympathize with the state's plan shouldn't be allowed to jeopardize federal funds for the people of Alaska."

Fischer said he feared the Reagan Administration's rejection of the minority hire plan would result in a reduction in the amount of federal aid highway funds available to the state.

The plan he is referring to was developed by the state Department of Transportation and Public Facilities to encourage state contractors to utilize more minority and female businesses on state highway construction projects. The Federal Highway Administration rejected the plan, saying

(more)

it would inhibit "free and competitive bidding".

"It is a shame that the federal bureaucracy rejected the plan," Fischer said. "The plan was developed by DOT/PF in good faith and it rece ved the endorsement of the state's Human Rights Commission, among others. It was a good plan", he added.

"Now, of course, it is critical that Transportation Commissioner Dan Casey and his people quickly put into effect an alternate method of assuring continued eligibility for federal assistance and to promote more equitable participation of minorities and women in state construction work," Fischer continued.

Fischer said he scheduled hearings on the matter now "partly in response to the federal rejection of Alaska's minority contracting plan. We had been planning hearings nearer to the next legislative session," he explai ed, "but the time for that, obviously, is now."

The A chorage Democrat said the Senate State Affairs Committee has been working on the problems of small and minority contractors for several years.

"It has been horribly frustrating to work with the bureaucracies and entrenched interests that don't want to take the steps necessary to permit small businesses, minority or not, to participate in large state construction projects", Fischer said.

"I am particularly appalled by the extent to which general contractors put the squeeze against small businesses and minority subcontractors, both in public and private construction work", Fischer said. "The little Alaskan firms are being ground up in the competitive struggle for state dollars. Time and again, we hear reports of minority and other local firms getting 'aced out' of subcontracts on which they submitted low bids; usually in favor of 'pet'

(more)

insiders, and often to make way for outside firms or carpetbaggers."

The Senate hearing will deal with all aspects of state construction contracts, not just with highways. This year, the state authorized nearly one billion dollars for state construction projects. Fischer said the state Department of Transportation and Public Facilities will be present at the hearings.

Aside from DOT/PF, Sen. Fischer is inviting the Alaska Human Rights Commission, the Associated General Contractors, the state Department of Administration, various minority and female business enterprise groups, and other organizations to participate in the hearings.

"Most importantly, however, is public involvement", Fischer said. "Rather than have agencies making up their minds and developing their plans without consulting those most directly involved, I want us to hear from the people first. Most of the good ideas in the state have come from the people themselves, and I see no reason why this area of public interest should be any different", Fischer concluded.

-30-

For further information, contact:
Ms. Suzanne Tryck, Tel.: 278-3654

110283

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • 1024 W. 6th Ave., Suite 204 C,
Anchorage, Alaska 99501
(907) 278-3654

Official Business

MEMORANDUM

TO: Senate State Affairs Committee

FROM: Senator Vic Fischer, Chair
Senate State Affairs Committee

RE: Committee hearing on minority and female businness contracting with the state

DATE: November 10, 1983

Attached you will find an agenda for the Senate State Affairs Committee hearing scheduled on November 17, 1983 at 1:30 in the Anchorage LIO office.

If you have any questions, please contact Ginger Baim, Suzanne Tryck (278-3654), or me (276-7626).

Attachments

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Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

SENATE STATE AFFAIRS COMMITTEE

PUBLIC HEARING ON DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
MINORITY/FEMALE/SMALL BUSINESSES PARTICIPATION
IN STATE CONTRACTS

A G E N D A

DATE:	Thursday, November 17, 1983	TIME:	1:30 p.m. (YT)
PLACE:	Anchorage LIO Office 1024 W. 6th Avenue Anchorage, Alaska	CONTACT:	Ginger Baim 278-3654

A public hearing is being held on DOTPF policies and actions to increase contracting opportunities for minority, female, and other small businesses on federally and state funded construction projects, including:

* Record of and goals for DOTPF use of minority, female and other small businesses in construction projects.

* DOTPF's plans to assure continued eligibility for assistance in view of the Federal Highway Administration's rejection of the MBE/FBE contracting plan to promote greater participation of minorities and women in state construction work.

* DOTPF's administration of construction contracts for public facilities and other non-federal aid highway projects, specifically as it applies to MBE/FBE and other small businesses.

* status of agreement between DOTPF and the Alaska State Commission on Human Rights to increase minority contracting opportunities.

* review of obstacles to minority and female owned and other small business participation in state contracting, including obtaining financing and bonding, size of DOTPF construction projects, local hire, and competition for state dollars with "outside" contractors.

Agency and public testimony is invited. Written comments are welcome and should be sent to Senator Vic Fischer, Chair, Senate State Affairs Committee, 1024 W 6th Ave., Suite 204C, Anchorage, Alaska, 99501. Please contact Ginger Baim or Suzanne Tryck at 278-3654 for further information.

JUN 16 1983

GB

VF Look At This

THE ALLIANCE

P.O. Box 100100 / Anchorage, Alaska 99510 / (907) 562-0100

June 14, 1983

TO: Members of the Alaska Legislature

Re: Fluctuating Work Week/
House Bill 223

Dear Legislator:

Attached for your review is a highlighted copy of the most recent issue of the UCLA-Alaska Law Review. We bring this to your attention because it represents a scholarly and impartial analysis of issues attendant to Alaska's prohibition of the fluctuating work week pay plan.

As you can see from the highlighted portions, the policy considerations articulated by the State Supreme Court in upholding the action of the State Department of Labor, are quite questionable. This type of bureaucratic experimentation with laws affecting employees and employers in Alaska is extremely detrimental to attempts at developing a long-range, stable employment climate in the State of Alaska.

As you know by now, the fluctuating work week pay plan is a legal method of payment everywhere else in the United States, and, until the relatively recent action by the Department of Labor, it was legal here also. If we are to have a stable job climate in the State of Alaska, this sort of bureaucratic tinkering with the laws must be avoided. Our laws should be made by you and your colleagues in the Legislature, not by bureaucrats.

You KNOW Stable employment climate STABLE TAX POLICIES ETC

We urge you to examine carefully the long-range implications of Alaska's ban on use of the fluctuating work week pay plan. Clearly such prohibition sends a negative signal to potential resource developers and could result in the creation of fewer jobs due to the lack of flexibility in determining the appropriate pay method for the project at hand.

You should give consideration to repealing the Department of Labor's regulation, and, in the meantime, House Bill 223 deserves your full support.

Sincerely,

Chuck Becker

Chuck Becker
Executive Director

Alaska Support Industry Alliance...for responsible economic development

Vol. 12 Fall 1982-Spring 1983 No. 1 & 2

U.C.L.A.-ALASKA LAW REVIEW

JUDICIAL REVIEW: *Challenging Alaska's Ban on the Fluctuating Workweek--Dresser Industries, Inc. v. Alaska Dept. of Labor (Alaska 1981)*—In *Dresser Industries, Inc. v. Alaska Department of Labor*,[1] the Alaska Supreme Court reviewed a regulation[2] which banned the "fluctuating workweek" (hereinafter FWW). The FWW is a method of calculating overtime compensation, and it is expressly permitted by federal regulations.[3] In *Dresser*, the court faced the problem of adopting a rule contrary to federal practice and the problem of judicial review of agency action. This casenote is a critical view of the court's approach to these problems.

I. FACTUAL BACKGROUND

The original claimant in this matter, Clyde Woody, worked for Dresser Industries, Inc.[4] His weekly wage was $374 or $9.35 per hour in a 40 hour week.[5] Mr. Woody was compensated under a FWW plan. The Alaska Department of Labor brought suit on his behalf soon after the ban on the FWW was promulgated. It claimed damages in the amount of $3,956.76 for payments made under the FWW plan.[6]

The FWW is a method of calculating an employee's wages in which an employee's weekly salary (without overtime) remains constant. Overtime payments are made for all hours worked over 40 hours at a rate of 1½ times the base rate or rate per hour. The distinguishing feature of the FWW is that the total number of hours the employee works each week varies, and this changes the

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1. 633 P.2d 998 (Alaska 1981).
2. ALASKA ADMIN. CODE tit. 8, § 15.100(d)(3) (January 1979).
3. 29 C.F.R. § 778.114(a)-(c) (1982). Section (a) states:
   An employee employed on a salary basis may have hours of work which fluctuate from week to week and the salary may be paid him pursuant to an understanding with his employer that he will receive such fixed amount as straight time pay for whatever hours he is called upon to work in a workweek, whether few or many. Where there is a clear mutual understanding of the parties that the fixed salary is compensation (apart from overtime premiums) for the hours worked each workweek, whatever their number, rather than for working 40 hours or some other fixed weekly work period, such a salary arrangement is permitted by the Act if the amount of the salary is sufficient to provide compensation to the employee at a rate not less than the applicable minimum wage rate for every hour worked in those workweeks in which the number of hours he works is greatest, and if he receives extra compensation, in addition to such salary, for all overtime hours worked at a rate not less than one-half his regular rate of pay.
4. Brief for Appellant at 2, *Dresser*, 633 P.2d 998.
5. Brief for Appellee at 28, *Dresser*, 633 P.2d 998.
6. *Dresser*, 633 P.2d at 1001 (stipulation 7).

rate per hour or base rate. Since the weekly salary is constant, the more hours an employee works the lower his wage per hour, or base rate, will be. Accordingly, if his base rate is lower, then his overtime rate will also be lower.

A simple example will be useful. Assume an employee's fixed weekly salary is $200. If the employee works 40 hours, then the base rate is $5 per hour with no overtime. If the employee works 20 hours, then the base rate is $10 per hour, once again with no overtime. However, if the employee works 50 hours, then the base rate is $4 per hour (200 ÷ 50). The employee is then entitled to 40 hours at $4 per hour plus 10 hours of overtime compensated at $6 per hour ($4 × 1½). Thus the employee's pay for the 50 hour week would be $220: (40 × $4) + (10 × $6).[7] In contrast, under a normal overtime system, an employee making $5 per hour would earn $275 in a 50 hour week: (40 × $5) + (10 × $7.50) = $275.

Federal regulations permit the FWW so long as no workweek will be so long as to make the employee's average hourly wage below the statutory minimum.[8] An Alaska regulation prohibits the FWW entirely: "The following are not acceptable methods for complying with the payment of overtime provisions of AS 23.10.060: . . . (3) flex-time or flexitime plans established under 29 C.F.R. 778.114 providing a fixed salary for fluctuating hours up to a predetermined maximum number of hours in a workweek".[9] The reason for promulgating this regulation banning the FWW was given in a stipulation in *Dresser* by the Alaska Department of Labor:

> The predicates which served as the Administrator's basis in adopting the challenged regulation were:
>
> (A) The 'fluctuating work week' is not applicable under the Alaska Act because,
>
> (1) AS 23.05.160 requires an employee to be told of his 'rate of pay' at the time of hire and of any changes therein before payday; and
>
> (2) AS 23.10.060 requires that employers have to pay overtime for hours worked over eight (8) hours per day, even if less than forty (40) hours per week are worked, and this is to the employer's detriment.[10]

Apparently the Director[11] who promulgated the regulation felt

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7. *Id.* at 1000 n.1.

8. 29 C.F.R. § 778.114(c) (1982).

9. ALASKA ADMIN. CODE tit. 8, § 15.100(d)(3) (January 1979).

10. *Dresser*, 633 P.2d at 1001 (stipulation 9).

11. "Administrator" is a generic term used by the *Dresser* court to describe the Director of the Wage and Hour Division of the Alaska Department of Labor. This casenote will use "Director" to describe the person who promulgated the

that under the FWW an employee could never be told in advance his precise overtime compensation rate.

II. The Court's Decision

The *Dresser* case presented two issues for review by the court. First, did the state Director of the Wage and Hour Division have the power to promulgate a regulation banning the FWW and if so, did he act within his grant of authority from the legislature? Second, was the disputed regulation reasonably related to the goals of the Alaska Wage and Hour Act?[12]

The Alaska Department of Labor argued that the state had the power to promulgate the regulations. However, Dresser Industries insisted that the federal provision which allows the FWW was controlling. Dresser first maintained that Alaska's Statehood Act incorporated all federal laws except where the Alaska Legislature proclaimed to the contrary.[13] Since the federal regulation specifically allowing FWW overtime computations existed before Alaska became a state, Dresser argued that the Statehood Act incorporated this provision. In addition, Dresser pointed to United States Supreme Court case law that endorses the FWW.[14]

The Alaska Supreme Court effectively responded to this challenge to the state's authority. The court pointed out that the Statehood Act did not incorporate federal case law or administrative law. The court supported this view by asserting its own power to break with federal case law and its past divergence from federal regulations. Thus, the court concluded that the federal regulation was not automatically applicable to Alaska under the Statehood Act.[15] Underlying this analysis was the court's implicit assumption that a conflict existed between the federal regulation and the Alaska regulation banning the FWW.

Given the apparent conflict between the federal and Alaska

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regulation banning the FWW because in this case he was the individual who promulgated the regulation.

12. Alaska Wage and Hour Act, AS 23.10.050-.150 (1981).

13. Alaska Statehood Act, Pub. L. No. 85-508(8)(d), 72 Stat. 339 (1958):

> Upon admission of the State of Alaska into the Union as herein provided, all of the Territorial laws then in force in the Territory of Alaska shall be and continue in full force and effect throughout said State except as modified or changed by this Act, or by the constitution of the state, or as thereafter modified or changed by the *legislature* of the State. (emphasis added)

14. Overnight Motor Transp. Co., Inc. v. Missel, 316 U.S. 572 (1942) (the FWW was an acceptable payment system for a clerk who performed incidental duties and whose employment involved wide fluctuations in the time required to complete his duties).

15. *Dresser*, 633 P.2d at 1002.

regulations regarding the FWW, a federal preemption issue appeared to be raised although Dresser Industries did not argue federal preemption nor did the Alaska Supreme Court discuss it. At first glance the preemption line of reasoning appears destructive of the court's result. Where a state statute directly conflicts with a federal statute, the federal rule prevails.[16] Despite an apparent conflict in this case, the disputed Alaska regulation should not have been preempted. Actual conflict requires either that it is impossible to comply with both state and federal regulations or that the state rule thwarts the Congressional purpose behind legislation.[17] Because the federal regulation is merely permissive in this case a business can simultaneously comply with both the state and federal rule. Moreover, no Congressional purpose is thwarted because the federal regulatory scheme provides a saving clause. The clause provides that where a state law requires a different method of calculating overtime compensation, the state law will not be preempted so long as it does not contravene the Fair Labor Standards Act.[18]

Because the saving clause makes a strong case for allowing Alaska to prohibit the FWW even though the federal regulations permit it, one can only speculate why the court did not raise it in support of its position. Perhaps the court wished to avoid the constitutional law issues entirely.[19] Certainly one could raise commerce clause objections to the *Dresser* result.[20] However, a

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16. Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1 (1824); L. TRIBE, AMERICAN CONSTITUTIONAL LAW § 6-23, 376 (1978) ("So long as Congress acts within an area delegated to it, the preemption of conflicting state or local action . . . flow[s] directly from the substantive source of the congressional action coupled with the supremacy clause of article VI . . .").

17. City of Burbank v. Lockheed Air Terminal Inc., 411 U.S. 624 (1973) (state law contravened congressional purpose). McDermott v. Wisconsin, 228 U.S. 115 (1913) (compliance with both state and federal regulations impossible).

18. 29 C.F.R. § 778.5 (1982) provides in part:

> Relation to other laws generally. Various Federal, State and local laws require the payment of minimum hourly, daily or weekly wages different from the minimum set forth in the Fair Labor Standards Act, and the payment of overtime compensation computed on bases different from those set forth in the Fair Labor Standards Act. Where such legislation is applicable and does not contravene the requirements of the Fair Labor Standards Act, nothing in the act, the regulations or the interpretations announced by the Administrator should be taken to override or nullify the provisions of these laws.

19. Generally, courts will not pass on the constitutionality of an act of the legislature if the merits of the case in hand may be fairly determined otherwise without so doing. *See, e.g.*, Flint v. Stone Tracey Co., 220 U.S. 107 (1910).

20. The commerce clause forbids states from regulating in ways which discourage interstate commerce. Banning the FWW may discourage foreign corporations from doing business in Alaska given the fact that the FWW is acceptable

complete discussion of the commerce clause issue is not within the scope of this note.

If the Alaska Department of Labor had the power vis-a-vis the federal government to promulgate this regulation, the next issue became whether the Director acted within his grant of authority from the Alaska Wage and Hour Act. This issue was one of statutory interpretation. The court had to deal with a clause in the Alaska Wage and Hour Act that suggested that the federal provision allowing the FWW should be used. The Alaska Wage and Hour Act provides that the terms in the act "shall be defined, where applicable, as they are defined in the federal Fair Labor Standards Act of 1938, as amended, or the regulations adopted under it."[21] This language suggests that the Alaska Department of Labor did not have the authority to change the definition of acceptable methods of calculating wages since the state Wage and Hour Act leaves no room for discretion.

The court, however, noted two statutory provisions that gave the Director the power to interpret provisions of the Wage and Hour Act and promulgate regulations consistent with the Act.[22] In order to give this interpretive and rule making power meaning, the court reasoned that under the Alaska Wage and Hour Act, federal standards are to be invoked "only when the state director of the Wage and Hour Division and the Commissioner of Labor have refrained from defining terms in the state regulations, pursuant to their discretionary authority under AS 23.10.085 and AS 23.19.095."[23] This analysis allowed the court to harmonize the apparently contradictory provisions of the Wage and Hour Act.[24] The court's conclusion included two holdings: (1) that the Alaska Act authorized the Administrator to promulgate the regulation,[25] and (2) that the regulation was proper despite an apparently conflicting federal rule.

The court next considered the reasonableness of the regula-

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in other states. Briefly, the regulation banning the FWW might violate the commerce clause because: (1) it affects interstate commerce, Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 6 L. Ed. 23 (1824); (2) it does not pursue the least restrictive alternative, Dean Milk Co. v. Madison, 340 U.S. 349 (1951); (3) states cannot discourage foreign corporations from doing business in their state, Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333 (1977); and (4) states cannot practice economic protectionism, Baldwin v. Seelig, 294 U.S. 511 (1935).

21. Alaska Wage and Hour Act, AS 23.10.145 (1981).

22. *Dresser*, 633 P.2d at 1003 (quoting AS 23.10.085 and AS 23.10.095).

23. *Id.*

24. *Id.* at 1003 n.9.

25. *Id.* at 1003.

tion banning the FWW.[26] The parties stipulated that the regulation was interpretive and that specific statutory provisions provided the basis for the regulation.[27] If the court were bound by these stipulations, the regulation would have been difficult to uphold.[28] The court stated, however, that stipulations of law are not binding on the court,[29] and further suggested that this rule is especially clear where matters of public policy are involved.[30]

Having dismissed these particular stipulations of the parties, the court ruled, with respect to the regulation-was-interpretive stipulation, that because the Director acted on a delegation of authority from the legislature, the regulation was quasi-legislative rather than interpretive as stipulated.[31] This meant the court would give the regulation the same deference as it would a statute[32] and apply the "reasonable and not arbitrary" test,[33] rather than the "independent judgment" standard.[34]

The other stipulation that the court dismissed stipulated to specific statutory provisions that formed the basis for the regulation.[35] While the court admitted that the regulation was related "only tenuously, if at all"[36] to the stipulated statutory provisions, this caused the court no problem as it had previously ruled that it would not be bound by this stipulation. Instead, the court accepted the Attorney General's argument that the more general policy basis for the regulation was given by the Alaska Wage and Hour Act which states that the purpose of the Alaska Fair Labor Standards Act is to establish and maintain minimum wage and overtime standards for workers' health and well being.[37] In short,

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26. *Id.* at 1004.

27. *Id.* at 1001.

28. *See infra* notes 36 & 47 and accompanying text.

29. *Dresser*, 633 P.2d at 1004 (citing San Francisco Lumber Co. v. Bobb, 139 Cal. 325, 73 P. 864 (1903)).

30. *Dresser*, 633 P.2d at 1004.

31. *Id.*

32. *Id.* ("We hold, therefore, that when a regulation has been adopted under a delegation of authority from the legislature to the administrative agency to formulate policies and to act in the place of the legislature, we should not examine the content of the regulation to judge its wisdom, but should exercise a scope of review not unlike that exercised with respect to a statute.") (Quoting Kelly v. Zamarello, 486 P.2d 906, 909 (Alaska 1971)).

33. *Dresser*, 633 P.2d at 1005.

34. The independent judgment standard allows a court to make independent findings of fact, drawing its own conclusions from the evidence. *See* 5 AM. JUR. 2D *Appeal and Error* § 703 (1962).

35. *Dresser*, 633 P.2d at 1001 (stipulation 9).

36. *Id.* at 1005.

37. The Alaska Wage and Hour Act is an addendum to the Fair Labor Standards Act; it deals specifically with wage and hour standards.

the court dismissed the stipulated goals articulated by the regulation's author—the Director—in favor of those provided by the state Attorney General.

Applying its "reasonable and not arbitrary" test, the court determined that the regulation was supported by the policy considerations provided by the Attorney General. Because Clyde Woody would have received more pay during his work period without the FWW plan, the court concluded the plan must be inconsistent with insuring an employee's adequate compensation. In addition, the court asserted that banning the FWW would induce employers to create more jobs rather than pay overtime, thus serving the state's interest in spreading employment.[38]

III. Criticisms of the Decision

The *Dresser* court's analysis is unconvincing for three reasons. First, the court dismissed certain stipulations of the parties without proper legal foundation. Second, the court implicitly made a policy choice by selecting a purpose, or goal, for the regulation different than the Director's purpose when the Director's purpose would have made the regulation unreasonable. This was inconsistent with the court's disclaimed reluctance to make policy choices and its avowed deference to the Director's authority. Moreover, the way in which the court applied the "reasonable and not arbitrary" test in this case gave the court the broad discretion to uphold virtually any regulation it considered. Finally, the court's abbreviated analysis of the costs and benefits of the FWW led it to conclude that the FWW was against the interests of workers. This conclusion may not necessarily be accurate.

The court's reasons for setting aside the stipulations of the Director were unpersuasive. The court based its dismissal on two grounds. First, it stated that it was not bound by stipulations of law.[39] The law on this issue is relatively undisputed. Courts are not bound by stipulations which involve legal conclusions.[40] However, the Department's statements of its purpose in promulgating the regulation were facts, not legal conclusions. A conclusion requires an inference; a fact is that which is asserted for the purpose of applying a rule of law.[41] The present case does not require an inference because the purpose was plainly stated. Purpose is inevitably an important fact in interpreting and evaluating

38. *Dresser*, 633 P.2d at 1006.
39. *Id.* at 1004.
40. 92 A.L.R. 663, 665 (1934).
41. 35 C.J.S. *Fact* § 489 (1960).

the regulation, i.e. in applying a rule of law.[42] Even if the court were not legally bound by the stipulation, surely the stated purpose of a regulation is inherently related to its reasonableness.[43]

Second, the court argued that stipulations as to the purpose of a regulation are not binding and cited *Fougera & Co. v. City of New York*.[44] *Fougera* involved a challenge to an ordinance requiring that all prescription drugs have labels listing their ingredients. The administrator who promulgated the regulation stipulated that the purpose of the ordinance was to prosecute people selling illegal drugs. Petitioner argued that the regulation required him to incriminate himself in violation of his fifth amendment rights. The Alaska court's reliance on this case suffers three weaknesses. First, the case was decided primarily on other grounds.[45] Second, in *Fougera* the administrator stipulated that the purpose of the ordinance was to force violators to make self-incriminating statements on the labels. This was tantamount to stipulating that the regulation was unconstitutional. In contrast, the stipulation in *Dresser* merely gave the reason for the rule and left the court to apply the "reasonable and not arbitrary" test. Finally, *Fougera* has only been cited by other courts for the proposition that parties cannot *directly* stipulate a regulation invalid.[46] In *Dresser*, the parties did not stipulate that the regulation was invalid. The court was left to decide its validity based on a simple declaration of purpose.

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42. Facts are distinguishable from legal conclusions by the degree to which one must draw an inference. The line between facts and laws can easily become blurred. Even the statement, "This is a car," draws the inference from the raw data of the tires, the body and the windows to the conclusion that this is a car. However, the statement is factual nonetheless. The process of identifying cars is so common and so trustworthy that we allow it as a fact. Similarly, we commonly accept an author's stated purpose as trustworthy because the author knows best why he promulgated a regulation.

43. *See* Bice, *Rationality Analysis in Constitutional Law*, 65 MINN. L. REV. 1 (1980).

44. 224 N.Y. 269, 278-79, 120 N.E. 642, 643 (1918); *Dresser*, 663 P.2d at 1005.

45. The *Fougera* court's statement that courts are not bound by stipulations as to legislative purpose may have been dictum. The *Dresser* court quoted a passage from *Fougera* which said that the court is not bound by a stipulation as to the purpose of the ordinance, 633 P.2d at 1005. However, the court failed to add the next line: "But if the stipulation were to be accepted as accurate, the result would not be changed." 224 N.Y. at 279, 120 N.E. at 643.

46. West v. Bank of Commerce & Trust, 167 F.2d 664, 666 (4th Cir. 1948) (city attorney could not stipulate that a zoning ordinance was unconstitutional and would not be enforced); City of Rye v. Metropolitan Transp. Auth., 301 N.Y.S.2d 569, 576 (C.A.N.Y. 1969) ("no concession or admission in a pleading or affidavit by a public officer . . . on the validity of an act duly passed by the legislature will bind the court to hold it unconstitutional").

The dismissal of the stipulated purpose for the regulation banning FWW presented the court with a difficult problem. The problem arose because, as the court noted, the ban on the FWW was not reasonably related to the Director's stipulated goals of insuring that employees would be paid for their overtime and informed of their rate of pay in advance.[47] Thus, the court was faced with a dilemma: either accept the stipulated goals and declare the regulation invalid, or dismiss the stipulated goals and adopt others.

Having dismissed the stipulated policy justification of the ban of the FWW, the court made its second mistake by adopting an inconsistent position. On the one hand it claimed deference to the Director,[48] but on the other hand it rejected the Director's purpose in favor of the one offered by the Attorney General.[49] The court was apparently trying to avoid making policy or legislative judgments, yet its analysis of the regulation's reasonableness reflected a definite policy choice.

Even though the court was unable to uphold the regulation on the basis of the Director's stated purposes, the court chose to uphold the ban on the FWW by choosing a purpose that would make the ban reasonable, namely, by adopting the policy considerations urged by the Attorney General. In contrast, the stipulated purpose of the Director was better suited for evaluating the reasonableness of the regulation than the purpose given by the Attorney General. The Attorney General's purpose was less meaningful for two reasons. First, the Attorney General could not determine the regulation's purpose as accurately as its promulgator. Second, the Attorney General's purpose was so general that it accommodated almost *any* means. To decide whether the means are rationally related to a purpose, one must have (1) an accurately identified purpose that (2) is reasonably specific.[50] The court's decision to adopt the Attorney General's purpose despite these shortcomings suggests that the court desired to find grounds for upholding the regulation rather than test the reasonableness of the ban given the purpose expressly stated by the Director at the time he promulgated the regulation.

Historically, the court has deferred to the Department of La-

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47. *Dresser*, 633 P.2d at 1005. *See supra* note 36 and accompanying text.

48. The court typically gives deference to an agency's regulations. Kenai Peninsula Fisherman's Co-Op. Ass'n., Inc. v. State, 628 P.2d 897 (Alaska 1981). In *Kenai Peninsula* the court asked whether a regulation was reasonably related to the agency's purpose, not one supplied by the court.

49. *Dresser*, 633 P.2d at 1005-06.

50. *See* Bice, *supra* note 43, at 6-16.

bor because of its expertise and its legislative grant of power.[51] By choosing the Attorney General's proffered purpose over that of the Director, the court ironically deferred to a branch of the executive that has neither legislative power nor expertise.

The court's "reasonable and not arbitrary" test can be used to uphold almost any regulation. One can examine a rule's reasonableness in two ways. Interpretive reasoning is used to decide what a rule means. Courts look for the purpose of a rule so they can apply it accurately. Evaluative reasoning, on the other hand, involves determining whether the means chosen by a rule are reasonably related to the purpose given empirical realities. When both these are used together, a court first examines the means to determine the purpose of the rule (interpretive); next the court looks to see if the means are reasonably related to the purpose (evaluative). Not surprisingly, when a court uses both interpretive and evaluative reasoning simultaneously, it necessarily decides that the means chosen are reasonably related to the purpose. The freedom to choose any conceivable purpose is the freedom to uphold any regulation.[52]

In *Dresser*, the court first *interpreted* the regulation to determine its "real" purpose. In this regard, it chose the purpose offered by the Attorney General despite the accuracy and specificity of the Director's purpose. The court then *evaluated* the reasonableness of the regulation. Not surprisingly, the court held that the goals it had selected for the regulation were reasonably related to the means. While the court's choices were limited, the court's ability to pick from among several possible goals gave it great discretion to uphold the regulation.

The *Dresser* court's decision to select a purpose for the regulation that would make the ban reasonable rather than the one that would make it arbitrary involved a choice of one policy over another. Yet, the court's actual consideration of the effect of banning the FWW was perfunctory despite the court's reliance on policy considerations as the basis for its decision. The court reasoned that the FWW would be detrimental to workers because it would mean lower wages and fewer jobs. The court drew these conclusions by generalizing from the detrimental effects in this particular case. Logically, the generalization was not justified; practically, it may have been incorrect.

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51. Alaska Public Util. Comm'n v. Chugach Electric Assn, Inc., 580 P.2d 687, 694 (Alaska 1978) (deference to agency acting with expertise); Kelly v. Zamarello, 486 P.2d 906 (Alaska 1971) (deference to agency acting with grant of authority from legislature)

52. *See* Bice, *supra* note 43.

The court's perfunctory treatment of the policy basis for the regulation may have overlooked some of the advantages of the FWW. The court was concerned with maintaining minimum wage and overtime standards. The FWW does not endanger minimum wage standards because it provides that the base rate can never drop below minimum wage.[53] Moreover, the typical FWW worker in Alaska earns well above minimum wage.[54]

The issue of whether the FWW injures overtime standards is more problematic. While the FWW may, in certain cases, mean less overtime compensation,[55] it does not strictly speaking offend the policy of overtime compensation. In addition, the FWW may provide more total wages to the employee[56] while affording him the additional benefits associated with greater job stability.[57]

The policy behind overtime compensation is to provide increased compensation for the added burden on a worker from excessive hours. Overtime hours are not bad per se, rather only uncompensated overtime hours are contrary to the Wage and

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53. 29 C.F.R. § 778.114(c) (1982).

54. Brief for Appellee at 28, *Dresser*, 663 P.2d 998 (quoting this employee's wage at $9.35 per hour); *see also Alaska State Manpower Review*, March 1977, at 31 (Alaska construction workers averaged over a thousand dollars per week in 1976).

55. For example, consider two workers A and B, who work identical hours but under different payment plans. A and B both work 50 weeks during the year making $10 per hour in a 40 hour week. A is on a FWW plan so his overtime rate varies. B is on a regular payment plan so he does not get his full salary when he works less than 40 hours. For simplicity, assume both first work 25 weeks of 50 hours and then 25 weeks of 30 hours. A's wages in the first period would be $11,000. In the next 25 weeks A makes $400 per week, or $10,000 total. A's wages for the year are $21,000. B's wages in the first period would be $13,750 based on $10 per hour for regular time and $15 per hour for overtime. However, during the second 25 weeks, B would earn only $7500 for a total of $21,250. Thus, the worker under a non-FWW plan would be $250 better off. This example assumes an equal number of hours over 40 per week as under 40 per week. If more weeks had less than 40 hours, then the FWW worker could make significantly more than a worker on a normal payment plan. If more weeks had more than 40 hours, then the opposite would be true.

56. *See supra* note 55. If A and B both work 35 weeks of 20 hours and then 15 weeks of 60 hours, then A would earn $20,997 under the FWW, but B would only earn $17,500 under a regular system. This example may be more realistic given that a great deal of work in Alaska is done during the short summer months, while cold, darkness, and snow may prevent work during the winter. During the winter, Anchorage experiences very short days in which construction work, for example, could not be done for more than half a day. (This corresponds to a 20 hour week.) In the summer, however, Anchorage gets more than 16 hours of daylight. Thus, workers could easily work 10 or 12 hour days, i.e. a 60 hour week. In Fairbanks and on the north slope these light and dark differences are even greater.

57. *See infra* note 64 and accompanying text.

Hour Act. The FWW does not allow uncompensated overtime hours, it merely provides a different formula for calculating overtime. It still provides one and one-half times the base rate for overtime. The *Dresser* court held that because under the FWW a worker's overtime rate goes down as he works more hours, it runs against the policy of safeguarding overtime standards. This argument assumes overtime compensation is meant to increase in some rigid proportion to hours worked. Other methods of paying overtime do not have a fixed relationship between hours worked and overtime compensation.[58] In some payment systems there is no relationship at all between hours worked and compensation for hours worked over 40.[59] The *Dresser* court allowed the Director of the Wage and Hour Division of the Alaska Department of Labor to single out the FWW among various flexible payment plans. This may not have been warranted.

Any payment plan is open to abuse. The FWW could be used to mislead an employee into working longer hours for less pay than he bargained for. However, given that the FWW neither allows wages to fall below the minimum nor permits overtime compensation at less than one and one-half times the base rate, it appears that individual FWW plans could function consistently with the "stated" purpose of the regulation. In *Dresser*, the court removed the FWW from case-by-case review and effectively proclaimed that whenever the FWW is used, it is detrimental to workers and against state policy. The court's opinion is contrary to evidence on the nature and desirability of the FWW.

The FWW can help workers in industries where the demand for labor is volatile.[60] In working situations where hours vary a great deal from one week to the next, the FWW provides workers

58. *E.g.*, 29 C.F.R. § 778.111 (a) (1982) provides a method of calculating the rate of "overtime" pay for pieceworkers; 29 C.F.R. § 778.120 (1982) gives a formula for figuring the amount of "overtime due" to workers who receive deferred commission payments as their compensation.

59. E.g., some salespeople on commission and most salaried workers.

60. It is well established that FWW plans are used where the demand for labor is volatile. *See* Overnight Motor Transp. Co., Inc. v. Missel, 316 U.S. 572 (1942); *see also* 29 C.F.R. § 778.114(c) (1982) ("Typically [FWW] salaries are paid to employees who do not work a regular schedule of hours and are in amounts agreed on by the parties as adequate straight-time compensation for long work weeks as well as short ones, under the circumstances of the employment as a whole."); D. FLEUTER, THE WORKWEEK REVOLUTION 80 (1975) (discussing the benefits of Flextime plans generally: "One additional advantage affecting both product and overtime is the possibility of adjusting work schedules to meet fluctuations in the work load. Employees can then work more hours during peak periods and fewer hours when there is a slack period."); G. BOLLANDER, FLEXTIME—A NEW FACE ON THE WORK CLOCK 39 (1978).

with a minimum salary in slow weeks. This benefit to workers is balanced against lower overtime pay in extremely busy weeks. Thus, the FWW may allow workers to receive steady pay for unsteady jobs. In considering the costs and benefits to workers of an FWW plan, non-monetary, personal advantages of the FWW suggest that the FWW could be more rewarding to workers than plans which might provide a higher annual income.[61] Many studies document the benefits to workers and employers of "flextime" whereby employees choose their hours within a certain range.[62] While the FWW plan in *Dresser* involved an employer making the choices, it shares many of the same advantages.[63] Moreover, in situations where the volatility of the demand for labor is so great that it causes frequent lay-offs, the added stability alone of an FWW plan might justify its use over an alternative plan that could increase the impact of severe fluctuations in the workload.[64]

The working conditions in Alaska provide many possible examples of situations where the FWW could be in the best interest of both workers and employers. Construction laborers' work is frequently interrupted by inclement weather. Alaskan workers

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61. *See supra* note 55 for an example of how a worker could earn more on a non-FWW plan. *See infra* notes 62-64 and accompanying text for reasons why the FWW may be more rewarding nonetheless.

62. A. EVANS, HOURS OF WORK IN INDUSTRIALIZED COUNTRIES 99-132 (1975), and S. RONEN, FLEXIBLE WORKING HOURS 57-79 (1981).

63. The FWW, as described in 29 C.F.R. 778.114 (a) - (c) (1982), does not apply only to plans where the employer chooses the hours an employee must work. Thus, by banning the FWW, the *Dresser* court banned a method of calculating overtime pay that could have been useful in adopting other "flextime" plans whereby the worker chooses his or her own hours. Moreover, even if the employer chooses the hours, many of the advantages of flexibility remain. *See* J. SWART, A FLEXIBLE APPROACH TO WORKING HOURS 204-06 (1978) (Flexible working hour plans 1) reduce travel time and travel congestion, 2) allow employees larger blocks of time to spend with their families, in leisure activities, or working in the community, 3) reduce job stress on workers especially in harsh working conditions, 4) encourage workers to become more job-oriented rather than hour-oriented thus improving employee attitudes towards their work, 5) help management in many ways which indirectly benefit the workers.).

64. Instability in the work place has been linked to many social problems. *See* B. LANDER, TOWARDS AN UNDERSTANDING OF JUVENILE DELINQUENCY 59 (1954) ("[D]elinquency was essentially related to the instability . . . of an area."); M. CLINARD, ANOMIE AND DEVIANT BEHAVIOR 35 (1964) (linking deviant social behavior to "a society whose social order is essentially unpredictable."); D. MARTIN, BATTERED WIVES 54-55 (1976) (suggesting a connection between loss of employment and wife beating); D. TIFFANY, R. COWAN & P. TIFFANY, THE UNEMPLOYED: A SOCIAL-PSYCHOLOGICAL PORTRAIT 63 (1970) (explaining that part time workers had lower levels of work identity and work involvement—important factors in developing "self-identity" and a stable personality).

would ordinarily have to go off the payroll whenever the weather prevented them from working. A worker could be off work for days or weeks. The FWW provides that the worker will be paid for these weeks of idleness, but she must expect long hours in return when work can be done.[65] If a maintenance or repair man for a large company is paid only when something breaks down, his income could become very sporadic, and he might be forced out of business. Then when the company needs the repairman, he would be unavailable. Hence, the FWW could help both the repairman and the company he works for by paying the employee to be on call. These scenarios are not at all far-fetched when it is considered that 31.7% of Alaska's workers are craft workers, operators, and laborers, of which a large proportion are maintenance and repair workers or construction workers.[66]

One need not go far to find examples of where the FWW makes good policy sense. The point to focus on is that the court in *Dresser* abdicated its case-by-case adjudicatory power over possible FWW abuses and upheld a comprehensive ban on the FWW. The court could have checked abuses while avoiding such a harsh result. For many workers and employers, this may cause serious problems or prevent future benefits.

The real impact of *Dresser* on the Alaska labor situation may not be what the court intended. Workers may not get higher wages. Instead, employers may be forced to reduce the base rate and factor their increased uncertainty costs into the reduced wages for workers.[67] Given the reason for using the FWW pay plan, it is unlikely that more jobs will be created. The FWW is typically used where demand for labor is very volatile;[68] sometimes work is plentiful while at other times it is nonexistent. It is costly for an employer to hire and then lay off employees each time the workload fluctuates.[69] Moreover, it is not healthy for the labor force to be in a boom-and-bust job cycle; it promotes transience and worker fragmentation.[70]

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65. *See* G. BOHLANDER, *supra* note 60, at 43-45 (describing how workers became more "job oriented" under flexitime systems and were more willing to work longer hours to see a job through).

66. ALASKA DEPARTMENT OF LABOR, OCCUPATIONAL EMPLOYMENT FORECAST 3, 6-7 (1981).

67. On the north slope, the costs of maintaining a work force and transporting workers long distances to and from jobs are very high. Workers often work in a week-on-week-off system where they get paid for their entire week on the job whether the climate permits work or not. The traveling distances alone suggest a need for this system and for flexible payment plans.

68. *See supra* note 60.

69. J. SWART, *supra* note 63, at 212.

70. Herzog & Schlottmann, *Labor Force Migration and Allocative Efficiency*

IV. What Should Be Learned from the Decision?

Despite the many problems with the *Dresser* decision discussed above, a direct assault on the *Dresser* holding would probably not be worth the cost of litigation. The court will probably not change its ruling on the validity of the Alaska Department of Labor regulation.[71] Therefore, although there are good arguments against the *Dresser* decision,[72] a client's money would most likely best be spent in lobbying against the regulation.

At best, the *Dresser* case provides the Alaska practitioner with some insight into how the Alaska Supreme Court might evaluate the rationality of regulations in the future. The "rationality" test has little content when the court may select *any* conceivable purpose for a regulation.[73] When evaluating the rationality of a quasi-legislative regulation, how far will the court be willing to go in selecting *any* purpose that will support the regulation? What weight will it give to the Attorney General's suggested purpose? Will the court suggest its own purpose when no other purpose exists that would make a regulation rational?

The Alaska cases construing statutes and regulations[74] indicate that the short answer to these questions appears to be that the court will select any conceivable purpose for a regulation, absent special circumstances such as a fundamental right or an equal protection issue. *Dresser* demonstrates that the court was willing to use the Attorney General's purpose even it if meant rejecting the intent of the Director who promulgated the regulation. Fi-

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in the United States: The Roles of Information and Psychic Costs, 19 Economic Inquiry 459 (1981) (documents that people move to find better working situations and that this causes psychic costs); Freudenburg, *Women and Men in an Energy Boomtown: Adjustment, Alienation and Adaptation*, 46 Rural Sociology 220 (1981) (discussing some of the psychological problems of moving to an energy boomtown to find work). For a dramatic discussion of the trauma associated with a boom-and-bust job cycle, *see* D. Tiffany, *supra* note 64, at 33-83 (describing the feelings of powerlessness, apathy, and loss of hope of migrant workers who travel from one harvest to the next).

71. In Webster v. Bechtel, 621 P.2d 890 (Alaska 1980), the court also upheld an Alaska Department of Labor regulation despite a challenge that it was preempted by federal regulations. The court held in *Webster*, as it did in *Dresser*, that the Alaska regulation was more protective of workers and therefore acceptable. Thus, the Alaska Supreme Court has indicated a strong preference for upholding the validity of Alaska Department of Labor regulations that conflict with federal regulations.

72. Any assault on the ban of the FWW should include a commerce clause argument, *see supra* note 21, and a strong policy analysis of the benefits of the FWW, *see supra* notes 54-55 and accompanying text. It is noteworthy that Appellant's Brief did not discuss the policy arguments for the FWW.

73. *See supra* note 52 and accompanying text.

74. *See infra* notes 78-80 and accompanying text.

nally, different cases suggest different answers to the question of whether the court would go so far as to invent its own purpose for a rule that would make the rule rational where no other source supplied such a purpose.

An examination of the Alaska Supreme Court's application of the rationality test will illustrate the accuracy of the above generalization. The court reviews administrative regulations under the Administrative Procedure Act, which states that a court should determine whether a regulation is "reasonably necessary to carry out the purpose of the statute."[75] In *Kelly v. Zamarello*,[76] the Alaska court held that it would treat regulations made by agencies with a lawful grant of authority as if the regulations were statutes passed by the legislature.[77] *Isakson v. Rickey*[78] explained how the court would review legislative enactments. The court announced a stricter standard of judicial review than the federal rational basis approach. The court stated that laws must have a "fair and substantial relation to the object of the legislation."[79] The court explained how the test would work: "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 experimentations is substantially narrowed."[80]

The language of *Isakson* certainly suggests that the court will not allow a kind of "any-conceivable-purpose" analysis in evaluating legislation. Indeed, the test to be applied sounds much like the intermediate standard of review employed by the United States Supreme Court in classifications based on gender. In *Califano v. Goldfarb*[81] and *Weinberger v. Wiesenfeld*[82] the United States Supreme Court struck down government benefit payment schemes which utilized gender-based classifications that were not substantially related to a legitimate government interest. This was done despite the fact that in each case the United States Attorney General suggested a rational purpose that might have supported the controversial classifications.

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75. AS 44.62.030 (1980).
76. 486 P.2d 906 (Alaska 1971).
77. *Id.* at 911.
78. 550 P.2d 359 (Alaska 1976).
79. *Id.* at 362 (quoting State v. Wylie, 516 P.2d 142, 145 (Alaska 1973)).
80. *Isakson*, 550 P.2d at 362 (quoting Gunther, *The Supreme Court, 1971 Term*—Foreword: *In Search of Evolving Doctrine on a Changing Court: A Model for Newer Equal Protection*, 86 HARV. L. REV. 1, 20 (1972)).
81. 430 U.S. 199 (1977).
82. 420 U.S. 636 (1975).

The Alaska "substantially related" test, however, has not been applied as strictly as *Isakson* suggests. In applying the test, the Alaska Supreme Court has invariably upheld a challenged statute unless a fundamental right or suspect class was involved.[83] In one case, *State v. Erikson*,[84] the court was willing to consider facts not in the record to uphold the rationality of a criminal statute forbidding the possession of cocaine. While the language used in *Isakson* suggests a stricter standard, in practice the court seems to employ the more traditional minimal rational basis approach.

The application of Alaska's rationality standard of judicial review in these cases shows that, absent special concerns, the court will uphold a challenged statute or regulation by using any purpose that will make it reasonable. However, it remains to be seen if the court will invent its own purpose which would support a statute or regulation. The court's history of applying the "substantially related" test and its attitude of deference to statutes and regulations suggests that it might invent a purpose. Moreover, *Erikson* demonstrated the court's willingness to go outside the record to find support for a statute. On the other hand, the language of *Isakson* indicates that the court would not invent a purpose if none were supplied that would make the statute rational.

V. Conclusion

Dresser demonstrates that the court was willing to select the regulatory purpose that supported the regulation. Thus, in upholding regulations and statutes, courts purport to defer to the policy choices of legislative and quasi-legislative bodies. Through this process the court hopes to avoid making policy determinations by always upholding the policy choices of the legislature or agency. In many cases, however, the choice to apply the reasonableness standard will itself involve the court's choice of one policy over another. The court should be aware, and Alaska practitioners should be ready to point out, that the court ought not ignore

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83. In State v. Lewis, 559 P.2d 630 (Alaska 1977), the court reviewed a procedure whereby the state of Alaska relinquished some of its lands, including mineral rights, to the federal government so that they in turn could give natives their aboriginal entitlements. The court upheld the act, saying it had a fair and substantial relationship to a legitimate government interest. In Plas v. State, 598 P.2d 966 (Alaska 1979), the court upheld a prostitution statute but struck out a reference in the statute that made it only applicable to females. The court considered the purpose of the statute and then applied the substantially related test. Finally, in Hilbers v. Municipality of Anchorage, 611 P.2d 31 (Alaska 1980), the court reviewed and upheld a statute that forbade people who had been convicted of certain crimes in the previous two years to operate massage parlors.

84. 574 P.2d 1 (Alaska 1978).

the intent of an agency in promulgating a regulation in the name of deference to that agency's regulation. Perhaps the *Dresser* case is an aberration, but it is useful because it shows how far the Alaska Supreme Court is willing to go to find that a regulation is reasonable. Hopefully this analysis will make Alaska practitioners aware of the tendency and suggest avenues for guarding against it in particular cases.

Daniel Friesen

Exec.

Order

53

COMMITTEE REPORT

SENATE

FURTHER: MESS
Finance

Date: 18 January 1983

Mr. President:

The Committee on STATE AFFAIRS has had EXECUTIVE ORDER NO 53

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

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____.

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

_____

_____

_____

_____

_____

_____

_____

_____

_____

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

_____

_____

_____

_____

_____

_____

CHAIRMAN

S 60 (Rev. 12/78)

Alaska State Legislature

Senate

Office of the Secretary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

January 18, 1983

M E M O R A N D U M

TO : Senator Vic Fischer, Chairman
State Affairs Committee

FROM: Peggy Mulligan
Secretary of the Senate

RE : Executive Order No. 53

Enclosed please find a transmittal letter from the Governor showing statutory corrections to Executive Order No. 53.

"AS 24.30.130 (b) An executive order proposing a change in the executive branch and requiring the force of law under § 23, art. III, of the state constitution shall be submitted to the presiding officer of each house on the day the house organizes. The legislature has 60 days of a regular session, or a full session if of shorter duration to disapprove the order. Unless disapproved by a special concurrent resolution introduced in either house, concurred in by a majority of the members in joint session, the order becomes effective at a date thereafter to be designated by the governor. An order submitted to but not disapproved by the legislature shall be published in the bound session laws and any codification of state law. (§ 41 ch 157 SLA 159; am § 12 ch 47 SLA 1961)."

Thank you.

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • Pouch V • Juneau, Alaska 99811 • (907) 465-4954

Official Business

January 27, 1983

Senator Jalmar Kerttula,
President
Alaska State Senate

Creating the Office of Management & Budget

Dear Mr. President:

The Senate State Affairs committee considered Executive Order Number 53 at a joint hearing with the House State Affairs committee on January 27, 1983.

We find Executive Order Number 53 to be satisfactory and recommend it be allowed to become law in accordance with AS 24.30.130(b).

Respectfully,

SEN. VIC FISCHER, CHAIR

SEN. ARLISS STURGULEWSKI

SEN. BILL RAY, VICE-CHAIR

SEN. PAT RODEY

SEN. TIM KELLY

EO #53 - has a further referral to HESS & Finance

Exec. Order 56

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chair • Pouch V
Juneau, Alaska 99811
(907) 465-4954

Official Business

SENATE STATE AFFAIRS COMMITTEE
MEETING SCHEDULE

February 7, Tuesday — NO MEETING

February 9, Thursday 3:00pm — Butrovich room, Capitol Building

EO 56 Transfering the distribution of session laws

SB 386 Displaced homemakers

SB 387 Leave time for state employees

SB 323 Income of pioneer home residents

HB 110 Avalanche and fire weather forecasting system

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chair • Pouch V
Juneau, Alaska 99811
(907) 465-4954

Official Business

MEMORANDUM

TO: Senate State Affairs Committee

FROM: Senate State Affairs Committee Staff

RE: EO 56 Transferring the distribution of session laws

DATE: February 9, 1984

Executive Order 56 transfers from the Department of Administration to the Department of Education the responsibility for distributing session laws. The Department of Education has already been performing this function since 1979.

Fiscal Information

The fiscal impact to the state would not be changed due to the transfer.

Both Departments requested this change.

Enclosed as Back-up

Attached as back-up you will find fiscal notes from the Department of Administration and the Department of Education.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

I. REQUEST
Bill/Resolution No.: EO 56
Title: Statute and Session Law Distribution
Sponsor:
Requestor:
Date of Request:

II. FISCAL DETAIL
Agency Affected: Education
Program Category Affected: Educ., Info., Cultur
BRU, Program of Subprogram(s) Affected:
State Library & Museums-Library Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES	5.5	5.5	5.8	5.8	6.0	6.0
200 TRAVEL						
300 CONTRACTUAL	1.1	1.1	1.3	1.3	1.5	1.5
400 COMMODITIES	122.5	126.3	130.1	133.9	137.7	141.5
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	128.1	133.9	137.2	141.0	145.2	149.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	124.3	130.1	133.2	137.0	140.8	144.6
FEDERAL FUNDS						
OTHER (Specify Source) Program	3.8	3.8	4.0	4.0	4.4	4.4
TOTAL Receipts						

POSITIONS:

FULL-TIME						
PART-TIME	1	1	1	1	1	1
TEMPORARY						
TOTAL						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: This Executive Order would transfer responsibility for distribution of Session Laws and Statutes from the Dept. of Administration to the Dept. of Education, State Library. Funds to pay for annual Statute updates are normally provided by the Dept. of Administration for Executive Branch distribution, by Legislative Affairs Agency for Legislative distribution and the Courts System. See attached page for further information. Progra receipts are from private subscriptions to the Session Laws (96 subscriptions at $40 each.)

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard B. Engen rbe — Phone: 465-2910
Division: State Libraries and Museums — Date: 28 Dec. 83

Approved by Commissioner: Harold Raynolds, Jr. — Date:
Department: Department of Education

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

9/14/83

IV. Analysis

This Executive Order would transfer responsibility for distribution of Session Laws and Alaska Statutes from the Department of Administration to the Department of Education, State Library. It was felt that the function could be logically and effectively handled through the State Publications Distribution Center.

Session Laws — These have been distributed (under agreement with the Department of Administration) by the State Library for several years. Copies are supplied by the Legislative print shop. Program receipts come from private subscriptions to the Session Laws. In 1983 this was $3,800. Approximately twice as many sets are distributed free to State Agencies.

Costs are $5,500 for part-time clerical help and $1,100 for postage. This totals $6,600 of which $3,800 are Program Receipts leaving $2,800 of General Fund required.

Statutes — These are primarily the annual supplements. In the past, distribution was made by the Department of Administration for Executive Branch agencies, Legislative Reference Library for the Legislative Branch and the State Law Library and the Superior Court Library. Funding is not clear, but the total General Fund required should not change. The funding indicated is based on figures from Legislative Affairs for the full share for those copies to be provided to Executive Agencies. Future costs are estimated at $250 per set. Additional copies are estimated at a growth rate of 15 per year to cover new Departments (Corrections) and new Offices (Public Defender) etc. State Library costs are not increased.

MF

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: January 23, 1984

REQUEST
Bill/Resolution No.: FO 56
Title: Statute & Session Law Distribution
Sponsor:
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Administration
Program Category Affected: Centralized Administrative Services
BRU, Program or Subprogram(s) Affected: General Services & Supply, Archives and Records Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL	0	0	(137.2)	(141.0)	(145.2)	(149.0)
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	(137.2)	(141.0)	(145.2)	(149.0)
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND			(133.2)	(137.0)	(140.8)	(144.6)
FEDERAL FUNDS						
OTHER			(4.0)	(4.0)	(4.4)	(4.4)
TOTAL	0	0	(137.2)	(141.0)	(145.2)	(149.0)

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	(1)	(1)	(1)	(1)
TEMPORARY	0	0	0	0	0	0

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: John M. Kinney JMK CL A Phone: 465-2275
Division: General Services & Supply Date: January 23, 1984

Approved by Commissioner: Lisa Rudd Date:
Agency: Administration

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Executive Order 56
Fiscal Note Analysis

Prepared by Division of General Services & Supply
Department of Administration

Date: January 23, 1984

This executive order transfers from the Department of Administration to the Department of Education the responsibility for distributing the session laws and the Alaska Statute Supplements. Both departments have requested this transfer. It is anticipated that the Division of Libraries and Museums in the Department of Education would perform this responsibility. Under a reimbursable services agreement that division has been performing the distribution of session laws since 1979. Considering the nature of its other duties, that division is the most logical place for this state function to be performed. The fiscal impact to the state is identical whether performed by the Department of Administration or the Department of Education. In the past the Department of Administration has budgeted for this distribution program based on estimated costs made by Legislative Affairs Agency and any additonal costs above this estimate have been bourne by Legislative Affairs. The FY86-FY89 projections are estimates; the actual costs are variable and depend on several uncontrollable factors including the extent of annual statute revisions made necessary by legislative action. Because of budget restraints in FY85 the Department of Administration did not budget for Alaska Statute Supplement distribution and therefore individual agencies will have to pay for their supplements in FY85.

BILL SHEFFIELD
GOVERNOR

E056
x Copies

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 9, 1984

The Honorable Jalmar Kerttula
President of the Senate
Pouch V
Juneau, AK 99811

Dear Senator Kerttula:

Under the authority of art. III, sec. 23, of the Alaska Constitution, I am transmitting an executive order to transfer to the Department of Education from the Department of Administration the responsibility for distributing the session laws and the Alaska Statutes. It is anticipated that the Division of Libraries and Museums, in the Department of Education, would perform this responsibility. Under a reimbursable services agreement, that division has been doing this since 1979 anyway. Considering the nature of its other duties, that division is the most logical place for this state function to be performed.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

I. REQUEST
Bill/Resolution No.: EO 56
Title: Statute and Session Law Distribution
Sponsor:
Requestor:
Date of Request:

II. FISCAL DETAIL
Agency Affected: Education
Program Category Affected: Educ., Info., Cultur
BRU, Program of Subprogram(s) Affected:
State Library & Museums-Library Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES	5.5	5.5	5.8	5.8	6.0	6.0
200 TRAVEL						
300 CONTRACTUAL	1.1	1.1	1.3	1.3	1.5	1.5
400 COMMODITIES	122.5	126.3	130.1	133.9	137.7	141.5
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	128.1	133.9	137.2	141.0	145.2	149.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	124.3	130.1	133.2	137.0	140.8	144.6
FEDERAL FUNDS						
OTHER (Specify Source) Program Receipts	3.8	3.8	4.0	4.0	4.4	4.4
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME	1	1	1	1	1	1
TEMPORARY						
TOTAL						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: This Executive Order would transfer responsibility for distribution of Session Laws and Statutes from the Dept. of Administration to the Dept. of Education, State Library. Funds to pay for annual Statute updates are normally provided by the Dept. of Administration for Executive Branch distribution, by Legislative Affairs Agency for Legislative distribution and the Courts System. See attached page for further information. Program receipts are from private subscriptions to the Session Laws (96 subscriptions at $40 each.)

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard B. Engen rbe
Phone: 465-2910
Division: State Libraries and Museums
Date: 28 Dec. 83

Approved by Commissioner: Harold Raynolds, Jr.
Date:
Department: Department of Education

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

9/14/83

IV. Analysis

This Executive Order would transfer responsibility for distribution of Session Laws and Alaska Statutes from the Department of Administration to the Department of Education, State Library. It was felt that the function could be logically and effectively handled through the State Publications Distribution Center.

Session Laws These have been distributed (under agreement with the Department of Administration) by the State Library for several years. Copies are supplied by the Legislative print shop. Program receipts come from private subscriptions to the Session Laws. In 1983 this was $3,800. Approximately twice as many sets are distributed free to State Agencies.

Costs are $5,500 for part-time clerical help and $1,100 for postage. This totals $6,600 of which $3,800 are Program Receipts leaving $2,800 of General Fund required.

Statutes These are primarily the annual supplements. In the past, distribution was made by the Department of Administration for Executive Branch agencies, Legislative Reference Library for the Legislative Branch and the State Law Library and the Superior Court Library. Funding is not clear, but the total General Fund required should not change. The funding indicated is based on figures from Legislative Affairs for the full share for those copies to be provided to Executive Agencies. Future costs are estimated at $250 per set. Additional copies are estimated at a growth rate of 15 per year to cover new Departments (Corrections) and new Offices (Public Defender) etc. State Library costs are not increased.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: January 23, 1984

REQUEST
Bill/Resolution No.: FO 56
Title: Statute & Session Law Distributior
Sponsor:
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Administration
Program Category Affected: Centralized Administrative Services
BRU, Program or Subprogram(s) Affected: General Services & Supply, Archives and Records Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL	0	0	(137.2)	(141.0)	(145.2)	(149.0)
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	(137.2)	(141.0)	(145.2)	(149.0)
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND			(133.2)	(137.0)	(140.8)	(144.6)
FEDERAL FUNDS						
OTHER			(4.0)	(4.0)	(4.4)	(4.4)
TOTAL	0	0	(137.2)	(141.0)	(145.2)	(149.0)

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	(1)	(1)	(1)	(1)
TEMPORARY	0	0	0	0	0	0

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: John M. Kinney Phone: 465-2275
Division: General Services & Supply Date: January 23, 1984

Approved by Commissioner: Lisa Rudd Date:
Agency: Administration

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

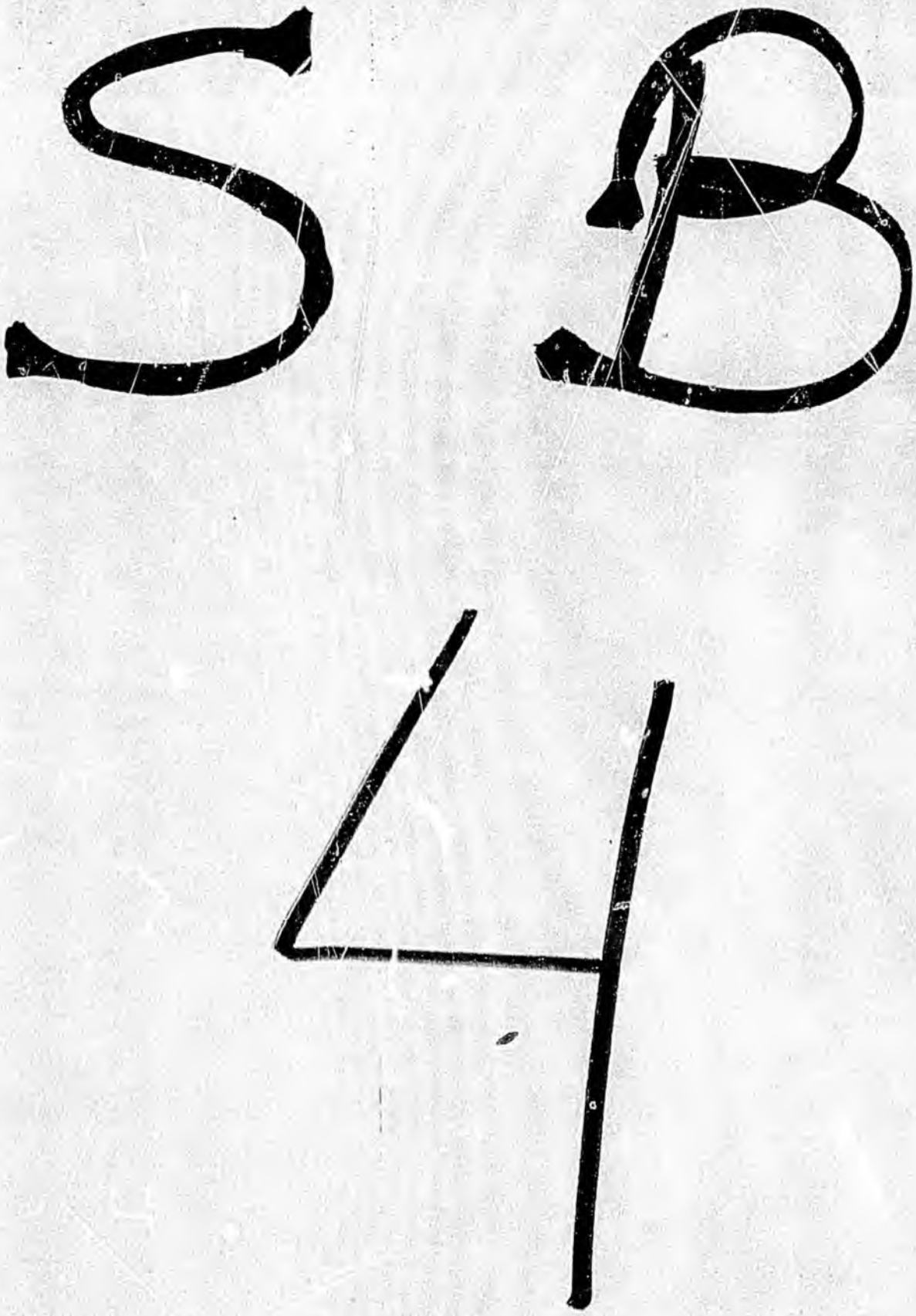
12/1/83

Executive Order 56
Fiscal Note Analysis

Prepared by Division of General Services & Supply
Department of Administration

Date: January 23, 1984

This executive order transfers from the Department of Administration to the Department of Education the responsibility for distributing the session laws and the Alaska Statute Supplements. Both departments have requested this transfer. It is anticipated that the Division of Libraries and Museums in the Department of Education would perform this responsibility. Under a reimbursable services agreement that division has been performing the distribution of session laws since 1979. Considering the nature of its other duties, that division is the most logical place for this state function to be performed. The fiscal impact to the state is identical whether performed by the Department of Administration or the Department of Education. In the past the Department of Administration has budgeted for this distribution program based on estimated costs made by Legislative Affairs Agency and any additonal costs above this estimate have been bourne by Legislative Affairs. The FY86-FY89 projections are estimates; the actual costs are variable and depend on several uncontrollable factors including the extent of annual statute revisions made necessary by legislative action. Because of budget restraints in FY85 the Department of Administration did not budget for Alaska Statute Supplement distribution and therefore individual agencies will have to pay for their supplements in FY85.



Senator Vic Fischer
Alaska State Legislature
Pouch V • Juneau, Alaska 99811 • (907) 465-4954

March 29, 1983
3:00pm

Butrovich Room
Capitol Bldg.

Members Present

Senator Vic Fischer, Chair
Senator Bill Ray, Vice-Chair
Senator Arlis Sturgulewski
Senator Tim Kelly
Senator Pat Rodey

SB 4--Repeal of the beverage dispensary license board

Senator Sturgulewski (prime sponsor) stated that the provision to be repealed is never used and is thus unnecessary.

Senator Rodey moved and asked unanimous consent to pass the bill out of committee with individual recommendations. There was no objection.

SB 132--Establishing an Alaska Administrative Journal

Senator Fahrenkamp (prime sponsor) testified for the bill. The idea of the bill is to promote efficiency in administrative action. She proposed a committee substitute and outlined its contents. She stated that the bill could be implemented without great cost for an 18 month trial period. At the end of the trial period, cost and demand for the journal will be known.

Lt. Governor Steven McAlpine testified that the 18 month trial period was a positive feature of the bill and that the fiscal note was his highest guess. The big question is the demand for such a publication and how much revenue it will generate.

Senator Ray asked if the "no effect until publication" section would work. Lt. Governor McAlpine responded that this problem was covered in subsection "d" of the committee substitute.

Arthur Peterson, Department of Law, testified that the CS takes care of many of the problems he had identified in the original bill. He stated that he had some concern that the project may be taking on too much. He went through the list of things to be included in the journal and commented on each one. He discussed the benefits of the provision which disclaims liability for the contents of the journal.

Senator Rodey moved and asked for unanimous consent to pass the bill from committee with individual recommendations. There were no objections.

SB 194--Relating to "ice classics"

Senator Sackett (prime sponsor) testified that he had been asked to help create a "Kuskokwim Ice Classic" by Bethel Social Services. This group wants to reduce their dependence on state money.

Senator Ray suggested that the title of the bill be changed to " An Act relating to Establishment of the Kuskokwim Ice Classic".

Senator Fischer suggested a minor change on line 13 of the bill.

Senator Ray moved and asked unanimous consent that these changes be incorporated in a committee substitute, that the committee substitute be adopted and passed out of committee with individual recommendations. There was no objection.

SB 137--Requiring public employees to comply with the Regulation of Lobbying Act.

Senator Faiks (prime sponsor) testified that she had contemplated a sponsor substitute but decided against it. She reviewed the substance of the bill and described the current situation where municipal and university lobbyists do not have to register and disclose while private sector lobbyists do. She described lobbying laws in other states. She stated that it was very difficult to get information on lobbying expenditures from the Municipality of Anchorage.

Senator Ray asked if, for example, a municipal attorney who answered questions for a legislator or legislative staff person would have to register. Senator Faiks responded that that would be true it the public employee was lobbying for money. She pointed out that "substantial and regular" portions of this person's salary must come from lobbying.

Senator Ray asked if legislators would be required to comply with the Act if this bill were passed. Senator Faiks was of the opinion that this legislation would not affect legislators.

Senator Ray suggested that municipal lobbyists were a local problem which would best be addressed by local ordinance. Senator Faiks disagreed saying that the crux of the problem is spending public money through lobbying to get more public money.

Vickie Rippie, A.P.O.C. assistant director, referred to APOC's position paper and summarized its content. This bill would apply to legislators and staff. She stated that the Commission feels that government productivity might suffer as 2000 employees could be affected.

Senator Rodey suggested that the bill be held over for further study. The committee agree by consensus to hold the bill over.

SB 190--Special appropriation for Wrangell Totem Poles

Senator Ferguson testified in favor of the bill. He stated that this bill would help save some important elements of the Native culture.

Senator Kelly asked if section 2 of the bill was duplicated by ther programs. Senator Ferguson said that this was not the case.

David Katzeek, Sealaska Heritage Foundation, testified for the bill. He described various foundation activities to save and display valuable artifacts.

Senator Sturgulewski asked if the project which is the subject of this bill will extend into future years and require further funding. Mr. Katzeek stated that this depended on the process laid out in the bill.

Senator Ray moved and asked unanimous consent that the bill pass from committee with individual recommendations. There was no objection.

The remainder of the calendar was not taken up.

Senator Fischer adjourned the meeting at 4:23pm.

COMMITTEE REPORT

SENATE

1/18/83

FURTHER: JUDICIARY

Date: 3-29-83

Mr. President:

The Committee on STATE AFFAIRS has had SENATE BILL NO ____

An Act repealing the requirement that an applicant for a beverage dispensary license file a bond.

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

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Tom Kelly

Pete Berg

MEMBERS HAVING
OTHER RECOMMENDATIONS:

V. Fisher do pass

CHAIRMAN

S 60 (Rev. 12/78)

Article 2. Licenses and Permits.

Sec. 04.11.080. Types of licenses and permits. Licenses and permits issued under this title are as follows:

(1) beverage dispensary license;
(2) duplicate beverage dispensary license for additional rooms;
(3) restaurant or eating place license;
(4) club license;
(5) bottling works license;
(6) brewery license;
(7) package store license;
(8) general wholesale license;
(9) wholesale malt beverage and wine license;
(10) distillery license;
(11) common carrier dispensary license;
(12) retail stock sale license;
(13) recreational site license;
(14) community liquor license;
(15) pub license;
(16) winery license;
(17) caterer's permit;
(18) special events permit;
(19) conditional contractor's permit. (§ 2 ch 131 SLA 1980)

Am. Jur. 2d and C.J.S. references. — 48 C.J.S. Intoxicating Liquors §§ 121-128.
45 Am. Jur. 2d, Intoxicating Liquors, §§ 124-133.

Sec. 04.11.090. Beverage dispensary license. (a) A beverage dispensary license authorizes the holder to sell or serve on the licensed premises alcoholic beverages for consumption on the licensed premises only.

(b) The annual beverage dispensary license fee is $1,250.

(c) An applicant for a beverage dispensary license must file with the application a cash bond or a surety bond executed by a surety company approved by the board. The bond shall be in the sum of $2,500. Upon revocation of the license under AS 04.11.370(4), the bond shall be forfeited and the amount deposited in the general fund of the state.

(d) The area designated as the licensed premises under a beverage dispensary license issued to a hotel, motel, resort or similar business which caters to the traveling public as a substantial part of its business may include the dining room, banquet room, guests' rooms, and other public areas approved by the board.

(e) A holder of a beverage dispensary license may not maintain upon the licensed premises more than one room in which there is regularly maintained a fixed counter or service bar at which alcoholic beverages are sold or served to members of the public for consumption unless he is issued by the board, after investigation, a duplicate of the original license for each of the rooms. The holder of the beverage dispensary license shall pay to the board with each application for a duplicate license an amount equal to the fee payable for the original beverage dispensary license under (b) of this section. If the licensed premises are located within a municipality, a duplicate beverage dispensary license may not be issued unless approved by the council or assembly, as appropriate.

(f) The area designated as the licensed premises under a beverage dispensary license issued to a bowling alley may include the concourse or lane areas of the bowling alley. Notwithstanding AS 04.16.049, the board may, upon application, authorize access by persons under 19 years of age to the concourse or lane areas designated part of the bowling alley's licensed premises during hours when no alcoholic beverages are being sold, served, or consumed. (§ 2 ch 131 SLA 1980)

Former law construed. — See In re Liquor License of Larry's, Inc., 12 Alaska 503 (1949).

Sec. 04.11.100. Restaurant or eating place license. (a) A restaurant or eating place license authorizes a restaurant or eating place to sell beer and wine for consumption only on the licensed premises.

(b) A license may be issued under this section only if the board determines that the premises to be licensed are a bona fide restaurant or eating place.

(c) A license may be issued under this section only if the sale and service of food and alcoholic beverages and any other business conducted on the licensed premises of the restaurant or eating place is under the sole control of the licensee.

(d) The annual fee for a restaurant or eating place license is $300. (§ 2 ch 131 SLA 1980)

Sec. 04.11.110. Club license. (a) A club license authrizes a club or organization to sell alcoholic beverages for consumption only on the licensed premises.

Alaska State Legislature
Senate

OFFICIAL BUSINESS

POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

DAVE

M E M O R A N D U M January 24, 2983

TO: Senator Vic Fischer, Chair
State Affairs Committee

FROM: Senator Arliss Sturgulewski

RE: SB 4

SB 4, a bill which I sponsored, has been assigned to the State Affairs Committee. For your committee records, I am attaching back-up materials. I have copied the relevant pages of a 1978 Sunset audit of the Alcoholic Beverage Control Board and the assenting response of the agency.

If there is anything further that I can do to be of assistance, please let me know.

Enclosures

Rec 6

A PERFORMANCE REVIEW OF THE ALCOHOLIC BEVERAGE CONTROL BOARD

November 3, 1978

Commissioner of the Department of Revenue	Sterling Gallagher
Deputy Commissioner of the Department of Revenue	John R. Messenger
Acting Deputy Commissioner of the Department of Revenue	Pete Bushre

Members of the
Alcoholic Beverage Control Board

Chairman	Timothy G. Middleton
Member	Elvin Elkins
Member	Albert P. Adams
Member	Robert J. Gonze
Member	John Kohler

Project, Dennis Kelso, Ph.D., Project Director in Working Papers: Descriptive Analysis of the Impact of Alcoholism and Alcohol Abuse in Alaska, 1975.

Recommendation No. 5

Renewals of licenses should be made in a timely manner.

A review of 99 renewals indicated that the average processing time is 70 days, ten days longer than the average processing time for new applications. We were able to determine two major causes of this delay. One is due solely to volume for although the application process for renewal of licenses is almost identical for the application process for new licenses, all alcoholic beverage licenses are renewed at the same time each year, thus causing a large backlog for several months each year.

The second cause for the delay results from conflicting statutory requirements for renewing licenses. AS 04.10.270 requires the Board to transmit written notice of its intent to approve the renewal of a license to the local governing body (city or borough), allowing it 30 days in which to protest its issuance. However, AS 04.10.350 requires the Board to renew licenses automatically if the fee is paid except in the case of conviction of the licensee or protest of a license that is outside a municipality.

ABC licensing staff estimated that of the approximately 1300 licenses renewed in 1978 only 50 were protested by local governing bodies and most, if not all of those protests, were for non-payment of local property taxes. The need for causing the processing delay of all applications to accomplish this tax collection service should be reviewed for its merits. If found to be without merit, AS 04.10.270 should be amended to exclude renewals from the section.

If found to be of merit, however, the following alternative should be considered to reduce processing delays: blanket notification to municipalities or boroughs prior to the renewal period of the ABC Board's intent to renew all liquor licenses in their jurisdiction subject to receipt of application and fees. This would allow the protest period to run concurrent with, rather than subsequent to, the renewal period, thus allowing for automatic renewal unless a protest has been received.

Recommendation No. 6

The requirement for a $2500 cash or surety bond for a beverage dispensary license should be eliminated from AS 04.10.040.

The requirement of a cash or surety bond in the amount of $2500 for beverage dispensary license was established by a 1939 amendment to the Laws of Alaska. At that time beverage dispensary licenses had no economic value and the amount of the bond was established as a penal sum to be forfeited upon revocation of a license.

Since 1939, however, beverage dispensary licenses have gained economic value in areas where the quota for that type of license has been reached. Thus, the revocation of a beverage dispensary license is a financially penalizing action in its own right. Additionally, with the rate of economic growth experienced in Alaska in the last 39 years it is obvious that $2500 no longer has the penal impact it did in 1939.

A review of the ABC Board records disclosed no evidence of the Board requiring forfeiture of the bond in the past five years. The bond requirement does, however, create additional work for the licensing staff and occasional delays in the application process. The need for this cash or surety bond requirement has become obsolete.

Recommendation No. 7

The Office of the Governor should keep appointments of members of the Alcoholic Beverage Control Board current and stagger them as required by AS 39.05.060.

During our review of ABC Board appointments during the period of January 1, 1974 to June 30, 1978, we noted the following exception. The ABC Board was allowed to operate without a five-member complement as required by law during the following periods:

1. February 1, 1974 through February 27, 1974: one vacancy for 27 days.

2. March 14, 1974 through March 23, 1975: one vacancy for 336 days, two vacancies for 35 days, three vacancies for 4 days. Total time period: 375 days.

3. November 20, 1976 through January 17, 1977: one vacancy for 59 days.

4. February 1, 1978 through February 8, 1978: three vacancies for 8 days.

As a result of these vacancies, the ABC Board was not in compliance with AS 04.05.010 which created it. Additionally, the ratio of public representation to industry representation established by AS 04.05.010 was upset allowing a possible unfavorable bias to enter into the Board's decision-making process.

Recommendation #4 is not really that important. See my response of November 13, 1978 for a complete response. This change would have no real impact and is probably going to raise emotions unnecessarily. The text suggests "industry" domination of the Board is possible. I suspect on only a very few issues, if any, has there been an "industry" position.

Recommendation #5 is hard to argue with - but I don't think we ought to remove the notice to the local government, so it can protest. However, we should find a way to speed up renewals. Perhaps by delegating renewals and licenses issuances to the Director we could speed up the process. Also, as in all municipal protests, there should be a clear protest set forth with specific reasons, not necessarily including non-payment of taxes. (As an aside, we should also review the merits of requiring creditors be satisfied prior to transfer.)

Recommendations #6 and #7, are meritorious.

An area of specific concern to me is the so called hotel-motel license exception to the population quota. This section could result in the elimination of the small neighborhood bar.

In summary, the number one priority of the legislature should be a complete and sensible re-write of Title 4, the other suggestions will not be of much use unless that is accomplished. Indeed, if only your suggestions are adopted, the problem of enforcement of ABC laws will be exacerbated, because there will be a feeling the problem is solved. The priority of the Board should be adoption of a comprehensive set of regulations.

Thank you for an opportunity to comment on your report.

Yours truly,

Timothy G. Middleton

TGM/lh

Rcd 2/15/83 8:45 PM.

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 4
Title An act repealing beverage dispensary license applicant bonding
Requested by State Affairs and Judiciary Date 2/8/83

II. FISCAL DETAIL
Agency Affected Department of Revenue
Program Category Affected Public Protection
BRU, Program, Or Subprogram(s) Affected Alcoholic Beverage Control Board
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

This bill has no fiscal impact

LEGISLATIVE FINANCE

RECEIVED
FEB 15 1983

IV. DATE February 8, 1983 PREPARED BY Robert D. Heath
AGENCY Department of Revenue
PHONE 465-2300

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

33-001 (Rev. 12/82) OMB Reviewed by: Gary Sof

Article 2. Licenses and Permits.

Sec. 04.11.080. Types of licenses and permits. Licenses and permits issued under this title are as follows:

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(c) An applicant for a beverage dispensary license must file with the application a cash bond or a surety bond executed by a surety company approved by the board. The bond shall be in the sum of $2,500. Upon revocation of the license under AS 04.11.370(4), the bond shall be forfeited and the amount deposited in the general fund of the state.

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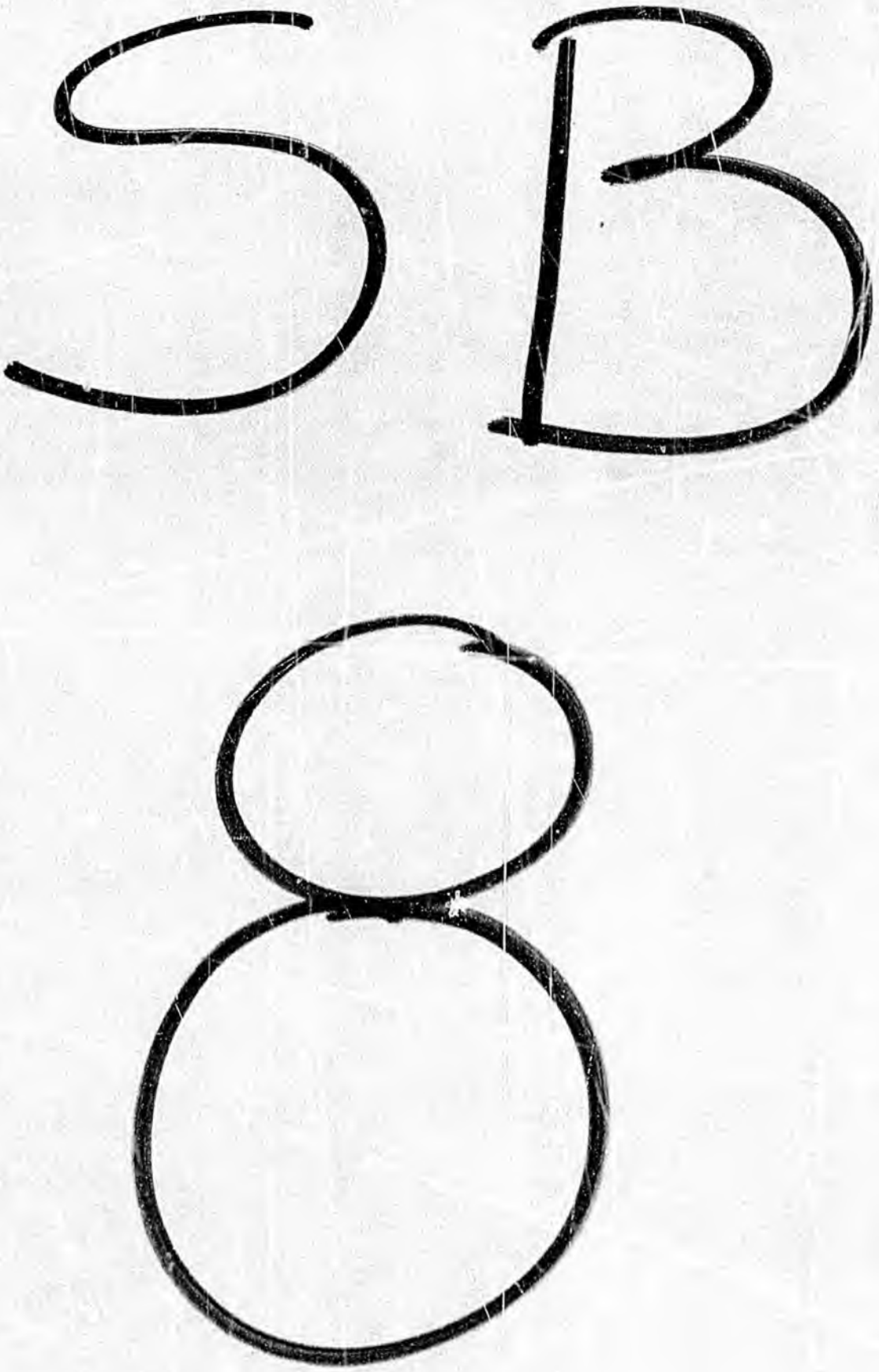

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M

January 28, 1983

SUBJECT: Political advertising
(CSSB 8)

TO: Senator Vic Fischer
Chairman, Senate State Affairs
Committee
Attn: David Dye, A.A.

FROM: Richard C. Folta
Legislative Counsel

On further review of political advertising issues and the specific problem illustrated by the Palmer case, I felt that a complete change should be made in the format of the bill to avoid constitutional questions. The new language is specific and we had avoided the sticky definition problem of defining political advertising. If you have problems with this please call me at 465-2450.

RCF:ljb

Enclosure

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • 1024 W. 6th Ave., Suite 204 C,
Anchorage, Alaska 99501
(907) 278-3654

Official Business

February 7, 1983

Norman Gorsuch, Attorney General
Department of Law
Pouch K
Juneau, Alaska 99811

Dear Mr. Gorsuch:

I would appreciate it if you would review the attached draft of CSSB 8 for potential conflict with the free speech provisions of the Alaska and U.S. Constitutions. I would also like to know how this proposed legislation meshes with existing statutory prohibitions (e.g. AS 39.25.178).

Would CSSB 8 prohibit political lapel pins in state buildings or affect peaceful demonstrations on the grounds of state buildings where signs are displayed or literature is distributed?

CSSB 8 is scheduled for hearing by the State Affairs Committee on Thursday, February 8, 1983. I would appreciate it very much if I could have your response before that hearing.

Best regards,

Senator Vic Fischer

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
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M E M O R A N D U M

February 4, 1983

SUBJECT: Prohibiting certain political activities (CSSB 8)

TO: Senator Vic Fischer
Chairman, Senate State Affairs Committee

FROM: Richard C. Folta
Legislative Counsel

In order to discuss the constitutionality of the above referenced bill, it is useful to quickly discuss the pertinent cases on free speech. In Messerli v. State, 626 P.2d 81, the Court held that the Alaska Constitution protects free speech, in a "more explicit and direct manner" than the Federal Constitution. The Court has also declared the test for First Amendment cases to be whether the abridgment of free speech was justified by a compelling government interest. A number of federal cases have held that

> Political activities may be restrained by legislation, when it serves in a necessary manner to foster and protect efficient and effective government . . . government agencies have right to preserve their harmonious operation by restricting such political activities of employees as directly threaten the administration in disruptions or loss of integrity.

In United Public Workers v. Mitchell, 91 L.Ed. 754, the Federal Court upheld the validity of the Hatch Act's restrictions on the political activities of federal employees, by saying:

> "Evidently what Congress feared was the cumulative effect on employee morale of political activity by all employees who could be induced to participate actively. It does not seem to us to be an unconstitutional basis for legislation.

> "Congress and the administrative agencies have authority over the discipline and efficiency of the public service. When actions of civil servants in the judgment of Congress menace the integrity and the competency of the service, legislation to forestall such danger and adequate to maintain its usefulness is required. The Hatch Act is the answer of Congress to this need. We cannot say with such a background that these restrictions are unconstitutional."

With this background we can discuss the SB 8 restrictions on state and other person's political activities in state offices. What is the compelling state interest here? I have assumed that it is the interest in maintaining the loyalty, efficiency, reliability and nonpartisanship of state and local government employees while they are working in state offices. It is an interest in maintaining an atmosphere conducive to carrying out state business free of unreasonable distractions in state offices during working hours. There should be little doubt that this is a proper state interest. The bill restrictions reasonably regulate the time, place and manner of expression of free speech. The Court would balance the First Amendment rights of employees and the equal basic right of the people of the state to a properly functioning state government. It is my opinion that the provisions of the bill are constitutional under this scrutiny and would be so declared by the Supreme Court.

Two changes should be made, however, in the restrictions. Under (a)(1), line 16, the word "wall" should be added after the word "exterior". This would allow public assembly and political activity on the steps of the Capitol Building, historically used for this purpose. Any disruption or blocking of access to the Capitol Building would be resolved in Title 11 proceedings. Also the words "during state office hours" should be added after the word "office" in line 24. This allows janitors, et cetera, to discuss politics at night cleaning state offices without danger of falling under these prohibitions. To make (b) consistent with (a), I have change "public employee" to "person".

Finally, there are the issues of statutes that are overbroad or vague. Overbroad means the statute includes both constitutionally protected conduct which the state can legitimately regulate. It is vague when it fails to give a person of ordinary intelligence fair notice that his

contemplated conduct is forbidden by statute and where it encourages arbitrary and erratic arrests and convictions. Marks v. City of Anchorage, 500 P.2d 644. In my opinion, I do not think the bill would fail under the two criteria above.

Provision (c) however does not effect the constitutionality of the bill one way or the other. It may be useful to provide for the state custodian to remove prohibited circulars, posters, signs, handbills, et cetera from state offices, since finding the person who posted or displayed the material originally is unlikely.

If I can be of further assistance, please let me know.

RCF:ljb

Enclosure

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SB 8 Date on Bill:
Title: An Act Prohibiting Political Advertising on and in Buildings
Sponsor:
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

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

b. Revenues:

Revenue			0	0*	0	0		

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

3. Assumptions:
* If Bill were to apply to existing leases as opposed to future leases, approximately I FTE, $37.6 would be required to renegotiate over 400 leases

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

Prepared By: Bob Link - Acting Director Phone: 465-2250
Division: Administration, General Services and Supply Date: 2/22/83

Approved by Commissioner: Date: 2/24/83
Department: Administration

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

2/8/83

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS COMMITTEE
SENATOR VIC FISCHER, CHAIRMAN
POUCH V, JUNEAU 99811
(907) 465-4954

March 1, 1983

Norman Gorsuch
Attorney General
Department of Law
Pouch K

Dear Mr. Gorsuch:

I would appreciate if you would review the attached draft of CSSB 8 for potential conflict with the free speech provisions of the Alaska and U.S. constitutions.

I plan to move this bill from committee as soon as possible and would like to have your response at your earliest convenience.

Best regards,

Senator Vic Fischer

cc: Jim Baldwin

Introduced: 1/18/83
Referred: State Affairs

Draft CS

IN THE SENATE BY V.FISCHER AND P.FISCHER

SENATE BILL NO. 8

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act prohibiting political advertising on and in buildings owned and leased by the state."

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

* Section 1. AS 35.25 is amended by adding a new section to read:

Sec. 35.25.040. POLITICAL ADVERTISING PROHIBITED. (a) Political signs and other political advertising may not be displayed on ~~or~~ the exterior of ~~in~~ buildings that house state offices.

(b) Each state lease of office space shall contain a provision prohibiting political signs and other political advertising on ~~and in~~ the exterior of buildings leased by the state.

Version 2
Folta
2-4-83

Proofed 24

Original Sponsors: V. Fischer and
P. Fischer

IN THE SENATE BY THE STATE AFFAIRS COMMITTEE

CS FOR SENATE BILL NO. 8 (State Affairs)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to campaign misconduct in buildings owned and leased by the state or local government."

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

* Section 1. AS ~~35.25~~ 39.25 is amended by adding a new section to read:

Sec. 35.~~25.040~~ 39.25.165. CAMPAIGN MISCONDUCT IN A STATE OR LOCAL GOVERNMENT BUILDING. (a) A person may not post or display a circular, poster or sign designed to aid or defeat any candidate for nomination or election to any state or local office, or designed to aid or defeat any state or local ballot proposition or question.

(1) on the exterior wall of or in a building owned and occupied by the state or local government;

(2) in a building or portion of a building leased by the state or local government, including walls of common areas or on the exterior walls of that building or portion of a building occupied or leased by the state or local government.

(b) A person may not while in any state or local office during working hours, attempt to persuade a person to vote for or against a candidate, proposition, or question, or circulates cards, handbills, or marked ballots, or posts political signs or posters relating to a candidate at an election or any state or local ballot proposition or question.

(c) This section shall not impair state or local government employee contractual rights or be construed in a manner that would abridge constitutional rights of state or local government employees.

Version 2
Folta
2-4-83

Proofed 2-4

Original Sponsors: V. Fischer and
P. Fischer

IN THE SENATE BY THE STATE AFFAIRS COMMITTEE

CS FOR SENATE BILL NO. 8 (State Affairs)

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(c) This section shall not impair state or local government employee contractual rights or be construed in a manner that would abridge constitutional rights of state or local government employees.