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promoting local hire, and generally attaining greater control and responsibility over a public works project. The use of Force Accounting has been criticized by contractors, labor unions, and others who have argued that "contracting out" public construction work to the private sector is usually the most efficient, economical, and risk-free method of performing public works construction.

As a result of the controversy surrounding the use of Force Accounting, particularly on construction projects financed in part or whole by State grants, an informal task force was organized in November 1984 to address the issue. The task force included representatives from various State agencies, local governments, contractor groups, organized labor, and other interested parties. At the outset, there was considerable support for the proposition that on pass-through grants for construction, the State agency passing through the grant funds should exercise greater approval and oversight authority over the use of Force Accounting by grant recipients. It was disclosed that new procedures for the controlling and monitoring of State grant funds are being prepared by an interdepartmental grant management review committee coordinated by the Office of Management and Budget.

On the central question of Force Accounting vs. contracting out public construction work, the task force participants were unable to reach a consensus solution. Local governments and political subdivisions that have used Force Accounting successfully to reduce construction costs and promote local hire desire to continue doing so (and, in some cases, expand the size of their force account projects), whereas contractors and labor unions contend that competitive bidding continues to be the best way to prevent favoritism and assure timely completion of public works construction at the lowest price and highest quality.

Alaska Department of Labor

February 1, 1985

CMC 7-3

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

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February 1, 1985

Mr. George . Easley, President
Alaska Chapter, Associated General Contractors
Box 4-2500
Anchorage, Alaska 99509

Dear Mr. Easley:

RE: Draft Force Account Appendix; Government Encyclopedia

I received your review comments concerning the draft of a force account appendix which is to be included in a current revision of this Department's publication: Alaska Local Government Encyclopedia. Thank you for your interest in this draft and for your time spent in providing us with your comments.

The scope of the draft in question was limited to providing communities with assistance in their preliminary considerations of whether or not to force account a project. Aside from this limited response to community requests for force account information, I believe that local decision makers could greatly benefit from the availability of information across the range of project construction options. Whether a community decides to contract a project out, or to do the project "in-house", they should make and carry out their decisions on the most informed basis possible.

Therefore, after reviewing your concerns, as well as comments which we have received from other Departments, communities and interested parties, I have decided that this appendix would better serve communities if the subject were expanded to include a broader range of capital project implementation considerations. This broader approach would incorporate additional discussions on contractor selection, site control, project accounting, permitting, and other topics.

My staff have been directed to proceed with the development of this broader information package which will appear as a chapter in the Government Encyclopedia, rather than the more limited appendix previously envisioned. Department staff will be contacting your offices in the near future with regard to your assistance in developing those elements of the proposed chapter which deal with the community's role when contracting out for the construction of a project.

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In the introduction to your comments, you state that "The Alaska Chapter, A.G.C. is opposed to force account work by government entities at all levels." The basic policy of this Department recognizes that force account construction, within specified constraints, is an option which is now legally available to Alaskan communities. Communities are now exercising that option. However, because of the general lack of information on force accounting, some communities are attempting to employ force account methods without the benefit of careful consideration of the requirements and potential problems inherent in force accounting. For this reason, and in response to specific requests from communities, the Department will be making force account information available to communities in a readily available format.

We can understand your immediate interest in the subject of force accounting, and we understand the larger justification for this interest which, as you state, is "protection of the public interest." This Department also has a strong responsibility to protect the public interest; particularly as the public interest is represented by the functions of its many communities. The fundamental purpose of the Local Government Encyclopedia is to provide the smaller Alaskan municipalities with information that can enable them to operate effectively and efficiently in the community's, and the State's, best interests.

In your letter, you express the belief that "informed public officials weighing objectively" will opt for the "contract out" method over the "force account" method of construction. Whatever the case, I certainly agree with the importance of public officials having adequate information to make well considered decisions. This is a premise of the technical assistance provided to communities by this Department, and this is the basis for our decision to provide communities with information to assist them in the implementation of their capital projects.

In summary, the Department is proceeding with the development of a new chapter for the Government Encyclopedia which will address a range of project construction options. This chapter will incorporate information on force accounting, contracting out, and a number of other related topics. As we proceed with this concept, I would hope that we could count on your substantial assistance.

Sincerely,

Emil Notti

Emil Notti
Commissioner

cc: John Shively, Chief of Staff, Office of the Governor
Richard Knapp, Commissioner, DOT/PF
Jim Robison, Commissioner, Dept. of Labor
Bob Landau, Deputy Commissioner, Dept. of Labor
Marty Rutherford, Director, DCRA/MRAD

Comm. TU
Bacolos

MEMORANDUM

State of Alaska

Community & Regional Affairs

TO: Distribution list below

DATE: November 30, 1984

FILE NO: 1355c/MC/mc

TELEPHONE NO: 465-4750

FROM: Michael Cushing, Research Analyst
Municipal and Regional
Assistance Division

MC

SUBJECT: Force Account Draft Appendix; Government Encyclopedia

AMC 7-3

The Department of Community and Regional Affairs is revising the Local Government Encyclopedia, now in its second edition. Several new chapters are to be added to reflect new procedures in state & local government, including a new appendix which will address force accounting. Attached is a draft of that appendix. I would appreciate your help in reviewing and commenting on this draft appendix.

This appendix is designed to illustrate the elements of force accounting and provide some preliminary guidelines for communities to consider when making a decision about whether or not to use force accounting for a community project. It is not intended to serve the function of a more comprehensive and detailed "how to" handbook.

As we would like to go to press early next year, I would appreciate receiving your comments by December 21. Please feel free to call me if you would like to discuss any aspect of the draft.

Thanks for your help in this effort.

Attachment

Distribution:

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cc: Emil Notti, Commissioner, DCRA
Jeff Smith, Deputy Commissioner, DCRA

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APPENDIX: FORCE ACCOUNT CONSTRUCTION

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INTRODUCTION

The purposes of this appendix are to provide an explanation of what "force accounting" is; to provide some basic guidelines that can help a community decide whether or not it is best to use force accounting to build a project in the community; and finally, to provide some guidelines for the preliminary development of a city's force account effort.

The decision to use force accounting to construct a community project should not be taken lightly. Force accounting should not be viewed as the best approach for every community or for every project in a community. Force account projects can sometimes be the ultimate test of a community's administration and construction abilities. A community must consider each project and carefully compare the potential benefits and problems that are associated with a force account program while measuring the community's capacity to deal with all the necessary elements of the project.

This appendix is broken down into a general introduction; a section discussing the key elements of a force account program; and sections outlining some of the benefits and problems of force accounting.

What is Force Accounting?

Force Accounting is a method of construction in which a city, village council or other grant recipient serves as the contractor and constructs the project using local labor. While different kinds of local entities may be legally permitted to use force accounting, this appendix will focus on the use of force account methods by cities. In a force account project, workers are hired directly by the city as public employees. The city may wish to contract for some parts of the project, such as project design, electrical and plumbing work and construction management, but the city has the overall responsibility for hiring and firing employees, setting wages, paying wages, purchasing materials, and seeing that the project is completed.

If a project is contracted out to a private company, rather than constructed by the city through force accounting, the wage rate is established by law. The Alaska "Mini Davis Bacon Act" (AS 36.05.010) and (AS 36.95.010(1), specifies that contracted labor shall be paid the "prevailing wage" which is established by the Alaska Department of Labor. If a portion of the work is contracted, this law applies to the wages for the workers which are hired by the contractor. It does not apply to employees hired directly by the city or village government.

Force accounting should not be seen simply as a way to avoid paying the prevailing wage scale. The most important purposes of force accounting are to enable communities to have more control over project construction and employment, and to be more responsible for their own projects. When the local labor force, with the assistance of a few skilled professionals, successfully constructs a project, the community benefits from a healthier economy, a trained labor force, and pride of accomplishment.

Who can "Force Account"?

The use of force accounting is interpreted by the Alaska Department of Labor to be restricted to local governments, political subdivisions, and some nonprofit entities. When a construction project receives federal funding, the federal funding agency should be consulted to determine if it is permissible to use force account construction.

Two important questions should be kept in mind when deciding whether to use force accounting for a construction project. The first is whether or not the city is capable of handling the technical aspects and labor requirements of the construction project. The second is whether or not the city, and the community, have the commitment to provide the labor force, training programs and supportive attitude necessary to successfully complete a force account project. These two critical questions need to be carefully considered and answered before starting a force account construction project.

ELEMENTS OF FORCE ACCOUNTING

When considering a city's capability to use force accounting, there are a number of project elements that need to be examined. It is important to keep in mind that a force account construction program will have all of the considerations that a private contractor would have, and maybe more if the city is inexperienced in doing construction projects.

This section presents a set of project elements which can serve as a guide in considering a possible force account project. Each individual city will have to consider these elements with regard to the particular characteristics and needs of the community. The project elements discussed include planning and financing, key personnel, labor force, employee and employer training, wages, tools & equipment, public relations, permitting, and legal requirements.

1. Planning and Financing

A preliminary project element is the planning and financing of the project. The process of developing a capital improvement project is described in detail in Topic Unit ??. If outside professional expertise is needed to assist the city in developing project plans and funding requests, the city should try to find professionals who have a good understanding of the special planning considerations of force accounting. When the city submits a funding request for a project which the city wishes to force account, the funding request should clearly describe how the city plans to deal with the special requirements of force accounting.

There are several aspects of a force accounting project that need to be specially considered when putting together construction and funding plans for a building project:

- Project scheduling: For several reasons, a force account project can be expected to take longer to complete than a contracted project. Local laborers will probably need a period of skills training before they can work as quickly as contracted labor. In the process of learning there are likely to be some mistakes made that will take additional time to correct. A local labor force may not choose to work as long a work day as contracted labor. Also a community might want to spread a construction project out over several years to provide a more even wage distribution in the community for a longer period of time.

- Labor Costs, Wages: Experience indicates that there is no general rule as to whether total labor costs for a force account project are more or less than for a contracted project. In force accounting, the hourly wages paid to each local worker will usually be lower than the wage that would have been paid to an imported contract laborer, but with force accounting there would usually be more workers, each working more hours during the course of the project.

- Equipment Costs: When a contractor builds a project in a community, he usually brings any necessary construction equipment with him. In force accounting, the city must consider either leasing or buying the equipment needed to build the project. This can be a major expense and may even require a separate funding request. On the other hand, a community might wish to consider using a more "labor intensive" approach to construction. For example, while site preparation may be done by a few men using heavy equipment, it might also be possible to do the same preparation with a lot of workers using hand tools.

- Administrative Costs: In force accounting, the city assumes responsibility for a number of administrative activities that would otherwise have been done by the private contractor. These include such things as purchasing materials and accounting for worker's wages, benefits and insurance.

2. Key Personnel

Experience has shown that one of the most important characteristics of a successful force account project is the presence of several key people, who are technically qualified and committed to the success of the force accounting method. These key personnel may include hired professionals and tradesmen (such as engineers and electricians), local decision makers (such as the the city manager, mayor), and other

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residents who can take a lead role on the project (such as the job foreman). These people, working closely together, and working closely with the community, will largely determine the successful outcome of a force account project.

Professional and Technical Expertise

Some aspects of developing and carrying out a force account project may require special professional or construction expertise such as architects, engineers and electricians. In many small communities, the local labor pool lacks these professional and trade skills.

For example, constructing a community hall could require the following kinds of technical expertise:

Survey & Design:	Planner, Engineer, Architect
Cost Estimates:	Facilities Planner, Engineer, Architect
Project Supervision:	Skilled Foreman, Project Manager
Quality Control:	Engineer, Project Manager
Job Training:	Trainer, Skilled Foreman
Project Accounting:	Accountant, Project Manager
Electrical wiring:	Trade electrician
Plumbing:	Trade Plumber
Finishing work	Dry Wall Expert, Finish Carpenter

Selecting Professional Assistance

If these people are are not available locally, the City will need to hire them on a contractual basis to work on the project. It is very important to find professionals and craftsmen who understand force accounting and who will work closely with the city and community to get the most good from the project.

Many professionals and skilled tradesmen are not used to working as closely with a community as might be expected when using force accounting. A city may want to take a strong role in the design of its project, choosing materials or figuring what will be the best use of its project funds. A city may want to form a citizens committee to advise on design, color scheme, or site placement. The city may expect the tradesmen on the job to teach their skills as well as use them. These things should be kept in mind when selecting professional assistance and should be made clear to contractors before they are hired.

Contacting several communities which have used professional assistance on force account projects is one way to select professional help. Another way is to interview a number of firms and choose one that is technically qualified <u>and</u> understands the community's goals in using force accounting.

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This is an important decision as the qualifications and attitude of these professionals can make or break a force account project. Listed below are some of the key personnel that may be needed for a construction project.

- Technical Coordinator/Engineer: This person oversees the technical aspect of the project and possibly its management. An engineer will be able to assist in the initial planning, financing, and site development. This person can also be used to oversee the construction of the project. An engineer can be very valuable in helping to select materials, choose equipment, hire subcontractors, and get the necessary permits. The engineer can help keep a project on schedule, and in accordance with proper construction standards.

- Project/Contract Administrator: A major key to operating a successful force account program is being able to manage the operation of the financial, administrative and personnel functions of the organization. The fiscal duties could be done by one person but it depends on the size of the construction program. A bookkeeper can handle the payroll, tax requirements, and do some of the necessary work for the grant administration. A city may need to hire some additional help if the job gets too big. For example, a city may need to have a time keeper going around to the job site to see if everyone who is getting paid is on the job. Additional staff may be needed to administer the compliance standards of the contract(s).

- Project Manager: A project manager is the driving force in a construction program. This person could be a city manager or a hired coordinator such as an engineer. This person generally assigned the direct responsibility for carrying the project forward. The project manager needs to be able to match peoples skills with the work to be done; interpret community needs; and work with agencies, technical people, and suppliers. This person needs to be able to work well with many people, and many kinds of people.

- Project Foreman: The foreman or lead crew person for a project, often a resident, is an important link between the work force and the professionals and administrators who are in charge of the project. This person will be responsible for helping to develop the skills, work habits and general attitude of the workers. Experience indicates that it is important for the foreman to be able to both supervise and work side by side with residents. This position can be a delicate one because it often involve supervising family members, neighbors and friends.

- Construction Subcontractors: The city may need to subcontract certain parts or project construction like plumbing, electrical wiring, and so on. It is important to remember that a subcontractor must pay his own workers at the prevailing wage rate and he is free to choose his own workers.

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Subco. tracting Guidelines

The following are a number of guidelines that may be useful when subcontracting for professiona' and construction services:

- Bids or proposals should be requested from at least three qualified contractors to insure a competitive price.

- The contractor's past record and references should be examined carefully, particularly with regard to experience on similar jobs. The identity and qualifications of the people that the company is actually proposing to use on the job should be known. Substitution of other personnel after a contract has been signed should not be permitted without the city's consent in advance.

- The project should be described to the contractor in as much detail as possible, including design plans if available, so that the subcontractor's price quotes can be complete and accurate.

- A contract should clearly specify the work to be accomplished, include a schedule for completion of the work, list the total amount to be paid to the contractor, and provide procedures for submitting billings for payment requests.

- A contractor should be required to post a performance bond, and contract should specify what happens if the contractor defaults or fails to complete the project on schedule.

- A contract should have provision that allows for changes or contract amendments.

- A contract may contain provisions <u>encouraging</u> local hire if these provisions were negotiated during the bidding process; however, recent court decisions indicate that it may be illegal to <u>require</u> contractors to hire residents.

- Be sure the agreement with the contractor meets all of the conditions and specifications of the grant agreement or contract with the funding agency. Funding agencies sometimes require that they review or approve proposed contracts before they are signed.

- Make sure that all contractors carry adequate insurance and bonding to cover the liability of those parts of the project for which they are responsible

- The Contract should be <u>READ CAREFULLY</u> by the <u>city and the contractor</u> and <u>SIGNED</u> before any work begins.

- The State Department of Labor should be notified of project subcontracts as soon as subcontracts are awarded so that statutory compliance can be monitored.

3. Labor Force

One of the major benefits of force accounting is the opportunity to employ and train local residents. A city should evaluate the size and talents of the resident labor force to determine what part of the job can be done by local people, and how many people will need to be hired from outside the community.

Lifestyles and cultural attitudes in rural communities should be taken into account when considering the job organization, schedule and progress of construction projects. An advantage of force accounting is that there is more local control to build flexibility into a work program so that resident workers can participate in seasonal subsistence needs, traditional occasions, and other social and cultural requirements. Experience has shown that it is possible to develop work programs that are efficient in constructing a project and sensitive to cultural needs.

Most small communities have good potential for developing a local labor force. A common problem is that many residents have never had an opportunity to develop the necessary construction skills. When putting together a project the city should consider that these workers will need some kind of skills training, as well as basic training in good work habits. Worker training takes time and can slow the progress of a project but the lasting effect of the skills learned is can make it a worthwhile effort.

4. Job Training/Management Training

Job training is a key element of a successful force account construction project. The local control and flexibility of force accounting allows the city to establish an On-The-Job (OJT) training program and "training" wage rates to pay workers a reasonable wage during training. When setting up an OJT program, the city should contact State and Federal agencies and other nonprofit organizations which offer assistance with OJT programs. These agencies can provide funding, for wages and skills training, and technical assistance with setting up and operating a local OJT program.

When Force accounting, a city should consider the need for training at all levels of employment. In addition to the typical kinds of skills and vocational training, there are two special areas of cross-cultural training that should be considered when force accounting: sensitivity training for managers, and work habits training for residents.

The first special training consideration is in the area of management. It is important to consider that professionals and managers may need special cross-cultural training to help them develop an approach to management that is sensitive to rural

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lifestyles and productive in the rural setting. Managers who are used to dealing only with an experienced urban work force may have to greatly modify their management style in order to contribute to the goals of a rural force account project.

The second special training consideration addresses the fact that many residents of small rural communities have very little experience working at a regular wage-earning job. Experience shows that these residents will need the support of an ongoing training effort to educate them about productive work habits and attitudes.

Force account programs in rural communities in Canada and Alaska have been studied to try to understand why some programs succeed and others fail. The results of this study suggest some guidelines for employment practices that are sensitive to traditional cultural values and, at the same time, help resident workers to acquire productive work habits:

Work Place Organization

- Job tasks can be organized in teams or crews with clear responsibilities for each team member, including a designated team supervisor. Ranking of individual job titles or status within the team should be avoided.

- Task assignments within each team can be flexible, allowing each worker to become familiar with a variety of skills during the project.

- The project work force, including managers, should be encouraged to meet together regularly, perhaps even daily, to exchange ideas, discuss problems and make suggestions.

- Clear work rules should be established, explained, and applied to all workers equally. This should include clear rules for firing (and sometimes rehiring) when rules are broken.

- Specific arrangements and rules should be developed in advance regarding time off for subsistence activities. Because of the need for continuity of supervision on the project, supervisors and project managers should be more restricted regarding time off.

- Incentive programs which reward good work habits can be built into the work program. The rules and rewards of the incentive program should be specific and clearly explained to workers.

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○ Pay and benefit schemes can be made flexible to offer workers alternatives in the manner of payment (weekly, monthly, etc.) and the kinds of benefits which they may choose.

Worker Training Program

○ Orientation training should clearly explain the rules of the work place and clearly describe the behavior expected of workers while working on the project.

○ Workers should receive training in communications skills, including regular workshops in which workers cooperate together in job-related problem solving exercises.

○ At least one project person should be designated as a "training facilitator" who is responsible for organizing training efforts and assisting individual workers with special training problems.

Management Training Program

○ Managers should be trained about the <u>community's</u> goals in using force account methods. The community's goals might focus on such things as employment training, community pride, and extending the construction period; rather than simply constructing a building.

○ If managers come from outside the community, they should receive orientation training about the history, culture, lifestyle and attitudes of local residents. Outside managers may need special cross cultural communication training in order to deal effectively with problem situations such as correcting a worker's methods.

○ Managers may need specific training in how to help workers to acquire productive work habits.

○ Supervisors should hold regular sessions on practical supervisory problem solving.

5. Wages

If a construction project is contracted out to a private company, the law requires that the company pay its workers at the "prevailing wage". The prevailing wage for each occupation is determined by the State Department of Labor. Since the private contractor must pay these prevailing wages, he is most likely to seek the most highly skilled labor that he can find. This usually means that the local residents, who are often less experienced in construction skills, don't get the jobs for construction projects in their own community. Often, the contractor will bring a complete construction "team" with him to build the project.

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However, when the city force accounts a construction project, the city has the right to set the hourly wages that will be paid to workers employed by the city on the project. This allows the city a great deal of flexibility in setting the project wages. The city may wish to set up a lower wage scale which might be more appropriate for the local economy. The city can set a special wage scale for beginning workers to accommodate On-The-Job training programs. The city could set aside a reserve fund to pay bonuses to workers who keep the rules, or workers who perform especially well. Given a set amount of funding to be used for wages, one city might wish to hire many people for a short period of time, while another city might use the same amount of money to hire a few people for a longer period of time.

Wage setting is one of the more difficult tasks that a city must perform is developing a force account program. It is a good idea for the city to contact a number of other communities which have already used force accounting, and find out how other cities have set up their wages. For example, one community may pay all of its workers the same hourly wage, regardless of the type of work done. Another community may choose to pay a higher wage to workers who have trade skills than to workers with no such skills. The city must carefully consider the community's basic goals when deciding how wages are going to be set.

A reminder: when a part of a State or Federally funded project is subcontracted out to a private company, the subcontractor and any workers that are employed by him, must be paid at the "prevailing wage" set by the State.

6. Public Relations and Workforce Relations

When developing and carrying out a force accounting program, the city should make an organized effort to keep people in the community informed about the program. The concepts of force accounting may be unfamiliar to most community residents. Getting and maintaining community support for the project is one of the most important elements of a successful force account project. If the community is not fully behind the force account effort it is unlikely to succeed. Rumors and hearsay can be very destructive to a project. The best protection against this problem is to keep community residents fully informed about the project and fully involved in major project decisions.

Good communication needs to be maintained between project management and project workers. It is helpful if there are clear policies agreed upon which deal with wages, job qualification, work rules and acceptable habits. The whole project organization will benefit if everyone understands what is expected of them.

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Another important communication channel that needs to be maintained is the one between the city and the funding agency. An agency can help with a project in some instances by solving technical or administrative problems. The funding agency should be kept informed about project status so that the agency can anticipate any areas where special assistance might be needed. Funding agencies are likely to be more receptive to future funding requests from those communities which have made an effort to work closely with the agency on previous projects.

7. Tools and Equipment

As a part of its force account responsibilities, the city must provide the tools and construction equipment necessary to build the project. The city may buy or lease equipment, or contract out that part of the project which will require heavy equipment. The project should be carefully considered to determine which way a project grant can be most efficiently used to pay for heavy equipment costs. A major benefit of force accounting is the city's ownership of tools and equipment after the project is completed. This equipment can be used on future projects, making those projects less expensive. One method of acquiring machinery is to spread the cost of the equipment over a number of construction projects.

If the city can't afford to buy a piece of equipment, it may consider borrowing or leasing it from a neighboring community. When renting equipment it is necessary to be prepared for the use the equipment in a timely manner; it can be very costly to have rented equipment sitting idle.

Equipment purchase involves a number of major decisions, including the choice of equipment type, size and brand, and what kind of financing will be used. It is important to remember that the equipment is to be used <u>and maintained</u> by community residents. Equipment suppliers will need to know the special needs and working conditions of equipment that is to be used for a force account project. Again, it is a good idea to check around with other communities and agencies to get information and advice about recommended equipment and suppliers; used equipment may be available for sale in other communities. If possible, it is best to get bids from several different equipment suppliers before making a purchase.

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8. Permitting and Other Legal Requirements

When a project is being planned, it is very important to keep track of the permits, contracts and any other legal procedures that may be required. A city is not necessarily exempt from the legal requirements that any other contractor would have to consider. Local, State and Federal permit requirements should be satisfied in a timely manner so as not to hold up the project. Contracts will have to be developed and signed with any necessary professional help and construction subcontractors. The land that a project is being constructed on should be clearly owned or controlled by the city.

Many construction projects will require special permits prior to the start of construction. For example, a dump site or sewage disposal project requires a permit from the State Department of Environmental Conservation; a project which will require dredging or filling of a waterway requires a U.S. Army Corps of Engineers' Dredge and Fill Permit. Most building construction plans must be reviewed by the State Fire Marshall's Office prior to beginning construction.

Depending on the project, there may be other permits required. For additional information about permits, contact the Alaska Department of Environmental Conservation. That Department operates regional Permit Information Centers and publishes a Directory of Permits. Assistance in applying for permits can be obtained from the Department of Community and Regional Affairs or the Department of Environmental Conservation.

The City should consider the question of what construction standards apply to the project. These could include the Uniform Building Code, the National Electric Code, State heating and lighting energy standards and perhaps others. These standards will have to be taken into account during project design and construction stages, and at the completion of project. Additionally, the City will need to arrange for whatever site inspections are necessary or required to assure that the project is in compliance with building standards.

Other legal issues may need to be addressed. Questions of liability need to be carefully considered. What will happen if the completed structure fails? What will happen if a worker on the project is injured or killed? Normally, the private construction company would be responsible for these problems. However, when the city is force accounting, these problems are the city's responsibility. Guidance from a city's attorney will help in determining what kinds of insurance or bonding a city should acquire when force accounting a project.

POTENTIAL BENEFITS OF FORCE ACCOUNTING

Force accounting offers a community a number of opportunities that are not available when a community project is built by a private construction company. These include more direct control over a project, local employment, developing the local labor force and developing an inventory of construction equipment and tools. These benefits, and others, are discussed below:

- Local Control. The city can establish wage rates, hiring and firing policies, and working hours. Decisions about the project schedule, design, materials and construction quality can also be made locally. The local government itself may undergo a transformation process by administering the project. The knowledge gained by carrying out the various elements of force accounting can expand the city's ability to serve the community.

- Local Employment. One of the the most important advantages of force accounting is the city's opportunity to employ community residents on the project labor force. While it may be necessary to recruit some workers from outside the community, generally the community can supply most of the workers needed.

- Develop the local labor force. Through On-The-Job training programs, the city, as employer, can help the local residents to acquire construction skills. Additionally, through exposure to work place organization and rules, residents can acquire the basic habits of productive employment. This local, skilled, labor pool would be available for future projects; saving the community future expenses. Additionally, as workers gain skills they will be increasingly able to compete in the larger, statewide, labor market.

- Develop a community equipment and tool inventory. If the city buys the equipment needed to construct a project, it will own that equipment after the project is completed. Again, an existing inventory of construction equipment and tools would save the community money on future projects.

- Community economy. A force account project can provide a direct boost to the local economy. In a normal construction project 25% to 40% of the project expense is worker wages; most of this is immediately taken out of the community by the imported workers. However, if a city employs mostly resident workers on a force account project, the wages tend to circulate longer in the local economy and this money can support other local and regional businesses.

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◦ Community pride. Another benefit of force accounting is the pride that a community gains through the successful completion of their construction project. The sense of self esteem that residents and workers have about a successful project may not be easily measured, but experience indicates this can be an important long term benefit of force account projects.

POTENTIAL PROBLEMS OF FORCE ACCOUNTING

Along with the advantage of greater direct control, a community is assuming a big responsibility by deciding to force account a project. Problems areas discussed here include project administration, dealing with the the labor force, project quality control, project liability, and community commitment:

◦ Project administration. The city is responsible for keeping the project on schedule and within budget, making sure that the project is completed, controlling construction quality, and supervising the employees. Force accounting projects require a good payroll system and a good accounting system to insure that expenses are charged to the proper accounts. Worker's compensation, taxes and insurance must be paid as well. Construction equipment and tools must be purchased or leased, and the community may need to contract with a mechanic to maintain the equipment. Other professional and construction subcontractors may need to be hired and managed during the course of planning and building the project Each of these activities will place extra burdens on the city's administrative capacity. These activities, taken together, can easily be too much for a single person to accomplish efficiently. When considering the choice of force accounting, it is important for a city to carefully consider the capacity of existing staff, or the requirements for new staff, to handle the many additional duties of administering a force account program.

◦ Labor force. Not every community can provide a resident labor force adequate for the needs of a force account project. A city must examine its available labor force and make a determination as to whether they are able to handle the size and scope of the project. The city will need to figure out what construction and management skills are available in the community and what skills are lacking. It is quite likely that the city will have to look outside the community to find some construction workers/managers with the necessary experience. It is extremely important that people hired from outside the community understand force accounting and the community's goals in using force accounting. The city should carefully interview nonresident workers to be sure they will be able to work well with resident workers and the city administration.

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Because a force account project labor force is made up largely of residents, there may be some special problems within the work force that are the result of conflicts which normally exist between people in any community. The city should be careful to take any existing interpersonal community problems into account when making job assignments and putting together project teams.

- Quality Control. Without proper designs, technical guidance, and project management, a construction project can run into many problems that can affect the quality of the product. This is especially so when a large portion of the work force is unfamiliar with building techniques and the reasons for using certain techniques. To insure that all construction is done properly and efficiently, it is necessary for the city to develop and maintain a good program of skill and attitude development, supported by frequent inspections of work done.

- Cost Overrun. A problem that often results from poor quality control practices is cost overrun. Cost overrun problems can also result from improper initial cost estimates, labor or management incompetence, unexpected delays dues to weather, equipment breakage, etc. Typically a capital project goes through a two-step cost estimate. The first estimate is made by an engineer or architect when the project is designed and secondly by the contractor when construction bids are submitted. In force accounting, the city acts as the contractor and the city loses the benefit of the private contractors' estimation of project cost. Therefore, it is very important that the city make a special effort to assure that cost estimates are as reliable as possible.

Additionally, the city loses the guarantee provided by a private contractor that the contractor will do a certain project at a certain cost. If there are cost overruns in contracted project, the contractor may be held responsible to complete the project at his own cost. However, if the city is force accounting, then the city has no such guarantee and must itself bear the burden of cost overruns. This may even mean that the city cannot complete the project unless it can get additional funding.

- Project Liability. Even with good planning and good management, some communities using force accounting will probably encounter unforeseen construction problems which could result in financial losses that would otherwise be borne by a general contractor. The major difference between force accounting and general contractor arrangements is that under force accounting the community assumes the responsibility for the safety of project workers and for the completion of the project correctly and within budget. While some potential liabilities to the city may be covered within the existing city insurance package, the city should examine the need for additional insurance coverage and construction bonding specifically for the force account project. The requirements for acquiring a construction bond may vary from case to case depending on the fiscal capacity of the community and the size of the project. The city would be well advised to seek legal guidance in obtaining the necessary project liability coverage.

- Community Commitment Experience has shown that a very important element of a successful force account project is a clear and continuing community commitment to the goals of the project. A successful project depends largely on a certain number of dedicated people in critical positions of administration, management and construction skills. However, these people can only succeed if they have the general support of the rest of the community. For this reason, it is important to keep the whole community informed and involved in major project decisions from the beginning to the completion of the project. If there are major conflicts in the community about whether to force account a project, or specific community concerns such as problems with proposed wage scales or hiring practices, the city should first resolve these conflicts before proceeding with the project.

DRAFT

7

NUSHAGAK ELECTRIC CO-OPERATIVE, INC.

NEC ALASKA

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

HB 176

Mike Navarre, Chairman
House Labor and Commerce
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 99811

Dear Representative Navarre:

I appreciate the opportunity to testify before your committee via teleconference yesterday on HB 176.

My testimony was quite abbreviated due to time constraints therefore I wanted to send you the text of my comments.

I have been located here in my present position of Manager of Nushagak Electric Cooperative and Nushagak Telephone Cooperative since 1972. Most of my adult life (since 1948) has been spent in rural Alaska and more specifically in Southwestern Alaska. I believe that I have some feel for the needs of this area that should be expanded upon.

The issue of high labor rates mandated by AS 36.05 was raised (for the first time as I recall) in HB 304 in 1983. Our records indicate that the following agencies supported our stand in recommending relief from the statute:

City of Dillingham
Nushagak Electric Cooperative
Nushagak Telephone Cooperative
Bristol Bay Native Association
Choggiung, Ltd.
Fortune Enterprises
Dillingham Construction

As far as I know, none of the above has changed its position.

I am really concerned because, in effect, we have the State of Alaska subsidizing high labor rates to a favored few who are supported strongly by organized labor and the State Department of Labor. This really means that competition for public works projects is minimized. Who pays?

Mike Navarre, Chairman
House Labor and Commerce
Alaska State Legislature

April 18, 1985

Yesterday, Representative Koponen asked what my position would be if a foreign firm (for example, a Korean company) was the low bidder on one of our projects. This was certainly a hypothetical question mainly because most of our work is done "force account" or with our own forces. But it does raise an interesting question. Is my primary responsibility to a state union contractor or to our electric consumers and telephone subscribers? To carry this issue a bit further, I see absolutely no difference in hiring a foreign contractor than I do in driving a VW or watching a Panasonic TV. I wonder how many of the opponents of HB 176 can say they are not supporting a foreign economy in some fashion.

The trade unions' strongest argument is that only their members have the skills to perform the tasks necessary to complete construction projects. For some construction projects, especially major jobs within the railbelt, there may be some grain of truth to this line of reasoning. But it hardly holds true in a rural village that may be contemplating a new school, a sewer system or improving a road.

Local government agencies and other entities that may be recipients of state capital project grants are actually precluded from utilizing local skilled labor because in most cases this local pool of talent are not members of railbelt area trade unions. Therefore, it should be noted that the largesse offered by the Little Davis Bacon Act wage rates is not available to all citizens in the state. And certainly union rolls are not open to all who apply.

In this era of declining oil revenues and corresponding reduction in available capital works funding, it would appear to be in the best interests of all Alaskans not just a favored few to stretch our dollars out as far as possible. In addition those dollars remaining for capital works projects should be shared as equitably as possible. We believe Alaska's Little Davis Bacon Act is in fact an impediment to good government because it removes competition from the work force and is applied unequally to citizens of this state.

To recognize the claims raised by unions, we would propose an exclusion of the application of this act in communities of 5,000 population or less. In summary we strongly urge your support for HB 176 because it does give the rural areas more local control for value received.

Thank you.

Yours very truly,

DAVID F. BOUKER
Manager

cc: Adelheid Herrmann, Representative District 26

DFB:ka

A

ALASCOM Telegram

TDA NELSON LAGOON ALASKA 30 04-17 1024A AST
PMS 465-3892
REP NAVARRE, CHAIRMAN HOUSE LABOR/COMMERCE COMMITTEE

JUNEAU AK

SINCE WE ARE UNABLE TO PARTICIPATE IN THE TELECONFERENCE THIS AFTERNOON, WE HOPE THIS TELEGRAM WILL BE SUBMITTED AS OUR TESTIMONY. WE UNANIMOUSLY SUPPORT HB176 INTRODUCED BY REPRESENTATIVE HERRMANN.

NELSON LAGOON COUNCIL
PAUL M. GUNDERSEN, PRESIDENT

Navarre

4/13

Message to Teleconference on HB#176 House Labor & Commerce Committee

From: Ellen Morrison, P.O. Box 128, Fairbanks, AK.

When local experienced contractors cannot pay their workers the prevailing Alaskan wage rate and still be competitive, in many cases they will not even bid a bush job. Out-of-state and inexperienced contractors will and will win the bush contracts. If that happens, I would say that you will not get "more for your buck", as Ms. Binkley said, by passage of HB#176. What you will get is installations of substandard quality.

I am a union electrician. Two years ago I came on a job that was begun by lower paid non-union electricians and proceeded to spend hundreds of hours re-doing work done poorly and dangerously. I empathize with the bush communities who want to get by with less money, but if they are going to have cheaper but inadequately trained people doing the work they will be taking the chance of exposing their residents to unnecessary dangers.

Presentation by Bob Bacolas to House Labor and Commerce Committee on House Bill 176

Under this bill, public construction under contract to municipalities, having a population of 5,000 or less, an unincorporated community, a public non-profit corporation, or a public utility operating in a city or village having a population of 5,000 or less would be exempt from paying the prevailing wage rates on public construction projects in the state as defined by AS 36.95.010(3). Furthermore, the bill seeks to define the term "unincorporated community" in relation to social units, within unorganized boroughs, which may from time to time be the recipient of funds for the construction of public facilities. This project, under contract to or for "unincorporated communities" would also be exempt from the requirement of paying prevailing wage rates of pay.

AS 36.05.010 now requires that a contractor or subcontractor who performs work on a public construction project in the state shall pay not less than the current prevailing rate of wages for work of a similar nature in the region in which the work is done. The current prevailing rate of wages for each pay period is that contained in the latest determination of prevailing rate of wages issued by the department. This bill would also exempt a political subdivision from its duty to publish applicable minimum wage schedules as part of its bid specifications.

This legislation would circumvent and evade the purpose of the "Little Davis-Bacon Act" (AS 36.05) and would be in direct conflict with the Alaska Supreme Court decision in The City and Borough of Sitka v. General Laborers' Local 942, 644 P. 2nd 227 (Alaska 1982), hereafter quoted as "Sitka".

The enabling legislation for Title 36, Public Contracts, when enacted by the

Territorial Legislature in 1931, was modeled after the federal "Davis-Bacon Act". The federal "Davis-Bacon Act" was enacted during the depression years, inter-alia, to prevent the importation of cheap labor. The act assures that all contractors are given an equal opportunity to benefit from public construction and guarantees that all laborers on public construction contracts are paid the same wages.

Under traditional "Davis-Bacon" analysis, prevailing wages are required whenever public funds are expended for construction of projects for use by the public for traditional reasons. The term "traditional", in the context of the application of "Davis-Bacon" principles, must be related in a contemporary sense. As indicated by the Alaska Supreme Court in "Sitka", "Davis-Bacon" coverage must be applied in an ever broadening fashion. The yardstick used to measure "traditional" must be relevant to the needs of today's society. Health and Welfare programs have expanded into areas that were not even considered, let alone conceived twenty-five years ago.

One of the underlying principles of the "Davis-Bacon Act", as also in the case of the Fair Labor Standards Act, was to give the working man a wage that represented a fair determination of what the government considered to be the lowest wage that could be paid while insuring the public receives the best quality workmanship and materials in the construction of their public use facilities. This legislation flies in the very face of those principles.

The Department of Labor is the agency responsible for determining the prevailing rate of pay for public construction contracts and enforcing the payment of that rate. The state "mini Davis-Bacon Act" has been law since 1931. As we learned from the Alaska Supreme Court in "Sitka" our law is modeled after the federal Davis-Bacon Act. The U.S. Supreme Court in Endicott-Johnson v. Perkins, expressed the underlying philosophy and legislative intent behind Davis-Bacon and related acts, "its purpose is to use the leverage of the government to immense purchasing powers to raise labor standards." The Davis-Bacon Act has as its key purpose that of establishing a minimum wage rate for craftsmen on public construction contracts where the cost of the contract is in excess of $2,000. The "Act" is intended to be a remedial labor standards statute.

This legislation seeks to broadly implant a legislative intent that, 1) municipalities, unincorporated communities, public non-profit corporations, and public utilities would have a preemptive authority over the state in the use and distribution of funds intended for public construction; 2) that projects built with designated grants are not public construction within the ambit of AS 36.05 and; 3) that any grant, to any corporation, determined to be "public non-profit" is not intended to fall within the ambit of "public construction" regardless of how "traditional", the terms of the government service the use of the facility may be.

The definition of "municipality" in general law, as set forth in the Alaska Statutes, means any city or borough, unchartered or otherwise, so long as it has legislative powers. It is estimated, after review of the department records related to the number of current projects in various phases of construction, that between 20-25% of all public construction projects fall within the category of those exempted by this bill.

Grants to municipalities under AS 37.05.315, provides state funds for a variety of local projects and activities, directly to established political subdivisions of the state. Requirements of AS 36.05 clearly apply to construction projects contracted out under those grants.

Designated grants, which are used to construct capital improvements in "unincorporated communities" is an "unincorporated community grant" under AS 37.05.317. Construction contracted out for an "unincorporated community" with grant funds provided by the state under AS 37.05.317, is subject to the provisions of AS 36.05. The U.S. Department of Labor does not deem it essential that a federal agency be signatory to the actual construction contract. Nor do they deem it necessary that the government hold title to it. So long as the contract is carried out with federal funds, to serve the interest of the public, Davis-Bacon is applicable. This is the concept of "Sitka" and we can continue to expect that the courts will rely on Davis-Bacon for interpretation of our law.

In the "Sitka" case the court expressly stated that "(T)he fundamental purpose of AS 36.05 is to assure that employees engaged in public construction receive at least the prevailing wage." It went on to emplasize that "(T)he focus of the act, quite clearly is to the benefit of the employees, not the contracting principles."

An item to be considered is that the language in this bill makes no distinction between federal and state funds. Any project with federal dollars included would also be exempt. This legislation subverts federal law and in doing so, jeopardizes federal aid to municipalities, unincorporated communities, public non-profit corporations, and public utilities.

This bill is obviously designed to affect only small, remote rural communities, where the standards of living are traditionally the lowest in the state. Virtually every community affected by this bill is already impacted by excessive unemployment, or at best nominal seasonal employment. (The underlying intent of this legislation seeks to accomplish one or possibly two purposes, they are: 1) to lower the wages paid on public contracts and thereby encourage the employment of persons with lower skill levels who reside in the community, and/or; 2) to provide a greater purchasing power in relation to the amount of money available for a given project by reducing labor costs. Both of these approaches are inconsistent with the basic and underlying philosophy of the Davis-Bacon Act, upon which our state law is modeled. The focus of the act is clearly to benefit the employee, not the contracting principles.

When comparing working conditions in urban areas to rural areas, the conditions in the rural setting is always lesser. In Alaska, the climate as well as the lack of amenities in the "bush" make the incentives attached to reasonable, fair wages even more important. This bill, if enacted, would work severely to the detriment of the rural Alaskan worker. The contracts would go to out-of-state construction companies who would import their own cheap labor.

This bill would also serve as a serious detriment to the Alaska contractor, as they would not be able to compete with the outside contractor who would employ cheap labor. The money earned by these companies and their employees, leaves the state reducing the pass through effect (economic multiplier) of local spending. This equates to an overall leakage to the state economy.

The cost of doing business in Alaska is much higher than elsewhere in the nation, therefore, the Alaska firm would be at a competive disadvantage without outside firms who can frequently offer lower bids. This problem magnifies under this proposed legislation.

Under the existing law, the Alaska firm is on an equal footing with the outside firm in terms of labor costs, since both are required to pay the prevailing wage rates. Without this equal protection and coupled with the high cost of doing business in the state, it can be predicted with reasonable certainty, that Alaska firms will not be successful in competitive bidding on public construction projects, even with the Alaska bidder preference advantage under AS 37.05.230(5). The result would be that the Alaska firms which had previously rendered job opportunities to Alaskans and had been subject to the high cost of doing business in the state, would no longer be competitive. The number of non-resident contractors doing business in the state on non-public construction projects using cheap labor is evidence of the consequenses of this type of legislation.

It is apparent that both the federal and state prevailing wage rates have as their primary objectives the protection of workers on government projects by establishing a required minimum wage. Both the legislative history and judicial interpretations of prevailing wage legislations strongly suggest that this primary objective is as fundamental and vital today as it was in 1931 when the legislation was first enacted.

This bill, finally removes from the law, the department's authority to collect certified payrolls and thereby eliminates one of the most effective systems to insure against misuse of the public dollar as well as monitor the activities of the non-resident contractors in their use of non-resident employees. Payroll information could be collected under new regulations so that there would be no impact to the Resident Hire Enforcement Program.

The department is diametrically opposed to this legislation as it is a total contradiction of the purpose of the Davis-Bacon Act, as well as AS 36.05, and would serve as a detriment to the working men and women of this state, as well as the Alaska contractor, and the state's overall economy.

This bill will result in a negative fiscal impact on the department. Fiscal note is attached.

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

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

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

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

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

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

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

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

RWL-tl
F-40

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 1/13/86

REQUEST

Bill/Resolution No. : HB 176
Title : An Act relating to wage rates on public construction......

Sponsor : Herrmann, Binklev, etc.
Requestor : HL+C
Date of Request : March 15, 1985

FISCAL DETAIL

Agency Affected : Community & Regional Affairs
BRU : Local Government Assistance

Components : Training/ Development

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by : Michael Cushing, Research Analyst
Phone : 465-4750
Division : Municipal & Regional Assistance
Date : 1/13/86

Approved by Commissioner : Emil Notti
Date : 1/17/86
Agency : Community & Regional Affairs

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

page ___ of ___

10/25/85

RECORDS CERTIFICATION

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James O. Smith
Signature of Camera Operator

9/5/89
Date

02-519 (REV 8/78)

HB
211

3/8

COMMITTEE REPORT

HOUSE

JUDICIARY

(7)

FURTHER: FINANCE

2/18/85

Date: March 6th 1985

Mr. Speaker:

The Committee on LABOR AND COMMERCE has had HB 211

"An Act relating to contractors' payment bonds."

under consideration and reports it back as follows:

[✓] 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 [✓] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the ______ Committee

MEMBERS SIGNING DO PASS

[illegible signatures]

MEMBERS HAVING OTHER RECOMMENDATIONS:

[illegible signatures]

CHAIRMAN

H 60

HB 211 File Contents
House Labor and Commerce Committee

1) Bill Summary -- Legislative Reporting Service

2) Overview Bill Summary -- Rep. Frank's Staff

3) Overview -- R. Poppe, L & C Committee Staff

4) Sectional Analysis -- Rep. Frank's staff

5) Statutory Sources

6) Fiscal Note -- Dept. of Labor, Labor Standards and Safety

7) Position Statement -- Dept. of Labor

M E M O R A N D U M

TO: All Members, House Labor and Commerce Committee

FROM: Roger Poppe, Committee Staff

DATE: February 28, 1985 Thursday

SUBJECT: Overview, HB 211

On February 29, 1985, the House Labor and Commerce Committee met in Room 102 of the Capitol Building on HB 211, An Act relating to Contractor's payment of bonds.

There was a bill submitted last year, HB 540 by Bettisworth, that dealt with this issue, and received the support of AGC. Initially, this bill said that workers or suppliers must make any claims against the contractor within 10 days from the time that materials were furnished or work commenced. The Department of Labor was opposed to this bill for this and other points, and so the bill was revised, but it died in Senate Judiciary.

The bill before you is in essence the revised version of HB 540 from last year, according to the Department of Labor. As it reads now, it will not impact them and so they have no opposition to it. Apparently, in the private sector, workers and suppliers can put a claim against the property itself; this bill deals with the public sector, where the only real recourse deals with putting a claim in against the contractor's bond.

HB 210 (cont'd)

payment shall, subject to appropriation, be paid the the surviving spouse by the right of survivorship unless a different beneficiary is designated. If no spouse survives and no beneficiary is named the lump sum shall be paid to the decedent's estate. The payment must include all permanent fund dividend contributions made by the individual, plus interest, but shall not include any credits to the account made following appropriations by the legislature to the annuity investment fund or interest on the annuity credits (Senate version provides for equitable distribution of the decedent's lump sum payment among the accounts of all individuals of the same age).

Introduced February 18 and referred to State Affairs, Judiciary, Finance.

Contractors' Payment Bonds (materials, equipment & supplies)

HOUSE BILL NO. 211, by Reps. Frank, Clocksin, M. W. Miller, Navarre and Rieger. Would require a contractor who is bidding on a state job that exceeds $100,000 to furnish a payment bond for the protection of all persons who supply labor, materials, supplies or equipment (currently the bond must cover people who supply labor and material). The bond becomes binding upon the award of the contract. The person furnishing labor, materials, supplies, or equipment who is not paid in full 90 days after the work is completed or materials, supplies or equipment is furnished, may sue on the payment bond for the amount unpaid at the time of the suit (currently covers only lab and material).

Section outlining the rights of a contractor furnishing labor or material is rewritten (AS 36.25.020(b)) to more specifically spell out the rights of a person who contracts with a subcontractor, but who has no contractual relationship with the contractor. That person has a right of action on the payment bond for materials, supplies or equipment furnished if proper notice is given. Notice must be given not later than 30 days after the first date on which the materials, supplies or equipment were provided and must state that the person has supplied or is supplying materials, supplies or equipment for which the person may make a claim. The notice must name the subcontractor and building or project for which materials, etc., have been supplied, give a general description and must state that the bond may be held for payment if the person supplying materials, supplies or equipment is not paid.

The person contracting with the subcontractor also must give notice not later than 90 days after the last day materials, supplies or equipment for which the claim is made, stating the name of the subcontractor, the building or project and a description of materials, and must state with substantial accuracy the amount claimed.

Does not provide an effective date (takes effect 90 days after Governor signs bill).

Introduced February 18 and referred to Labor & Commerce, Judiciary, Finance.

SECTIONAL ANALYSIS OF HB211: "An Act relating to contractors' payment bonds." By Frank, Clocksin, M.W. Miller, Navarre and Rieger

SECTION 1: This section clarifies the current statutes by adding supplies and equipment.

Any contractor, prior to entering into a contract (exceeding $100,000) for construction, alteration or repair, on any public project shall furnish a performance bond and a payment bond. The payment bond serves as protection for persons who supply labor, materials, supplies and equipment to the subcontractor for work provided for in the contract.

SECTION 2: This section, as does section 1, clarifies the current statutes by adding supplies and equipment.

In the event a person, who has furnished labor, materials, equipment or supplies, has not been paid in full by the subcontractor before 90 days after the last day labor is performed or materials equipment or supplies are furnished, the person may sue on the contractors payment bond for the amount owed him.

SECTION 3: This section changes the notice provisions in this statute.

The present law only requires a notice 90 days after material equipment or supplies were last provided. This bill requires an additional notice be given to contractors. This addition is a notice of right to claim which must be made within 30 days of the first date materials supplies or equipment were furnished (so that contractors will be aware of potential claims against their payment bond). Notice of actual claim is still required within 90 days of the date materials, supplies or equipment were last provided (as is currently in statutes).

This bill would not affect persons supplying labor. That is to say they would still have 90 days, after the last date they supplied labor, to file a claim without a requirement to provide prior notice.

Representative Steve Frank
February 15, 1985

Bill Summary:
"an act relating to contractor's bonds" HB 211

Under existing law on public projects, a person having no direct contractual relationship with a general contractor, but who supplies labor or material to a sub-contractor, may make a claim by giving the general contractor written notice within 90 days from the last date on which the person performed labor or furnished material. A general contractor has no way of knowing who may have supplied materials to a subcontractor. Accordingly, a general contractor has no easy way to assure that a subcontractor has paid all his suppliers. Certification by a subcontractor that all labor and materialmen have been paid is no assurance if the certifying subcontractor is or becomes insolvent. The only "iron clad" safeguard for a general contractor is to delay payment to all subcontractors until 90 days after they have supplied labor or materials. This solution does little to harmonize relations and increase cooperation between general contractors and subcontractors.

The change proposed in the bill will not preclude claims of a subcontractor's supplier against a general contractor's payment bond. However, timely notice to the general contractor of the supplier's status will become a prerequisite to filing a claim. This notice requirement will allow a general contractor to ensure that a subcontractor has paid all suppliers.

As proposed, a general contractor will know which persons may possibly have claims against his payment bond prior to a claim being made. Under existing law, a general contractor cannot determine, in advance of a claim being filed, which persons, may be eligible to file a claim.

The proposed revisions will still provide protection to the subcontractor's material and equipment suppliers however, to take advantage of that protection, the material and equipment suppliers must take the initiative in assuring that the contractor is aware of their existence.

The bill will put some responsibility on the supplier, because they are the beneficiary of the system. These suppliers are business people with the ability to provide notice as a normal part of a business transaction and it should not be an undue burden on the supplier.

NOTE: This bill would not affect persons supplying labor to a subcontractor. That is to say they would still have 90 days, after the last date they supplied labor, to file claim without a requirement to provide prior notice.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 211
Title: "An Act relating to contractors' payment bonds."
Sponsor: Frank, Clocksin et al.
Requestor: House Labor & Commerce
Date of Request: 2/19/85

FISCAL DETAIL
Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Labor Standards & Safety
Wage and Hour Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: RB Robert J. Bacolas, Jr. RJBacolas Phone: 465-4870
Division: Labor Standards & Safety Date: 2/21/85

Approved by Commissioner: Jim Robison Jim Robison Date: 2/21/85
Agency: Labor

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

Bill No. House Bill No. 211

Title "An Act relating to contractors' payment bonds."

Date February 26, 1985

Contact: Eileen Plate
465-2700
Bob Bacolas
465-4870

House Bill No. 211 makes editorial changes to provisions in Title 36 with respect to action against a contractor's payment bond by persons performing labor for subcontractors on public construction projects.

The bill also contains a number of more significant changes to Title 36 with respect to action against a contractor's payment bond by persons who furnish materials, supplies, or equipment to subcontractors on public construction projects. Inasmuch as persons who furnish materials, supplies or equipment on public construction projects fall outside of the department's authority or responsibility as far as collection of monies due them, we have no comments on these particular provisions.

The Department's position on House Bill 211 is neutral. It will not have a fiscal impact on the Department.

APPROVED:

Jim Robison

Jim Robison, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

ONSTRUCTION, INC.

P. O. BOX 967 • FAIRBANKS, ALASKA 99707 (907) 452-7146 • 452-7147

February 26, 1985

Representative Mike Navarre
House Labor & Commerce Committee
Juneau, Alaska 99801

Dear Sir:

The Little Miller Act provides for employees, all tiers of subcontractors, suppliers and materialmen to seek relief by filing a lien against the general contractor's payment bond on public works projects, if such notice is filed within 90 days of the last acts or charges. As the law now stands these people are allowed to seek this relief regardless of the circumstances, including negligence on their part, disputes, or any other reason if they have not been paid.

In many instances the projects are completed and paid in full by the general contractor before this ninety day period expires.

A case that happened to our company which is still in litigation, documentation can and will be furnished if you request, happened like this. A subcontractor on one of our projects leased a piece of equipment from an equipment dealer. The equipment was leased for a minimum guaranteed ninety days with option to purchase within the ninety days. A major portion of the lease payments to apply to the purchase if the purchase option was exercised. Our company was not privy to this agreement.

Seven and one half months after the equipment arrived jobsite we received notice from the equipment dealer of non payment and of his intent to file lien against our bond. At that time the subcontractor had received all monies due him on this contract. We feel that if the notifications of intent was required to be filed sooner, say within 15 days of the first act or charge that problems such as this would not happen or if they did it would be negligence on the part of the general contractor instead of the equipment dealer, who, in this case will probably win this litigation.

Your help in correcting this deficiency in the Little Miller Act would be greatly appreciated.

If there are any questions please call.

Very truly yours,

C.J.M. Construction, Inc.

Derrall McBirney

Derrall McBirney
DM/bg

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

9/5/89
Date

02-519 (REV 8/78)

HB
216

COMMITTEE REPORT

HOUSE

(7)

FURTHER: FINANCE

2/20/85

Date: Feb 27th, 1985

Mr. Speaker:

The Committee on LABOR & COMMERCE has had HB 216

"An Act relating to dispensing opticians; and providing for an effective date."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 216 [✓] same title [ ] new title

and recommends

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

[ ] reports it back without recommendation

[ ] referred to the ______ ______ Committee

MEMBERS SIGNING DO PASS

Mike Miller

Niels E. [illegible]

[illegible]

[illegible]

[illegible] Kallan

Mike Davis

MEMBERS HAVING OTHER RECOMMENDATIONS:

[illegible]

Mike Miller

CHAIRMAN

H 60

February 27, 1985 Wednesday 1:15 pm. Room 102 Capitol

HOUSE LABOR AND COMMERCE AGENDA

1) CALL MEETING TO ORDER

2) NOTE TIME/DAY/YEAR (1:15 pm?)

3) NOTE MEMBERS PRESENT, ABSENT, AND/OR LATE

4) RECOGNIZE ANY VIP'S OR GUESTS PRESENT

5) REMIND EVERYONE PRESENT TO SIGN IN AS EITHER A WITNESS OR AS AN OBSERVOR

6) EXPLAIN ORDER OF BILLS BEFORE THE COMMITTEE

   a. HB 216 " Continuation of Board of Dispensing Opticians" Lin Sloane requested we hold this bill first, so that the two people who flew down from Anchorage, (Harper and McCanahan) can catch the plane back to Anchorage.

   b. HB 80: "Relating to Insurance Fees" Mike Ford, the bill drafter, will be here to respond to questions; Don Koch and Willis Fitzpatrick will be here with a new FN.

   c. HB 64: "Elevator Safety Standards. Bob Bacolas from Commerce will be here to report on the results of their meeting Monday with the Municipality of Anchorage's Committee dealing with elevator safety standards. No teleconference--will be held over to next week before you vote on it and teleconferenced then so the elevator manufacturers can have one more shot at it.

7) ANNOUNCE FIRST BILL BEFORE COMMITTEE, THEN SECOND, ETC.

8) ANNOUNCE TIME OF ADJOURNMENT

**Note: As each witness comes forth, please request that they state their name and the name of the firm or company that they are representing.

Fitzpatrick

To: Mike
From: Roger February 27, 1985 Wednesday .

HB 216: Looks like Lin Sloane did a pretty good job of lining up her ducks on this one. Lots of co-sponsors on the bill, and also lots of co-sponsors for SB 167, the Senate version. There are some kind of funny games going on behind the scenes here that I havent been able to figure out, coming from Carol Derfner's Boards and Commissions office. I gather the Governor would like to see the Board continued, but Leg. Budget and Audit and Boards and Commissions offices would not. There is some hidden agenda going on here that may not come out. For example, they talk about the Board being sunsetted because it only serves 66 members, but hey, the Dept. of Commerce has all sorts of Boards smaller than that that are not being sunsetted. There is no position statement forthcoming from the Dept. of Commerce, interestingly enough; they are staying away from it, which tell us there is some sort of internal struggle going on.

The key things from Derfner's point of view are the comments in the L B & A report in your file which I had highlighted for you at her request. She will testify on them; the biggest bitch she has apparently is that there was some sort of understanding or agreement or intent to have Opticians merge with the Board of Optometrists (a move that is no doubt opposed by both Boards), and rather than comply, the Board of Opticians hired Lin Sloane to lobby for them.

Testifying in support of the bill will be two opticians from Anchorage:
1) Larry Harper, of Western Optical, and a former Board member;
2) Greg McClannahan, of Vista Optical.

They requested that they be first on the agenda so they could catch a plane back to Anchorage.

Robert O'Connell (Kenai) and John Dempske (Soldotna), both optomitrists from your District, called to tell you to sunset the Board of Opticians, and they feel that the Board's functions could be taken over by the Board of Optomitrists (Robert is on the Board of Optomitrists).

In informal conversation with Michael Thill in Zharhoff's office, I got the impression that when they hear SB 167 on the 18th of March they will not be holding a teleconference either, and they are thinking of possibly amending the bill to combine the two boards; but nothing definite has been decided.

M E M O R A N D U M

TO: All Members, House Labor and Commerce Committee

FROM: Roger Poppe, Committee Staff

DATE: February 27, 1985

SUBJECT: Overview of HB 216 --Continuance of Bd. of Opticians

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On February 27, 1985, the House Labor and Commerce Committee met at 1:15-2:45 pm in Room 102 of the Capitol on HB 216: "An Act relating to dispensing Opticians."

This Board was established in the 1973 session. It came up for Sunset review last in 1978, and was continued then. In the current sunset review process, the Division of Legislative Budget and Audit has recommended that this Board be sunsetted for some of the following reasons:

1) The Board performs only minimal functions (p. 9).
2) An optician cannot cause great physical harm (9)
3) Only 14 complaints were received by consumers in the past years.
4) Only 20 of 49 states deem it necessary to license opticians.
5) Another way of controlling the opticians is to merge them with the Board of Optometry.
6) Vacant Board positions should be filled (they since have been).
7) The Board only oversees 66 dispensing opticians currently, so it is not very cost-effective to continue it.

The Board has written rebuttals to all of these points and others as well, and these are found in your files under 5 d) and also 6 b). On the other hand, the Board was apparently asked by the Governor's Office to investigate the possible merger of their Board with the Board of Optometry, but they apparently have not done so, for the reasons outlined on page IV.11 of their responses in 5 d).

Since this is a sunset issue for this year's legislature, there was no bill or issue at hand that carried over from the last legislature. There is, however, a companion bill in the Senate, SB 167 by Ray, which has received the co-sponsorship of 7 other Senators.

There s before the Committee a proposed SS which is a technical change that would change line 27 from the incorrectly-calculated 40 hours to the correc 30 hours. There is also a proposed CS which in addition to the above correction would change the effective date of the setting of fees by regulation from the original July 1, 1988 to July 1, 1986.

Both this bill and SB 167 have referrals to HESS and to Finance after this Committee.

In regards to the cost; there should be a FN of zero arriving from the Dept. of Commerce. This does not mean there are no costs; merely that they are already in the Dept. of Commerce's Operating Budget for FY 86. I understand that this is tentatively $1,000 + inflation for travel and per diem for one board meeting.

Community Health Aides (state assistance for)

HOUSE BILL NO. 215, by Reps. Herrmann, Wallis, Shultz, Binkley, Adams, Fuller, Gruenberg and Thompson. Would allow qualified regional health organizations to grants of $30,000 each fiscal year for the training and supervision of at least three primary community health aides. Each fiscal year qualified regional health organizations or local health organizations are entitled to a grant of $8,000 multiplied by the number of primary health aides or skilled medical observers who averaged 20 hours a week of service paid for by the organization during the previous fiscal year. Limits number of aides to those who were employed on July 1, 1984. Grants may be used only for training health aides, supervision of aides, and alternate aides.

Outlines what community must do in order to qualify for grants. They must have received money from the federal government for a health aide program during the fiscal year for which the state grant is sought or they must be engaged in conducting a program that meets standards established by the Department of Health & Social Services that is similar to a community health aide program. The regional or local health organization must provide the services of aides on a nondiscriminatory basis for the benefit of the public, apply for the grant in accordance with department requirements, or negotiate a contract if the organization provides other contract services. The organization must supply information requested by the department.

Sets up the community health aide grant account in the Dept. of Health & Social Services. Provides the state is not liable for any injury that may result from the use of money awarded by the state as a community health aide grant. Takes effect July 1, 1985.

Introduced February 20 and referred to Health, Education & Social Services, Finance.

Dispensing Opticians (extending board/fees)

HOUSE BILL NO. 216, by Reps. Koponen, Gruenberg, Cotten, Hanley, Taylor, Hurley, Uehling, Phillips, Furnace, Pettyjohn and Collins. Would extend the Board of Dispensing Opticians to June 30, 1989 (currently set to terminate 6/30/85), and would raise fees for examination to $175 (from $50), for initial dispensing optician license to $350 (from $50), and for license renewal fee, due every four years to $500 (now $200). Would require the department to set fees for examination, initial license and license renewal, reflecting to the extent possible, the actual costs to the department of the activity for which the fee is charged. The department may not set a fee unless the board concurs.

A dispensing optician must submit to the board evidence of 40 hours of continuing competence before license renewal (currently 15 hours). Would allow the board to issue a temporary permit to an applicant who has submitted a completed application for licensure under licensure by credentials section (there is a typo in the bill, citing AS 08.17.145 - should be AS 08.71.145). Section 3 of the bill (allowing the department to set fees) takes effect July 1, 1988. All other sections take effect immediately.

A SPECIAL REPORT ON THE SUNSET PROCESS IN ALASKA

September, 1977 - May, 1984

STATE OF ALASKA

DIVISION OF LEGISLATIVE AUDIT

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

May 18, 1984

Members of the
Legislative Budget and Audit Committee:

In accordance with a special request of the Legislative Budget and Audit Committee and Title 24 of the Alaska Statutes, the attached report is submitted for your review.

A SPECIAL REPORT ON THE
SUNSET PROCESS IN ALASKA

September, 1977 - May, 1984

Gerald L. Wilkerson

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE OF THE REPORT

In accordance with a special request of the Legislative Budget and Audit Committee and Title 24 of the Alaska Statutes, this special report has been prepared to document the Sunset experience in Alaska and to gather information about Sunset results in other states.

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THE SUNSET EXPERIENCE

In 197~ the Alaska Legislature created Alaska's Sunset law which was patterned after the Colorado Sunset legislation. The design of Alaska's Sunset law provides legislative scrutiny of all programs and activities of the State. While most other states' Sunset laws only addressed boards and commissions, Alaska's law is comprehensive. It includes in addition to boards and commissions, all State programs.

The process in Alaska provides for the programs, boards, and commissions selected by the legislature to be reviewed by the legislature at least every four years, unless established for a shorter period of time. The Division of Legislative Audit provides a performance review of all agencies selected by the legislature for Sunset.

Since inception of the Alaska Sunset process in 1977, the legislature has reviewed 47 agencies. The Legislative Auditor has recommended termination of 12 boards or commissions. The Legislature has terminated two of the these boards and merged two others (see Appendix A).

Alaska is a young state and therefore has fewer old boards and commissions for which there is not a demonstrated public need. Nationwide, 35 states have adopted Sunset legislation in which approximately 1676 Sunset reviews have taken place. Of these, 283 (17%) boards, commissions, or agencies were terminated.[1]

Benefits From Sunset Reviews - Nationwide

Although some have viewed termination of State entities as the measure of success of Sunset, the main benefits, according to a nationwide survey made by Common Cause The Status of Sunset In The States, have been to make government more efficient and more responsive and accountable to the public. Of the 1676 entities reviewed, 17% were terminated because no public purpose was being served. In 83% of the reviews conducted nationwide, modifications were needed in order to improve efficiency. In addition, 68% of the states surveyed believed the principle benefits were increased public accountability and efficiency. Furthermore, 56% believed increased legislative experience and interest in the oversight work was a major accomplishment in the Sunset implementation.

Alaskan Experience

Alaska's experience has paralleled that of other states. The process has not resulted in significant cost savings, but as the result of legislative reviews, the agencies', boards', and commissions' operations have become more effi-

1. See Footnotes, Appendix B, Page 10

cient and the entities are more aware and responsive to the public needs. They have also become more cognizant of their responsibilities for self-evaluation and have made improvements not required by the legislature. In addition, recommendations for improvements in the entities' efficiency and effectiveness, made by the legislature and auditors, have either been fully or partially implemented. Therefore, improvements in the existing programs have been more beneficial than the cost savings from terminating State programs or boards. Some of the improvements observed are as follows:

1. The number of State boards and licensed professionals has not increased. The legislature has used the Sunset experience to curb the growth of boards and commissions.

2. Legislative reviews have eliminated a number of self-serving regulations and practices. This has resulted in improved availability of services, the elimination of price protections, and the heightened awareness on the part of boards that what is in the public's best interest is not necessarily what the professions would like to see occur.

3. Investigations of licensure violation by the professionals has improved. Investigations are ranked according to possible harm to the public, and those which could cause the most harm are given priority. Prior to the Sunset review, the investigations of licensure violations or incompetent practices of professionals was almost nonexistent.

4. The legislative examination of programs under the Sunset law resulted in significant changes in the inspection programs in Alaska. Three programs were merged under one department, and the mission of the other was greatly changed.

Problems with Implementing Sunset

Although most states have expressed favorable reactions to Sunset laws, there have been some common complaints about the process. Again, citing the Common Cause report The Status of Sunset in the States, March 1982, 50% of the 35 states surveyed believed the major problem with Sunset involved the amount of time spent by legislators in preparing for and conducting public hearings; 35% cited the fact that response to the public hearing consisted of licensed professionals lobbying for benefits to them; and 29% believed the costs involved were too high compared to the benefits.[2]

2. See Footnotes, Appendix B, Page 10

In Alaska and other states, attempts have been made to include the participation of the public. Very few hearings are well attended by other than licensed professionals. Solutions to this complaint have included appointing public members to the boards. This method has gained nationwide acceptance. In Alaska, almost all boards have at least two public members.

In addition, some legislators have held meetings after regular working hours in an attempt to make hearings more accessible to the general public. According to states that have tried this, there has been an increase in public attendance.

Concerns about the cost of Sunset in Alaska do have some merit. There have been little direct savings in State expenditures due to Sunset. However, due to the type of programs reviewed, little savings could have resulted. Most reviews have been of professional licensing boards which, in some cases, provide more revenue to the State through license fees than it costs to support the board. Also, even if a board is terminated, the registration of licensees is oftentimes retained so the greatest cost, administrative expense, continues.

Recommendation For The Future

We believe the Alaska Sunset law is an important Legislative tool which should be retained. Although the law may have been over-used in some cases, it is valuable in that it provides a formal process for legislative oversight. The following are reasons why we believe such oversight is valuable:

1. Whenever legislative authority is delegated to an appointed regulatory entity, oversight should be maintained and pursued to ensure the welfare of the public is safeguarded. Due to the very nature of the regulatory agencies, they do not demand the budgetary or audit attention that the high cost programs do. In addition, the interests of regulated professional groups may differ from the public's interest. Thus, Sunset review may be the only consistent method of ensuring public accountability.

2. Sunset reviews have provided a forum for evaluation of governmental entities on the basis of public need and a method to improve the efficiency of government. A pending legislative Sunset review encourages governmental entities to make voluntary improvements and implement legislative intent.

We believe that modification to the Alaska Sunset law and procedures would help make the Sunset process a more effective legislative tool.

1. AS 44.66.020 -.030 should be repealed as these statutes are no long.r applicable. This portion of the Sunset statutes sets out provisions for the termination of programs selected by the legislature. However, there were no programs selected for Sunset under these provisions. As a result, according to legislative counsel, the times such programs could be selected was mandatory, and this portion of the statute is no longer in force.

2. The legislature should consider amending the Sunset legislation for the selection of agencies or programs to be reviewed. The Sunset law does not increase the powers of the legislature, and in fact, may reduce them in that it gives the Governor the right to veto proposed Sunset bills. The legislature could select a program or agency for consideration under Sunset by resolution. The Division of Legislative Audit could then perform a performance audit of the entity, at the direction of the Budget and Audit Committee.

The Sunset process can be an effective tool to examine in detail the performance and need of a government entity not just for the termination of an agency. We believe the Sunset process could be useful in the following areas:

1. When the legislature creates a new program or agency they can provide for a Sunset review after a period of time. In this way, the legislature has a formal method of ensuring that the new State program will function as envisioned when created. The legislature used this method in creating the Litter Program. As a result, the auditors found that program personnel were very aware of the need to perform in accordance with legislative intent.

2. A program or agency could be selected for a Sunset review when there is a substantial change in the funding or purpose of a program or agency, or if it is believed the entity has not complied with prior legislative intent. We have found that the process of selecting a program for a Sunset review heightens the entity's awareness of its purpose and legislative intent, even when the possibility for termination is marginal. There are almost always improvements in effectiveness and responsiveness to the public's needs which can be made by the government entity. In addition, the legislature has a formal method of ensuring the the State entity or program is performing their duties as planned.

3. The Sunset process can also be useful in eliminating duplicative programs or services, and excessive management. There is a recognized tendency for the management within any large organization to build up over time. As a result, programs can duplicate existing programs, or programs are retained in-house when they could be better performed by contracting with outside sources, and organization structures tend to increase in the number of managers and support services.

The legislature should increase the number of years for which a board is re-established, from four years to six or eight years for the following reasons:

1. Most boards and commissions under AS 08.03.010 have been through the review cycle twice since Sunset was enacted in 1977 and, in most cases, public need has been established. Boards are now cognizant of the review process and are more likely to perform their duties in a more efficient manner.

2. Increasing the number of years between reviews would decrease the cost to the State not only in direct costs of performing the reviews, but also in the time consumed by legislators in their oversight functions. Alaska's review cycle of four years is one of the shortest of all states. Most states' review cycle ranges from six to ten years.

3. Authority exists under Title 24.20 to request performance reviews of any program under 08.03 or 44.66 if the legislature believes evaluation is necessary prior to the regular Sunset review cycle.

(Intentionally left blank)

APPENDIX A
STATE OF ALASKA
SUNSET REVIEW
UPDATE OF AUDITS PERFORMED AND RESULTS

Alaska Statute Reference	Boards, Commissions, Councils and Corporations	Original Termination Date	Legislative Audit Recommendation and Report Date	Division of Occupational Licensing Recom.	Legislative Action Taken and SLA Reference	1st Revised Termination Date	Legislative Audit Recommendation and Report Date	Division of Occupational Licensing Recom.	Legislative Action Taken and SLA Reference	2nd Revised Termination Date	Legislative Audit Recommendation and Report Date	Division of Occupational Licensing Recom.	Legislative Action Taken & SLA Reference	3rd Revised Termination Date
08.03.010	Board of Chiropractic Examiners	6/30/79	Continue 10/16/78	Continue	Cont'd Ch. 36 SLA 80	6/30/84	Continue 2/28/81	Continue	(Note 2)					
	Board of Dental Examiners	6/30/79	Continue 6/09/78	Continue	Cont'd Ch. 40 SLA 80	6/30/82	Continue 7/17/81	Continue	Cont'd Ch. 28 SLA 82	6/30/86				
	State Medical Board	6/30/79	Continue 10/30/78	Continue	Cont'd Ch. 87 SLA 80	6/30/83	Continue 7/30/82	Continue	Cont'd Ch. 48 SLA 83	6/30/87				
	Board of Nursing	6/30/79	Continue 10/06/78	Continue	Cont'd Ch. 74 SLA 79	6/30/83	Continue 2/01/82	Continue	Cont'd Ch. 9 SLA 83	6/30/87				
	Board of Dispensing Opticians	6/30/79	Terminate 1[illegible]/31/78	Terminate	Cont'd Ch. 39 SLA 80	6/30/85								
	Board of Examiners in Optometry	6/30/79	Continue 11/[illegible]/78	Terminate	Cont'd Ch. 37 SLA 80	6/30/84	Continue 2/28/81	Continue	(Note 2)					
	Board of Pharmacy	6/30/79	Continue 11/10/78	Continue	Cont'd Ch. 38 SLA 80	6/30/84	Continue 2/20/81	Continue	(Note 2)					
	Board of Veterinary Examiners	6/30/79	Continue 11/01/78	Continue	Cont'd Ch. 41 SLA 80	6/30/85								
	Board of Psychologist and Psychological Associate Examiners	6/30/79	Continue 10/31/78	Terminate	Cont'd Ch. 62 SLA 80	6/30/82	Terminate 8/12/81	Indeterminate	Cont'd Ch. 29 SLA 83	6/30/87				
	Board of Nursing Home Administrators	6/30/79	Terminate 10/20/78	Terminate	Cont'd Ch. 43 SLA 80	6/30/86								
	Physical Therapy Board	6/30/79	Continue 10/20/78	None	Cont'd Ch. 42 SLA 80	6/30/86								
	Board of Public Accountancy	6/30/80	Continue 10/01/79	Continue	Cont'd Ch. 82 SLA 80	6/30/84	Review Contracted							
	Board of Barber Examiners (Note 1)	6/30/80	Terminate 1/31/79	Terminate	Merged Ch. 159 SLA 80	6/30/84	Terminate 2/20/81	Terminate	(Note 2)					
	Collection Agency Board	6/30/80	Terminate 3/22/79	Terminate	Allowed to Terminate									
	Board of Hairdressing and Beauty Culture Examiners	6/30/80	Terminate 6/11/79	None	Merged Ch. 159 SLA 80	With Barbers								
	Board of Electrical Examiners	6/30/80	Terminate 5/02/79	None	Cont'd Ch. 71 SLA 80	6/30/82	Terminate 2/16/81	Terminate	Cont'd Ch. 60 SLA 82	6/30/86				
	State Board of Registration for Architects, Engineers, and Land Surveyors	6/30/80	Continue 5/11/79	Continue	Cont'd Ch. [illegible] SLA 80	6/30/84	Continue 2/20/81	Continue	(Note 2)					
	Guide Licensing and Control Board	6/30/80	Continue 7/17/79	Continue	Cont'd Ch. 51 SLA 81	6/30/82	Continue 12/21/81	Indeterminate	Cont'd Ch. 13 SLA 83	6/30/86				
	Board of Marine Pilots	6/30/80	Continue 6/15/79	Continue	Cont'd Ch. 161 SLA 80	5/30/83	Continue 8/04/82	Continue	Cont'd Ch. 9 SLA 83	6/30/87				
	Real Estate Commission	6/30/80	Continue 5/07/79	Continue	Cont'd Ch. 162 SLA 80	6/30/82	Continue 6/04/81	None	Cont'd Ch. 96 SLA 82	6/30/86				
	Board of Welding Examiners	6/30/80	Terminate 6/06/79	Terminate	Cont'd Ch. 153 SLA 80	6/30/81	Terminate 11/24/80	None	Allowed to Terminate					
	Board of Governors of the Alaska Bar Association	6/30/80	No Audit	N/A	Cont'd Ch. 52 SLA 81	6/30/85		N/A						
44.66.010	Alcoholic Beverage Control Board	6/30/79	Continue 11/01/78	N/A	Cont'd Ch. 86 SLA 80	6/30/81	Continue 9/05/80	N/A	Cont'd Ch. 66 SLA 81	6/30/83	Continue 12/15/82	N/A	Cont'd Ch. 76 SLA 83	6/30/84
	Alaska Transportation Commission	6/30/79	Continue 10/24/78	N/A	Cont'd Ch. 115 SLA 80	6/30/83	Terminate 4/01/82	N/A	Cont'd Ch. 34 SLA 81	6/30/85				
	State Board of Parole	6/30/80	Continue 5/09/79	N/A	Cont'd Ch. 32 SLA 81	6/30/82	Continue 12/21/81	N/A	Cont'd Ch. 20 SLA 83	6/30/85				
	Alaska Public Utilities Commission	6/30/80	Continue 8/01/79	N/A	Cont'd Ch. 136 SLA 80	6/30/85		N/A						
	Alaska Pipeline Commission	6/30/81	Merge 7/11/80	N/A	Merged Ch. 110 SLA 81			N/A						
	Alaska Council on Science and Technology (Note 3)	6/30/83	Terminate 12/01/82	N/A				N/A						
	Alaska Renewable Resources Corporation	6/30/82	Terminate 11/11/81	N/A	Revised Ch. 142 SLA 82	6/30/92		N/A						
	Alaska Code Revision Commission	6/30/82	Terminate 10/28/81	N/A	Cont'd Ch. 65 SLA 82	6/30/85								
	Rural Development Council	6/30/82												
	Older Alaskan Commission	6/30/85												
	Council on Domestic Violence and Sexual Assault	6/30/85												
	Alaska Women's Commission	6/30/87												

Note 1 - Includes Hairdressers
Note 2 - Legislative Review Due 1984
Note 3 - The Council will terminate June 30, 1986 unless reestablished by the Legislature

No. of Audits Performed - 43
No. of Boards Recommended for Termination - 12
No. of Programs Terminated - 2

APPENDIX B

Footnotes

1. The Status of Sunset in the States: A Common Cause Report, Common Cause, March 1982. page 42.

2. ibit, page 43

3. ibit, page 43-44

The Status of Sunset in the States: A Common Cause Report, summary and recommendation follow. The complete report summarizes a questionnaire sent to states with Sunset laws. The questionnaire which allows comparisons between states is contained in the body of the report. We recommend anyone with interests in comparing the Alaska experience with other state's experiences read this report in conjunction with our report. Copies of this report are available upon request from the Division of Legislative Audit.

THE STATUS OF SUNSET IN THE STATES

SUMMARY

Sunset legislation -- which requires the periodic review of state agencies under the threat of automatic termination unless affirmatively recreated by law -- has triggered state governments' interest in legislative oversight and enhanced their ability to conduct it.

Since the enactment of the first Sunset law in Colorado in 1976, 35 states have passed Sunset laws. One-third of these states have taken action to expand their Sunset laws to apply to additional agencies and programs. As recently as December, 1981 Pennsylvania passed a Sunset law for the first time. Only one state, North Carolina, has formally abandoned the automatic termination provision which distinguishes Sunset from other forms of legislative oversight.

Most state Sunset laws embrace the principles suggested by Common Cause in 1976; however, current Sunset laws differ in the type and number of agencies they cover and in their approach to organizing and implementing Sunset reviews. (The Common Cause Sunset Principles are listed on page 2.)

The following conclusions are based on the results of a questionnaire completed by all 35 states with Sunset laws, on in-depth case studies of the Florida and Texas Sunset laws, and on research of individual state Sunset statutes and reports prepared by the Sunset evaluation staff. Our review has determined that Sunset is largely achieving its goal of helping to make government work better. However, problems with Sunset laws do exist and will require skillful handling by those involved with the implementation of Sunset laws in the states.

THE BENEFITS OF SUNSET

1. Improvements in Government Performance - The results of the Common Cause survey indicate that two-thirds of the respondents from states with Sunset laws believe that increased agency efficiency and public accountability have been principle benefits of Sunset. Improvements have taken the form of major across-the-board reforms and specific recommendations applied to individual agencies.

2. Financial Savings - The purpose of Sunset is not to slash state budgets, but rather to improve agency performance and to free citizens from excessive regulation. Saving money and conducting Sunset are not mutually exclusive, however. In at least one-sixth of the states conducting Sunset reviews, legislators have been able to document savings.

3. Increased Legislative Experience In Conducting Oversight - Over half of the states with Sunset laws stated in the Common Cause questionnaire that increased legislative experience and interest in legislative oversight have been important benefits of Sunset. A positive outcome of this experience is the emergence of state government officials who are competent and often innovative leaders in the emerging area of oversight.

PROBLEMS WITH SUNSET

1. False Expectations About What Sunset Can Do - States continue to look for an instant reduction in the size of state government. The number of agency terminations is the wrong yardstick of success for Sunset. Further, state legislatures expect to see instant dollar savings from Sunset. Since most states began Sunset reviews with the examination of regulatory agencies, massive savings were never possible. However, a number of states are beginning to achieve significant savings, particularly when they have begun reviews of large regulatory agencies or service delivery agencies or programs.

2. The Time-Consuming and Costly Nature of Oversight - The leading complaint about Sunset is that Sunset reviews are too time consuming. However, states are tackling the problems of managing the Sunset workload and costs creatively. They are reducing the number of agencies reviewed in each cycle, lengthening the review cycle itself, creating priority review, and streamlining auditing and reporting requirements.

3. Low Public Participation and the Disproportionate Influence of Regulated Professions - Seventy percent of the states surveyed reported that the average turnout for a public hearing has been 25 persons or fewer. That licensees attend public hearings is commendable, but industry involvement often extends beyond public testimony to include intense lobbying of state legislators. One-third of the survey respondents indicated that they only hear from licensed professionals about Sunset issues.

4. Inadequate Measurement Information on Agency Performance and Agency Value. Many states are struggling with appropriate evaluation criteria for examining an agency's performance in achieving its goals. Almost half of the states indicated that the lack of measurement information on agency performance and agency value has been a major problem. This issue is especially critical when examining non-regulatory agencies which are unlikely candidates for termination and which have a large impact on the state budget.

RECOMMENDATIONS

The following recommendations are discussed in detail on page 35. The recommendations were developed with the knowledge that states are at various stages of Sunset implementation. States which are looking ahead to an expanded role for Sunset frequently have an interest in the dual goals of establishing a manageable workload and in broadening the scope of their review schedules to include non-regulatory agencies (e.g., service delivery agencies and programs).

1. States involved in expanding the scope of their Sunset reviews beyond regulatory agencies should develop a timely, systematic procedure for establishing a manageable schedule of agency terminations.

2. States involved in broadening the scope of their Sunset laws should consider lengthening the termination schedules they have adopted to 8 or 10 years.

3. States may want to modify the evaluation criteria in their Sunset laws if they are adding non-regulatory agencies or programs to their review schedules.

4. To create a more manageable workload for Sunset reviews, states might consider establishing priorities for conducting their program evaluation process.

5. States should attempt to achieve a close integration of Sunset with the budget process.

6. Sunset findings should be presented in an organized, digestible format.

7. Public participation in the Sunset process should be encouraged.

8. Executive branch participation in the Sunset process should be increased.

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 February 21, 1985

SUBJECT: Sectional analysis of HB 216

TO: Representative Niilo Koponen

FROM: Teresa B. Cramer Terry Cramer
Legislative Counsel

You have asked for a sectional analysis of HB 216, relating to dispensing opticians.

Section 1 extends the sunset date of the board of dispensing opticians to June 30, 1989.

Section 2 increases fees for examination, licensing and the renewal of licenses of dispensing opticians. The increase stays in effect until 1988, when section 3 of the bill repeals and reenacts AS 08.71.120.

Section 3 repeals and reenacts the fee section amended in section 2 to require the department to set fees instead of setting the amounts by statute. This section takes effect July 1, 1988, as stated in section 6.

Section 4 increases the hours of continuing education required for license renewal.

Section 5 allows the board to issue a temporary permit to a dispensing optician licensed in another jurisdiction while the optician is waiting for a license by credentials under AS 08.71.145. (Note that through a typographical error, line 3 refers incorrectly to AS 08.17.145.)

Section 6 is the delayed effective date for section 3.

Section 7 provides that the other sections of the bill take effect immediately.

If I may be of further assistance, please advise.

TBC:ojb
J12/004

A PERFORMANCE REPORT ON THE BOARD OF DISPENSING OPTICIANS

July 1, 1981 -- June 30, 1984

Audit Control Number

08-1168-84-R

Commissioner, Department of Commerce and Economic Development	Richard A. Lyon
Deputy Commissioners, Department of Commerce and Economic Development	Vincent O'Reilley Terry Elder

Members of the
Board of Dispensing Opticians

Chairman	J. Robin Isbell
Secretary	Leslie E. Brockelsby
Member	Larry E. Harper
Member	George Tresnak
Member	Vacant

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

June 30, 1984

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the Alaska Statutes (sunset legislation), the attached report is submitted for your review.

A PERFORMANCE REPORT
ON THE BOARD OF
DISPENSING OPTICIANS

July 1, 1981 -- June 30, 1984

Audit Control Number

08-1168-84-R

Gerald L. Wilkerson

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE AND SCOPE OF THE REPORT

Purpose

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Dispensing Opticians for the past three fiscal years to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the Board of Dispensing Opticians should be reestablished. The law now specifies that the Board will terminate June 30, 1985, and have one year from that date to conclude its affairs.

Scope

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.

2. Tests of files and documents of licensees.

3. Interviews with the license examiners.

4. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Office, Attorney General's Office, and the Ombudsman's Office.

5. Discussions with Board members.

6. Minutes of Board meetings and Division correspondence files.

7. Attorney General's Opinions applicable to professional boards.

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ORGANIZATION AND FUNCTION

The Board of Dispensing Opticians was established by the 1973 Session Laws of Alaska. This regulatory board consists of five persons; four dispensing opticians and one public member, appointed by the Governor. Board members serve staggered terms of four years.

The Board is organized under the Department of Commerce and Economic Development, Division of Occupational Licensing (OL). OL provides the Board with licensing and investigative support. The licensing section processes applications, maintains license files, answers inquiries, and provides other administrative help to the Board.

The Board sets the minimum standards to practice in Alaska by:

1. Examining and issuing licenses to qualified applicants.
2. Establishing, amending, or eliminating regulations necessary and desirable to enforce statutes.
3. Revoking, annulling, or suspending licenses in accordance with the Administrative Procedures Act when a person has violated dispensing optician statutes or regulations.

(Intentionally left blank)

REPORT CONCLUSION

Policy Issues

This report contains policy issues raised as a result of our evaluation of Board practices. The final policy decisions affecting these practices are not within the scope of this report but require legislative consideration. In debating these issues, the oversight committee should take into consideration the Findings and Recommendations presented in this report so the potential impact of policy changes can be evaluated.

Report Conclusion

The primary purpose of a regulatory board with a licensing function is to protect the public. The questions that have to be evaluated to determine if licensing is needed are:

1. Does the unlicensed practice pose a serious risk to the consumers' life, health, safety, or economic well-being?

2. Can the potential users be expected to possess the knowledge needed to properly evaluate the qualifications of those offering services?

3. Do the benefits to the public clearly outweigh any potential harmful effects, such as a decrease in the availability of practitioners, higher costs of services, and restriction on optimum utilization of personnel?

During our review to determine if the Board's licensing function is required and meets the previously mentioned criteria, we examined existing statutes, complaints, and various Board functions. As a result of our examination we found:

1. The Board performs only minimal functions. The majority of their duties, as outlined by AS 08.71.070, are handled by the Division of Occupational Licensing. Those duties that are executed by the Board include conducting meetings, reviewing applications for licensure, reviewing results of investigations and hearings and determining proper disciplinary actions, and preparing and grading the State examination. These duties are not substantial enough to continue the Board. Conducting meetings is only necessary to the extent that it is easier to take care of business at a meeting as opposed to by mail.

The bulk of the work on reviewing applications for licensure is done by the license examiner. He/she gathers the proper documentation and makes sure it is complete. The applications are then presented to the Board, who then votes whether to approve or disapprove licensure. This review tends to be cursory as the majority of it has already been done by the license examiner.

Reviewing results of investigations and hearings and determining proper disciplinary actions also tends to be cursory. This is due to the up-front work that is done by the investigations unit in Occupational Licensing and the hearing officers. The Board is kept informed of the status of complaints but are not involved in the investigations. The determination of proper disciplinary actions has usually been done by the hearing officer. It is then a formality for the Board to approve them.

I disagree

The only duty requiring the expertise of the Board is the preparation and grading of the State examination. A license examiner does not have the background to formulate those exams. However, it is not necessary to give an exam because the potential physical harm caused by unlicensed dispensing opticians is minimal to nonexistent, and the administering of an exam is not essential.

Consequently, there are not enough duties for the Board to justify its existence. The expenses to maintain a Board of 5 members to regulate approximately 60 dispensing opticians is not economical.

2. An optician cannot cause great physical harm to an individual. Spectacles can cause double vision, distorted vision, and trouble with perception. Yet with these types of troubles, most patients will return to their optometrist or ophthalmologist for verification of the prescription. Improper fitting of contact lenses can result in physical harm. However, AS 08.71.200 requires a licensed physician (ophthalmologist) or optometrist to supervise the fitting of contact lenses and requires the patient to return to the prescribing physician or optometrist. In addition, AS 08.72.275 is adequate to protect the public from harm due to improperly hardened lenses because it requires each lens to be impact resistant under specified test conditions.

3. Approximately 12 complaints were received by the Division of Occupational Licensing and 2 complaints were received by Consumer Protection over the last few years.

Most of the complaints were instigated by licensed practitioners, not consumers, and related to unlicensed individuals dispensing. Of these, none resulted in physical harm. In one case, the Attorney General's Office refused to prosecute a violation because there was no evidence of physical harm.

4. In addition, several cases were noted where individuals were licensed without adequate documentation of statutory and regulatory requirements. These individuals were potentially "unqualified," yet no evidence of physical harm has resulted from their practices.

5. Contact lenses cost approximately $500 and spectacles cost much less. Therefore, if for some reason the consumer received poor quality or useless contacts or spectacles, the loss to the consumer would not be severe. Also, if a consumer is dissatisfied, he/she has recourses available whether a business or individual is licensed or not. The Consumer Protection Unit as well as the court system are there to provide remedies for injured parties.

Thus, we found the Board's existence to be superfluous, especially in light of the scope of the dispensing optician's work. The dispensing optician prepares and dispenses original or duplicate lenses, eyeglasses, contact lenses, and appurtenances to them on written prescription from a licensed physician or optometrist. They also interpret, measure, adapt, and fit the above mentioned. This restricts their scope to a small sphere of duties and limits that amount of harm that could result if they were not licensed.

Therefore, we recommend the Board of Dispensing Opticians be allowed to terminate on June 30, 1985.