

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

4184 SLAB SB 254 - SB 265 1064



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James O. Smith
Signature of Camera Operator

11/24/89
Date

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Alaska State Legislature

Senator Paul A. Fischer
Senate District D
Box 784
Soldotna, Alaska 99669
(907) 262-9420 W
262-9269 H



State Senate

While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-3791

APR 22 1985

Memo

April 22, 1985

To: Senator Fred Zharoff, Chairman
Senate State Affairs Committee

From: Senator Paul Fischer *PF*

Subject: Senate Bill 254

I introduced this legislation to enable sole proprietors and partners to be covered under workmans' compensation laws. The statutes allow coverage for corporate owners, but do not permit coverage by sole proprietors and partners. This legislation is modeled after a similar Oregon law.

I have reviewed the amendments proposed by the Department of Labor and would support a committee substitute including Labor's proposed amendments.

I would appreciate your expeditious consideration of this bill.

attachments:

~~Dick~~
Mueller
Realty

100 TRADING BAY RD., SUITE 1
KENAI, AK 99611
907-283-5888



February 20, 1985

State of Alaska
Director of Insurance
Dept. of Commerce &
Economic Development
Juneau, Alaska 99801

Sir:

I wish to call your attention to discrimination in Alaska Workman's Compensation laws and ask what can be done about it.

According to my insurance agent a sole proprietor of a business must furnish workmans's compensation insurance for all employees and all uninsured independent contractors. But, he can not be insured on this policy which he is forced to buy. Not even to the extent of injuries received on the job, doing the same work his insured employees and independent contractors are doing and this is discrimination against the small independent business man.

I can see some possible reason for excluding the employer from receiving compensation for lost time, but even this is hard to justify.

In the case of real estate brokers, they must cover all independent contractors. Builders and other business owners are only required to cover independent contractors if they do not have insurance. Why can real estate agents who are independent contractors not insure themselves? This is an unfair burden on the broker owner.

Most real estate brokers in our area work on listing and sales the same as their agents and pay commissions to themself the same as the agents.

The operation of running the business is done in addition to sales. In my case most of my income is from sales based exactly the same as my agents.

Thank you for prompt answers to my questions.

Sincerely,

Richard R. Mueller, GRI, CRS,
Broker/Owner

RRM:rm

cc; Sen. Paul Fisher, Rep. Mike Navarre & Rep. Andre Marrou

Date April 4, 1985

Title

"An Act relating to Workers'
Compensation."

Contact *J. L. McClintock*
465-2790

The Department of Labor supports the concept of legislation that would give sole proprietors and partners the opportunity to obtain coverage for workers' compensation. We would propose two amendments to the bill to correct potential problems, as follows:

1. Amend AS 23.30.239(c) which begins on line 19 to read:

(c) Notwithstanding the provisions of AS 23.30.120(a), a person covered under (a) of this section bears the burden of proof of the validity of the claim.

Since there is no employee/employer relationship for persons who would be covered under this bill, there is no party to raise an affirmative defense in connection with a claim filed by a sole proprietor or partner. The proposed subsection (c) attempts to address this problem by the inclusion of a requirement of "corroborative evidence." That term could be defined quite broadly, however, leading to an interpretation which is not necessarily consistent with the intent of the Alaska Workers' Compensation Act. Our proposed amendment of subsection (c), which specifically provides that sole proprietors and partners do not get the benefit of the presumption contained in AS 23.30.120(a), would clarify the provision and avoid the potential for interpretations inconsistent with the intent of the Act.

2. Amend line 23 to read:

may cancel the election by giving written notice to the insurer. Notwithstanding the provisions of AS 23.30.030(5), the

This would eliminate the conflict between the proposed subsection (d), which provides that "The cancellation becomes effective the day following the filing of notice with the insurer;" and AS 23.30.030(5), which provides that "A termination of the policy by cancellation is not effective as to the employees of the insured employer covered by it until 20 days after written notice of the termination has been received by the board."

APPROVED:



Jim Robison
Commissioner

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 254
 Title: "An Act relating to
 workers' compensation
 Sponsor: P. Fischer
 Requestor: Senate Labor & Commerce
 Date of Request: 3/27/85

FISCAL DETAIL

Agency Affected: Labor
 Program Category Affected: Public
 Protection
 BRU, Program or Subprogram(s) Affected: Workers' Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
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						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: ^{NS} Jacque McClintock *Jacque McClintock* Phone: 465-2790

Division: Workers' Compensation Date: 3/28/85

Approved by Commissioner: ^{NS} Jim Robinson *Jim Robinson* Date: 3/28/85

Agency: Labor

Distribution (by Agency preparing fiscal note):

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

Fiscal note (0)

Bill No. Senate Bill 254

Date April 4, 1985

Title "An Act relating to Workers' Compensation."

Contact J. L. McClintock
465-2790

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1. Amend AS 23.30.239(c) which begins on line 19 to read:

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Since there is no employee/employer relationship for persons who would be covered under this bill, there is no party to raise an affirmative defense in connection with a claim filed by a sole proprietor or partner. The proposed subsection (c) attempts to address this problem by the inclusion of a requirement of "corroborative evidence." That term could be defined quite broadly, however, leading to an interpretation which is not necessarily consistent with the intent of the Alaska Workers' Compensation Act. Our proposed amendment of subsection (c), which specifically provides that sole proprietors and partners do not get the benefit of the presumption contained in AS 23.30.120(a), would clarify the provision and avoid the potential for interpretations inconsistent with the intent of the Act.

2. Amend line 23 to read:

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This would eliminate the conflict between the proposed subsection (d), which provides that "The cancellation becomes effective the day following the filing of notice with the insurer;" and AS 23.30.030(5), which provides that "A termination of the policy by cancellation is not effective as to the employees of the insured employer covered by it until 20 days after written notice of the termination has been received by the board."

APPROVED:



Jim Robison
Commissioner

Introduced: 3/26/85
Referred: Labor & Commerce

1 IN THE SENATE

BY P.FISCHER

2

SENATE BILL NO. 254

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to workers' compensation."

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

8 * Section 1. AS 23.30 is amended by adding a new section to read:

9 Sec. 23.30.239. SOLE PROPRIETORS AND PARTNERS AS EMPLOYEES. (a)

10 A person who is a sole proprietor, or a member of a partnership, may
11 elect coverage as an employee under this chapter by making written
12 application to an insurer. The insurer may accept the application and
13 fix an assumed monthly wage at which the person shall be carried on
14 the payroll for purposes of this chapter.

15 (b) When the application is accepted, the person is subject to
16 the provisions and entitled to the benefits of this chapter. The
17 person shall promptly notify the insurer whenever there is a change in
18 the status of the person as a sole proprietor or partner.

19 (c) A claim may not be allowed or paid to a person covered under
20 (a) of this section except upon corroborative evidence in addition to
21 the evidence of the claimant.

22 (d) A person subject to this chapter as provided in this section
23 may cancel the election by giving written notice to the insurer. The
24 cancellation becomes effective the day following the filing of notice
25 with the insurer.



Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

CS SB 254 (L&C): "AN ACT RELATING TO WORKERS" COMPENSATION"

NOTE: CHAIRMAN NEEDS TO MOVE FOR THE ADOPTION OF THE L&C CS;

Do you wish to "tighten up" the title?

THIS LEGISLATION EXTENDS THE OPPORTUNITY FOR SOLE PROPRIETORS AND "PARTNERS AS EMPLOYEES" TO OBTAIN WORKERS' COMPENSATION COVERAGE.

THE SENATE LABOR AND COMMERCE CS INCORPORATES CHANGES WHICH WERE PROPOSED BY THE DEPARTMENT OF LABOR AND BOTH THE DEPARTMENT OF LABOR AND THE DIVISION OF INSURANCE EXPRESSED SUPPORT FOR THIS BILL.

Chairman's Information:

- 1) SB 254: "An act relating to worker's compensation"
 - a) Introduced: P Fischer
 - b) Co-Sponsors:
- 2) INTENT: Extends the opportunity for sole proprietors and "partners as employees" to obtain workers' compensation coverage.

FISCAL NOTE: none

NOTE: It appears that the title is rather broad and I would suggest a title change to tighten it up. Also we have a L&C CS which contains changes requested by the Department of Labor.

- 3) ADDITIONAL REFERRALS:
- 4) PUBLIC HEARINGS:
 - a) Sponsor:
 - b) Public witnesses:
- 5) BILL ACTION:
 - a) Hold in committee?
 - b) Assign to sub committee for further review?
 - c) Move from Committee?
 - d) close public hearings?
- 6) COMMITTEE ACTION:
 - a) amendments?
 - b) CS adoption? Move for adoption of the L&C CS?



Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SB 254: Summary

This legislation would extend the opportunity to obtain workers' compensation coverage to sole proprietors or members of a partnership who wish such coverage. The bill provides that an insurer may accept the application and fix an assumed monthly wage at which the person will be carried on the payroll for purposes of this chapter.

After an application is accepted, the person is entitled to the benefits of this chapter, and the person must notify the insurer when there is a change in his status as a sole proprietor or partner.

A person covered under this section bears the burden of proof of the validity of the claim and may cancel his coverage by giving written notice to the insurer. The cancellation becomes effective the day following the filing of such notice with the insurer.

Ford
4/10/85

Original sponsor: P.Fischer

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IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 254 (L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to workers' compensation."

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

* Section 1. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.239. SOLE PROPRIETORS AND PARTNERS AS EMPLOYEES. (a)
A person who is a sole proprietor, or a member of a partnership, may elect coverage as an employee under this chapter by making written application to an insurer. The insurer may accept the application and fix an assumed monthly wage at which the person shall be carried on the payroll for purposes of this chapter.

(b) When the application is accepted, the person is subject to the provisions and entitled to the benefits of this chapter. The person shall promptly notify the insurer whenever there is a change in the status of the person as a sole proprietor or partner.

(c) Notwithstanding the provisions of AS 23.30.120(a), a person covered under (a) of this section bears the burden of proof of the validity of the claim.

(d) A person who has elected coverage under (a) of this section may cancel the election by giving written notice to the insurer. Notwithstanding AS 23.30.030(5), the cancellation becomes effective the day following the filing of notice with the insurer.

23.30.270 due to a loss which is excluded by the terms of the policy and for which the employer has paid no premiums. *Munz v. Underwriters at Lloyds*, 336 F.2d 798 (9th Cir. 1964).

Airplane trips not within coverage of policy. — Airplane trips to remote fishing lodges for free recreation were not necessary, incidental or appurtenant to, or connected with the business of the employer under an insurance policy covering all operations of every nature incidental to employer's hotel and bar. *D.K. MacDonald & Co. v. Alaska Indus. Bd.*, 14 Alaska 483,

116 F. Supp. 555 (D. Alaska), 117 F. Supp. 401 (9th Cir. 1954). See also *Underwriters at Lloyds v. Munz*, 224 F. Supp. 954 (D. Alaska 1963), aff'd, 336 F.2d 798 (9th Cir. 1964).

Apportionment of liability between insurance carriers rejected. — See *Underwriters at Lloyds v. Alaska Indus. Bd.*, 17 Alaska 527, 160 F. Supp. 248 (D. Alaska 1958).

Applied in Providence Washington Ins. Co. v. Alaska Pac. Assurance Co., Sup. Ct. Op. No. 2579 (File No. 6398), 654 P.2d 269 (1982).

Sec. 23.30.030. Required policy provisions. A policy of a company insuring the payment of compensation under this chapter is considered to contain the provisions set out in this section.

(1) The insurer assumes in full all the obligations to pay physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, burial expenses, and compensation or death benefits imposed upon the insured under the provisions of this chapter.

(2) The policy is made subject to the provisions of this chapter and its provisions relative to the liability of the insured employer to pay physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices transportation charges to the nearest point where adequate medical facilities are available, burial expenses, compensation or death benefits to and for said employees or beneficiaries, the acceptance of the liability by the insured employer, the adjustment, trial and adjudication of claims for the physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, burial expenses, compensation or death benefits and the liability of the insurer to pay the same are considered a part of this policy contract.

(3) As between the insurer and the employee or the employee's beneficiaries, notice to or knowledge of the occurrence of the injury on the part of the insured employer is notice or knowledge on the part of the insurer; jurisdiction of the insured employer for the purpose of this chapter is jurisdiction of the insurer; and the insurer, in all things, is bound by and subject to the orders, awards, judgments and decrees made against the insured employer under this chapter.

(4) The insurer will promptly pay to the person entitled to them the benefit conferred by this chapter, including physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, burial expenses, and all installments of compensation or death benefits awarded or agreed upon under this

aska), 117 F. Supp. also Underwriters t F. Supp. 954 (D. i F.2d 798 (9th Cir.

liability between rejected. — See s v. Alaska Indus. 0 F. Supp. 248 (D.

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chapter. The obligator insurer is not affected by a default of the insured employer after the injury, or by default in giving a notice required by this policy. The policy is a direct promise by the insurer to the person entitled to physician's fees, nurse's charges, fees for hospital services, charges for medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, and hospital supplies, charges for burial, compensation or death benefits, and is enforceable in the name of that person. The insurer shall provide claims facilities through its own staffed adjusting facilities located within the state, or by independent, licensed, resident adjusters with power to effect settlement within the state.

(5) A termination of the policy by cancellation is not effective as to the employees of the insured employer covered by it until 20 days after written notice of the termination has been received by the board. If the employer has a contract with the state or a home rule or other political subdivision of the state, and the employer's policy is cancelled due to nonpayment of a premium, the termination of the policy is not effective as to the employees of the insured employer covered by it until 20 days after written notice of the termination has been received by the contracting agency, and the agency has the option of continuing the payments on behalf of the employer in order to keep the policy in force. If, however, the employer has secured insurance with another insurance carrier, cancellation is effective as of the date of the new coverage.

(6) All claims for compensation, death benefits, physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, and burial expenses, may be made directly against either the employer or the insurer, or both, and the order or award of the board may be made against either the employer or the insurer or both.

(7) If the insurer fails or refuses to pay a final award or judgment (except during the pendency of an appeal) made against it, or its insured, or if it fails or refuses to comply with a provision of this chapter, the insurance commissioner shall revoke the approval of the policy form, and may not accept further proofs of insurance from it until it has paid the award or judgment or has complied with the violated provision of this chapter, and has resubmitted its policy form and received the approval of the form by the insurance commissioner. (§ 40 ch 193 SLA 1959; am § 2 ch 1 SLA 1962; am § 2 ch 166 SLA 1972)

NOTES TO DECISIONS

Applied in Providence Washington Ins Co. v. Alaska Pac. Assurance Co., Sup. Ct. Op. No. 2579 (File No. 6398), 654 P.2d 267 (1982).

Stated in Richard v. Fireman's Fund Ins. Co., Sup. Ct. Op. No. 155 (File No. 267), 384 P.2d 445 (1963).

AWARD.
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 on v. Erickson, Sup. Ct.
 No. 1277), 477 P.2d 996

r is not to be barred
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**OF ORDER TO
 IANT AND
 LOYER.**

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ion claim. 63 ALR3d

Sec. 23.30.115. Attendance and fees of witnesses. (a) A person is not required to attend as a witness in a proceeding before the board at a place more than 100 miles from the person's place of residence, unless the person's lawful mileage and fee for one day's attendance is first paid or tendered to the person; but the testimony of a witness may be taken by deposition or interrogatories according to the Rules of Civil Procedure.

(b) A witness summoned in a proceeding before the board or whose deposition is taken shall receive the same fees and mileage as a witness in the superior court. (§§ 23, 24 ch 193 SLA 1959)

Cross references. — For court rules on depositions and interrogatories, see Civ. R. 26-37.

NOTES TO DECISIONS

Applied in Commercial Union Cos. v. Smallwood, Sup. Ct. Op. No. 1246 (File No. 2443), 550 P.2d 1261 (1976).

Collateral references. — Competency Workmen's Compensation Act as affected of witness in proceeding for death under by Deadman's Statute, 77 ALR2d 680.

Sec. 23.30.120. Presumptions. (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that

- (1) the claim comes within the provisions of this chapter;
- (2) sufficient notice of the claim has been given;
- (3) the injury was not proximately caused by the intoxication of the injured employee or proximately caused by the employee being under the influence of drugs unless the drugs were taken as prescribed by the employee's physician;
- (4) the injury was not occasioned by the wilful intention of the injured employee to injure or kill self or another.

(b) If delay in giving notice is excused by the board under AS 23.30.100(d)(2), the burden of proof of the validity of the claim shifts to the employee notwithstanding the provisions of (a) of this section. (§ 9 ch 193 SLA 1959; am §§ 11, 13 ch 93 SLA 1982)

Revisor's notes. — Subsection (b) was enacted as a part of AS 23.30.100(d)(2). Renumbered in 1982.

Effect of amendments. — The 1982 amendment rewrote paragraph (3) of present subsection (a), which formerly read "the injury was not occasioned solely by the intoxication of the injured employee," and enacted the provisions of subsection (b).

NOTES TO DECISIONS

This section provides statutory guidance for the supreme court in evaluating the basis for a board decision. *Cook v. Alaska Workmen's Comp. Bd.*, Sup. Ct. Op. No. 644 (File No. 1168), 476 P.2d 29 (1970).

A preexisting disease or infirmity does not disqualify a claim if the work aggravated, accelerated or combined with the disease or infirmity to produce the death. *Cook v. Alaska Workmen's Comp. Bd.*, Sup. Ct. Op. No. 644 (File No. 1168), 476 P.2d 29 (1970); *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

There is a presumption in favor of compensability under the workmen's compensation laws. *Marsh v. Alaska Workmen's Comp. Bd.*, Sup. Ct. Op. No. 1745 (File No. 3643), 584 P.2d 1134 (1978).

And that injury is work-connected. — Since the Workmen's Compensation Act creates a presumption that a claim for compensation comes within the provisions of the statute, it must be presumed that an injury is work-connected in the absence of substantial evidence to the contrary. *Beauchamp v. Employers Liab. Assurance Corp.*, Sup. Ct. Op. No. 655 (File No. 1161), 477 P.2d 993 (1970). See also *Miller v. ITT Arctic Servs.*, Sup. Ct. Op. No. 1602 (File No. 3311, 3312), 577 P.2d 1044 (1978).

The test of coverage should not be limited to specific or required duties of the employment, but should include duties reasonably incidental to the employment. *Laborers & Hod Carriers Local 341 v. Groothuis*, Sup. Ct. Op. No. 773 (File Nos. 1435, 1459), 494 P.2d 808 (1972).

Hence, where the duties of decedent's position were broadly defined and included "anything that would inure to the benefit of the country," it would be difficult to find a rational basis upon which it could be asserted that he was not acting within the scope of his employment at the time of the crash. *Laborers & Hod Carriers Local 341 v. Groothuis*, Sup. Ct. Op. No. 773 (File Nos. 1435, 1459), 494 P.2d 808 (1972).

Compensable activity. — While labeling an employee's activity as "personal" may not render the ensuing injury per se noncompensable, the activity must still be "reasonably foreseeable and incidental" to the employment, and not just "but for" the employment, to enable the employee to claim compensation. *Marsh v. Alaska Workmen's Comp. Bd.*, Sup. Ct. Op. No. 1745 (File No. 3643), 584 P.2d 1134 (1978).

A heart attack is within the statutory presumption of compensability of accidental injuries under the Alaska Workmen's Compensation Act. *Employers Com. Union Ins. Cos. v. Schoen*, Sup. Ct. Op. No. 1325 (File No. 2616), 554 P.2d 1146 (1976).

Application of presumption. — Presumption of compensability in subsection (1) of this section applies in determining whether an employee's current problems are related to an on-the-job injury or arise from an independent cause. *Black v. Universal Servs., Inc.*, Sup. Ct. Op. No. 2348 (File No. 4786), 627 P.2d 1073 (1981).

The presumption in paragraph (1) of this section applies to claims of aggravation or acceleration of a preexisting condition. *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

The presumption of compensability is not so limited that it does not apply in cases where the injury is not shown to have occurred on the job and is not sudden or unexplained, but rather the result of a preexisting condition which may have been aggravated by the employment. *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

Where claimant's theory was that his employment conditions, particularly his work on a haul road, aggravated his preexisting renal dysfunction by preventing him from getting proper medical attention and maintaining a low salt diet necessary to control hypertension, which accelerated his ultimate renal failure, such aggravation or acceleration must be presumed in the absence of substantial evidence to the contrary. *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

Before the statutory presumption of compensability attaches, some preliminary link must be established between the disability and the employment, and in claims based on highly technical medical considerations medical evidence is often necessary in order to make that connection. *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

The presumption of compensability found in paragraph (1) of this section is expressly made applicable to any "proceeding for the enforcement of a claim for compensation under this chapter" of the Worker's Compensation Act, AS 23.30.005

is within the statutory compensability of accident under the Alaska Compensation Act. *Employers Cos. v. Schoen*, Sup. Ct. Op. No. 2616, 554 P.2d

presumption. — Presumption in subsection applies in determining employee's current problems on-the-job injury or arising cause. *Black v. Union*, Sup. Ct. Op. No. 2348, 57 P.2d 1073 (1981).
in paragraph (1) of this section applies to claims of aggravation or preexisting condition. *Smallwood v. Smallwood*, Sup. Ct. Op. No. 4502, 623 P.2d 312

of compensability is that it does not apply in an injury is not shown to be the result of a sudden job and is not sudden rather the result of a preexisting condition on which may have been employed. *Smallwood v. Smallwood*, Sup. Ct. Op. No. 4502, 623 P.2d 312

theory was that his condition, particularly his hypertension, aggravated his renal dysfunction by getting proper medication, maintaining a low salt diet, controlling hypertension, his ultimate renal condition or acceleration in the absence of substantial evidence to the contrary. *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

ory presumption of compensability, some preliminary findings established between the employment, and in the absence of substantial technical medical evidence is often sufficient to make that conclusion. *Smallwood v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623

of compensability in subsection (1) of this section is applicable to any "promise of a claim for his chapter" of the Alaska Act, AS 23.30.005

— 23.30.270. The broad inclusiveness of this language does not mean that the mere filing of a claim gives rise to the presumption of coverage, for there must be some evidence that the claim arose out of, or in the course of, employment before the presumption arises. *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

Presumption may not be ignored. — The question in a particular case of whether the employment did so contribute to aggravate or accelerate the final result is one of fact which is usually determined from medical testimony, but once a prima facie case of work-relatedness is made, the board may not ignore the presumption and allocate the burden of proof to the claimant. *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

The board failed to apply the proper legal standard where nowhere in its findings and conclusions was there any mention of the statutory presumption of coverage, or of aggravation or acceleration of a preexisting condition, and the language employed by the board in its decision suggested that it improperly placed the burden of establishing work-relatedness on claimant. *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

Overcoming presumption of compensability. — Two possible ways of overcoming the presumption of compensability are (1) by affirmative evidence showing that the death was not work-connected, or (2) by eliminating all reasonable possibilities that the death was work-connected. *Miller v. ITT Arctic Servs.*, Sup. Ct. Op. No. 1602 (File Nos. 3311, 3312), 577 P.2d 1044 (1978); *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

The employer can overcome the presumption of compensability by introducing affirmative evidence that the assault was not work-related. *Marsh v. Alaska Workmen's Comp. Bd.*, Sup. Ct. Op. No. 1745 (File No. 3643), 584 P.2d 1134 (1978).

Where the statutory presumption of workers' compensation coverage governs, it is necessary for the employer to show by substantial evidence that the employee's continuing back problems did not result from the work-related accident. *Rogers Elec. Co. v. Kouba*, Sup. Ct. Op. No. 1990 (File No. 4164), 603 P.2d 909 (1979).

Presumption of compensability not

inconsistent with holding burden of proof on claimant. — There is no inconsistency between the presumption of compensability found in this section and a holding that the burden of proving that an injury arose out of and in the course of the employment rests upon the claimant for compensation, for the presumption of this section places a burden on the employer to go forward with evidence on the issue of whether the injury arises outside or within the scope of employment. Once competent evidence is introduced, the presumption drops out, and the final burden of proof as to all essential elements is on the claimant. *Anchorage Roofing Co. v. Gonzales*, Sup. Ct. Op. No. 867 (File No. 1533), 507 P.2d 501 (1973).

Burden of proof. — The presumption of this section applies until such time as there is evidence that the claimant was outside the scope of his employment. At such time the claimant then has the burden of going forward with evidence of the job-related nature of the injury. *Anchorage Roofing Co. v. Gonzales*, Sup. Ct. Op. No. 867 (File No. 1533), 507 P.2d 501 (1973).

The employer has the burden of going forward with the evidence on the issue of whether the injury arose outside the scope of employment, but once substantial evidence is introduced, the presumption drops out, and the burden of proving all elements of the claim falls on the plaintiff. *Fireman's Fund Am. Ins. Cos. v. Gomes*, Sup. Ct. Op. No. 1230 (File No. 2421), 544 P.2d 1013 (1976).

The Alaska Workmen's Compensation Act contains a presumption that an injury is work-connected in the absence of substantial evidence to the contrary. Once substantial evidence is introduced, the presumption drops out and the burden of proving all elements of the claim falls on the claimant. *Miller v. ITT Arctic Servs.*, Sup. Ct. Op. No. 1602 (File Nos. 3311, 3312), 577 P.2d 1044 (1978).

If a company meets its burden of producing substantial evidence that the injury was not work-related, the presumption would then drop out, shifting the burden of proving all elements of the claim back to the claimant. *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

Substantial evidence required to overcome presumption. — When a claimant shows that he has been injured at work, substantial evidence is needed to overcome the presumption of com-

pensability. *Marsh v. Alaska Workmen's Comp. Bd.*, Sup. Ct. Op. No. 1745 (File No. 3643), 584 P.2d 1134 (1978). See also *Laborers & Hod Carriers Local 341 v. Groothuis*, Sup. Ct. Op. No. 773 (File Nos. 1435, 1459), 494 P.2d 808 (1972).

For a reviewing court to uphold a decision of the Alaska Workers' Compensation Board determining that an employer has rebutted the statutory presumption of coverage, it must find that the decision is supported by "substantial evidence." *Black v. Universal Servs., Inc.*, Sup. Ct. Op. No. 2348 (File No. 4786), 627 P.2d 1073 (1981).

"Substantial evidence". — The supreme court has consistently defined "substantial evidence" as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Evidence which is competent or admissible may nevertheless be insufficient to overcome the presumption of compensability; the question whether the quantum of evidence is substantial is a legal question. *Miller v. ITT Arctic Servs.*, Sup. Ct. Op. No. 1602 (File Nos. 3311, 3312), 577 P.2d 1044 (1978).

"Substantial evidence" is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Rogers Elec. Co. v. Kouba*, Sup. Ct. Op. No. 1990 (File No. 4164), 603 F.2d 909 (1979); *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981); *Black v. Universal Servs., Inc.*, Sup. Ct. Op. No. 2348 (File No. 4786), 627 P.2d 1073 (1981).

The mere inability to state that the disability was work-related does not constitute substantial evidence. *Miller v. ITT Arctic Servs.*, Sup. Ct. Op. No. 1602 (File Nos. 3311, 3312), 577 P.2d 1044 (1978).

The mere possibility of another injury is not "substantial" evidence sufficient to overcome the presumption of compensability. *Hoth v. Valley Constr.*, Sup. Ct. Op. No. 2736 (File No. 6750), 671 P.2d 871 (1983).

Affirmative evidence in the form of expert testimony that decedent's death was not work-related was sufficient to constitute substantial evidence for purposes of rebutting the statutory presumption of compensability. *Miller v. ITT Arctic Servs.*, Sup. Ct. Op. No. 1602 (File Nos. 3311, 3312), 577 P.2d 1044 (1978).

Where, even though an employee's injury was sustained while he was at work, there was compelling evidence presented to indicate that the employee had taken himself outside the scope and duties of his

employment in his encounter with a woman patron and that it was that conduct which motivated the assault on him by the woman's husband, there was substantial evidence to support the board's determination that the assault on the employee was not work-connected and did not entitle the employee to compensation. *Marsh v. Alaska Workmen's Comp. Bd.*, Sup. Ct. Op. No. 1745 (File No. 3643), 584 P.2d 1134 (1978).

In order to produce substantial evidence necessary to overcome the statutory presumption of compensability, it is imperative that the carrier be given an opportunity to cross-examine the claimant's medical experts and produce its own medical evidence of lack of aggravation or causation. *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

Uncontradicted lay testimony, coupled with inconclusive medical testimony, can be enough to support a finding by the board that a physical condition is causally connected to an accidental injury sustained in the course of the employment. *Employers Com. Union Co. v. Labor*, Sup. Ct. Op. No. 1162 (File No. 2119), 536 P.2d 129 (1975).

Resolution of doubt as to substance of medical testimony. — If there is any doubt as to the substance of medical testimony, it must be resolved in favor of the claimant. *Beauchamp v. Employers Liab. Assurance Corp.*, Sup. Ct. Op. No. 655 (File No. 1161), 477 P.2d 993 (1970); *Cook v. Alaska Workmen's Comp. Bd.*, Sup. Ct. Op. No. 644 (File No. 1168), 476 P.2d 29 (1970); *Miller v. ITT Arctic Servs.*, Sup. Ct. Op. No. 1602 (File Nos. 3311, 3312), 577 P.2d 1044 (1978); *Alaska Pac. Assurance Co. v. Turner*, Sup. Ct. Op. No. 2067 (File No. 4304), 611 P.2d 12 (1980); *Kessick v. Alyeska Pipeline Serv. Co.*, Sup. Ct. Op. No. 2171 (File No. 4614), 617 P.2d 755 (1980).

The rule on resolving doubt as to the substance of medical testimony is properly applicable only when the substance of a particular witness' testimony is in doubt. *Miller v. ITT Arctic Servs.*, Sup. Ct. Op. No. 1602 (File Nos. 3311, 3312), 577 P.2d 1044 (1978).

Psychiatrist's report. — Where a psychiatrist concluded that an injured employee's problems were mental rather than physical, this report could be given more weight than other doctors' (who were not psychiatrists) conclusions to the contrary and where the psychiatrist's report was neither doubtful nor ambiguous, it

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compensability. Black v. Universal Servs.,
Inc., Sup. Ct. Op. No. 2348 (File No. 4786),
627 P.2d 1073 (1981).

Where a psychiatrist who had no oppor-
tunity to examine the injured employee in
any depth concluded contrary to numerous
physicians who treated her that the
employee's problems were mental rather
than physical, this was insufficient evi-
dence to sustain the Workers' Compensa-
tion Board's determination that the
employee's injury was not compensable.
Black v. Universal Servs., Inc., Sup. Ct.
Op. No. 2348 (File No. 4786), 627 P.2d
1073 (1981).

Superior court's findings of an occupa-
tional disease were supported by
substantial evidence in light of the
whole record. Aleutian Homes v. Fischer,
Sup. Ct. Op. No. 365 (File No. 668), 418
P.2d 769 (1966).

Paragraph (1) presumption held to
operate. — Where deceased was shot and
killed, after closing time while cleaning

up, at the restaurant at which he was
employed as a bartender, by an unknown
assailant, and no words were spoken
during the attack and no money was
taken, the presumption of paragraph (1)
operated, since no motive was found, no
one knew why the assault was committed,
and no plausible explanation showing the
lack of employment connection was sug-
gested. Fireman's Fund Am. Ins. Cos. v.
Gomes, Sup. Ct. Op. No. 1230 (File No.
2421), 544 P.2d 1013 (1976).

Presumption of compensability not
overcome. — See Land & Marine Rental
Co. v. Rawls, Sup. Ct. Op. No. 2777 (File
Nos. 6963-7090), P.2d (1984).

Applied in Thornton v. Alaska
Workmen's Comp. Bd., Sup. Ct. Op. No.
327 (File No. 612), 411 P.2d 209 (1966);
Ruble v. Arctic Gen. Inc., Sup. Ct. Op. No.
1887 (File No. 3710), 598 P.2d 95 (1979);
Providence Washington Ins. Co. v. Bonner,
Sup. Ct. Op. No. 2818 (File No. 7308),
P.2d (1984).

Collateral references. — Matters
concluded, in action at law to recover for
the same injury, by decision or finding

made in workmen's compensation pro-
ceeding. 84 ALR2d 1036.

Sec. 23.30.122. Credibility of witnesses. The board has the sole
power to determine the credibility of a witness. A finding by the board
concerning the weight to be accorded a witness's testimony, including
medical testimony and reports, is conclusive even if the evidence is
conflicting or susceptible to contrary conclusions. The findings of the
board are subject to the same standard of review as a jury's finding in
a civil action. (§ 14 ch 93 SLA 1982)

NOTES TO DECISIONS

Absent specific findings by the board
that it chose to disbelieve a witness's testi-
mony, a court will not assume that lack of
credibility was a relevant factor in the

board's decision. Hoth v. Valley Constr.,
Sup. Ct. Op. No. 2736 (File No. 6750), 671
P.2d 871 (1983).

Sec. 23.30.125. Review of compensation order. (a) A compensa-
tion order becomes effective when filed in the office of the board as
provided in AS 23.30.110 and, unless proceedings to suspend it or set
it aside are instituted as provided in (c) of this section, it becomes final
on the 31st day after it is filed.

S B

2 5 6

Bill No. Senate Bill No. 256

Date April 5, 1985

Title "An Act relating to exposure to microwave radiation in the workplace."

Contact: Richard Arab
465-4856
Eileen Plate
465-2700

Senate Bill No. 256 provides special employer reporting requirements when an employee is over-exposed to microwave radiation; requires that employees who may be exposed to microwave radiation be informed of the potential exposure and trained to safely work around such radiation; and requires that microwave radiation information be included on the "Right to Know" poster printed and distributed by the department.

This bill was introduced as a result of an incident in which several workers were over-exposed to microwave radiation while repairing a radar dish. An estimated 700 workers in Alaska do this type of work. The bill would also cover other workers who may work around other sources of microwave radiation such as bar and restaurant employees who use microwave ovens.

The reporting of incidents involving over-exposure to microwave radiation will assist the department in identifying and correcting work conditions which cause such exposures; and the employee education and training, as prescribed in the bill, will effect implementation of protective measures by the employer to safeguard employees, as well as provide employees with an understanding of the importance of following safe and healthful work practices. This bill would, therefore, enhance the department's efforts to protect Alaska's workers.

The Department of Labor supports Senate Bill No. 256. It will not have a fiscal impact on the department.

APPROVED:



Jim Robison, Commissioner
Department of Labor

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 256
 Title: "An Act relating to exposure to microwave radiation..."
 Sponsor: Coghill & Josephson
 Requestor: Senate Labor & Commerce
 Date of Request: 3/27/85

FISCAL DETAIL

Agency Affected: Labor
 Program Category Affected: Public Protection
 BRU, Program or Subprogram(s) Affected: Occupational Safety & Health

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
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						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Assumes that inclusion of information on microwave radiation on the department's "Right-to-Know" poster, per Sec. 3 of SB 256, does not have to be incorporated until the department exhausts its present supply and reprints the poster.

Prepared By: Robert J. Bacolas, Sr.
 Division: Labor Standards & Safety

Phone: 465-4870
 Date: 3/28/85

Approved by Commissioner: Jim Robinson
 Agency: Labor

Date: 3/28/85

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

7/1/84



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Signature of Camera Operator

11/24/89
Date

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SB 259 "An act relating to the practice of public accountancy and providing for an effective date."

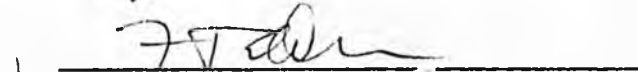
The Department of Commerce and Economic Development and the Division of Occupational Licensing would support this legislation with amendments.

The legislation, as drafted, expands the authority of the licensing board. The new legislation authorizes the boards to regulate items such as the use of names and titles, affiliations with other organizations, "reasonable requirements" for unimpaired capital, and professional liability insurance. This practice act allows for one not qualified to take an examination within 120 days if they expect to meet the qualifications. The legislation also restricts the board's ability to protect the consumer by limiting the period of revocation or suspension they can enforce for a violation. Alaska Statutes 08.04.485 (Section 23, beginning on page 12) gives the board the expanded authority to hold hearings which are not subject to the Administrative Procedures Act (AS 44.62).

A section by section analysis has been prepared by the staff of the Division of Occupational Licensing. The Division of Occupational Licensing is also committed to assisting in working with the bill sponsor for a clear and concise legislation that will protect the consumer, provide assistance to those qualified who are seeking licensing, and the licensing board in their administrative function without overregulating, overrestricting or expanding the licensure authority.


Harry D. Treager, Director
Division of Occupational Licensing

Date April 16, 1985


Loren H. Lounsbury, Commissioner
Department of Commerce & Economic
Development

Date 4/19/85

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 259
 Title: Practice of public accounting
 Sponsor: Senator Zharoff
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
 Program Category Affected: _____
Consumer Protection
 BRU, Program or Subprogram(s), Affected: _____
Occupational Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		-0-	-0-	-	-0-	-0-
200 TRAVEL		-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL		.6	.7	.7	.7	.8
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		.6	.7	.7	.7	.8

CAPITAL						
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REVENUE		***				
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FUNDING: (Thousands of Dollars)

GENERAL FUND		.6	.7	.7	.7	.8
FEDERAL FUNDS						
OTHER						
TOTAL		.6	.7	.7	.7	.8

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

This legislation expands the authority of the Board to regulate such items as, the use of names and titles, affiliations with other organizations, requirements for unimpaired capital and professional liability insurance. The bill also establishes new requirements in processing regulation projects, and allow the board to hold hearings that are not subject to the Administrative Procedure Act (AS 44.62).

Prepared By: Jennifer Strickler, Mgnt Analyst Phone: 465-2144

Division: Occupational Licensing Date: April 18, 1985

Approved by Commissioner: Loren H. Lounsbury Date: 4/19/85

Agency: Commerce & Economic Development

Distribution (by Agency preparing fiscal note):

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

7/1/84

SB 259 FISCAL IMPACT

300 Contractual Services:

Section 08.04.080 requires a copy of proposed regulations to be sent to each licensee. Regulation projects average about eight (8) pages, and based on 773 current licensees, the following costs would apply:
 $773 \times .26¢ \text{ per set} = \200.98

Postage at $.22¢$ per envelope $\times 773 = \$170.06$

Sections 16, 17, 18 of the bill requires the board to establish fees for registration of affiliations with organizations, registration of offices, and use of names and titles.

In compliance with the Administrative Procedure Act, notices must be published in a newspaper of general circulation. Therefore, advertising costs of \$60 per ad in three (3) major papers of the State would apply.
 $\$60 \times 3 \text{ newspapers} = \180.00

TOTAL COSTS = \$551.04

Revenues:

*** There are 18 public accountancy corporations currently licensed. Once the fee mentioned in sections 16,17 and 18 is established, an immediate fiscal impact would be generated from the 18 corporations already licensed.



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James O. Smith
Signature of Camera Operator

11/24/89
Date

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GREGORY W. LESSMEIER*

*FAIRBANKS OFFICE
**JUNEAU OFFICE
***VALDEZ OFFICE

February 21, 1985

Senator Richard I. Eliason
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Alaska Statute 21.59. Automobile Service Corporations

Dear Senator Eliason:

I stopped by your office today to discuss with Sheila Chapter 59 of Title 21, dealing with Automobile Service Corporations, which was passed this last legislative session. As you know, I representative Allstate Insurance Company, and have been asked on behalf of an affiliate of Allstate Insurance Company, Allstate Motor Club, Inc., to look into this legislation. Allstate Motor Club, Inc. is an Automobile Service Corporation which provides its members with the benefits that are described in the club's "Official Service Contract", a copy of which I have enclosed for your information. Prospective members are enrolled by licensed Allstate Insurance Company agents, each of whom is an authorized representative of the Allstate Motor Club and in addition by direct mail efforts. Mail solicitations are included with various Sears, Roebuck and Company and Allstate Insurance Company bills and other promotional mailings and by other direct mail programs.

Members are entitled to reimbursement for covered expenses involving towing and road service expenses, trip interruption claims, legal defense claims, lost keys/lockout benefit, and theft/hit-and-run protection. Other benefits include lodging and rent a car discounts, Discovery magazine and trip planning.

Senator Eliason
February 21, 1985
Page 2

Allstate Insurance Company indemnifies Allstate Motor Club through a \$20 million protective policy. Allstate Life Insurance Company, also an affiliate, insures motor club members for accidental death or dismemberment.

As of December 31, 1984 Allstate Motor Club had 1,268,000 members nation-wide, and 4,741 members in Alaska.

During the past legislative session, chapter 59 of Title 21 was enacted. Alaska Statute 21.59.020(a) expressly provides that a person providing or intending to provide "Automobile Service Corporation services shall be incorporated as a nonprofit corporation . . ." (emphasis added). Allstate Motor Club is not a nonprofit corporation. I have looked through the legislative history of chapter 59, and have not discovered any discussion dealing with the "nonprofit" aspect of this bill. The "nonprofit" requirement of this bill will effectively put Allstate Motor Club out of business in Alaska, and we simply do not believe that was the intent of this legislation. If the "nonprofit" aspect of this legislation is not removed, Allstate Motor Club will not be able to continue to do business in Alaska and we would hope this legislation could be corrected to prevent this from occurring. This could be accomplished simply by removing the word "nonprofit" from AS 21.59.020(a). We would think this amendment would be simply a technical amendment and would hope that it would be noncontroversial. We stand ready to provide any further information you feel might be of assistance.

Sincerely,

HUGHES THORSNESS GANTZ
POWELL & BRUNDIN

By:
Michael L. Lessmeier

Enclosure
MLL/mh

cc: Rep. Fritz Pettyjohn

STATEMENT BEFORE
SENATE LABOR AND COMMERCE COMMITTEE
HEARING ON SB 260
PRESENTED ON BEHALF OF ALLSTATE MOTOR CLUB, INC.

April 3, 1985

Mr. Chairman, members of the Labor and Commerce Committee, my name is Michael Lessmeier. I am a lawyer from Juneau and am here on behalf of Allstate Motor Club, Inc. to support Senate Bill 260, which would allow a profit or non-profit corporation to obtain authorization as an automobile service corporation.

During the past legislative session, Chapter 59 of Title 21 was enacted. AS 21.59.020(a) states that a person providing or intending to provide "automobile service corporation services shall be incorporated as a non-profit corporation . . ." (emphasis added). The legislation before you would simply delete the "non-profit" aspect of Chapter 59 and thus allow a corporation authorized as an automobile service corporation under a certificate of authority issued by the Division of Insurance to provide automobile service corporation services. In researching the legislative history of Chapter 59, we have not discovered any discussion dealing with the "non-profit" aspect of this bill and we can conceive of no reason why a duly authorized corporation

should not be allowed to offer this service so long as it is issued an appropriate certificate of authority by the Director of the Division of Insurance, as required by the other provisions of this chapter.

Allstate Motor Club, Inc. is an automobile service corporation which provides its members certain benefits including reimbursement for covered expenses involving towing and road service expenses, trip interruption claims, legal defense claims, lost key/lockout benefits, and theft/hit-and-run protection. Other benefits include lodging and rent-a-car discounts, Discovery magazine and trip planning. Allstate Motor Club, Inc. is an affiliate of Allstate Insurance Company, and as of December 31, 1984, had approximately 1,268,000 members nationwide, and 4,741 members in Alaska.

Since Allstate Motor Club is a profit as opposed to a non-profit corporation, the "non-profit" requirement of this bill will effectively put Allstate Motor Club out of business in Alaska and we do not believe this was the intent of the legislation. As far as we know, there is no advantage to the consumer in requiring an automobile service corporation to be "non-profit", and in fact, this requirement may well effectively eliminate from the market any service corporation which does not qualify as "non-profit".

We do believe these corporations provide a benefit to the public which is in demand, and we ask your support of this legislation.

SB 260 File Contents

April 22, 1985 Monday

- 1) Bill Summary -- Legislative Reporting Service
- 2) Overview -- Provided by Senate L & C staff (nd)
- 3) Fiscal Note -- Dept. of Commerce & ED (4/2/85)
- 4) Statutes -- AS 21.59.020
- 5) Written testimony before Senate L & C Committee, (4/3/85)
- 6) Letter from Michael Lessmeier to Senator Eliason (2/21/85)

SB 260: "AN ACT RELATING TO AUTOMOBILE SERVICE CORPORATIONS"

THIS LEGISLATION WAS INTRODUCED TO CORRECT AN OVERSIGHT WHICH OCCURRED IN LEGISLATION PASSED LAST YEAR. LAST YEARS BILL PROVIDED THAT AN AUTOMOBILE SERVICE CORPORATION BE INCORPORATED AS A NON PROFIT CORPORATION WHICH RESULTED IN PRECLUDING THE "FOR PROFITS" FROM DOING BUSINESS IN THIS STATE. ONE OF THE "FOR PROFIT" MOTOR CLUBS OPERATING IN THE STATE CURRENTLY HAS 4,741 ALASKAN MEMBERS, AND DURING TESTIMONY BEFORE THE COMMITTEE, THE DIVISION OF INSURANCE EXPRESSED ITS SUPPORT FOR CORRECTION OF THIS OVERSIGHT. THIS IS A NON CONTROVERSIAL BILL AND I URGE ITS PASSAGE BY THE BODY.

AUTOMOBILE SERVICE CORPORATIONS PROVIDE THEIR MEMBERS BENEFITS SUCH AS REIMBURSEMENT FOR TOWING AND ROAD SERVICE EXPENSES, LOST KEY AND LOCK_ OUT BENEFITS, AND THEFT AND HIT AND RUN PROTECTION.

Introduced: 3/28/85
Referred: Labor & Commerce

1 IN THE SENATE

BY ZHAROFF

2

SENATE BILL NO. 260

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to automobile service corporations."

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

8 * Section 1. AS 21.59.020(a) is amended to read:

9 (a) A person providing or intending to provide automobile ser-
10 vice corporation services shall be a corporation [INCORPORATED AS A
11 NONPROFIT CORPORATION AND BE] currently authorized as an automobile
12 service corporation under a certificate of authority issued by the
13 director under this chapter.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 260
 Title: "An Act to permit automobile
 service corporations"
 Sponsor: Zharoff
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
 Program Category Affected: _____
Consumer Protection
 BRU, Program or Subprogram(s) Affected: _____
Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: John L. George, Director Phone: 465-2515
 Division: Insurance Date: 4/2/85

Approved by Commissioner: Loren H. Lounsbury Date: 4/2/85
 Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

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

/1/84

Statutes relating to SB 260

AS21.59.020

HEADINGS TITLE 21.
Insurance.
CHAPTER 59.
Automobile Service Corporations.

CITATION Sec. 21.59.020.

CATCH LINE

INCORPORATION AND CERTIFICATE OF AUTHORITY REQUIRED.

TEXT

(a) A person providing or intending to provide automobile service corporation services shall be incorporated as a nonprofit corporation and be currently authorized as an automobile service corporation under a certificate of authority issued by the director under this chapter.

(b) If the corporation is to be formed under the laws of this state, the articles of incorporation of the proposed corporation or amendments to existing articles of incorporation shall be submitted to the director before they are filed with the commissioner of commerce and economic development. The commissioner of commerce and economic development may not file the articles or amendments unless the director's approval is endorsed. The director shall approve the articles or amendments unless the director finds that the articles or amendments do not comply with law. If not approved, the director shall return the proposed articles of incorporation to the incorporators or amendments to the corporation, together with a written, detailed statement of the reasons for nonapproval.

HISTORY

(Sec. 1 ch 135 SLA 1984)



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

11/24/89
Date

S B

2 6 5



Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SB 265: Sectional Analysis

Section 1) Repeals and re enacts section concerning the composition of the authority, and establishes a 7 member board. (incorporates a modified version of a recommendation by the Advisory Committee on Statewide Power Production Costs concerning APA Board structure)

Proposed APA Board structure:

- 1) Commissioner of DCED
- 2) one director from banking industry
- 3) one consumer representative
- 4) two directors from business and industry
- 5) two directors who are managers of the utility industry.

Directors are appointed by the Governor, serve for staggered 6 year terms, and are subject to Legislative confirmation.

Section 2) Requires that directors appointed by the Governor must be residents, qualified voters, and are subject to the conflict of interest statutes.

Section 3) Describes the mechanics of replacing current board members, i.e. public directors shall serve until their terms expire, and the Governor shall replace OMB member and 3 commissioners on the day before the effective date of this act.



Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

HISTORICAL REVIEW OF THE COMPOSITION OF THE APA BOARD:

- 1976: 4 public members, appointed by the Governor, and the Commissioner of DCED;
- 1978: 4 directors, appointed by the Governor, and the Commissioner of DCED. Commissioners of C&RA, DNR, DOT, and Revenue have the rights and privileges, but not voting.
- 1979: same
- 1980: same
- 1981: same
- 1982: 3 public members from different judicial districts; director of management and Budget, and 3 commissioners.
- 1983: same
- 1984: 7 directors, with 6 of those members appointed by the Governor. Of the 7, 3 must be public members, 3 must be commissioners, and the director of OMB.
- 1985: same

Adivisory Committee on Statewide Power Production
Recommendation: Change the current composition of the
APA Board to give it long term stability, free from
political pressure.

9 member Board, with 6 year staggered terms, composed as
follows:

- 1) One Commissioner (DCED)
- 2) four members from the utility industry
- 3) Two members from business and industry
- 4) one banker
- 5) one consumer representative

BOARD: POWER AUTHORITY, ALASKA

TITLE: Alaska Power Authority

DEPT: Department of Commerce and Economic Development

AUTHORITY: AS 44.83.010

STATUS: ACTIVE

REQUIREMENTS: FINANCIAL DISCLOSURE

PROHIBITIONS:

TERM: 4-year - overlapping

DESCRIPTION: 7 directors - 6 appointed by Governor: 3 public from different judicial districts (for terms), and 3 Commissioners, plus Director, Div. of Budget and Management; Board elects Chair.

SPECIAL FACTS: Quorum - 4 members; public corporation with independent legal existence; receives grants

FUNCTION: Promote general prosperity and economic welfare of Alaskans by providing a means of constructing, acquiring, financing, and operating power projects and facilities that recover and use waste energy.

COMPENSATION: Standard travel/per diem

MEETINGS: 12 times per year; 48 days maximum

*FOR FURTHER INFORMATION CONTACT: Executive Director, Alaska Power Authority, 334 West Fifth Avenue, Second Floor, Anchorage, AK 99501 - 276-0001

85

Power Authority

<u>MEMBER</u>	<u>APPT</u>	<u>REAPPT</u>	<u>TERM</u>
David L. Allison 217 Second Street Juneau 99801 Public/Restricted	83/07/06	84/07/02	88/07/01
Robert L. Huffman 1018 Galena Street Fairbanks 99701 Public/Restricted	83/02/28	83/06/30	87/07/01
Richard J. Knapp DOT/PF - Pouch Z Juneau 99811 Comm./State Dept.	84/06/30		
Loren Lounsbery DCED Juneau 99811 Comm./State Dept.	85/01/03		
Gordon Harrison OME Juneau 99811 OMB-Dir/Mandate	84/11/13		
Lee R. Nunn, Jr. 6311 Habicht Court Anchorage 99504 Public/Restricted	83/06/07		85/07/01
Esther Wunnicke DNR Juneau 99811 Comm./State Dept.	83/01/18		

BOARD: POWER AUTHORITY, ALASKA

TITLE: Alaska Power Authority

DEPT: DCED

AUTHORITY: AS 44.83.010

STATUS: ACTIVE

REQUIREMENTS: FINANCIAL DISCLOSURE

PROHIBITIONS:

TERM: 4-year - overlapping

DESCRIPTION: 7 directors - 6 appointed by Governor: 3 public from different judicial districts (for terms), and 3 Commissioners, plus Director, Div. of Budget & Management; Board elects Chair.

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COMPENSATION: Standard travel/per diem

MEETINGS: 12 times per year; 48 days maximum

CONTACT: Power Authority, Larry Crawford, E.D., 334 West Fifth Avenue,
Second Floor Anchorage 99501 - 277-7641

84

Power Authority

<u>MEMBER</u>	<u>APPT</u>	<u>REAPPT</u>	<u>TERM</u>
David L. Allison 217 Second Street Juneau 99801 Pub/Restricted	83/07/06		84/07/01
Robert Heath Revenue Juneau 99811 Comm./ST Dept.	83/11/23		
Robert L. Huffman 1018 Galena Street Fairbanks 99701 Pub/Restricted	*83/02	83/06/30	87/07/01
Richard Lyon Commerce Juneau 99811 Comm./ST Dept. - Chair	83/01/18		
Pete McDowell OMB Juneau 99811 OMB-Dir/Mandate	83/01/18		
Lee R. Nunn, Jr. 6311 Habicht Court Anchorage 99504 Pub/Restricted	83/06/07		85/07/01
Esther Wunnicke DNR Juneau 99811 Comm./ST Dept.	83/01/18		

84

POWER AUTHORITY, ALASKA

(SLA 278; AS 44.83.010) 3 public members from different judicial districts; director of Budget & Management; 3 commissioners. Requires financial disclosure.

MEMBERS	REPLACING	APPT.	TERM
Mr. Charles Conway 821 N Street, Suite 201 Anchorage, Alaska 99501 (Chair)	Reappointed	81/08/17	84/07/01
Mr. Robert B. Weeden Box 80425 Fairbanks, Alaska 99701 479-6664	Reappointed	81/08/17	83/07/01
Mr. John Schaeffer Box 106 Kotzebue, Alaska 99752		81/09/01	85/07/01
<p>Ron Lehr, Director Division of Budget & Management Pouch AM Juneau, Alaska 99811</p> <p>The Honorable Robert Ward Commissioner Dept. of Transportation & Public Facilities Pouch Z Juneau, Alaska 99811</p> <p>The Honorable Chuck Webber Commissioner Dept. of Commerce & Economic Development Pouch D Juneau, Alaska 99811</p> <p>The Honorable Ernst Mueller Commissioner Dept. of Environmental Conservation Pouch O Juneau, Alaska 99811</p>			

CONTACT AGENCY:
Eric Yould, Executive Director
333 W. Fourth Street
Anchorage, AK 99501
(277-7641)

ID #1 (G-11)

PRIV
Govt
cont
MEMI
Mr.
Firs
P.O.
Fair
Busi
Ms.
Alas
P.O.
Fair
Busi
Mr.
Alas
Box
Sewa
Rep.
Ms.
P. O
Kodi
Mr.
1200
Anch
Orga
Mr.
Box
June
Busi
Mr.
SOHI
Pouch
Anch
Busi
Mr.
9501
Anch
Busi
Mr.
Appr
407
Anch
Anch
ID #

82/83

POWER AUTHORITY, ALASKA

(SLA 278; AS 44.83.010) 3 public members from different judicial districts; director of Budget & Management; 3 commissioners. Requires financial disclosure.

MEMBERS	REPLACING	APPT.	TERM
Mr. Charles Conway 821 N Street, Suite 201 Anchorage, Alaska 99501 (Chair)	Reappointed	81/08/17	84/07/01
Mr. Robert B. Weeden Box 80425 Fairbanks, Alaska 99701 479-6664	Reappointed	81/08/17	83/07/01
Mr. John Schaeffer Box 106 Kotzebue, Alaska 99752		81/09/01	85/07/01

Ron Lehr, Director
Division of Budget & Management
Pouch AM
Juneau, Alaska 99811

Commissioner Robert Ward
Dept. of Transportation
& Public Facilities
Pouch Z
Juneau, Alaska 99811

Commissioner Chuck Webber
Dept. of Commerce & Economic
Development
Pouch D
Juneau, Alaska 99811

Commissioner Ernst Mueller
Dept. of Environmental Conservation
Pouch O
Juneau, Alaska 99811

CONTACT AGENCY:

Eric Yould, Executive Director
333 W. Fourth Street
Anchorage, AK 99501
(277-7641)

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POWER AUTHORITY, ALASKA
(SLA 278; AS 44.83.010) 4 public members; financial disclosure;
four-year terms.

MEMBERS	REPLACING	APPT.	TERM
Thomas E. Kelly 225 Cordova, Building B Suite 307 Anchorage, Alaska 99501	Charles Behlke	80/06/23	83/01/01
Mr. Chuck Conway Box 520 Sitka, Alaska 99835	Reappointed	80/12/15	85/01/01
Robert B. Weeden Box 80425 Fairbanks, Alaska 99701	Jacob Wick	80/06/23	84/01/01
Mr. Arnold G. Espe 2204 Arcadia Drive Anchorage, Alaska 99503	Bob Ward	79/02/14	82/01/01

CONTACT AGENCY:
Eric Yould, Executive Director
333 W. Fourth Street
Anchorage, AK 99501
(277-7641)

ID #1 (G-12)

(SLA 278; AS 44.56.010-240) 4 public members; members are subject to *legislative confirmation and financial disclosure; four-year terms.

MEMBERS	REPLACING	APPT.	TERM
Mr. Charles Behlke P. O. Box 80257 Fairbanks, Alaska 99758	Frank Murkowski	79/02/14	83/01/01
Mr. Chuck Conway Box 520 Sitka, Alaska 99835		76/12/21	81/01/01
Mr. Jacob Wick Box 746 Kodiak, Alaska 99615		77/03/25	80/01/01
Mr. Arnold G. Espe 2204 Arcadia Drive Anchorage, Alaska 99503	Bob Ward	79/02/14	82/01/01

CONTACT AGENCY:

Commerce & Economic Development
(465-2500)

*Confirmation is required by statute but is not allowed under the constitution.

ID #80

ALASKA POWER AUTHORITY

(SLA 278; AS 44.56.010-240) 4 public members; members are subject to
*legislative confirmation and financial disclosure.

MEMBERS	REPLACING	APPT.	TERM
Mr. Charles Behlke P. O. Box 80257 Fairbanks, Alaska 99758	Frank Murkowski	79/02/14	83/01/01
Mr. Chuck Conway Box 520 Sitka, Alaska 99835		76/12/21	81/01/01
Mr. Jacob Wick Box 746 Kodiak, Alaska 99615		77/03/25	80/01/01
Mr. Arnold G. Espe 2204 Arcadia Drive Anchorage, Alaska 99503	Bob Ward	79/02/14	82/01/01

CONTACT AGENCY:

Commerce & Economic Development
(465-2500)

*Confirmation is required by statute but is not allowed under the
constitution.

ID #80

(SLA 278; AS 44.56.010-240; 4 public members; members are subject to
 *legislative confirmation and financial disclosure)

NAMES AND ADDRESSES	Replacing	New	Appt. Acct.	Term Expires
Frank Murkowski 3 Mi. Chena Pump Road Fairbanks 99701			2/21/76	1/1/79
Chuck Conway Box 520 Sitka 99835			12/1/76	1/1/81
Jacob Wick Box 746 Kodiak 99615			3/35/77	1/1/80
Bob Ward 6711 Foothill Dr. Anchorage 99501			* 1/6/77	1/1/82
CONTACT AGENCY: Department of Commerce and Economic Development Office of the Commissioner (465-2500)				
* Confirmation is required by statute but is not allowed under the constitution				

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degree of independence and perpetuity necessary for a consistent long term cost-beneficial program such as described in this document. There should be full recognition of the management commitment that is necessary for the long term capital commitment and long term construction cycles of the electric generation facilities inherent under this concept.

The Committee assumes that the Alaska Power Authority (APA) will be the organization to administer this program. Since State funds will be involved, the legislature and administration will continue to be interested in the success of the program.

It is the recommendation of the Committee that a nine member board be created with the fiduciary responsibility of setting policy and directing the operation of the Power Authority. The Board would be constituted as follows:

- The Commissioner of Commerce and Economic Development--This would be the only Board member without a fixed term and would be the specific person charged with representing the interests of the Governor and his administration.
- Four Directors appointed by the Governor for staggered six year terms and approved by the legislature--These four members should include one member from the banking industry and one a consumer representative and two from business and industry.
- Four Directors from the Alaska Systems Coordinating Council (ASCC)--The Alaska Systems Coordinating Council is an existing group of electric utility

managers who on ad hoc basis are now coordinating the development of electric generation and transmission systems within the State. The Governor should appoint and the legislature approve these four Directors--two Railbelt, one Southeast Alaska, and one bush utility manager. The ASCC should make recommendations to the Governor. As with the other appointed members, the ASCC Directors should serve six year staggered terms.

An important function of the Board of Directors will be to set electric power development policy and to assure that cost-beneficial planning and operations are conducted by the APA that will benefit all Alaskan consumers. In order to insure that generating capacity additions are the ones which result in minimum cost, are compatible to long range plans and contribute to system optimization, any equalization payments for prospective units must be based solely on pre-construction approval by the Power Authority Board. In no event should the Authority be required to purchase power either directly or indirectly through a participating system which was not generated by said participating system.

Over the past few years, the State of Alaska has provided loans or grants for substantial sums of monies to develop generation capacity--most notable examples are the Four Dam Pool and the Fairbanks-Anchorage Intertie. It is the recommendation of this committee that these loans be converted to grants by the State and be considered as equity of the Alaska Power Authority. These projects obviously fit within the context of the concept presented by the Committee, in that they contribute to lowering the cost of generation for all

Kodiak

Electric Association Inc.

(907) 486-3261

Box 787

KODIAK, ALASKA 99615

January 21, 1985

Representative Dave Thompson
Alaska State Legislature
Pouch V
(MS 3100)
Juneau, Alaska 99811

Dear Representative Thompson:

As you requested, enclosed is an explanation of the frequency problem we have with the Terror Lake Project in a "stand alone" mode, along with a strip chart showing a period of time under test conditions. The Coast Guard was disconnected from Terror Lake during these tests.

As you can see, when the project was governed by the diesel, the frequency is straight as a string. As soon as the diesel was taken off, the frequency started to fluctuate. This test was done at night after 8 p.m. and no damage to anyone's equipment resulted.

About a week earlier, a small mishap at the Terror Lake Project resulted in a few minutes of operation like this and considerable damage was done to computers throughout the area. That is why we conduct these tests after 8 p.m.

You will note the biggest swing was caused by a 500 KW load-change. During the day time, these are so common as to go unremarked as they happen as often as several times a minute. A larger load change will cause the project to relay off the system.

The APA and contractor technicians are presently on site making adjustments. I suspect they will be back several more times before we know if they are successful.

Sincerely,



David S. Nease, Jr.

Enclosures: 2

Kodiak Electric Association, Inc.

Attached is a strip-chart recording of frequency on the KEA System made during a "stand alone" test of Terror Lake generation on January 16 between 9 and 11:30 p.m. This would be typical steady-state operation with load changes of 500 KW or less. Also shown on the chart are the proposed APUC maximum frequency requirements and KEA's typical operation with diesel generation or diesel-assisted hydro operation.

From the standpoint of our consumers, the 3.8 hz bandwidth is unacceptable. Damage to equipment has already resulted from smaller variations than these. The proposed APUC standard of (\pm)2% is a maximum value and should be approached only occasionally (once a day), not continually (once every 15 minutes).

Note two other things on the strip chart. The gradually sloping line (area 1) shows drift in the governor, and the failure to return to 60 hz (area 2) on some occasions indicates a "dead band" or a frequency variation that the governor does not see. These are also serious problems.

At this time, EBASCO Engineers, Woodward Governor Tech Reps and a Fugi Engineer are at the site trying to correct these problems. I speculate that they will correct the "drift" and "dead band" problems. It will be more difficult to correct the 3.8 hz bandwidth during "stand alone" operation. If any of these problems are not corrected, KEA will need continued diesel generation "on line" to support the system frequency.

William Eberhardt
Manager of Power Production
Kodiak Electric Association, Inc.
January 16, 1985

BANDWIDTH = 3.8 HZ

3.8 HZ

JAN 10 1985

AREA 1
"DRIFT"

500 KW LOAD CHANGES

250 KW LOAD CHANGES

PROPOSED ^{BY A.RUC}
MAXIMUM = 2.4 HZ

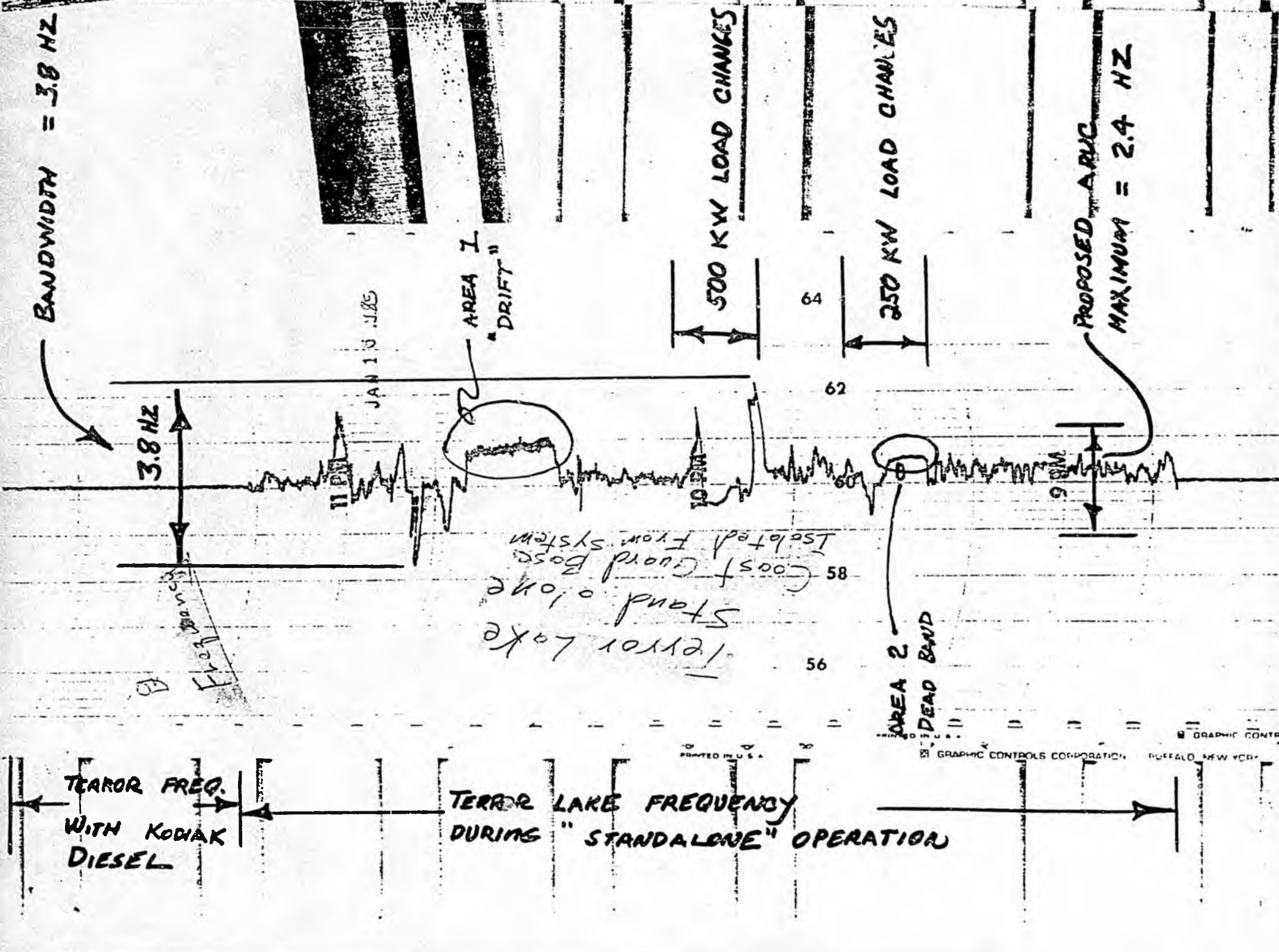
Flow Control

Terror Lake
Stand alone
Coast Guard Base
Isolated From System

AREA 2
DEAD BAND

TERROR FREQ.
WITH KODIAK
DIESEL

TERROR LAKE FREQUENCY
DURING "STANDALONE" OPERATION



BANDWIDTH = 3.8 HZ

3.8 HZ

Frequency

JAN 16 1985

AREA 1
"DRIFT"

500 KW LOAD CHANGES

64

250 KW LOAD CHANGES

PROPOSED A RUC
MAXIMUM = 2.4 HZ

Terror Lake
Stand alone
Coast Guard Base
Isolated From System

AREA 2
DEAD BAND

TERROR FREQ.
WITH KODAK
DIESEL

TERROR LAKE FREQUENCY
DURING "STANDALONE" OPERATION

PRINTED IN U.S.A.
GRAPHIC CONTROLS CORPORATION, HUSTON, TEXAS 77030
GRAPHIC CONTROLS

BRIEFING PAPER ON THE HISTORY OF THE 4-DAM POOL
NEGOTIATIONS AND THE GOVERNOR'S ADVISORY COMMITTEE
ON STATEWIDE POWER COSTS

The history of the 4-dam pool starts with Senate Bill #25 wherein the Energy Bill of Alaska was enacted by funding various hydro projects throughout the State; Terror Lake being one of them.

At that point, the concept of financing was 100% grant money. Over a period of time, deteriorating oil revenues and subsequent legislation, particularly HB#9, changed the direction of ownership and financing to a statewide ownership of the projects and a common financing pool; hence the 4-dam pool.

It is important to note, at this time, all future additional projects are to go into the debt pool. This is referred to as system increment. Shortly after this legislation, the projects commenced to be finished and come "on line". Terror Lake is the last one and is not yet in commercial operation. Because of a shortfall in the original appropriation for grants to build the projects, additional financing was necessary. (\$210,000,000) The APA determined to finance this via revenue bonds. At this point, towards the last quarter of 1983, considerable dissatisfaction was voiced by the members of the 4-dam pool concerning their negotiations with the APA regarding financing. Part of it was frustration in dealing with a State Agency but most of it was due to the restrictions put on the utilities by bond consultants involved in the Power Sales Contracts.

The administrative requirements were significant, but the bottom line was cost of power which the communities perceived as being higher than the current cost of diesel operation.

Two opposing forces were at work causing this particular conflict. One is in connection with diesel operation costs. The State and the 4-dam pool members were using projected costs of oil based on worldwide projections as well as the State of Alaska projections and had agreed on a 6.5% escalation per year.

Then, actual costs proceeded to decline instead of increase.

The other force is the projected kWh sales of the four combined communities. These sales had a direct affect on what the cost of power would be from the hydro projects. The more kWh sales, the lower the cost is per kWh. All sales combined were the guarantee of the payments to the bond buyers. However, toward the end of the 1985 legislative session an agreement was reached between the APA and the 4-dam pool communities (with the exception of Petersburg) with the communities ready to sign contracts. The communities accepted the fact that they were signing contracts higher than the cost of diesel production, figuring the cost of oil would escalate and the line would cross over in a few years and, in the long term, it would be stable, low-cost power. In this plan, there was the system increment for additional projects with a cap. A condition before signing was that a \$49,000,000 appropriation must be approved by the legislature to put in place rate stabilization. Then, everything changed during the last week of the legislative session when the legislature decided that the State should finance these projects instead of writing bonds and passed legislation to do so. The essential criteria in the legislation was:

- 1) The rate of return to the State would be the same as the current market rates.
- 2) The alternative cost of power in the community must be considered (In most cases, diesel).
- 3) The loan terms could be as long as 50 years.
- 4) Loan payments could be deferred by the State if desired.

After a three-month wait, the APA called a meeting and presented the 4-dam pool members with a contract. The terms were 35 years with an 8% yield to the State. (Debt service rate from 5.50¢/kWh to 25.26¢/kWh in the 35th year)

The 4-dam pool communities asked to be given an opportunity to analyze their proposal and be allowed to make a counter proposal.

The 4-dam pool counter proposal is based on a 50-year loan term with a 5% rate of return, a deferred entry rate starting at 2¢ to 3.28¢ for five years and a flat rate of 3.53¢ for 30 years wherein the communities pay only for that capacity used. The

State would accept the responsibility for marketing unused capacity. After the 40th year, the communities would pick up the principal on unused capacity which is .0098¢ to the 50th year on the unused capacity but not the interest. There is no system increment in the 4-dam pool proposal.

Under the 4-dam pool's proposal to finance \$210,000,000, the State gets a rate of return of \$531,388,915. Under the State's proposal, the State would get a return of over \$1,900,000,000 with a kWh rate that started at 5.5¢ and escalated in 30 years to 25.26¢ per kWh.

The 4-dam pool felt they were not given the opportunity to explain their position to any decision makers such as the APA Board Members or even adequately to the APA staff. The staff took it without any opportunity for explanation and stated that they would analyze it and explain it to the APA Board. The 4-dam pool representatives will now have an opportunity to explain to the APA Board on January 23.

On November 9, 1985, the Governor appointed a Blue Ribbon Panel to look into a statewide power rate. I was appointed as one of the members.

The APA set aside negotiations while the Governor's Committee undertook its study and also to see what the outcome of resulting legislation, if any, would be. Therefore, an interim contract resulted with a cost of power at 2.64¢/kWh until June. The Governor's Committee presented their report on December 15 to the Governor and to the APA. Representatives of that Committee will meet with the APA on the 23rd of January to make a presentation. Basically, the Committee recommends a three-point program.

- 1) Rates throughout the State will be averaged by a State Agency purchasing all kWh produced at the bussbar and selling it back at an average rate. (Estimated at 5¢ at the bussbar)

- 2) Averaged rates would be higher in the railbelt and lower throughout the rest of the State. Therefore, a \$100,000,000 appropriation would be made for eight years to provide rate stabilization to ratepayers in the railbelt so that they pay the same rate as they would normally pay.

Secondly, \$200,000,000 would be appropriated for eight years and be put into an interest bearing account with the interest accruing to that account to be used to finance large power projects. When the large projects are "on line", it will no longer be necessary to provide appropriations for rate stabilization as the large projects will provide this financing. The above would probably require a constitutional amendment.

3) Reorganize the APA Board. The APA will become essentially a State generation and transmission utility. No utility can successfully operate under the unstable conditions that exist at present on the APA Board. It is necessary that it have long-term stability and that political pressures be removed from the Board. Recommendations for the reorganization are described in the Committee's report to the Governor. Briefly, it would be a nine-man board with six-year staggered terms. One Commissioner would serve on the board; four members would be from the utility industry, recommended by the Alaska Coordinating Council; two members would be from business and industry; one would be a banker and one would be a consumer representative. The Coordinating Council would act as an advisory group to the Board and the Staff of the APA.

January 22, 1985

14-0997
Cramer
3/28/85 ✓

1
2 IN THE SENATE

BY ZHAROFF

3 SENATE BILL NO.

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 FOURTEENTH LEGISLATURE - FIRST SESSION

6 A BILL

7 For an Act entitled: "An Act relating to composition of the Alaska Power
8 Authority Board."

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

10 * Section 1. AS 44.83.030 is repealed and reenacted to read:

11 Sec. 44.83.030. MEMBERSHIP OF THE AUTHORITY. The board of
12 directors of the authority consists of seven members. The commis-
13 sioner of commerce and economic development serves as a director and
14 the governor shall appoint one director from the banking industry, one
15 consumer representative, two directors from business and industry, and
16 two directors who are managers in the utility industry. Directors
17 appointed by the governor serve for staggered terms of six years and
18 are subject to confirmation by a majority of the members of the legis-
19 lature in joint session.

20 * Sec. 2. AS 44.83.045(a) is amended to read:

21 (a) The [PUBLIC] directors appointed by the governor must
22 [SHALL] be residents and qualified voters of Alaska and shall comply
23 with the requirements of AS 39.50 (conflict of interests). [THE
24 PUBLIC DIRECTORS SHALL SERVE OVERLAPPING FOUR-YEAR TERMS.]

25 * Sec. 3. Notwithstanding the amendments to AS 44.83.030 made by sec. 1
26 of this Act, the public directors of the authority on the day before the
27 effective date of this Act shall continue to serve until their terms ex-
28 pire. The governor shall replace the director of the office of management
29 and budget and the three commissioners who are directors on the day before
the effective date of this Act in accordance with AS 44.83.030 as amended

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by this Act.

Kodiak Electric Association Inc.

(907) 486-3261

Box 787
KODIAK, ALASKA 99615

December 21, 1984

Enclosed you will find a copy of the report completed by the Governor's Blue Ribbon Committee for statewide power rates.

The scenarios looked at here indicate a cost of 5¢ at the bussbar for the communities. (Bussbar meaning low bushing side of the substation transformers)

E. M. ...

STATUTES RELATING TO SB 265

AS 44.83.03044.83

CHAPTER = 83
SECTION = 44.83.030
TITLE = 44
HEADINGS TITLE 44.
State Government.
CHAPTER 83.
Alaska Power Authority.
ARTICLE 1.
Creation and Organization.
CITATION Sec. 44.83.030.
CATCH LINE
MEMBERSHIP OF THE AUTHORITY.
TEXT The authority shall consist of the following directors:
(1) three public directors to be appointed by the
governor and confirmed by the legislature; only one director
may be appointed from each judicial district described in AS
22.10.010;
(2) the director of the office of management and
budget, or the director's designee within that office, and
three commissioners of principal executive departments
appointed by the governor.
HISTORY (Sec. 1 ch 278 SLA 1976; am sec. 2 ch 156 SLA 1978; am sec. 2 ch
118 SLA 1981; am sec. 25 ch 63 SLA 1983)