ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4192 SLAB SB 379 - SB 384

1922

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02-519 (REV 8/78)

SB

379

CHAIRMAN'S INFORMATION: SB 379

1) BILL TITLE: "An act relating to the premium tax for domestic insurers"

a) Introduced: By Governor

b) Co-sponsors:

2) INTENT: Current law provides that domestic insurers pay a 1.5% premium tax on gross premiums, while non domestic are required to pay 3%. A recent US Supreme Court case raised consitutional questions concerning the differential rate of these tax structures, and the Department of Law estimates that the state is exposed to a potential liability of approximately $14.5 million if this statute is not corrected.

FISCAL NOTE: 0 operating; FY87 1,142.3 generated in revenue

N.B. NO EFFECTIVE DATE CLAUSE

3) ADDITIONAL REFERRALS: Finance, Rules

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?

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85 US 76, 81
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73 (Marshall, J.,

METROPOLITAN LIFE INSURANCE COMPANY, et al., Appellants

v

W. G. WARD, Jr., et al.

470 US —, 84 L Ed 2d 751, 106 S Ct —

[No. 83-1274]

Argued October 31, 1984. Decided March 26, 1985.

Decision: State statute taxing out-of-state insurance companies at a higher rate than domestic insurance companies held not to have legitimate state purpose for purposes of equal protection clause.

SUMMARY

A group of foreign insurance companies filed claims with Alabama state insurance authorities contending that an Alabama statute imposing a substantially higher gross premiums tax on out-of-state insurance companies than on domestic companies, and allowing the out-of-state companies to reduce their tax rate by investing certain percentages of their total assets in specified state assets and securities, violated the equal protection clause as applied to them. The Circuit Court for Montgomery County, Alabama, upheld the denial of these claims, ruling that the statute was rationally related to the legitimate state purposes of encouraging the formation of new domestic insurance companies and encouraging capital investment in the state by foreign insurance companies. The Court of Civil Appeals of Alabama affirmed as to the legitimacy of these purposes but remanded for an evidentiary hearing on the issue of rational relationship. The insurance companies waived their right to such a hearing and appealed as to the legitimacy of the stated legislative purposes. The Supreme Court of Alabama denied certiorari, and judgment was subsequently entered in favor of the state and the intervenor domestic companies.

On appeal, the United States Supreme Court reversed and remanded. In an opinion by POWELL, J., joined by BURGER, Ch. J., and WHITE, BLACKMUN, and STEVENS, JJ., the court held that the Alabama statute could not be sustained under the equal protection clause ruling that the promotion of domestic business within a state by discriminating against foreign corpora-

tions that wish to compete by doing business there is not a legitimate state purpose, and that the encouragement of capital investment in state assets and securities also is not a legitimate state purpose when furthered by discrimination.

O'CONNOR, J., joined by BRENNAN, MARSHALL, and REHNQUIST, JJ., dissented, expressing the view that the majority opinion was unsupported by precedent and distorted the constitutional balance, threatening the freedom of both state and federal legislative bodies to fashion appropriate classifications in economic legislation.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Constitutional Law § 369; Insurance § 6 — equal protection — foreign corporations — insurance companies — illegitimacy of purposes of discriminatory tax law

1a–1f. A state law imposing a higher premiums tax on foreign insurance companies than on domestic insurance companies, and allowing foreign companies to reduce but not eliminate the disparity in tax rates by investing certain proportions of their assets in state assets and securities, cannot be justified under the equal protection clause by its asserted purpose of promoting domestic business within the state, which is not a legitimate state purpose for purposes of the equal protection clause where it is accomplished by discriminating against foreign corporations that wish to compete by doing business in the state, or by its asserted purpose of encouraging investment in state assets, which is also not a legitimate state purpose when furthered by discrimination. (O'Connor, J., and Brennan, Marshall, and Rehnquist, JJ., dissented from this holding.)

Constitutional Law § 349 — equal protection — state discrimination against nonresidents

2. The equal protection clause forbids a state to discriminate in favor of its own residents solely by burdening the residents of other state members of the federation.

Constitutional Law § 369; Insurance § 6 — equal protection — insurance companies — McCarran-Ferguson Act

3. Although the McCarran-Ferguson Act, 15 USCS §§ 1011–1015, exempts the insurance industry from commerce clause restrictions, it does not purport to limit in any way the applicability of the equal protection clause.

Commerce § 144; Constitutional Law § 313 — commerce clause and equal protection clause — comparison of tests governing validity of state laws

4. Under commerce clause analysis, the state's interest served by a state law, if legitimate, is weighed against the burden the state law would impose on interstate commerce; in the equal protection context, however, if the state's purpose is found to be legitimate, the state law stands as long as the burden it imposes is found to be rationally related to that purpose.

SYLLABUS BY REPORTER OF DECISIONS

An Alabama statute imposes a substantially lower gross premiums tax rate on domestic insurance companies than on out-of-state (foreign) insurance companies. The statute permits foreign companies to reduce but not to eliminate the differential by investing in Alabama assets and securities. Appellant foreign insurance companies filed claims for refunds of taxes paid, contending that the statute, as applied to them, violated the Equal Protection Clause. The State Commissioner of Insurance denied the claims. On consolidated appeals to a county Circuit Court, in which several domestic

companies intervened, the statute was upheld on summary judgment. The court ruled that the statute did not violate the Equal Protection Clause because, in addition to raising revenue, it served the legitimate state purposes of encouraging the formation of new insurance companies in Alabama and capital investment by foreign insurance companies in Alabama assets and securities, and that the distinction between foreign and domestic companies was rationally related to those purposes. The Alabama Court of Civil Appeals affirmed the finding as to legitimate state purposes, but remanded for an evidentiary hearing on the issue of rational relationship. On certiorari to the Alabama Supreme Court, appellants waived their rights to such an evidentiary hearing, and the court entered judgment for the State and the intervenors on appellants' equal protection challenge to the statute.

Held: The Alabama domestic preference tax statute violates the Equal Protection Clause as applied to appellants.

(a) Under the circumstances of this case, promotion of domestic business by discriminating against nonresidents is not a legitimate state purpose. Western & Southern Life Ins. Co. v State Board of Equalization of California, 451 US 648, 68 L Ed 2d 514, 101 S Ct 2070, distinguished. Alabama's aim to promote domestic industry is purely and completely discriminatory, designed only to favor domestic industry within the State, no matter what the cost to foreign corporations also seeking to do business there. Alabama's purpose constitutes the very sort of parochial discrimination that the Equal Protection Clause was intended to prevent. A State may not constitutionally favor its own residents by taxing foreign corporations at a higher rate solely because of their residence. Although the McCarran-Ferguson Act exempts the insurance industry from Commerce Clause restrictions, it does not purport to limit the applicability of the Equal Protection Clause. Equal protection restraints are applicable even though the *effect* of the discrimination is similar to the type of burden with which the Commerce Clause also would be concerned. Pp 6–12.

(b) Nor is the encouragement of the investment in Alabama assets and securities a legitimate state purpose. Domestic insurers remain entitled to the more favorable tax rate regardless of whether they invest in Alabama assets. Moreover, since the investment incentive provision does not enable foreign insurers to eliminate the statute's discriminatory effect, it does not cure but reaffirms the impermissible classification based solely on residence.

—— So 2d ——, reversed and remanded.

Powell, J., delivered the opinion of the Court, in which Burger, C. J., and White, Blackmun, and Stevens, JJ., joined. O'Connor, J., filed a dissenting opinion, in which Brennan, Marshall, and Rehnquist, JJ., joined.

APPEARANCES OF COUNSEL

Matthew J. Zinn argued the cause for appellants.

Warren B. Lightfoot argued the cause for appellees.

Justice Powell delivered the opinion of the Court.

[1a] This case presents the question whether Alabama's domestic preference tax statute, Ala Code §§ 27-4-4 and 27-4-5 (1975), that taxes out-of-state insurance companies at a higher rate than domestic insurance companies, violates the Equal Protection Clause.

I

Since 1955,[1] the State of Alabama has granted a preference to its domestic insurance companies by imposing a substantially lower gross premiums tax rate on them than on out-of-state (foreign) companies.[2] Under the current statutory provisions, foreign life insurance companies pay a tax on their gross premiums received from business conducted in Alabama at a rate of 3 percent, and foreign companies selling other types of insurance pay at a rate of 4 percent. Ala Code § 27-4-4(a) (1975). All domestic insurance companies, in contrast, pay at a rate of only 1 percent on all types of insurance premiums. § 27-4-5(a).[3] As a result, a foreign insurance company doing the same type and volume of business in Alabama as a domestic company generally will pay three to four times as much in gross premiums taxes as its domestic competitor.

Alabama's domestic preference tax statute does provide that foreign companies may reduce the differential in gross premiums taxes by investing prescribed percentages of their worldwide assets in specified Alabama assets and securities. § 27-4-4(b). By investing 10 percent or more of its total assets in Alabama investments, for example, a foreign life insurer may reduce its gross premiums tax rate from 3 to 2 percent. Similarly, a foreign property and casualty insurer may reduce its tax rate from 4 to 3 percent. Smaller tax reductions are available based on investment of smaller percentages of a company's assets. Ibid. Regardless of how much of its total assets a foreign company places in Alabama investments, it can never reduce its gross premiums tax rate to the same level paid by comparable domestic companies. These are entitled to the 1 percent tax rate even if they have no investments in the State. Thus, the investment pro-

1. The origins of Alabama's domestic preference tax statute date back to 1849, when the first tax on premiums earned by insurance companies doing business in the State was limited to companies not chartered by the State. Act No. 1, 1849 Ala Acts 5. A domestic preference tax was imposed on and off throughout the years until 1945, when the State restored equality in taxation of insurance companies in response to this Court's decision in United States v South-Eastern Underwriters Assn. 322 US 533, 88 L Ed 1440, 64 S Ct 1162 (1944). Act No. 156, 1945 Ala Acts 196–197. In 1955, the tax was reinstated, Act No. 77, 1955 Ala Acts 193 (2d Sp Sess), and with minor amendments, has remained in effect until the present.

2. For domestic preference tax purposes, Alabama defines a domestic insurer as a company that both is incorporated in Alabama and has its principal office and chief place of business within the State. Ala Code § 27-4-1(3) (1975). A corporation that does not meet both of these criteria is characterized as a foreign insurer. § 27-4-1(2).

3. There are two exceptions to these general rules concerning the rates of taxation of insurance companies. For annuities, the tax rate is one percent for both foreign and domestic insurers, Ala Code § 27-4-4(a) (1975), and for wet marine and transportation insurance, the rate is three-quarters of one percent for both foreign and domestic insurance companies, § 27-4-6(a).

vision permits foreign insurance companies to reduce, but never to eliminate, the discrimination inherent in the domestic preference tax statute.

II

Appellants, a group of insurance companies incorporated outside of the State of Alabama, filed claims with the Alabama Department of Insurance in 1981, contending that the domestic preference tax statute, as applied to them, violated the Equal Protection Clause. They sought refunds of taxes paid for the tax years 1977 through 1980. The Commissioner of Insurance denied all of their claims on July 8, 1981.

Appellants appealed to the Circuit Court for Montgomery County, seeking a judgment declaring the statute to be unconstitutional and requiring the Commissioner to make the appropriate refunds. Several domestic companies intervened, and the court consolidated all of the appeals, selecting two claims as lead cases[4] to be tried and binding on all claimants. On cross-motions for summary judgment, the court ruled on May 17, 1982, that the statute was constitutional. Relying on this Court's opinion in Western & Southern Life Ins. Co. v State Board of Equalization of California, 451 US 648, 68 L Ed 2d 514, 101 S Ct 2070 (1981), the court ruled that the Alabama statute did not violate the Equal Protection Clause because it served "at least two purposes, in addition to raising revenue: (1) encouraging the formation of new insurance companies in Alabama, and (2) encouraging capital investment by foreign insurance companies in the Alabama assets and governmental securities set forth in the statute." App to Juris Statement 20a-21a. The court also found that the distinction the statute created between foreign and domestic companies was rationally related to those two purposes and that the Alabama Legislature reasonably could have believed that the classification would have promoted those purposes. Id., at 21a.

After their motion for a new trial was denied, appellants appealed to the Court of Civil Appeals. It affirmed the Circuit Court's rulings as to the existence of the two legitimate state purposes, but remanded for an evidentiary hearing on the issue of rational relationship, concluding that summary judgment was inappropriate on that question because the evidence was in conflict. 437 So 2d 535 (1983). Appellants petitioned the Supreme Court of Alabama for certiorari on the affirmance of the legitimate state purpose issue, and the State and the intervenors petitioned for review of the remand order. Appellants then waived their right to an evidentiary hearing on the issue whether the statute's classification bore a rational relationship to the two purposes found by the Circuit Court to be legitimate, and they requested a final determination of the legal issues with respect to their equal protection challenge to the statute. The Supreme Court denied certiorari on all claims. Appellants again waived their rights to an evidentiary hearing on the rational relationship issue and filed a joint motion with the

4. Metropolitan Life Insurance Co., a New York corporation, was chosen to represent the life insurance claimants, and Prudential Property and Casualty Co., a New Jersey corporation, was chosen as representative of the nonlife claimants. See App 314-315.

other parties seeking rehearing and entry of a final judgment. The motion was granted, and judgment was entered for the State and the intervenors. This appeal followed, and we noted probable jurisdiction. 466 US ——, 80 L Ed 2d 455, 104 S Ct 1905 (1984). We now reverse.

III

Prior to our decision in Western & Southern Life Ins. Co. v State Board of Equalization of California, supra, the jurisprudence of the applicability of the Equal Protection Clause to discriminatory tax statutes had a somewhat checkered history. Lincoln National Life Ins. Co. v Read, 325 US 673, 89 L Ed 1861, 65 S Ct 1220 (1945), held that so-called "privilege" taxes, required to be paid by a foreign corporation before it would be permitted to do business within a State, were immune from equal protection challenge. That case stood in stark contrast, however, to the Court's prior decisions in Southern R. Co. v Greene, 216 US 400, 54 L Ed 536, 30 S Ct 287 (1910), and Hanover Fire Ins. Co. v Harding, 272 US 494, 71 L Ed 372, 47 S Ct 179, 49 ALR 713 (1926), as well as to later decisions, in which the Court had recognized that the Equal Protection Clause placed limits on other forms of discriminatory taxation imposed on out-of-state corporations solely because of their residence. See, e.g., WHYY, Inc. v Glassboro, 393 US 117, 21 L Ed 2d 242, 89 S Ct 286 (1968); Allied Stores of Ohio, Inc. v Bowers, 358 US 522, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312 (1959); Wheeling Steel Corp. v Glander, 337 US 562, 93 L Ed 1544, 69 S Ct 1291, 40 Ohio Ops 101, 55 Ohio L Abs 305 (1949).

In Western & Southern, supra, we reviewed all of these cases for the purpose of deciding whether to permit an equal protection challenge to a California statute imposing a retaliatory tax on foreign insurance companies doing business within the State, when the home States of those companies imposed a similar tax on California insurers entering their borders. We concluded that Lincoln was no more than "a surprising throwback" to the days before enactment of the Fourteenth Amendment and in which incorporation of a domestic corporation or entry of a foreign one had been granted only as a matter of privilege by the State in its unfettered discretion. 451 US, at 665, 68 L Ed 2d 514, 101 S Ct 2070. We therefore rejected the longstanding but "anachronistic" rule of Lincoln and explicitly held that the Equal Protection Clause imposes limits upon a State's power to condition the right of a foreign corporation to do business within its borders. Id., at 667, 68 L Ed 2d 514, 101 S Ct 2070. We held that "[w]e consider it now established that, whatever the extent of a State's authority to exclude foreign corporations from doing business within its boundaries, that authority does not justify imposition of more onerous taxes or other burdens on foreign corporations than those imposed on domestic corporations, unless the discrimination between foreign and domestic corporations bears a rational relation to a legitimate state purpose." Id., at 667–668, 68 L Ed 2d 514, 101 S Ct 2070.

[1b] Because appellants waived their right to an evidentiary hearing on the issue whether the classification in the Alabama domestic preference tax statute bears a rational relation to the two purposes upheld

by the Circuit Court, the only question before us is whether those purposes are legitimate.[5]

A

(1)

The first of the purposes found by the trial court to be a 'egitimate reason for the statute's classification between foreign and domestic corporations is that it encourages the formation of new domestic insurance companies in Alabama. The State, agreeing with the Court of Civil Appeals, contends that this Court has long held that the promotion of domestic industry, in and of itself, is a legitimate state purpose that will survive equal protection scrutiny. In so contending, it relies on a series of cases, including Western & Southern, that are said to have upheld discriminatory taxes. See Bacchus Imports, Ltd. v Dias, 468 US ——, 82 L Ed 2d 200, 104 S Ct 3049 (1984); Pike v Bruce Church, Inc., 397 US 137, 25 L Ed 2d 174, 90 S Ct 844 (1970); Allied Stores of Ohio, Inc. v Bowers, supra; Parker v Brown, 317 US 341, 87 L Ed 315, 63 S Ct 307 (1943); Carmichael v Southern Coal & Coke Co. 301 US 495, 81 L Ed 1245, 57 S Ct 868, 109 ALR 1327 (1937); Board of Education v Illinois, 203 US 553, 51 L Ed 314, 27 S Ct 171 (1906).

The cases cited lend little or no support to the State's contention. In Western & Southern, the case principally relied upon, we did not hold as a general rule that promotion of domestic industry is a legitimate state purpose under equal protection analysis.[6] Rather, we held that Cali-

5. The State and the intervenors advanced some 15 additional purposes in support of the Alabama statute. As neither the Circuit Court nor the Court of Civil Appeals ruled on the legitimacy of those purposes, that question is not before us, and we express no view as to it. On remand, the State will be free to advance again its arguments relating to the legitimacy of those purposes.

As the dissent finds our failure to resolve whether Alabama may continue to collect its tax "baffling," post, at 4, we reemphasize the procedural posture of the case: it arose on a motion for summary judgment. The Court of Civil Appeals upheld the Circuit Court's ruling that the two purposes identified by it were legitimate, but the appellate court remanded on the issue of rational relationship as to those purposes because it found the evidence in conflict. In order to obtain an expedited ruling, appellants waived their right to an evidentiary hearing only as to the purposes "which the lower courts have determined to be legitimate." App to Juris St, at 2a. Thus, for this Court to resolve whether Alabama may continue to collect the tax, it would have to decide de novo whether any of the other purposes was legitimate, and also whether the statute's classification bore a rational relationship to any of these purposes—all this, on a record that the Court of Civil Appeals deemed inadequate.

6. We find the other cases on which the State relies also to be inapposite to this inquiry. Bacchus Imports, Pike, and Parker discussed whether promotion of local industry is a valid state purpose under the Commerce Clause. The Commerce Clause, unlike the Equal Protection Clause, is integrally concerned with whether a state purpose implicates local or national interests. The Equal Protection Clause, in contrast, is concerned with whether a state purpose is impermissibly discriminatory; whether the discrimination involves local or other interests is not central to the inquiry to be made. Thus, the fact that promotion of local industry is a legitimate state interest in the Commerce Clause context says nothing about its validity under equal protection analysis. See infra, at ——-——, 84 L Ed 2d 760–761.

Moreover, neither Bacchus nor Pike ruled that a State's ability to promote domestic industry was unlimited, even under the Commerce Clause. Thus, in Bacchus, although we observed as a general matter that "a State may enact laws pursuant to its police powers that have the purpose and effect of encouraging domestic industry," 468 US ——, ——, 82 L Ed 2d 200, 104 S Ct 3049 (1984), we held

taxes. See Bacchus Dias, 468 US ——, 82 104 S Ct 3049 (1984); Church, Inc., 397 US 2d 174, 90 S Ct 844 Stores of Ohio, Inc. v Parker v Brown, 317 Ed 315, 63 S Ct 307 hael v Southern Coal 01 US 495, 81 L Ed : 868, 109 ALR 1327 of Education v Illinois, 51 L Ed 314, 27 S Ct

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fornia's purpose in enacting the retaliatory tax—to promote the *interstate* business of domestic insurers by deterring other States from enacting discriminatory or excessive taxes—was a legitimate one. 451 US, at 668, 68 L Ed 2d 514, 101 S Ct 2070. In contrast, Alabama asks us to approve its purpose of promoting the business of its domestic insurers in Alabama by penalizing foreign insurers who also want to do business in the State. Alabama has made no attempt, as California did, to influence the policies of other States in order to enhance its domestic companies' ability to operate interstate; rather, it has erected barriers to foreign companies who wish to do interstate business in order to improve its domestic insurers' ability to compete at home.

[2] The crucial distinction between the two cases lies in the fact that Alabama's aim to promote domestic industry is purely and completely discriminatory, designed only to favor domestic industry within the State, no matter what the cost to foreign corporations also seeking to do business there. Alabama's purpose, contrary to California's, constitutes the very sort of parochial discrimination that the Equal Protection Clause was intended to prevent. As Justice Brennan, joined by Justice Harlan, observed in his concurrence in Allied Stores of Ohio, Inc. v Bowers, 358 US 522, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312 (1959), this Court always has held that the Equal Protection Clause forbids a State to discriminate in favor of its own residents solely by burdening "the residents of other state members of our federation." Id., at 533, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312. Unlike the retaliatory tax involved in Western & Southern, which only burdens residents of a State that imposes its own discriminatory tax on outsiders, the domestic preference tax gives the "home team" an advantage by burdening *all* foreign corporations seeking to do business within the State, no matter what they or their States do.

The validity of the view that a State may not constitutionally favor its own residents by taxing foreign corporations at a higher rate solely because of their residence is confirmed by a long line of this Court's cases so holding. WHYY, Inc v Glassboro, 393 US, at 119–120, 21 L Ed 2d 242, 89 S Ct 286; Wheeling Steel Corp. v Glander, 337 US, at 571, 93 L Ed 1544, 69 S Ct 1291, 40

that in so doing, a State may not constitutionally impose a discriminatory burden upon the business of other States, merely to protect and promote local business, id., at ——, 82 L Ed 2d 200, 104 S Ct 3049. Accord Armco Inc. v Hardesty, 467 US ——, ——, 81 L Ed 2d 540, 104 S Ct 2620 (1984). Likewise, in Pike, the Court held that the state statute promoting a legitimate local interest must "regulat[e] evenhandedly." 397 US, at 142, 25 L Ed 2d 174, 90 S Ct 844.

Other cases cited by the State are simply irrelevant to the legitimacy of promoting local business at all. Carmichael relates primarily to the validity of a state unemployment compensation scheme, and Board of Education deals with the State's ability to regulate matters relating to probate. Bowers is the only one of the State's cases that involves the validity under the Equal Protection Clause of a tax that discriminates on the basis of residence of domestic *versus* foreign corporations. That case does little, however, to support the State's contention that promotion of domestic business is a legitimate state purpose. It was concerned with encouraging nonresidents—who are not competitors of residents—to build warehouses within the State. See infra, at ——-——, 84 L Ed 2d 760.

Ohio Ops 101, 55 Ohio L Abs 305; Hanover Fire Ins. Co. v Harding, 272 US, at 511, 71 L Ed 372, 47 S Ct 179, 49 ALR 713; Southern R. Co. v Greene, 216 US, at 417, 54 L Ed 536, 30 S Ct 287. See Reserve Life Ins. Co. v Bowers, 380 US 258, 13 L Ed 2d 959, 85 S Ct 951 (1965) (per curiam). As the Court stated in Hanover Fire Ins. Co., with respect to general tax burdens on business, "the foreign corporation stands equal, and is to be classified with domestic corporations of the same kind." 272 US, at 511, 71 L Ed 372, 47 S Ct 179, 49 ALR 713. In all of these cases, the discriminatory tax was imposed by the State on foreign corporations doing business within the State solely because of their residence, presumably to promote domestic industry within the State.[7] In relying on these cases and rejecting Lincoln in Western & Southern, we reaffirmed the continuing viability of the Equal Protection Clause as a means of challenging a statute that seeks to benefit domestic industry within the State only by grossly discriminating against foreign competitors.

The State contends that Allied Stores of Ohio, Inc. v Bowers, supra, shows that this principle has not always held true. In that case, a domestic merchandiser challenged on equal protection grounds an Ohio statute that exempted foreign corporations from a tax on the value of merchandise held for storage within the State. The Court upheld the tax, finding that the purpose of encouraging foreign companies to build warehouses within Ohio was a legitimate state purpose. The State contends that this case shows that promotion of domestic business is a legitimate state purpose under equal protection analysis.

[1c] We disagree with the State's interpretation of Allied Stores and find that the case is not inconsistent with the other cases on which we rely. We agree with the holding of Allied Stores that a State's goal of bringing in new business is legitimate and often admirable. Allied Stores does not, however, hold that promotion of domestic business by *discriminating* against foreign corporations is legitimate. The case involves instead a statute that *encourages nonresidents*—who are not competitors of residents—to build warehouses within the State. The discriminatory tax involved did not favor residents by burdening outsiders; rather, it granted the nonresident businesses an exemption that residents did not share. Since the foreign and domestic companies involved were not competing to provide warehousing services, granting the former an exemption did not even directly affect adversely the domestic companies subject to the tax. On its facts, then, Allied Stores is not inconsistent with our holding here that promotion of domestic business within a State, by discriminating against foreign corporations that wish to compete by doing business there, is not a legitimate state purpose. See 358 US, at 532–533, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312 (Brennan, J., concurring).

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[3] The State argues nonetheless

7. Although the promotion of domestic business was not a purpose advanced by the States in support of their taxes in these cases, such promotion is logically the primary reason for enacting discriminatory taxes such as those at issue there.

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that it is impermissible to view a discriminatory tax such as the one at issue here as violative of the Equal Protection Clause. This approach, it contends, amounts to no more than "Commerce Clause rhetoric in equal protection clothing." Brief for Appellee Ward 22. The State maintains that because Congress, in enacting the McCarran-Ferguson Act, 15 USC §§ 1011–1015 [15 USCS §§ 1011–1015], intended to authorize States to impose taxes that burden interstate commerce in the insurance field, the tax at issue here must stand. Our concerns are much more fundamental than as characterized by the State. Although the McCarran-Ferguson Act exempts the insurance industry from Commerce Clause restrictions, it does not purport to limit in any way the applicability of the Equal Protection Clause. As noted above, our opinion in Western & Southern expressly reaffirmed the viability of equal protection restraints on discriminatory taxes in the insurance context.[8]

[4] Moreover, the State's view ignores the differences between Commerce Clause and equal protection analysis and the consequent different purposes those two constitutional provisions serve. Under Commerce Clause analysis, the State's interest, if legitimate, is weighed against the burden the state law would impose on interstate commerce. In the equal protection context, however, if the State's purpose is found to be legitimate, the state law stands as long as the burden it imposes is found to be rationally related to that purpose, a relationship that is not difficult to establish. See Western & Southern, 451 US, at 674, 68 L Ed 2d 514, 101 S Ct 2070 (if purpose is legitimate, equal protection challenge may not prevail so long as the question of rational relationship is "'at least debatable'" (quoting United States v Carolene Products Co. 304 US 144, 154, 82 L Ed 1234, 58 S Ct 778 (1938)).

The two constitutional provisions perform different functions in the analysis of the permissible scope of a State's power—one protects interstate commerce, and the other protects persons[9] from unconstitutional discrimination by the States. See Bethlehem Motors Corp. v Flynt, 256 US 421, 423–424, 65 L Ed 1029, 41 S Ct 571 (1921). The effect of the statute at issue here is to place a discriminatory tax burden on foreign insurers who desire to do business within the State, thereby also incidentally placing a burden on interstate commerce. Equal protection restraints are applicable even though the *effect* of the discrimination in this case is similar to the type of burden with which the Commerce Clause also would be concerned. We reaffirmed the importance of the Equal Protection Clause in the in-

8. In fact, as we noted in Western & Southern, the legislative history of the McCarran-Ferguson Act reveals that the Act was Congress's response only to United States v South-Eastern Underwriters Assn. 322 US 533, 88 L Ed 1440, 64 S Ct 1162 (1944), and that Congress did not intend thereby to give the States any power to tax or regulate the insurance industry other than what they had previously possessed. Thus Congress expressly left undisturbed this Court's decisions holding that the Equal Protection Clause places limits on a State's ability to tax out-of-state corporations. See 451 US, at 655, n 6, 68 L Ed 2d 514, 101 S Ct 2070.

9. It is well established that a corporation is a "person" within the meaning of the Fourteenth Amendment. E.g., Western & Southern, supra, at 660, n 12, 68 L Ed 2d 514, 101 S Ct 2070.

surance context in Western & Southern and see no reason now for reassessing that view.

[1d] In whatever light the State's position is cast, acceptance of its contention that promotion of domestic industry is always a legitimate state purpose under equal protection analysis would eviscerate the Equal Protection Clause in this context. A State's natural inclination frequently would be to prefer domestic business over foreign. If we accept the State's view here, then any discriminatory tax would be valid if the State could show it reasonably was intended to benefit domestic business.[10] A discriminatory tax would stand or fall depending primarily on how a State framed its purpose—as benefiting one group or as harming another. This is a distinction without a difference, and one that we rejected last term in an analogous context arising under the Commerce Clause. Bacchus Imports, Ltd. v Dias, 468 US, at ——, 82 L Ed 2d 200, 104 S Ct 3049. See n 6, supra. We hold that under the circumstances of this case, promotion of domestic business by discriminating against nonresident competitors is not a legitimate state purpose.

B

[1e] The second purpose found by the courts below to be legitimate was the encouragement of capital investment in the Alabama assets and governmental securities specified in the statute. We do not agree that this is a legitimate state purpose when furthered by discrimination. Domestic insurers remain entitled to the more favorable rate of tax regardless of whether they invest in Alabama assets. Moreover, the investment incentive provision of the Alabama statute does not enable foreign insurance companies to eliminate the discriminatory effect of the statute. No matter how much of their assets they invest in Alabama, foreign insurance companies are still required to pay a higher gross premiums tax than domestic companies. The State's investment incentive provision therefore does not cure, but reaffirms, the statute's impermissible classification based solely on residence. We hold that encouraging investment in Alabama assets and securities in this plainly discriminatory manner serves no legitimate state purpose.

IV

[1f] We conclude that neither of the two purposes furthered by the Alabama domestic preference tax statute and addressed by the Circuit Court for Montgomery County, see supra, at 3, is legitimate under the Equal Protection Clause to justify the imposition of the discriminatory tax at issue here. The judgment of the Alabama Supreme Court accordingly is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

10. Indeed, under the State's analysis, *any* discrimination subject to the rational relation level of scrutiny could be justified simply on the ground that it favored one group at the expense of another. This case does not involve or question, as the dissent suggests, post, at ——, 84 L Ed 2d 774, the broad authority of a State to promote and regulate its own economy. We hold only that such regulation may not be accomplished by imposing discriminatorily higher taxes on nonresident corporations solely because they are nonresidents.

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Justice **O'Connor,** with whom Justice Brennan, Justice Marshall and Justice **Rehnquist** join, dissenting.

This case presents a simple question: Is it legitimate for a state to use its taxing power to promote a domestic insurance industry and to encourage capital investment within its borders? In a holding that can only be characterized as astonishing, the Court determines that these purposes are illegitimate. This holding is unsupported by precedent and subtly distorts the constitutional balance, threatening the freedom of both state and federal legislative bodies to fashion appropriate classifications in economic legislation. Because I disagree with both the Court's method of analysis and its conclusion, I respectfully dissent.

I

Alabama's legislature has chosen to impose a higher tax on out-of-state insurance companies and insurance companies incorporated in Alabama that do not maintain their principal place of business or invest assets within the State. Ala Code § 27-4-4 et seq. (1975). This tax seeks to promote both a domestic insurance industry and capital investment in Alabama. App to Juris Statement 20a-21a. Metropolitan Life Insurance Company, joined by many other out-of-state insurers, alleges that this discrimination violates its rights under the Equal Protection Clause of the Fourteenth Amendment, which provides that a State shall not "deny to any person within its jurisdiction the equal protection of the laws." Appellants rely on the Equal Protection Clause because, as corporations, they are not "citizens" protected by the privileges and immunities clauses of the Constitution. Hemphill v Orloff, 277 US 537, 548–550, 72 L Ed 978, 48 S Ct 577 (1928). Similarly, they cannot claim Commerce Clause protection because Congress in the McCarran-Ferguson Act, 59 Stat 33, 15 USC § 1011 et seq. [15 USCS §§ 1011 et seq.], explicitly suspended Commerce Clause restraints on state taxation of insurance and placed insurance regulation firmly within the purview of the several States. Western & Southern Life Ins. Co. v State Board of Equalization, 451 US 648, 655, 68 L Ed 2d 514, 101 S Ct 2070 (1981).

Our precedents impose a heavy burden on those who challenge local economic regulation solely on Equal Protection Clause grounds. In this context, our long-established jurisprudence requires us to defer to a legislature's judgment if the classification is rationally related to a legitimate state purpose. Yet the Court evades this careful framework for analysis, melding the proper two-step inquiry regarding the State's purpose and the classification's relationship to that purpose into a single unarticulated judgment. This tactic enables the Court to characterize State goals that have been legitimated by Congress itself as improper solely because it disagrees with the concededly rational means of differential taxation selected by the legislature. This unorthodox approach leads to further error. The Court gives only the most cursory attention to the factual and legal bases supporting the State's purposes and ignores both precedent and significant evidence in the record establishing their legitimacy. Most trou-

bling, the Court discovers in the Equal Protection Clause an implied prohibition against classifications whose purpose is to give the "home team" an advantage over interstate competitors even where Congress has authorized such advantages. Ante, at ——, 84 L Ed 2d 759.

The Court overlooks the unequivocal language of our prior decisions. "Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest." New Orleans v Dukes, 427 US 297, 303, 49 L Ed 2d 511, 96 S Ct 2513 (1976). See, e.g., Lehnhausen v Lake Shore Auto Parts Co. 410 US 356, 35 L Ed 2d 351, 93 S Ct 1001 (1973). Judicial deference is strongest where a tax classification is alleged to infringe the right to equal protection. "[I]n taxation, even more than in other fields, legislatures possess the greatest freedom in classification." Madden v Kentucky, 309 US 83, 88, 84 L Ed 590, 60 S Ct 406, 125 ALR 1383 (1940). "Where the public interest is served one business may be left untaxed and another taxed, in order to promote the one or to restrict or suppress the other." Carmichael v Southern Coal & Coke Co. 301 US 495, 512, 81 L Ed 1245, 57 S Ct 868, 109 ALR 1327 (1937) (citations omitted). As the Court emphatically noted in Allied Stores of Ohio, Inc. v Bowers:

> "[I]t has repeatedly been held and appears to be entirely settled that a statute which encourages the location within the State of needed and useful industries by exempting them, though not also others, from its taxes is not arbitrary and does not violate the Equal Protection Clause of the Fourteenth Amendment. Similarly, it has long been settled that a classification, though discriminatory, is not arbitrary or violative of the Equal Protection Clause of the Fourteenth Amendment if any state of facts reasonably can be conceived that would sustain it." 358 US 522, 528, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312 (1959) (citations omitted).

See also Western & Southern Life Ins. Co. v State Board of Equalization, supra, at 674, 68 L Ed 2d 514, 101 S Ct 2070; Minnesota v Clover Leaf Creamery Co. 449 US 456, 464, 66 L Ed 2d 659, 101 S Ct 715 (1981).

Appellants waived their right to an evidentiary hearing and conceded that Alabama's classification was rationally related to its purposes of encouraging the formation of domestic insurance companies and bringing needed services and capital to the State. Thus the only issue in dispute is the legitimacy of these purposes. Yet it is obviously legitimate for a State to seek to promote local business and attract capital investment, and surely those purposes animate a wide range of legislation in all 50 States.

The majority evades the obvious by refusing to acknowledge the factual background bearing on the legitimacy of the State's purpose or to address the many collateral public benefits advanced by Alabama. Instead, the Court dismisses the

State's arguments by merely stating that they were not ruled on by the courts below. Ante, at ——, n 5, 84 L Ed 2d 758. In point of fact, the full range of purposes documented before this Court was also argued and documented before the Alabama Circuit Court. See Record, Vols VI, VII, VIII. That court found *"at least* two purposes, in addition to raising revenue: (1) encouraging the formation of new insurance companies in Alabama, and (2) encouraging capital investment by foreign insurance companies in the Alabama assets and governmental securities set forth in the statute." App to Juris Statement 20a-21a (emphasis added). As appellants concede, these purposes are simply a step in achieving the "larger set of purposes [whose] premise . . . is that domestic insurance companies, on the whole, benefit the state in ways which foreign companies do not." Brief for Appellants 31.

In any event, it is settled law that the appellee may assert any argument in support of the judgment in his favor, regardless of whether it was relied upon by the court below. Dandridge v Williams, 397 US 471, 475, n 6, 25 L Ed 2d 491, 90 S Ct 1153 (1970). The Court's failure actually to resolve whether Alabama may continue to collect its tax, see ante, at ——, n 10, 84 L Ed 2d 762, is all the more baffling, since appellants took the exceptional step of conceding the factual issues to assure a speedy resolution of numerous pending lawsuits disruptive of industry stability. See Brief for State of Alaska et al. as Amici Curiae 1–2. Our precedents do not condone such a miserly approach to review of statutes adjusting economic burdens. See, e.g. Allied Stores of Ohio, Inc. v Bowers, supra, at 528–529, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312; McGowan v Maryland, 366 US 420, 425, 6 L Ed 2d 393, 81 S Ct 1101, 17 Ohio Ops 2d 151 (1961); United States v Carolene Products Co. 304 US 144, 152–153, 82 L Ed 1234, 58 S Ct 778 (1938); Borden's Farm Products Co. v Baldwin, 293 US 194, 209, 79 L Ed 281, 55 S Ct 187 (1934). The Court had consistently reviewed the validity of such statutes based on whatever "may reasonably have been the purpose and policy of the State Legislature, in adopting the proviso." Allied Stores of Ohio, Inc. v Bowers, supra, at 528–529, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312. It is to that inquiry that I now turn.

Alabama claims that its insurance tax, in addition to raising revenue and promoting investment, promotes the formation of new domestic insurance companies and enables them to compete with the many large multistate insurers that currently occupy some 75% to 85% of the Alabama insurance market. App 80. Economic studies submitted by the State document differences between the two classes of insurers that are directly relevant to the well-being of Alabama's citizens. See id., at 46–129. Foreign insurers typically concentrate on affluent, high volume, urban markets and offer standardized national policies. In contrast, domestic insurers such as intervenors American Educators Life Insurance Company and Booker T. Washington Life Insurance Company are more likely to serve Alabama's rural areas, and to write low-cost industrial and burial policies not offered by the larger

national companies.[1] Additionally, Alabama argues persuasively that it can more readily regulate domestic insurers and more effectively safeguard their solvency than that of insurers domiciled and having their principal places of business in other states.

Ignoring these policy considerations, the Court insists that Alabama seeks only to benefit local business, a purpose the Court labels invidious. Yet if the classification chosen by the State can be shown *actually* to promote the public welfare, this is strong evidence of a legitimate State purpose. See Note, Taxing Out-of-State Corporations After Western & Southern: An Equal Protection Analysis, 34 Stan L Rev 877, 896 (1982). In this regard, Justice Frankfurter wisely observed that:

> "[T]he great divide in the [equal protection] decisions lies in the difference between emphasizing the actualities or the abstractions of legislation.
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> "To recognize marked differences that exist in fact is living law; to disregard practical differences and concentrate on some abstract identities is lifeless logic." Morey v Doud, 354 US 457, 472, 1 L Ed 2d 1485, 77 S Ct 1344 (1957) (Frankfurter, J., dissenting).

A thoughtful look at the "actualities of [this] legislation" compels the conclusion that the State's goals are legitimate by any test.

II

The policy of favoring local concerns in State regulation and taxation of insurance, which the majority condemns as illegitimate, is not merely a recent invention of the States. The States initiated regulation of the business of insurance as early as 1851. See Report of the Comptroller General, Issues and Needed Improvements in State Regulation of the Insurance Business, GAO Report B-192813, p 5 (Oct. 9, 1979) (GAO Report). In 1944, however, this Court overruled a long line of cases holding that the business of insurance was an intrastate activity beyond the scope of the Commerce Clause. United States v South-Eastern Underwriters Assn. 322 US 533, 88 L Ed 1440, 64 S Ct 1162. "The decision provoked widespread concern that the States would no longer be able to engage in taxation and effective regulation of the insurance industry. Congress moved quickly, enacting the McCarran-Ferguson Act within a year of the decision in South-Eastern Underwriters." St. Paul Fire & Marine Insurance Co. v Barry, 438 US 531, 539, 57 L Ed 2d 932, 98 S Ct 2923 (1978). See H R Rep No 143, 79th Cong, 1st Sess, 2 (1945); 91 Cong Rec 479–480 (1945) (remarks of Sen. Ferguson); id., at 487 (remarks of Sen. Ellender).

The drafters of the Act were sensitive to the same concerns Alabama now vainly seeks to bring to this Court's attention: the greater responsiveness of local insurance com-

1. "Industrial insurance" is the trade term for a low face-value policy typically sold door-to-door and maintained through home collection of monthly or weekly premiums. Alabama currently has more industrial insurance in force than any other State. Burial insurance is another form of insurance popular in rural Alabama that is offered exclusively by local insurers. By contrast, Metropolitan Life, like many multistate insurers, has discontinued writing even whole-life policies with face values below $15,000. App 173–176.

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panies to local conditions, the different insurance needs of rural and industrial states, the special advantages and constraints of state-by-state regulation, and the importance of insurance license fees and taxes as a major source of State revenues. See, e.g., Hearings on S 1362 before the Senate Subcommittee on the Judiciary, 78th Cong, 1st Sess, 3, 10, 16–17 (1943) (letter of Gov. Sharpe of South Dakota stressing role of domestic insurers that provide "poor man" and rural policies adapted to farming concerns); 90 Cong Rec 6564 (1944) (remarks of Rep Vorhis). "As this Court observed shortly afterward, '[o]bviously Congress' purpose was broadly to give support to the existing and future state systems for regulating and taxing the business of insurance.' Prudential Insurance Co. v Benjamin, 328 US 408, 429 [90 L Ed 1342, 66 S Ct 1142, 164 ALR 476] (1946)." St. Paul Fire & Marine Insurance Co. v Barry, supra, at 539, 57 L Ed 2d 932, 98 S Ct 2923.

The majority opinion correctly notes that Congress did not intend the McCarran-Ferguson Act to give the States any power to tax or regulate the insurance industry other than they already possessed. But the legislative history cited by the majority, ante, at ——, n 7, 84 L Ed 2d 760, relates not to differential taxation but to decisions of this Court that had invalidated State taxes on contracts of insurance entered into outside the State's jurisdiction. See H R Rep No. 143, 79th Cong, 1st Sess, 3 (1945). The Court fails to mention that at the time the Act was under consideration the taxing schemes of Alabama, Arizona, Arkansas, Illinois, Kansas, Kentucky, Maine, Michigan, Mississippi, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Washington, and Wisconsin all incorporated tax differentials favoring domestic insurers. See App 377–379.

Any doubt that Congress' intent encompassed taxes that discriminate in favor of local insurers was dispelled in Prudential Insurance Co. v Benjamin. Cf. Note, Congressional Consent to Discriminatory State Legislation, 45 Colum L Rev 927 (1945) (discussing the issues of constitutional power posed by the Act). There a foreign insurer challenged a tax on annual gross premiums imposed on foreign but not domestic insurers as a condition for renewal of its license to do business. Congress, the foreign insurer argued, was powerless to sanction the tax at issue because "the commerce clause 'by its own force' forbids discriminatory state taxation." Prudential Insurance Co. v Benjamin, 328 US 408, 426, 90 L Ed 1342, 66 S Ct 1142, 164 ALR 476 (1946). A unanimous Court rejected the argument that exacting a 3% gross premium tax from foreign insurers was invalid as "somehow technically of an inherently discriminatory character." Id., at 432, 90 L Ed 1342, 66 S Ct 1142, 164 ALR 476. The Court concluded that the McCarran-Ferguson Act's effect was "clearly to sustain the exaction and that this can be done without violating *any* constitutional provision." Id., at 427, 90 L Ed 1342, 66 S Ct 1142, 164 ALR 476 (emphasis added).

Benjamin expressly noted that nothing in the Equal Protection Clause forbade the State to enact a law such as the tax at issue. Id., at 438, and n 50, 90 L Ed 1342, 66 S Ct 1142, 164 ALR 476. In this regard the Court relied in part on Hanover Fire Ins. Co. v Harding, 272 US 494,

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71 L Ed 372, 47 S Ct 179, 49 ALR 713 (1926), a decision that explicitly recognized that differential taxation of revenues of foreign corporations may not be arbitrary or without reasonable basis. See Western & Southern Life Ins. Co. v State Board of Equalization, 451 US, at 664, n 17, 68 L Ed 2d 514, 101 S Ct 2070. The Commerce Clause, Benjamin emphasized, is not a "one way street" but encompasses congressional power "to discriminate against interstate commerce and in favor of local trade," "subject only to the restrictions placed upon its authority by other constitutional provisions." 328 US, at 434, 90 L Ed 1342, 66 S Ct 1142, 164 ALR 476. Where the States and Congress have acted in concert to effect a policy favoring local concerns, their action must be upheld unless it unequivocally exceeds "some explicit and compelling limitation imposed by a constitutional provision or provisions designed and intended to outlaw the action taken entirely from our constitutional framework." Id., at 435–436, 90 L Ed 2d 1342, 66 S Ct 1142, 164 ALR 476.

Our more recent decision in Western & Southern in no way undermines the force of the analysis in Benjamin. Western & Southern confirms that differential premium taxes are not immune from review as "privilege" taxes, but it also teaches that the Constitution requires only that discrimination between domestic and foreign corporations bear a rational relationship to a legitimate state purpose. Benjamin clearly recognized that differentially taxing foreign insurers to promote a local insurance industry was a legitimate State purpose completely consonant with Congress' purpose in the McCarran-Ferguson Act.

The contemporary realities of insurance regulation and taxation continue to justify a uniquely local perspective. Insurance regulation and taxation must serve local social policies including assuring the solvency and reliability of companies doing business in the State and providing special protection for those who might be denied insurance in a free market, such as the urban poor, small businesses and family farms. GAO Report 10–13; State Insurance Regulation, Hearing before the Subcommittee on Antitrust, Monopoly and Business Rights of the Senate Committee on the Judiciary, 96th Cong, 1st Sess, 19–21 (1979) (hereinafter Insurance Regulation). Currently at least 28 of the 50 States employ a combination of investment incentives and differential premium taxes favoring domestic insurers to encourage local investment of policyholders' premiums and to partially shelter smaller domestic insurers from competition with the large multistate companies. App 66.

State insurance commissions vary widely in manpower and expertise. GAO Report 14. In practice, the State of incorporation exercises primary oversight of the solvency of its insurers. Id., at 36–38. See generally Dunne, Risk, Reality, and Reason in Financial Services Deregulation: A State Legislative Perspective, 2 J Ins Reg 342 (1984) (prepared by the Conference of Insurance Legislators). See, e.g. Ala Code § 27-2-21 (Supp 1984); Ill Rev Stat, ch 73, ¶ 745 (1983); (power to examine books of domestic insurers); Ala Code § 27-32-1 et seq. (1975); Ill Rev Stat, ch 73, ¶¶ 799, 800 (1983) (commissioner's authority to assume control to prevent insolvency); see generally Wis Stat Ann, ch 620, Prefatory Commit-

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tee Comment—1971, pp 536, 546 (1980) (noting lesser control over nondomestic's financial operations). Even the State-of-incorporation's efforts to regulate a multistate insurer may be seriously hampered by the difficulty of gaining access to records and assets in forty-nine other States. Dunne, supra, at 356. Thus the security of Alabama's citizens who purchase insurance from out-of-state companies may depend in part on the diligence of another State's insurance commissioner, over whom Alabama has no authority and limited influence. In the event of financial failure of a foreign insurer the State may have difficulty levying on out-of-state assets. See, e.g., South Carolina ex rel Phoenix Life Ins. Co. v McMaster, 237 US 63, 73, 59 L Ed 839, 35 S Ct 504 (1915). Since each State maintains its own insurance guarantee fund, the domestic insurers of the States where a multistate insurer is admitted to do business may ultimately be forced to absorb local policyholders' losses. Dunne, supra, at 372–373.

Many have sharply criticized this piecemeal system, see, e.g., GAO Report i-iii; Schmalz, The Insurance Exemption: Can it be Modified Successfully?, 48 ABA Antitrust L J 579 (1979), but Congress has resisted suggestions that it modify the McCarran-Ferguson Act to permit greater federal intervention. See GAO Report 1; Insurance Regulation, supra. This Court cannot ignore the exigencies of contemporary insurance regulation outlined above simply because it might prefer uniform federal regulation. Given the distinctions in ease of regulation and services rendered by foreign and domestic insurers, we cannot dismiss as illegitimate the State's goal of promoting a healthy local insurance industry sensitive to regional differences and composed of companies that agree to subordinate themselves to the Alabama Commissioner's control and to maintain a principal place of business within Alabama's borders. Though economists might dispute the efficacy of Alabama's tax, "[p]arties challenging legislation under the Equal Protection Clause cannot prevail so long as 'it is evident from all the considerations presented to [the legislature], and those of which we may take judicial notice, that the question is at least debatable.'" Western & Southern Life Ins. Co. v State Board of Equalization, 451 US, at 674, 68 L Ed 2d 514, 101 S Ct 2070, quoting United States v Carolene Products Co. 304 US, at 154, 82 L Ed 1234, 58 S Ct 778. Moreover, appellants waived their right to challenge the tax measure's effectiveness.

III

Despite abundant evidence of a legitimate state purpose, the majority condemns Alabama's tax as "purely and completely discriminatory" and "the very sort of parochial discrimination that the Equal Protection Clause was intended to prevent." Ante, at ——, 84 L Ed 2d 759. Apparently, the majority views any favoritism of domestic commercial entities as inherently suspect. The majority ignores a long line of our decisions. In the past this Court has not hesitated to apply the rational basis test to regulatory classifications that distinguish between domestic and out-of-state corporations or burden foreign interests to protect local concerns. The Court has always recognized that there are certain legitimate restrictions or policies in which, "[b]y definition, dis-

crimination against nonresidents would inhere." Arlington County Board v Richards, 434 US 5, 7, 54 L Ed 2d 4, 98 S Ct 24 (1977) (per curiam). For example, where state of incorporation or principal place of business affect the State's ability to regulate or exercise its jurisdiction, a State may validly discriminate between foreign and domestic entities. See G. D. Searle & Co. v Cohn, 455 US 404, 71 L Ed 2d 250, 102 S Ct 1137 (1982) (difficulty of obtaining jurisdiction over nonresident corporation provides a rational basis for excepting such corporations from statute of limitations); Metropolitan Casualty Ins. Co. v Brownell, 294 US 580, 79 L Ed 1070, 55 S Ct 538 (1935) (domicile of insurer relevant to statute of limitations as foreign insurers offices and funds generally located outside state); Board of Education v Illinois, 203 US 553, 562, 51 L Ed 314, 27 S Ct 171 (1906) (State's greater control over domestic than foreign nonprofit corporations justifies discriminatory tax).

A State may use its taxing power to entice useful foreign industry, see Allied Stores of Ohio, Inc. v Bowers, 358 US, at 528, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312, or to make residence within its boundaries more attractive, see Zobel v Williams, 457 US 55, 67-68, 72 L Ed 2d 672, 102 S Ct 2309 (1982) (Brennan, J., concurring). Though such measures might run afoul of the Commerce Clause, "[n]o one disputes that a State may enact laws pursuant to its police powers that have the purpose and effect of encouraging domestic industry." Bacchus Imports, Ltd. v Dias, 468 US ——, ——, 82 L Ed 2d 200, 104 S Ct 3049 (1984); Western & Southern Life Ins. Co. v State Board of Equalization, supra, at 668, 68 L Ed 2d 514, 101 S Ct 2070. Cf. Edgar v MITE Corp. 457 US 624, 646, 73 L Ed 2d 269, 102 S Ct 2629 (1982) (Powell, J. concurring in part) (noting State's interest in protecting regionally based corporations from acquisition by foreign corporations).

Moreover, the Court has held in the dormant commerce clause context that a State may provide subsidies or rebates to domestic but not to foreign enterprises if it rationally believes that the former contribute to the State's welfare in ways that the latter do not. Hughes v Alexandria Scrap Corp. 426 US 794, 49 L Ed 2d 220, 96 S Ct 2488 (1976). Although the Court has divided on the circumstances in which the dormant Commerce Clause allows such measures, see id., at 817, 49 L Ed 2d 220, 96 S Ct 2488 (Brennan, J., dissenting), surely there can be no dispute that they are constitutionally permitted where Congress itself has affirmatively authorized the States to promote local business concerns free of Commerce Clause constraints. Neither the Commerce Clause nor the Equal Protection Clause bars Congress from enacting or authorizing the States to enact legislation to protect industry in one State "from disadvantageous competition" with less stringently regulated businesses in other States. Hodel v Indiana, 452 US 314, 329, 69 L Ed 2d 40, 101 S Ct 2376 (1981). See also Western & Southern, supra, at 669, 68 L Ed 2d 514, 101 S Ct 2070 (with congressional approval, States may promote domestic insurers by seeking to deter other States from enacting discriminatory or excessive taxes).

The majority's attempts to distinguish these precedents are unconvincing. First the majority suggests

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the majority suggests

that a State purpose might be legitimate for purposes of the Commerce Clause but somehow illegitimate for purposes of the Equal Protection Clause. No basis is advanced for this theory because no basis exists. The test of a legitimate State purpose must be whether it addresses valid State concerns. To suggest that the purpose's legitimacy, chameleon-like, changes according to the constitutional clause cited in the complaint is merely another pretext to escape the clear message of this Court's precedents.

Next the majority asserts that "a State may not constitutionally favor its own residents by taxing foreign corporations at a higher rate solely because of their residence," citing cases that rejected discriminatory ad valorem property taxes, defended as taxes on the "privilege" of doing business. Ante, at ——, 84 L Ed 2d 759–760. See, e.g., WHYY, Inc. v Glassboro, 393 US 117, 21 L Ed 2d 242, 89 S Ct 286 (1968); Wheeling Steel Corp. v Glander, 337 US 562, 93 L Ed 1544, 69 S Ct 1291, 40 Ohio Ops 101, 55 Ohio L Abs 305 (1949); Hanover Fire Ins. Co. v Harding, 272 US 494, 71 L Ed 372, 47 S Ct 179, 49 ALR 713 (1926); Southern R. Co. v Greene, 216 US 400, 54 L Ed 536, 30 S Ct 287 (1910). These decisions were addressed in Western & Southern, and the classifications were characterized as impermissibly discriminatory because they did not "'rest on differences pertinent to the subject in respect of which the classification is made.'" 451 US, at 668, 68 L Ed 2d 514, 101 S Ct 2070, quoting Power Manufacturing Co. v Saunders, 274 US 490, 494, 71 L Ed 1165, 47 S Ct 678 (1927). As the majority concedes, none of these decisions intimates that the tax statutes at issue in the decisions rested on relevant differences between domestic and foreign corporations or had purposes other than the raising of revenue at the out-of-state corporations' expense.

In fact, the Court noted in several of these opinions that foreign corporations *may* validly be taxed at a higher rate if the classification is based on some relevant distinction. No such distinction, however, had been demonstrated or even alleged. See WHYY, Inc. v Glassboro, supra, at 120, 21 L Ed 2d 242, 89 S Ct 286 ("This is not a case in which the exemption was withheld by reason of the foreign corporation's failure or inability to benefit the State in the same measure as do domestic nonprofit corporations"); Wheeling Steel Corp. v Glander, 337 US, at 572, 93 L Ed 1544, 69 S Ct 1291, 40 Ohio Ops 101, 55 Ohio L Abs 305 ("the inequality is not because of the slightest difference in Ohio's relation to the decisive transaction"); Southern R. Co. v Greene, 216 US, at 416–417, 54 L Ed 536, 30 S Ct 287 (parties conceded that the business of the foreign and domestic corporations was precisely the same).[2] Lack-

2. The only cited authority that arguably addressed the issue raised in the instant case is a per curiam reversal and remand without opinion of a decision upholding a discriminatory ad valorem tax on a foreign insurer's fixtures and other tangible property. See Reserve Life Ins. Co. v Bowers, 380 US 258, 13 L Ed 2d 959, 85 S Ct 951 (1965). A reversal and remand is more enigmatic even than a summary affirmance, which has precedential value only as to "the precise issues necessarily presented and necessarily decided." Mandel v Bradley, 432 US 173, 176, 53 L Ed 2d 199, 97 S Ct 2238 (1977). Decisions without opinion may not be equated with "an opinion by this Court treating the question on the merits." See Edelman v Jordan, 415 US 651, 670–671, 39 L Ed 2d 662, 94 S Ct 1347 (1974).

ing the threshhold requirement of an articulated distinction relevant to an asserted purpose, the classifications at issue in these decisions could never have survived rational basis scrutiny and no such analysis was even attempted. These precedents do not answer the question posed by this case: whether a legislature may adopt differential tax treatment of domestic and foreign insurers not simply to raise additional revenue but with the purpose of affecting the market as an "instrument of economic and social engineering"? P. Hartman, Federal Limitations on State and Local Taxation § 3:2 (1981). The majority's suggestion that these cases necessarily decided the issue before us, as promotion of domestic business is "logically the primary reason for enacting discriminatory taxes such as those at issue [in the cited cases]," is mere speculation. See ante, at ——, n 6, 84 L Ed 2d ——.

In treating these cases as apposite authority, the majority again closes its eyes to the facts. Alabama does *not* tax at a higher rate solely on the basis of residence; it taxes insurers, domestic as well as foreign, who do not maintain a principal place of business or substantial assets in Alabama, based on conceded distinctions in the contributions of these insurers *as a class* to the State's insurance objectives. The majority obscures the issue by observing that a given "foreign insurance company doing the same type and volume of business in Alabama as a domestic company" will pay a higher tax. Ante, at ——, 84 L Ed 2d 755. Under our precedents, tax classifications need merely "res[t] upon some reasonable consideration of difference or policy." Allied Stores of Ohio, Inc. v Bowers, supra, at 527, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312. Rational basis scrutiny does not require that the classification be mathematically precise or that *every* foreign insurer or *every* domestic company fit to perfection the general profile on which the classification is based. "[T]he Equal Protection Clause does not demand a surveyor's precision" in fashioning classifications. Hughes v Alexandria Scrap Corp, 426 US at 814, 49 L Ed 2d 220, 96 S Ct 2488.

IV

Because Alabama's classification bears a rational relationship to a legitimate purpose, our precedents demand that it be sustained. The Court avoids this clear directive by a remarkable evasive tactic. It simply declares that the ends of promoting a domestic insurance industry and attracting investments to the State *when accomplished through the means of discriminatory taxation* are not legitimate state purposes. This bold assertion marks a drastic and unfortunate departure from established equal protection doctrine. By collapsing the two prongs of the rational basis test into one, the Court arrives at the ultimate issue—whether the *means* are constitution—without ever engaging in the deferential inquiry we have adopted as a brake on judicial impeachment of legislative policy choices. In addition to unleashing an undisciplined form

"Indeed, upon fuller consideration of an issue under plenary review, the Court has not hesitated to discard a rule which a line of summary affirmances may appear to have established." Fusari v Steinberg, 419 US 379, 392, 42 L Ed 2d 521, 95 S Ct 533 (Burger, C. J., concurring) (1975).

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of Equal Protection Clause scrutiny, the Court's approach today has serious implications for the authority of Congress under the Commerce Clause. Groping for some basis for this radical departure from equal protection analysis, the Court draws heavily on Justice Brennan's concurring opinion in Allied Stores v Bowers, 358 US 522, 530, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312 (1959), as support for its argument that 'the Equal Protection Clause forbids a State to discriminate in favor of its own residents solely by burdening 'the residents of other states' members of our federation.'" Ante, at ——, 84 L Ed 2d 759, quoting 358 US, at 533, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312.

As noted in Western & Southern, Justice Brennan's interpretation has not been adopted by the Court, "which has subsequently required no more than a rational basis for discrimination by States against out-of-state interests in the context of equal protection litigation." 451 US, at 667, n 21, 68 L Ed 2d 514, 101 S Ct 2070. More importantly, to the extent the Court today purports to find in the Equal Protection Clause an instrument of federalism, it entirely misses the point of Justice Brennan's analysis. Justice Brennan reasoned that "[t]he Constitution furnishes the structure for the operation of the States with respect to the National Government and with respect to each other" and that "the Equal Protection Clause, among its other roles, operates to maintain this principle of federalism." 358 US, at 532, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312. Favoring local business as an end in itself might be "rational" but would be antithetical to federalism. Accepting arguendo this interpretation, we have shown that the measure at issue here does not benefit local business as an end in itself but serves important ulterior goals. Moreover, any federalism component of equal protection is fully vindicated where Congress has explicitly validated a parochial focus. Surely the Equal Protection Clause was not intended to supplant the Commerce Clause, foiling Congress' decision under its commerce powers to "affirmatively permit [some measure of] parochial favoritism" when necessary to a healthy federation. White v Massachusetts Council of Construction Employers, 460 US 204, ——, 75 L Ed 2d 1, 103 S Ct 1042, (1983). Such a view of the Equal Protection Clause cannot be reconciled with the McCarran-Ferguson Act and our decisions in Western & Southern and Benjamin.

Western & Southern established that a state may validly tax out-of-state corporations at a higher rate if its goal is to promote the ability of its domestic businesses to compete in *interstate* markets. Nevertheless, the Court today concludes that the converse policy is forbidden, striking down legislation whose purpose is to encourage the *intrastate* activities of local business concerns by permitting them to compete effectively on their home turf. In essence, the Court declares "We will excuse an unequal burden on foreign insurers if the State's purpose is to foster its domestic insurers activities in *other* States, but the same unequal burden will be unconstitutional when employed to further a policy that places a higher social value on the domestic insurer's *homestate* than interstate activities." This conclusion is

not drawn from the Commerce Clause, the textual source of constitutional restrictions on State interference with interstate competition. Reliance on the Commerce Clause would, of course, be unavailing here in view of the McCarran-Ferguson Act. Instead the Court engrafts its own economic values on the Equal Protection Clause. Beyond guarding against arbitrary or irrational discrimination, as interpreted by the Court today this Clause now prohibits the effectuation of economic policies, even where sanctioned by Congress, that elevate local concerns over interstate competition. Ante, at ——, 84 L Ed 2d ——. "But a constitution is not intended to embody a particular economic theory . . . . It is made for people of fundamentally differing views." Lochner v New York, 198 US 45, 75–76, 49 L Ed 937, 25 S Ct 539 (1905) (Holmes, J., dissenting). In the heyday of economic due process, Justice Holmes warned:

> "Courts should be careful not to extend [the express] prohibitions [of the Constitution] beyond their obvious meaning by reading into them conceptions of public policy that the particular Court may happen to entertain." Tyson & Brother v Banton, 273 US 418, 445–446, 71 L Ed 718, 47 S Ct 426, 58 ALR 1236 (1927) (Holmes, J., dissenting, joined by Brandeis, J.) (emphasis added).

Ignoring the wisdom of this observation, the Court fashions its own brand of economic equal protection. In so doing, it supplants a legislative policy endorsed by both Congress and the individual States that explicitly sanctioned the very parochialism in regulation and taxation of insurance that the Court's decision holds illegitimate. This newly unveiled power of the Equal Protection Clause would come as a surprise to the Congress that passed the McCarran-Ferguson Act and the Court that sustained the Act against constitutional attack. In the McCarran-Ferguson Act, Congress expressly sanctioned such economic parochialism in the context of state regulation and taxation of insurance.

The doctrine adopted by the majority threatens the freedom not only of the States but also of the Federal Government to formulate economic policy. The dangers in discerning in the Equal Protection Clause a prohibition against barriers to interstate business irrespective of the Commerce Clause should be self-evident. The Commerce Clause is a flexible tool of economic policy that Congress may use as it sees fit, letting it lie dormant or invoking it to limit as well as promote the free flow of commerce. Doctrines of equal protection are constitutional limits that constrain the acts of federal and state legislatures alike. See, e.g., Califano v Webster, 430 US 313, 51 L Ed 2d 360, 97 S Ct 1192 (1977); Cohen, Congressional Power to Validate Unconstitutional State Laws: A Forgotten Solution to an Old Enigma, 35 Stan L Rev 387, 400–413 (1983). The Court's analysis casts a shadow over numerous congressional enactments that adopted as federal policy "the type of parochial favoritism" the Court today finds unconstitutional. White v Massachusetts Council of Construction Employers, 460 US, at ——, 75 L Ed 2d 1, 103 S Ct 1042. Contrary to the reasoning in Benjamin, the Court today indicates the Equal Protection Clause stands as an independent barrier if

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courts should determine that either Congress or a State has ventured the "wrong" direction down what has become, by judicial fiat, the one-way street of the Commerce Clause. Nothing in the Constitution or our past decisions supports forcing such an economic straight-jacket on the federal system.

V

Today's opinion charts an ominous course. I can only hope this unfortunate adventure away from the safety of our precedents will be an isolated episode. I had thought the Court had finally accepted that

> "the judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines; in the local economic sphere, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment. New Orleans v Dukes, 427 US, at 303–304, 49 L Ed 2d 511, 96 S Ct 2513 (citations omitted).

Because I believe that the Alabama law at issue here serves legitimate State purposes through concededly rational means, and thus is neither invidious nor arbitrary, I would affirm the court below. I respectfully dissent.

Introduced: 1/31/86
Referred: Labor and Commerce
and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

IN THE SENATE

SENATE BILL NO. 379

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the premium tax for domestic insurers."

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

* Section 1. AS 21.09.210(b) is amended to read:

(b) Each insurer, and each formerly authorized insurer with respect to premiums received while an authorized insurer in this state, shall pay a tax on the total direct premium income received during the year ending on the preceding December 31 and paid for the insurance of property or risks resident or located in the state other than wet marine and transportation insurance, after deducting from the total direct premium income the applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, all policy dividends, unabsorbed premiums refunded to policy holders, refunds, savings, savings coupons and other similar returns paid or credited to policyholders with respect to their policies. No deductions may be made of cash surrender value of policies. Considerations received on annuity contracts are [SHALL] not [BE] included in the direct premium income and are [SHALL] not [BE] subject to tax. The tax must [SHALL] be paid to the director annually before April 1, and, except as provided in AS 21.69.390(c), is computed at the rate of

(1) [FOR DOMESTIC COMPANIES, 1 PER CENT;]

(2) for hospital and medical service corporations, 6 percent of their gross premiums, less claims paid;

(3) for companies other than [DOMESTIC AND] hospital and

medical service corporations, 3 percent.

* Sec. 2. This Act applies to the tax due by April 1, 1987 for the tax year beginning January 1, 1986 and to the tax due for subsequent tax years.

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

SB 379: Summary

Current law provides that domestic insurers pay a 1.5% premium tax on gross premiums, while nondomestic companies are required to pay 3%. A recent US Supreme Court case raised constitutional questions concerning the differential rate of these tax structures, and the Department of Law estimates that the state is exposed to a potential liability of approximately $14.5 million if this statute is not corrected.

BILL SUMMARY

Department of Commerce & Economic Development / POSITION PAPER

SB 379: "An Act relating to premium tax for domestic insurers."

This legislation eliminates the the tax preference currently granted to domestic insurance companies by standardizing the rate for domestic and nondomestic insurance companies.

AS 21.09.210(b) provides that domestic insurance companies pay premium tax at the rate of one and one-half percent of gross premiums, while nondomestic companies pay three percent of gross premiums. A recent U.S. Supreme Court case, Metropolitan Life Insurance Co. v. Ward, U.S., 53 U.S.L.W. 4699 (June 10, 1985), raises serious questions concerning constitutionality of the differential rate structure. This bill is proposed to correct the problem and not jeopardize our premium tax law. The bill has the further benefit of raising the total amount of premium tax collected. We are in favor of the legislation.

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

Date: 2/21/86

John L. George, Director of Insurance

Date:

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST SB 375

Bill/Resolution No. : 377-069-86
Title : Premium tax for domestic insurers.

Sponsor : _____
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : Commerce & Economic Dev.
BRU : Insurance

Components : _____

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	-0-	1,142.3	1,200.4	1,260.0	1,323.4	1,389.6

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

Prepared by : John L. George
Division : Insurance
Phone : 465-2515
Date : 11/27/85

Approved by Commissioner : _____
Date : _____
Agency : Commerce and Economic Development

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

ALASKA FOREIGN INSURANCE COMPANY TAX PAYMENTS
ESTIMATED REFUNDS
1974 - 1984

	FOREIGN LIFE 3%	REFUND 1 - 1/2	P & C 3% Paid	REFUND 1 - 1/2	COMBINED TOTAL REFUND
1984					
1983	4,438,315	2,219,158	8,818,990	4,409,495	6,628,653
1982	3,707,727	1,853,864	7,729,096	3,864,548	5,718,412
1981	3,360,555	1,680,278	6,018,707	3,009,353	4,689,631
1980	3,178,322	1,589,161	4,843,581	2,421,790	4,010,951
1979	2,921,795	1,460,898	4,999,852	2,499,926	3,960,824
1978	2,912,980	1,456,490	5,050,350	2,525,175	3,981,665
1977	2,897,452	1,448,726	4,736,774	2,368,387	3,817,113
1976	2,329,917	1,164,958	3,910,087	1,955,043	3,120,001
1975	2,049,788	1,024,879	2,818,755	1,409,378	2,434,257
1974	1,586,349	793,175	2,235,308	1,117,604	1,910,779
	29,383,200	14,691,585	51,161,400	25,580,699	40,272,284
PLUS					
1984 Revised 2/24/86	4,861,829	2,430,914	9,644,148	4,822,074	7,252,988
	GRAND TOTAL				47,525,272

1RefundLGJOBS2/25/86a

REQUEST FOR REFUNDS RECEIVED TO DATE
FEBRUARY 1986

	YEAR(S)	TOTAL REQUEST
Horace Mann Insurance Company	1981	20,611
Horace Mann Life Insurance Company	1981	2,913
Union Mutual Stock Life	1984	8,500
	1983	5,006
States West Life Insurance Company	1982, 1983, 1984	13,380
Northern Life Insurance Company	1980 - 1985	27,198
Dairyland Insurance Company	1982 - 1984	8,294
Mutual Protective Insurance Company	1980 - 1984	1,138
Physicians Mutual Insurance Company	1980 - 1984	45,857
Medico Life Insurance Company	1979 - 1984	347
Motors Insurance Company	1979 - 1984	80,395
MIC Life Insurance Company	1983 - 1984	1,684
CIM Insurance Corporation	1979 - 1984	3,774
Philadelphia Life	1983 - 1984	809
Philadelphia American Life	1983 - 1984	386
American Bankers Insurance Company	1982	1,383
American Bankers Life Insurance Company	1982	13,201
Cudis Insurance	1982, 1983, 1984	28,692
CUNA Mutual Insurance Society	1982, 1983, 1984	40,463
Union Mutual Life Insurance Company	1983, 1984	1,118
Mutual Life Insurance Company of New York*	1984	84,170
Combined Insurance Company of America	1974 - 1984	112,380
Ranger Insurance	1982 and 1984	9,201
Industrial Indemnity	1981	70,472
Atlantic International Insurance Company	1984	3,249
Provident Mutual Life Insurance Company	1981 - 1984	2,547
Phoenix Mutual Life	1981	1,153
26 Companies - TOTAL		588,321

* Also Party to Suit

Total 3%

Foreign Premium Tax Paid for 1984 Premium Tax	14,505,977
1 - 1/2% Refund	7,252,988

2RefundLGJOBS2/25/86a

TAX CASE 1JV-81 CIV
1JV-83 616 CIV

	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	COMPANY TOTAL
Equitable Life Assurance	53,257	69,938	77,232	111,053	126,228	167,917	180,448	140,897	151,959	175,413	145,314	1,399,656
John Hancock Mutual Life	19,741	21,945	26,172	30,303	30,698	42,025	45,757	55,155	60,886	58,426	55,144	446,252
Metropolitan Life	91,777	119,376	139,195	206,468	215,247	207,039	228,356	152,843	73,428	54,020	52,191	1,539,940
Mutual Life Insurance Co. of NY	75,274	88,935	95,935	102,149	117,873	115,665	116,697	126,447	131,829	154,141	168,340	1,293,285
New York Life Insurance Company	170,823	177,683	218,659	241,937	272,951	290,766	310,683	362,120	418,880	533,434	619,912	3,617,848
Prudential Insurance Company	83,940	59,309	64,797	75,964	136,627	139,440	124,976	174,767	190,130	188,765	185,030	1,423,745
Travelers Insurance Co. - Life	60,575	79,380	126,850	169,402	190,928	164,736	167,953	190,193	178,529	209,098	261,946	1,799,590
Accident Department	14,954	37,110	28,450	60,601	62,617	32,973	17,430	98,462	38,566	140,358	105,352	636,873
Travelers Indemnity	14,994	29,460	26,958	16,872	41,890	21,622	52,619	25,328	55,335	122,366	129,339	536,789
Aetna Life & Annuity Corp.	-	-	281	153	32	32	24	559	1,885	4,685	22,509	30,160
Aetna Casualty & Surety	10,253	25,930	46,798	90,325	79,928	29,921	43,816	79,686	92,797	102,665	76,768	678,887
Aetna Life Insurance Company	188,875	231,309	259,582	354,978	343,980	393,051	460,910	523,186	564,299	904,663	773,698	4,998,531
Standard Fire Insurance Co.	7,209	5,565	5,260	15,628	20,743	5,323	6,683	6,040	21,876	108,512	78,362	281,201
Automobile Ins. Co. of Hartford	-	-	29	17	-	-	-	-	-	11	968	1,025
Accidential Life Ins. Co. (Transamerica)	55,590	51,432	53,948	60,968	66,284	82,365	98,332	97,674	104,026	124,586	90,071	885,276
Massachusetts Mutual Life Insurance Company	9,399	13,108	15,421	16,345	18,887	22,489	23,004	24,720	25,063	19,948	22,372	210,756
Connecticut Mutual Life Insurance Company	5,291	6,528	7,860	9,631	11,567	13,426	16,270	19,063	17,753	17,201	16,656	141,246
3% TAX PAID	846,958	987,548	1,166,469	1,545,922	1,694,600	1,707,168	1,841,339	2,051,812	2,071,906	2,795,926	2,674,633	19,384,281
GRAND TOTAL	861,952	1,017,008	1,193,427	1,562,794	1,736,496	1,728,790	1,893,958	2,077,140	2,127,241	2,918,292	2,803,972	19,921,070
REFUND @ 1 1/2% (domestic rate)	430,796	508,504	596,713	781,397	868,248	864,395	946,979	1,038,570	1,063,620	1,459,146	1,401,986	9,960,534

3RefundLGJ0852/25/86a

BILL SHEFFIELD
GOVERNOR

d379

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 31, 1986

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the premium tax paid by domestic insurers.

Under present law, AS 21.09.210(b) provides that domestic insurers pay premium tax at the rate of one and one-half percent of gross premiums, while nondomestic companies pay three percent of gross premiums. A recent U.S. Supreme Court case, Metropolitan Life Insurance Co. v. Ward, ___ U.S. ___, 53 U.S.L.W. 4699 (June 10, 1985), raises serious questions concerning the constitutionality of the differential rate structure. In order to correct this problem and not jeopardize our premium tax laws, this bill will eliminate the preference for domestic insurers by standardizing the rate at three percent for both categories of insurance companies. The bill has the further benefit of raising the total amount of premium taxes collected. I urge your support of this bill.

Sincerely,

Bill Sheffield
Governor

TRANSMITTAL LETTER

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☐ *1031 W 4th AVENUE*
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

☐ *1st NATIONAL CENTER*
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

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

March 7, 1986

The Honorable Fred Zharoff
Chair, Senate Labor and Commerce
Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: SB 379 (Premium tax for domestic insurers)

Dear Chairman Zharoff:

As indicated in the governor's transmittal letter dated January 31, 1986, this bill is necessary due to a recent United States Supreme Court case, Metropolitan Life Insurance Co., v. Ward, 105 S.Ct. 1676 (1985), which calls into serious doubt the constitutionally of the present Alaska premium tax law.

Enclosed is a chart prepared from data compiled by the division of insurance, Department of Commerce and Economic Development, showing the amount of premium taxes collected by the state from foreign insurance companies between 1974 and 1984. As you can see, the state collected approximately $14.5 million in 1985, for the 1984 tax year.

We can assume this figure is a good indication of the premium amount the state will collect in future years. Foreign insurance companies, claiming the entire tax is unconstitutional, are now making their entire tax payments under protest. Thus, the state is currently exposed to possible liability in excess of $14.5 million per year until the statute is corrected. 1/

1/ A good argument can be made that if a refund is required, it should be only one-half of all taxes paid, or approximately $7.25 million annually. This represents the difference between the amount paid by the companies (three percent) and the amount they would have paid, were they domestic companies (one and one-half percent).

Given the state's declining revenues, it is very important that this bill be passed this year, to prevent possible future state losses of $7 - 14 million per year.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

By: Jeffrey W. Bush
Assistant Attorney General

HMB:JWB:cck

Enclosure

cc w/ enc.:

Jim Ayres, Director
Legislative Relations
Office of the Governor

Art Peterson
Legislation/Regulations Attorney
Department of Law

John George, Director
Division of Insurance
Department of Commerce
and Economic Development

ALASKA FOREIGN INSURANCE COMPANY TAX PAYMENTS

1974 - 1984

TAX YEAR	FOREIGN LIFE (3%)	PROP & CAS (3%)	TOTAL TAX PAID	AMT. WOULD HAVE PAID AT DOM. RATE
1984	4,861,829	9,644,148	14,505,977	7,252,989
1983	4,438,315	8,818,990	13,257,305	6,628,653
1982	3,707,727	7,729,096	11,436,823	5,718,412
1981	3,360,555	6,018,707	9,379,262	4,689,631
1980	3,178,322	4,843,581	8,021,903	4,010,952
1979	2,921,795	4,999,852	7,921,647	3,960,824
1978	2,912,980	5,050,350	7,963,330	3,981,665
1977	2,897,452	4,736,774	7,634,226	3,817,113
1976	2,329,917	3,910,087	6,240,004	3,120,002
1975	2,049,788	2,818,755	4,868,543	2,434,272
1974	1,586,349	2,235,308	3,821,657	1,910,829
	34,245,029	60,805,548	95,[illegible]0,577	47,525,288

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

02-519 (REV 8/78)

SB

382

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 382
Title: Civil Actions

Sponsor: Kerttula
Requester: John L. George
Date of Request: 2/28/86

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
BRU: Insurance

Components: Public Protection

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

ANALYSIS: Attach a separate page if necessary.

Prepared by: John L. George, Director
Division: Division of Insurance
Phone: 465-2515
Date: 2/28/86

Approved by Commissioner: Loren H. Lounsbury
Agency: Department of Commerce & Economic Development
Date: 2/28/86

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

10/25/85

Department of Commerce & Economic Development / POSITION PAPER

SB 382: "An Act relating to civil actions; amending Alaska Rules of Civil Procedure 49, 52, 54, 58, and 82; and providing for an effective date."

This bill is focused on a variety of tort reforms. The position of the department on these issues is neutral.

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

Date: 2/28/86

John L. George, Director of Insurance

Date: 2/28/86

lt0241K

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James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB
384

Alaska State Legislature

CO-CHAIRMAN
FINANCE COMMITTEE
907-465-3740

JAN FAIKS
POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Senate

February 21, 1986

MEMORANDUM

TO: Fred Zharoff, Chairman
Senate Labor and Commerce Committee

FROM: Jan Faiks, Senator

SUBJECT: Senate Bill 384 - Board of Electrical Examiners

As you know, the Division of Legislative Audit's performance report on the Board of Electrical Examiners recommends the board be sunset.

To this end, I want to share with you and the committee members comments I received on the audit from Kent Lee Woodman of the Alaska Independent Electrical Contractors Association. I think you will find the information helpful in your review.

OUT OF SESSION
1024 WEST SIXTH AVENUE, SUITE 302 ANCHORAGE, ALASKA 99501 907-274-6611

Alaska Bussell Electric Company

"AN ALASKAN CORPORATION"
ELECTRICAL CONTRACTORS AND ENGINEERS

ALASKA BUSSELL
ELECTRIC COMPANY
P.O. Box 4-1325
Anchorage, Alaska 99509
(907) 248-1515

BUSSELL ELECTRIC
P.O. Box 2363
Kailua, Kona, Hawaii 96740
(808)329-1192

BUSSELL ELECTRIC
P.O. Box 298
Nome, Alaska 99762
(907) 443-2380

February 20, 1986.

Alaska State Legislature
Box "V"
Juneau, Alaska. 99811

FEB 25 1986

Attn: Representive H.A. "Red" Boucher.

Subject: SB 384

Dear Representive Boucher:

SB 384 was recently introduced in the Senate. If adopted this bill will extend the term or life of the board of electrical examiners. The board is due to "sun set" if some form of legislative action is not taken to extend its life, this year.

It is my hope the bill will not make it out of the Senate Labor and Commerce committee. The History of activity concerning the board of electrical examiners has been highlighted by service to special interests, obstruction to right and lawful pursuit of a better life by a large number of Alaskans, an unconscionable amount of State money totally wasted and improperly spent on acts of obstruction and destruction of Alaskan's attempting to follow the American dream of personal advancement in their lives, use of the board and department employee's by the administration to punish those not currently in its favor, outright deceit and untruthfullness by department personnel have become common practice when dealing with the Alaskan public, the board and Department are formed and pledged to serve.

Other states with boards such as ours produced simular results and in most cases their Legislatures considered the problems caused by these boards, added up the wasted cost and arrived at the conclusion to eliminate them. As you know, there are now only a hand ful of states left with our type of counter-productive license system.

As a key Alaskan Legislator and a leading member of the House Labor and Commerce committee I urge you to oppose passage of SB 384 or any other measure which would extend the life of the board of Electrical Examiners and its Department staff.

Sincerely

Charlie Bussell
CEO ABEC

Copy to Mitch

From the desk of:
Senator Mitch Abood
Alaska State Legislature

2/25/86

FEB 25 1986

Senator Zharoff

After having a great deal of trouble & problems with the Board of Electrical Examiners, & agree with Mr Bussell. I would be most happy to discuss these problems if you would care to listen.

Thanks for your consideration

Sen Mitch Abood

3980 Coventry Drive
Anchorage,Alaska 99507
February 28,1986

Mr. Kevin Henderson
Div.of Occupational Lic.
P.O.Box D-LIC Juneau,Alaska 99811

MAR 2 1 1986

Dear Mr. Henderson,

I wish to express a complaint concerning the examination for Electrical Administrator, Inside Wiring. I realize that many persons hold this license,both by test and by a grandfather grant. However, very few have passed the last two tests given in Anchorage.

On the test of June 85, I did not have my application on file in time because I had been told by the Anchorage office-Frontier building that August 85 would be the first upcoming test. I felt something was unusual about this 'short notice' test, so wrote to Linda Janidlo at the Ombudsmans office asking to find out how many took the test and how many passed it. I wanted no names, just numbers. Received a reply dated July 9 '85 from Mr. Treager, director-division of occupational licensing stating "thirty six applicants took the examination.Because of priority work load,we cannot tell you how many passed the exam."

I have applied for and taken the last two exams of August 85 and January 86. My scores were 63% and 65.42%. This is absolutely ridiculous!! At this point I wish to state that 'in my opinion' the board of Electrical Examiners are not properly doing their job. First- evidently they are not screening all applicants properly or there would not be such a high percentage of failing test grades. Possibly they are allowing persons to take the test who have no electrical knowledge.
Secondly- if a person has the experience required to take the test, the test itself should be a mere formality. If my semi-official information is correct, on the test of January 86 there were 67 qualified applicants who took the test. 59 of these persons failed the test. Approximately 88% of the applicants failed to reach a minimum 70% score!

The real problem is that the test is unrealistic and is not designed as a measure of competency. It is designed to discourage and fail applicants. I have been informed that two gentlemen(I know them both) were paid $50.00 for each question submitted to be used for the inside wiring test. Naturally they would soon run out of legitimate questions and resort to every page of every electrical book to keep coming up with obscure questions. I am certain that I could do the same, and probably would, at that price. However, failing such a test would not make an examinee 'not qualified to do electrical work in Alaska'. By the same token, passing such trivia would not qualify an unqualified person.

I have been working in the electrical construction field for over 37 years. Began in Sept.1948 as electrical apprentice and have been at it continuosly through the ranks to electrical superintendent and electrical contractor. Still hold a electrical contractors license in California, although have been an Alaskan for the past 15 years. All this time has been as a member of I.B.E.W. and I hold a 35 year pin from same. I mention this only because it is very easy to check my credentials that way.

Also on the inside wiring test were quite a few questions pertaining to telephone and inside communications. The state has a separate license and exam for this specialty and I resent being tested for it on the inside wiring test. The questions missed and the time wasted on this portion may have contributed to my failing the test. 12 AAC 32.100 states that(person holding current license in inside wiring will be granted a license in inside communications**without examination**)

The state employees in the division of occupational licensing are not my complaint. My complaint is the actual test and the poor passing percentage.

The final blow is this. The next test after January 86 is sometime in the fall of 86. This will be after the fiscal year ends June 30 and a new $200.00 fee will be required.

Sincerely,

Paul Z. Mead

Paul Z. Mead

Copy:
Commissioner Lounsbury
Senators- DeVries, Zharoff, Eliason,
Bennett, Sackett, Ray, Faiks
Reps- Nauarre, Marrou, Davis, Cato,
Boucher, Koponen, Hanley,
Collins, Pearce

STATE OF ALASKA

Department of Commerce and Economic Development

Division of Occupational Licensing

In the Matter of:
Amber Electric, Ltd.,
Yellow Electric, Ltd.
Yellow Electric Company, Ltd.,
and Kent Lee Woodman,
Respondents.

File EE-84-768
AG File 122-742-84

STIPULATION OF SETTLEMENT AND PROPOSED ORDER

It is hereby stipulated by and between the Department of Commerce and Economic Development, Division of Occupational Licensing, by its attorney, the Attorney General of the State of Alaska ("the Department"), and Kent Lee Woodman, Yellow Electric Company, Inc., ("the Company") and each of the Company's corporate divisions ("the Divisions") as follows:

A. On November 28, 1983, the Department issued a Temporary Cease and Desist Order under AS 08.01.087(b)(1) against Respondents. That order was amended by an Amended Temporary Cease and Desist Order dated May 24, 1984. The Amended Temporary Cease and Desist order stated, in summary, that one or more Divisions of the Company were operating under their divisional names, which names were not registered with the Department as required by AS 08.18.011. (The name of one of the corporate divisions, Yellow Electric, Ltd., is registered with the Department under AS 08.18.011.) The order further stated that Kent Lee Woodman was acting as electrical administrator for each of the Divisions of the Company.

B. Counsel for Respondents and for the Department have discussed the issues raised in the Amended Temporary Cease and Desist Order, and it is the purpose of this Stipulation and Order to provide for compromise and settlement of all issues without the necessity of proceeding to a formal hearing at which

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OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

the Respondents would have the opportunity to present a defense with regard to the allegations set forth in the Amended Temporary Cease and Desist Order.

THEREFORE, the following stipulation is agreed to and submitted for the purpose of allowing its terms to become an order of the Department.

IT IS STIPULATED AND AGREED AS FOLLOWS:

1. The Department has jurisdiction over Respondents and the subject matter contained in this Stipulation and Order and in the Amended Temporary Cease and Desist Order.

2. Respondents neither admit nor deny the allegations of wrongdoing stated in the Amended Temporary Cease and Desist Order.

3. Respondents understand that they have a right to a hearing with regard to the facts admitted in paragraph 4 below. Respondents further understand and agree that, by waiving their rights to a hearing and admitting the facts and conduct contained in paragraph 4 below, they are relieving the Department of its burden of proving these facts and conduct, and are voluntarily and knowingly giving up their right to present their defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross examination of witnesses as they may desire.

4. Respondents admit and agree as follows:

a. Yellow Electric Company, Inc. is an Alaska corporation in good standing;

b. Amber Electric, Ltd., Yellow Electric, Ltd., Yellow Electric Service, Yellow Electric Commercial, Yellow Electric Residential, Yellow Electric Bush, Amber Electric, Ltd., and Northern Electronics are each a corporate division of Yellow Electric Company, Inc.;

c. Each of the Divisions listed above, and the Company itself, engage in activities for which registration is required under AS 08.18.011.

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d. Yellow Electric, Ltd. is registered as a contractor under AS 08.18.011;

e. None of the Company's other Divisions is registered as a contractor under AS 08.18.011;

f. Yellow Electric Company, Inc. is not registered as a contractor under AS 08.18.011, except through the registration of its divisional name, Yellow Electric, Ltd.

5. Respondents do not deny the use of the divisional names referenced above, nor do they seriously dispute the factual allegations which were the subject of the Cease and Desist Order. Respondents disagree, however, with the Department's position that Respondents violated Alaska law by operating under unregistered divisional names. However, Respondents do not desire to contest the Department's position at a formal administrative hearing.

6. Respondents agree that:

a. Not later than five (5) business days from the effective date of this Stipulation and Order, Respondents shall have applied to transfer the registration of Yellow Electric, Ltd. to Yellow Electric Company, Inc., and to change the electrical administrator designation of Kent Lee Woodman from Yellow Electric, Ltd. and Amber Electric, Ltd. to Yellow Electric Company, Inc.;

b. Not later than September 3, 1984, all signs on any and all real and personal property owned by Yellow Electric Company, Inc., which presently display only the name of one or more Divisions, shall have been changed to show the Company name in conjunction with the divisional name: for example, "Amber Electric Ltd., a Division of Yellow Electric Company, Inc.";

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c. Not later than sixty (60) days from the effective date of this Stipulation and Order, the Respondents shall have changed all stationary and advertisements in such a way that no divisional name appears alone without the Company's name, for example, "Amber Electric, Ltd., a Division of Yellow Electric Company, Inc."

Respondents may continue using stationery currently in stock, but it must be altered, by stamp or otherwise, to clearly and conspicuously indicate that the Division is a Division of the Company. All future orders of stationery for each Division shall show the Division name only in conjunction with the Company name;

d. Any advertisements which cannot be changed within the time period specified in (c) above because of infrequency of publication or other matters beyond Respondents' control, shall be changed by Respondents at the earliest possible time;

e. Respondents shall promptly notify all persons with whom they have outstanding and uncompleted contracts under the name of any Division of the fact that the Division is a division of the Company; and

f. Respondents shall abide by the requirements of AS 08.18.011 and .051 and AS 08.40.130, and henceforth shall never use a divisional name except in conjunction with the registered corporate name.

g. Without limiting the Department's general authority to conduct investigations, Respondents and the Department agree that each of Respondents' business premises may be inspected by the Department to verify Respondents' compliance with this Stipulation and Order on three occasions occurring between September 3, 1984 and two years following the effective date of this Stipulation and Order. The Department agrees that these inspections will be con-

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PHONE: (907) 276-3550

ducted during normal business hours, and the Respondents agree to fully cooperate in and allow the inspections. Respondents further agree to provide the Department with such other or additional assurances of Respondents' compliance with this Stipulation and Order as the Department may reasonably require.

7. The Department agrees that:

a. Respondents may properly operate under the name of a Division, if and only if the Division name is always used in conjunction with the Company's name and if and only if the Company is registered under the Company's own name; and

b. Respondents shall have the periods of time specified in paragraph 5 above to accomplish the changes described in that paragraph.

8. Nothing in this Stipulation and Order, including but not limited to paragraph 6(a) above, prohibits the Company from changing its name or that of any or all of its Divisions as may be allowed by applicable laws. However, the Respondents agree to provide the Department prior written notice of proposed name changes.

9. If, during the next two years, the Department has reasonable grounds to believe that any of the Respondents are in violation of this Stipulation and Order, the Department may initiate an action under AS 08.01.087, AS 08.40.170 and/or AS 08.18.121 against any or all of the Respondents. If, after a hearing in such an action, it is determined that this Stipulation and Order has been violated, the violation shall be grounds for suspending or revoking the registrations of or otherwise disciplining the Respondents, and/or for the issuance of a permanent cease and desist order against Respondents. These rights of the Department are in addition to, and not in lieu of, any

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other rights the Department may have to initiate any proceedings against Respondents under any pertinent Alaska statutes or regulations.

10. This Stipulation and Order shall be binding upon the Respondents and their respective successors and assigns.

11. This Stipulation and Order shall be a public record of the Department.

12. This Stipulation and Order shall be effective on the date it is accepted by the Director of the Division of Occupational Licensing, and shall constitute a full and final resolution of this matter.

13. The Attorney General notes that the Department is charged with the responsibility of protecting the public health, safety, and welfare by prosecuting unlicensed activities in the State of Alaska. In the opinion of the Attorney General, the terms and conditions of this Stipulation and Order will fully protect the public interests at stake in this matter.

DATED this 31st day of July, 1984, at Anchorage Alaska.

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Kay E. Maassen Gouwens
Kay E. Maassen Gouwens
Assistant Attorney General

DATED this 30 day of July, 1984, at Anchorage, Alaska.

James Bendell
Counsel for Respondents

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

PROPOSED DECISION

As the parties have stipulated to a result in this matter which appears to the hearing officer to be a fair settlement, this Stipulation is adopted as the proposed decision in this matter.

DATED this 7 day of August, 1984, at Anchorage, Alaska.

Jack D. Clark

Jack D. Clark, Hearing Officer

FINAL ORDER

The Division of Occupational Licensing of the Department of Commerce for the State of Alaska, having examined the Stipulation and proposed Order dated August 7, 1984 by hearing officer Jack D. Clark, hereby adopts the Stipulation and proposed Order as its final Order in this matter.

DATED this 24 day of August, 1984, at Juneau, Alaska.

Division of Occupational
Licensing,
Department of Commerce and
Economic Development

By: Harry Treager
Harry Treager, Director

The undersigned hereby certifies that on the 3 of August, 19 84, the attached document were mailed to the attorneys of record.

Jim Reardon

Julie N. Ourbutt Jr.

Subscribed and sworn to before me the date last written.

Karen M Proctor

Notary Public
My Commission Expires 7-21-85

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OFFICE OF THE ATTORNEY GENERAL
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1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

NOTE: This is an extremely abbreviated attachment. Between this cover Cease & Desist Order and the Stipulation to do, in effect what we had been doing all along, were eleven (11) months, over $10,000 and some ten (10) pounds of documents. All are available for review.

IV 28 Nov 83

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

In the Matter of:)
AMBER ELECTRIC LTD.)
RESPONDENT)

FILE: EE-84-768

TEMPORARY CEASE AND DESIST ORDER
(AS 08.01.087(b)(1)

TO: Kent Lee Woodman
Amber Electric Ltd.
1658 East 59th Avenue
Anchorage, Alaska 99507

1. As a result of an investigation conducted by the Division of Occupational Licensing it has been determined that:

You are operating an Electrical Contracting business known as "Amber Electric Ltd." without registration as a specialty or general contractor. This operation is evidenced by your advertisements as "Amber Electric Ltd" contained on pages 8, 348 and 349 of the 1983 Anchorage telephone book. This is in violation of Alaska Statute 08.18.011. Records of this division indicate that you are the electrical administrator for Yellow Electric Ltd., therefore, you cannot act as electrical administrator for both Yellow and Amber Electric. By doing so, you are also in violation of AS 08.40.130. Division records also show that you were informed by a member of this division on or about 4/1/81 that a separate contractor license and electrical administrator would be required for you to operate as "Amber Electric Ltd". Additionally, inquiry to the Department of Revenue and the Division of Corporations reveals that you have no business license for Amber Electric Ltd. nor is Amber Electric Ltd. registered as a corporation, thus constituting violation of Alaska Statutes 43.70.020 and 09.50.310 respectively.

2. Notification has been made to the members of the Board of Electrical Examiners of the proposed issuance of this Temporary Cease and Desist Order and a majority of the board members do not object to its issuance.

3. Issuance of this Temporary Cease and Desist Order is in the public interest.

IT IS THEREFORE ORDERED pursuant to AS 08.01.087(b)(1) that you immediately CEASE AND DESIST from further practice as an Electrical Administrator for Amber Electric Ltd. and from further operation of Amber Electric Ltd. until such time as you have the requisite license to do so.

4. Upon your written request within 15 days of receipt of this order a hearing will be set and thereafter a further order will be entered; if no such request is received, this order shall stand as entered.

This order is effective on receipt by you.

DATED THIS 28 DAY OF November 1983 at Juneau Alaska.

BY ORDER OF

COMMISSIONER
DEPARTMENT OF COMMERCE
AND ECONOMIC DEVELOPMENT

BY: Harry D. Treager

HARRY D. TREAGER, DIRECTOR
DIVISION OF OCCUPATIONAL LICENSING

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

In the matter of:

Respondent

TEMPORARY CEASE AND DESIST ORDER
(AS 08.01.087)

REQUEST FOR HEARING

Respondent, pursuant to AS 08.01.087(b)(1), hereby gives Notice of Defense in this proceeding.

A hearing on the matters set forth in the Temporary Cease and Desist Order is hereby requested.

DATED this 12th day of December 1983.

Respondent's signature

Address: 1658 East 59th Avenue

Anchorage, Alaska 99507
City State

561-2366
Telephone Zip

NOTICE

This Request for Hearing must be signed by or on behalf of respondent, set forth respondent's mailing address, and must be filed with the Director, Division of Occupational Licensing, Department of Commerce and Economic Development, Pouch D, Juneau, Alaska 99811, within 15 days of receipt. Upon receipt of this or a written request in any form received by the Director within 15 days of your receipt of this order, a hearing will be set and thereafter a further order will be entered. If no such request is received, this order shall stand as entered.

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
POUCH D, JUNEAU, ALASKA 99811
TELEPHONE: (907) 465-2538

RATIONALE' AND EXPLANATION
Proposed changes: Statutes and Administrative Code

FORWARD:

In the extensive review of the statutes and regulations pertinent to this package, several changes were made simply to clarify or to clear up English errors. Such changes are NOT reviewed in the following text, as they should be obvious. The following text reveals the thinking behind each pertinent change.

* Sec 08.01.110 (2): This change moves a great deal of the Electrical licensing and related matters FROM the Department of Commerce and Economic Development, TO the Department of Labor.

  It has been discussed many times that the lines of authority, communication and enforcement sweep back and forth between these two departments with no logic at all, and often times creating confusion and duplication. This is the first of several areas where we propose that the Board of Electrical Examiners, the testing and licensing of Administrators and the Testing, licensing, inspecting and enforcement procedures for craftsmen, all fall under the same Department. We are aware of NO OTHER STATE in which such an illogical splitting of functions and authorities exists.

* Sec 08.40.130: This change would allow an Administrator with more than one license to administer for a company with each license. As an example, an Outside Communications license could be vested with a communications company, while an Inside Wiring license could be with an electrical contractor.

  We suspect that it was never the intent of the original drafters to prevent this, however, the language does stop it cold currently. Concerns for the continuity of supervision should be reduced considerably with reference to that subject in the materials which follow.

* Sec. 08.40.175: This short addition complies with the intent of HB 328.

* Sec. 08.40.195: This change would enable Administrators to extend their supervision and inspection activities to more jobs, especially concurrently, through the medium of a new technician, the MASTER JOURNEYMAN ELECTRICIAN, described below. We maintain that this section is impossible to comply with currently without several Administrators on staff and constantly traveling.

  Additionally, the law is currently written only to cover the <u>materials</u> and not the <u>installation</u> or labor. This change would fix that.

  Finally, the change would be more specific as to the duties of the Administrator, in an attempt to make it more difficult for them to be "absentee" or "leased" licenses of people who are not actively involved in the practices or final product.

  There has been considerable discussion through the years that licensing of "private" inspectors would go a long way towards resolving the extreme shortage of funds and personnel available to the state in providing standards of inspection of work to afford an acceptable level of public safety. This is especially true in higher growth areas which have no local inspection. We maintain that should such a system become possible under law, that it would be these highly qualified Master Journeymen Electricians and Electrical Administrators which would be best suited and trained. Note that application is required. This text would enable the department to initiate such a plan for the first time, thus reducing costs and concerns for public safety.

* Sec. 18.60.660. This section provides a clarification to prevent difficulties in interpreting the law concerning such items as "zero lot line" and "condominiums" where the units are multi-family, but NOT rented out to the public as with apartments and hotels.

* Sec 18.62.050(c): This change simply deletes improper references to a trade union over compatible competition, and allows both the NEC and AIECA to provide the input. Present language constitutes an illegal advantage to the union, and constitutes an unfair labor practice in law.

  This change would not restrict previous IBEW/NEC activities at all.

* 8 AAC 90.160: This whole section is designed to create a new level of technical supervisor called a MASTER JOURNEYMAN ELECTRICIAN, compatible with other states, and to fit the rationale' above under "supervision". The balance of this section simply repairs some bad language or makes the material more readable and understandable.

  NOTE the change under item (6), which again, deletes reference to the union, and makes it possible for both entities to make input.

  NOTE: new item (C) gives a little more substance to certificates of fitness from other states.

  NOTE: item (7), which was recently deleted by the legislature, is back in, but with a qualifier indicating that the only "grandfather" licenses to be considered are those of folks who have remained in the industry in some capacity, and not those who came out of hibernation after 12 years asleep and out of touch.

* 8 AAC 90.170: This is in concert with Mechanical Inspection's desires not to have to fund for and conduct the testing for the new classification. Such tests are available nationally.....from no less than IEC chapters. It places a little more formality on the important new classification, and prevents cries of "foul" in the testing and certifying to come.

* 8 AAC 90.175, 176, 177 & 178. This section introduces for the first time, the licensed signal and communications technician. Much has been said in the past about this career field. Portions of their work are covered by the NEC, and the Municipality of Anchorage is currently studying inspection of all "low voltage" work. Suffice it to say there are many unqualified and unsupervised people installing alarm, communications, data, signal and control circuits, wiring and equipment upon which the public must rely. The delay for compliance provides notice and opportunity for all to bring their operations into compliance with no undue hardship on any one individual or firm.

* 8 AAC 90.205(c) adds the material contained in Representative Robin Taylor's HB 328.

* 8 AAC 90.900 (2), (4) & (10) include language required to support the concept of licensing low voltage technicians. Item (15) includes Master Journeyman Electrician in another section that requires it, for continuity. (16) modifies the limits of a RESIDENTIAL WIREMAN: He or she would still be limited to residential work with no more than four (4) living units on a foundation....IF HE OR SHE IS IN CHARGE OF THE JOB.

  What it changes, is that if he or she works on, say an 8-plex where a Journeyman is in charge and in place, the wireman may be treated as a Journeyman for purposes of body count and apprentice ratio....i.e. not as an apprentice as it currently is.

  NOTE: This situation has been discussed many times, and there is cautious agreement in the state that wiremen on a larger residential job are journeymen for the purposes of apprentices working there as well, provided that a journeyman is in charge....but it needs put in writing.

* 12 AAC 32.250(a)(5): This section is currently up for change to require the notarized letters, which creates a real problem. Oftentimes the writers of the letters are no longer in business, perhaps even dead. Strict enforcement of such a provision would render many, many hours of work experience invalid for lots of people! This change would give the Mechanical Inspection people some freedom to validate; a practice they have been performing for several years now in unusual cases, on a form they already have.

* 12 AAC 32.320: simply adds IEC and AIECA to the list of approved sponsoring organizations for the bi-annual workshops. There is no reason in the world that they should not be included , and their exclusion at printing time simply shows the ignorance and short-sightedness of the original drafters.

* 12 AAC 32.910(2): This completes the changes required to move everything electrical out of Commerce and into Labor. Sections (4) & (10) incorporate the communications technicians for continuity. (15) Adds the Master Journeyman Electrician into the last place it needs to appear to make the new classification complete.

Respectfully submitted this 09th day of May 1985

KENT LEE WOODMAN
Director of Administration
AIECA

IN THE HOUSE BY TAYLOR

HOUSE BILL NO. ___

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to Electrical Administrators, Electrical craftsmen, and providing for an immediate effective date."

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

* Section 1. AS 08.01.110 is amended to read:

Sec. 08.01.110. DEFFINITIONS. In this chapter

(1) "board: includes the boards and commissions listed in 08.01.010;

(2) "department" means the Department of Commerce and Economic Development, except in the case of the Board of Electrical Examiners, in which case it means the Department of Labor;

(3) "commissioner" means the commissioner of commerce and economic development, except in case of the Board of Electrical Examiners in which case it means the Commissioner of Labor;

(4) "license" means any license, certificate, permit, or registration or similar evidence of authority issued by one of the boards listed in AS 08.01.010;

(5) "licenseee" means any person who holds a license;

(6) "occupation" means any of the trades or professions for which licensure is required by one of the boards listed in AS 08.01.010.

* Section 2. AS 08.40.130 is amended to read:

Sec. 08.40.130. ADMINISTRATOR LIMITED TO ONE LICENSED CONTRACTOR. No person may qualify for or operate as an electrical administrator for more than one registered contractor with each license.

* Section 3. AS 08.40.175 is amended by adding a new subsection to read:

08.40.175(c). A person who makes an inspection for the commissioner under this section must be licensed to perform the kind of work being examined.

* Section 4. AS 08.40.195 is amended to read:

Sec. 08.40.195. (a) [PERSONAL] SUPERVISION. A person licensed under this chapter as an electrical administrator who contracts to install or repair electrical wiring, conduits, devices, fixtures, equipment or other electrical materials for transmitting, using or consuming electrical energy must [personally inspect those materials after installation and repair] establish a formal supervision system for the electrical contractor he or she represents, which develops the on-site supervision by the administrator and/or journeyman master electrician; the communications, coordination, records and system(s) required to adequately manage such construction and assure proffessional standards of electrical construction and complaince with the national Electrical Code and local amendments thereto, unless the installation or repair amounts to simple or highly standardized work performed in less than 24 man-hours by personnel generally under the supervision of the electrical administrator, or consists entirely of major component or exact system replacement.

* Section 5. AS 08.40.195 is amended by adding new subsections to read:

Sec. 08.40.195 (b) An electrical administrator who provides supervision under section (a) of this statute, shall have direct and regular contact with the inspecting and/or supervising journeyman master electrician who regularly inspects each phase of the work performed and the materials supplied. This direct and regular contact shall consist of at least a minimum of periodic review of plans and specifications, methods of construction and installation, procedures and inspection results, to assure complaince with the provisions of the National Electrical Code and all local amendments thereto.

Sec. 08.40.195 (c) An electrical administrator who provides supervision under sections (a) and (b) above, shall make periodic sampling visits to various work sites and shall maintain plans, specifications, as-built drawings and/or contract documents of all projects for at least one (1) year following completion of said project.

* Section 6. AS 18.60.610 DELEGATION OF AUTHORITY is amended by preceeding the previous text with "(a)" and adding a new paragraph.

Sec 18.60.610 (b) Upon application to the department, a person licensed and qualified as a master journeyman electrician in accordance with AS 08.40.195, AS 08.90.160, 8 AAC 90.900 and 8 AAC 32.910, and who is an electrical administrator or employed and supervised by a licensed electrical administrator in accordance with AS 08.40.90, 130, 195, 200 and 12 AAC chapter 32, may be authorized by the commissioner to inspect the electrical wiring for a public or commercial structure or a residential structure as defined in AS 18.60.660 provided, however, that such inspection is not for electrical work performed by his or her own employer. Such inspections will be documented on forms provided by the department. Authorization by the commissioner under this section constitutes a grant of full authority to act within the provisions of AS 18.60.580 - 18.60.660 with the same immunities and privileges accorded to the state in the performance of these duties. A person or entity whose electrical wiring installation is found, by the authorized inspector, not to meet the standards prescribed, has the right to appeal to the commissioner for a new inspection. The commissioner shall, within fifteen (15) days, furnish a new inspection by a designee not associated with the person, firm or utility who performed the original inspection.

* Section 7. AS 18.60.660 DEFFINITIONS is amended by adding a new paragraph to read:

Sec 18.60.660 (5) "residential structure" means buildings such as single-family and multi-family units used for residence, including condominiums.

* Section 8. AS 18.62.050 ISSUANCE AND CONTENTS OF CERTIFICATE is amended to read:

Sec 18.62.050(c). verification by an Alaska-based [labor union] <u>electrical trade association which has an apprenticeship and training program certified by the U.S. Department of Labor, Bureau of Apprenticeship and Training,</u> of <u>an applicant's</u> [member's] qualifications to meet the requirements for a certificate of fitness may be accepted in lieu of examination or other requirement for issuing a certificate[ion] under this chapter.

* Section 9. This Act takes effect immediately in accordance with AS 01.10 .070(c).

CORRISPONDING CHANGES TO AAC

ARTICLE 3. ELECTRICIAN CERTIFICATE OF FITNESS.

Section

160. Journeyman electrician/master journeyman electrician certificates of fitness

165. Electrician trainee certificate of fitness

170. Electrician Examination

175. Communications journeyman technician certificate of fitness

176. Communications technician trainee certificate of fitness

177. Communications technician examination

8 AAC 90.160. JOURNEYMAN ELECTRICIAN/MASTER JOURNEYMAN ELECTRICIAN CERTIFICATE OF FITNESS.

(a) An electrician certificate of fitness authorizes the holder to perform work which is subject to the standards established in AS 18.60.580.

(b) A[n] master journeyman electrician, journeyman electrician, journeyman power lineman, maintenance electrician or residential wireman certificate of fitness will be issued by the department upon payment of the fee required under AS 18.62.030, if the applicant respectively

(1) for MASTER JOURNEYMAN ELECTRICIAN: submits documented proof that he or she has a minimum of six (6) years' or 10,000 hours' experience in the electrical trade, of which the last two (2) years or 3,000 hours have been as a supervising and/or inspecting journeyman, and passes an examination prescribed by the department and administered at least quarterly by an approved national testing institution; an accredited apprenticeship classroom program or educational training in the electrical field may be substituted for up to six (6) months' or 1,000 hours' work experience in the trade. An additional six (6) months' or an additional 1,000 hours of formal educational training in management of people, principals of project management and/or electrical inspection may be substituted for the requirement of the last two (2) years; or

(2) [(1)] for JOURNEYMAN ELECTRICIAN: submits documented proof that he or she has a minimum of four (4) years' or 8,000 hours' experience in the electrical trade and passes an examination given by the department; an accredited apprenticeship classroom program or educational training in the electrical field may be substituted for up to six (6) months' or 1,000 hours' work experience in the trade; or

(3) [(2)] for JOURNEYMAN POWER LINEMAN: submits documented proof that he or she has a minimum of four (4) years' or 8,000 hours' experience as a power lineman and passes an examination given by the department; an accredited apprenticeship classroom program or educational training in the electrical field may ber substituted for up to six (6) months' or 1,000 hours' work experience in the trade; or

(4) for MAINTENANCE ELECTRICIAN: submits documented proof that he or she has a minimum of three (3) years' or 6,000 hours' experience as a maintenance electrician and passes an examination given by the department; an accredited apprenticeship classroom program or educational training in the electrical field may be substituted for up to three (3) months' or 500 hours' work experience in the trade; or

(5) [(3)] for RESIDENTIAL WIREMAN: submits documented proof that he or she has a minimum of two (2) years' or 4,000 hours' experience as a residential wireman and passes an examination given by the department; an accredited apprenticeship classroom program or educational training in the electrical field may be substituted for up to three (3) months' or 500 hours' work experience in the trade; or

(6) [(5)] presents to the department, on a form provided by the department, a sworn affidavit from an official of an Alaska-based [union] electrical trade association which has an Apprenticeship Training Program certified by the U.S. Department of Labor, Bureau of Apprenticeship and Training, which shows that the applicant meets the experience requirements set forth in paragraphs (1), (2), (3), (4) or (5) of this section, and passes an examination given by the department; the affidavit must specify

(A) the number of qualifying hours experience the applicant claims for the classification for which he or she seeks certification; apprenticeship hours must be noted if this time is being used for qualification; and

(B) the inclusive dates during which the hours claimed in (A) of this paragraph were worked.

(C) Compatible certificates properly issued in other States with experience and testing requirements which are the same or substantially the same as those required in Alaska, may be accepted by the department to substantitate hours and/or experience for the purposes of qualifying to take the applicable examinations.

(7) [(6)] presents documented proof that he or she was actively engaged in the respective work catagory of the electrical trade in the state for one or more years before January 1, 1973, provided, however, that the person has maintained a continuous, licensed presence in the electrical field from that time to the of application.

8 AAC 90.170. ELECTRICIAN EXAMINATION. (a) Examinations for journeyman electrician, journeyman power lineman, maintenance electrician and residential wireman are available by appointment at the offices of the division in Juneau, Anchorage and Fairbanks. Arrangements for examinations in other [places] locations may be made [by writing the Anchorage office or] by contacting any office of the division.

(b) Examinations for master journeyman electrician shall be conducted at least quarterly by a national testing institute, as prescribed by the department. Arrangements for testing shall be made in the same manner as noted above.

(c) [(b)] A person who fails to pass the examination given by the department may be reexamined after thirty (30) days following the date of the most recent examination. A person who fails to pass the examination for master journeyman electrician, may be reexamined at the next quarterly examination if he or she applies in a timely manner.

8 AAC 90.165. ELECTRICIAN TRAINEE CERTIFICATE OF FITNESS.

- no changes to this section -

8 AAC 90.175. COMMUNICATIONS JOURNEYMAN TECHNICIAN CERTIFICATE OF FITNESS. (a) A communications technician certificate of fitness authorizes the holder to perform work which is subject to the standards established in AS 18.69.580.

(b) A journeyman communications technician or communications technician certificate of fitness will be issued by the department upon payment of the fee required by AS 18.62.030, if the applicant respectively

(1) for JOURNEYMAN COMMUNICATIONS TECHNICIAN: submits proof that he or she has a minimum of four (4) years' or 8,000 hours' experience in the electrical/communications trade and passes an examination given by the department; an accredited apprenticeship classroom program or educational training in the electrical/communications field may be substituted for up to six (6) months' or 1,000 hours' work experience in the trade; or

(2) for COMMUNICATIONS TECHNICIAN: submits proof that he or she has a minimum of two (2) years' or 4,000 hours' experience in the electrical/communications trade and passes an examination given by the department; an accredited apprenticeship classroom program or educational training in the electrical/communications field may be substituted for up to three (3) months' or 500 hours' work experience in the trade; or

(3) presents to the department, on a form provided by the department, a sworn affidavit from an official of an Alaska-based electrical/communications trade association having an apprenticeship training program certified by the U.S. Department of Labor, Bureau of Apprenticeship & Training, which shows that the applicant meets the experience requirements set forth in paragraphs (1) or (2) of this section and passes an examination given by the department; the affidavit must specify

(A) the number of qualifying hours experience the applicant claims for the classification for which he or she seeks certification; apprenticeship hours must be noted if this time is being used for qualification; and

(B) the inclusive dates during which the hours claimed in (A) above were worked;

(4) OR submits documented proof that he or she was actively engaged in the respective work catagory of the electrical/communications trade in the state for one or more years before 15 May 1985.

8 AAC90.176 COMMUNICATIONS TECHNICIAN TRAINEE CERTIFICATE OF FITNESS.

(1) A communications technician trainee certificate of fitness authorizes the holder to perform work which is subject to the standards established in AS 18.60.580 and performed under the conditions set out under this section.

8 AAC 90.177. COMMUNICATIONS TECHNICIAN EXAMINATION.

(1) Examinations for journeyman communications technician and communications technician are available by appointment at the offices of the division in Anchorage, Fairbanks and Juneau. Arrangements for examinations in any location may be made by contacting any office of the division.

(b) A person who fails to pass the examination given by the department may be reexamined after thirty (30) days following the date of the most recent examination.

8 AAC 90.178. COMPLIANCE.

Compliance with the various provisions of communication technician licensing is required by 01 January 1987.

8 AAC 90.180, 185 RENEWAL AND REVOCATION OF CERTIFICATES OF FITNESS.

- no changes to this section -

8 AAC 90.190. APPEALS.

- no changes to this section -

8 AAC 90.205. RIGHT OF INSPECTION. (a) An inspector must be given free access during reasonable hours to any premises where plumbing or electrical work subject to the standards established in AS 18.60.580 and AS 18.60.705 is being performed.

(b) The inspector may request any person performing work for which a certificate of fitness is required, to present [exhibit] the certificate of fitness. (c) The inspector may immediately serve upon a person performing work without a certificate of fitness, a notice to cease any further work for which a certificate is required, until a certificate of fitness appropriate to the job is obtained from the department. The inspector will serve a copy of the notice on the worker's employer.

(d) An inspector performing inspections under this section shall be licensed for the kind of work being examined or inspected.

8 AAC 90.900 DEFINITIONS.

(note: Item (1) remains unchanged)

(2) "apprentice" means a worker at least sixteen (16) years of age who is employed to learn a skilled trade through participation in a systematic form of instruction and on-the-job work experience designed to provide the worker with knowledge of the theoretical and technical subjects related to the communications, electrical or plumbing trade;

(Note: Item (3) remains unchanged)

(4) "communications technician" means a person who performs work necessary to the installation and construction of communicatos control, alarm, data and other low voltage circuits as defined by the National Electrical Code, and equipment within buildings and within property lines, restricted to residential units, or commercial structures of two (2) stories or less, acting in the position of supervising technician for that project. Communications technicians shall be considered as "journeymen" for purposes of apprentice ratios on larger projects where a journeyman communications technician is supervising.

(Note: old numbers (4) through (8) remain unchanged except that their numbering sequence is increased by one for the above.)

(10) "journeyman communications technician" means a person who performs work necessary to the installation and construction of communications, control, alarm, data and other low voltage circuits as defined by the National Electrical Code, and equipment within buildings and within property lines of any given property; the term does not include a person performing electrical or electrical line work in buildings, in underground or overhead construction.

(Note: old numbers (9) through (13) remain unchanged except that their numbering sequence is increased by two for the above)

(15) "master journeyman electrician" means a person who performs all the duties and functions noted for "journeyman electrician" in item (11) above, plus certain supervisory and inspection functions in accordance with AS 08.40.195 and AS 16.60.610. The master journeyman electrician provides project management, personnel supervision and inspection of electrical projects for compliance with the National Electrical Code and local amendments thereto.

(16) [14] "residential wireman" means a person who performs work necessary to the installation, construction, and operation of residential electrical systems, beginning at the point of attachment of the service drop or the service laterial on the load side of the meter, and whose work as a supervising journeyman is limited to residential occupancies providing for no more than four (4) residential units on a common foundation, or as a non-supervisory journeyman on residential units of more than four (4) units on a common foundation;

(Note: Old number 15 remains unchanged except that it is now advanced to number (17) because of the new items above)

* Article 7: APPLICATIONS:

12 AAC 32.250(a) (5) notarized certificate in support of applicant's experience and qualifications, or letters of recommendation that have been substantiated and documented during reference checks, for licensure as an electrical administrator from three (3) persons licensed in any state in the electrical industry.

* Article 8: CONTINUING EDUCATION:

12 AAC 32.320. APPROVED WORKSHOPS. (a) To be approved by the board, the subject material of a continuing education workshop must cover the most recent published edition of the National Electrical Code or the most recent published edition of the National Electrical Safety Code.

(b) Continuing education workshops sponsored by the following are approved by the board if they meet the requirements of (a) of this section:

(1) National Electrical Contractors Association;

(2) International Brotherhood of Electrical Workers;

(3) International Association of Electrical Inspectors; and

(4) Independent Electrical Contractors, Inc; and

(5) Alaska Independent Electrical Contractors Association.

* Article 9: DEFINITIONS. 12 AAC 32.910. DEFINITIONS. In this chapter

(1) "board" means the Board of Electrical Examiners.

(2) "communications technician" means a person who has at least two (2) years' or 4,000 hours' experience in the communications technicial wiring field and holds or is otherwise entitled to hold a certificate of fitness issued by the Department of Labor under AS 18.62.

(3) [(2)] "department" means the Department of Labor [Department of Commerce and Economic Development]

(4) [(3)] "four-plex" means a building containing four (4) dwelling units erected on a common foundation.

(5) "journeyman communications technician" means a person who has at least four (4) years' or 8,000 hours' experience in the communications technicial wiring field and holds or is otherwise entitled to hold a certificate of fitness issued by the Department of Labor under AS 18.62.

(6) [(4)] "journeyman lineman" or "journeyman electrician" means a person who has at least four (4) years' or 8,000 hours' experience in the electrical trade as described in AS 08.40.200(3) and

(A) holds a certificate of fitness as issued by the Department of Labor under AS 18.62; or

(B) meets all of the qualifications for receipt of a certificate of fitness and has applied for but not yer received, the certificate;

(7) "master journeyman electrician" means a person who is qualified and licensed as in item (6) above, and who has an additional two (2) years' or 2,000 hours' field experience in supervision and inspection, together with completion of special examinations provided by the department.

(Note: old numbers (6) through (9) are unchanged except that each receives a higher number to accomodate the changes above)

end end end end

COMMENTS ON PROPOSED LABOR REGULATION CHANGES

VERBAL TESTIMONY 04 NOVEMBER 1985

MY NAME IS KENT LEE WOODMAN. I AM THE DIRECTOR OF ADMINISTRATION FOR THE ALASKA INDEPENDENT ELECTRICAL CONTRACTORS ASSOCIATION, AND ADMINISTRATOR FOR COMMONWEALTH, LTD. OF ANCHORAGE.

THOUGH OUR ASSOCIATION DID NOT RECEIVE THE PROPOSED RULE MAKING, SUFFICIENT LICENSED ADMINISTRATORS AND CRAFTSMEN DID SO THAT WE BECAME AWARE OF THE TEXT OF THE PROPOSED CHANGES ON MONDAY 14 OCTOBER 1985.

PRIOR TO A TECHNICAL DISCUSSION OF EACH OF THE SEVERAL CHANGES, WE HAVE SEVERAL COMMENTS AND A QUESTIONS.

QUESTIONS: WHAT HAS HAPPENED TO THIS ASSOCIATION'S SUGGESTED CHANGES? SOME OF THEM PARALLEL THESE, BUT DIG DEEPER INTO A TOTAL REPAIR. OUR MASTER JOURNEYMAN ELECTRICIAN SUGGESTION WAS CAREFULLY THOUGHT OUT AND PRESENTED. OUR WORK WAS DONE IN TEDIOUS DETAIL AND PRESENTED LOGICALLY, CORRECTLY AND IN A FORMAT WHICH WAS TOTALLY COMPATIBLE WITH THE REGULATIONS AND THE PROCESSES INVOLVED IN SUCH CHANGES.

WHERE DID THESE PROPOSED CHANGES COME FROM? WHO INITIATED THEM? WERE ALL THE SUGGESTIONS INCORPORATED? IS THERE MORE? HOW DO THEY RELATE TO OUR SUGGESTIONS? WHY WAS THE U.S. DEPARTMENT OF LABOR, BUREAU OF APPRENTICESHIP AND TRAINING NOT NOTIFIED OF THE PROPOSED CHANGES?

COMMENTS: AS USUAL, THESE PROPOSED CHANGES APPENDED ABSOLUTELY NO EXPLANATION, RATIONALE' OR DISCUSSION. AS A RESULT, THE PROPOSED CHANGES RAISE AS MANY OR MORE QUESTIONS THAN THEY PROPOSE TO RESOLVE. ADDITIONALLY, AS 18.60.580 IS REFERENCED AS A NEW AREA TO BE IMPLEMENTED. MOST ELECTRICIANS WILL NOT HAVE THIS STATUTE ON FILE, NECESSITATING SEVERAL HUNDRED TRIPS TO THE LAW LIBRARY FOR A COPY. IT IS ONLY ONE PAGE AND COULD HAVE BEEN EASILY INCORPORATED IN THE MAILING, FACILITATING FAR BETTER RESPONSE FROM A TRADE WHICH IS AT ABSOLUTE MAXIMUM WORK SATURATION AT THIS TIME.

FAILURE TO INCLUDE A COPY WITH THE RULE CHANGE, ALONG WITH FAILURE TO PROVIDE ANY DISCUSSION OR JUSTIFICATION FOR THE CHANGES, IS EITHER CALCULATED TO PRODUCE THE MINIMUM INPUT, OR AT BEST, HAS PRECISELY THAT EFFECT. AS A RESULT, THE ONLY PEOPLE WHO HAVE THE WHEREWITHALL TO RESPOND WILL MOST LIKELY BE AIECA AND NECA. NOT VERY REPRESENTATIVE. FAILURE TO NOTICE THE BAT APPARENTLY EXCLUDES ONE OF THE MOST INTERESTED PARTIES, IN VIOLATION OF THE INTENT AND SPIRIT [illegible] OF THE ALASKA ADMINISTRATIVE CODE, IF NOT THE LETTER OF THE CODE.

INDIVIDUAL COMMENTS:

8 AAC 90.115 (A) & (B): WE ASSUME THAT THESE TWO NEW SECTIONS ARE INSERTED HERE FOR SOME HOUSECLEANING PURPOSE, AND SUBJECT TO ACCEPTANCE OF THE ENTIRE CONCEPT,WE HAVE NO SPECIFIC OBJECTION.

8 AAC 90.130 THROUGH .150: THESE SECTIONS RELATE TO THE PLUMBING FIELD, IN WHICH WE HAVE NO EXPERTISE. WE HAVE NO COMMENTS.

8 AAC 90.160(B): THIS CHANGE NOT ONLY ALLOWS INCLUSION OF THE NEW PROPOSED CATAGORIES, BUT ALSO STRAIGHTENS OUT SOME HERETOFOR TEDIOUS AND CONFUSING LANGUAGE. SUBJECT TO COMMENTS ON THE NEW CATAGORIES THEMSELVES, WE APPROVE OF THIS CHANGE.

8 AAC 90.160(C) MINIMUM QUALIFICATIONS: WE HAVE NO SPECIFIC OBJECTION TO FURTHER REFINING THE CONTENT OF THE EXPERIENCE REQUIRED OF NEWLY LICENSED JOURNEYMEN, BUT WE ARE GREATLY CONCERNED WITH HOW YOU PLAN TO HANDLE <u>PRESENTLY LICENSED</u> JOURNEYMEN.

A. WHAT WILL PRESENTLY LICENSED JOURNEYMEN (OR THOSE WHO ARE LICENSED BY THE TIME THESE CHANGES TAKE EFFECT) BE REQUIRED TO DO TO RETAIN OR TO RENEW THEIR LICENSES?

B. WHAT TIME FRAME WILL APPLY TO THE PRESENT JOURNEYMEN'S COMING INTO COMPLIANCE?

C. IF A PRESENTLY LICENSED JOURNEYMAN HAS SAY 12,000 HOURS, BUT LACKS 200 IN LOW VOLTAGE APPLICATIONS, WHAT WILL HE OR SHE DO UPON RENEWAL?

D. WILL FULLY QUALIFIED JOURNEYMEN BE ABLE TO PERFORM THE FUNCTIONS OF THE NEWLY PROPOSED TITLES OF LOW VOTAGE SIGN AND ELEVATOR ELECTRICIANS IN A MANNER SIMILAR TO A JOURNEYMAN BEING ABLE TO PERFORM LOW VOLTAGE AND RESIDENTIAL WIREMAN TASKS PRESENTLY?

E. WHAT WILL PRESENT LOW VOLTAGE TECHNICIANS DO THE MOMENT THESE REGULATIONS BECOME EFFECTIVE? WHAT IS THE PHASE-IN TIME PERIOD? HOW WILL IT BE HANDLED?

F. WE WERE GIVEN TO UNDERSTANT THAT THE MAINTENANCE ELECTRICIAN WAS A POSITION WHICH CAUSED SOME DIFFICULTIES WITH FIELD ENFORCEMENT AND THAT THERE WAS INTEREST IN DELETING THE TITLE. IS THIS NOT THE BEST TIME TO DO SO?

G. WHAT IS THE PURPOSE AND CONCEPT BEHIND CREATING THESE NEW POSITIONS? ARE WE NOT, IN FACT, JUST GOING ALONG AND MAKING THE PRESENT SITUATION LEGAL? IF THIS IS SO, IS THAT PROPER JUSTIFICATION? WHAT OTHER STATES HAVE EXPERIENCE WITH THESE MANY CLASSIFICATIONS?

8 AAC 90.165 (A) & (B): WE HAVE NO DIFFICULTY WITH THESE CHANGES, WHICH APPEAR LARGELY HOUSEKEEPING.

8 AAC 90.165 (C): WE HAVE A GREAT DEAL OF DIFFICULTY WITH ANY PROPOSED CHANGE TO THE RATIO OF JOURNEYMEN TO APPRENTICE AS SHOWN! WE HAVE BEEN PRESENTED WITH ABSOLUTELY NO RATIONALE', EXPLANATION, OR EXCUSE FOR THIS RATIO TO BE TIGHTENED. IT APPEARS TO BE A CLEAR AND BLATANT EFFORT TO MAKE ALL PRIVATE TRADE WORK COMPLY WITH THE INFLATED AND GREEDY CONDITIONS OF DAVIS BACON JOBS.

A. A LICENSED, EXPERIENCED JOURNEYMAN CAN EASILY HANDLE AND SUPERVISE TWO (2) OR MORE APPRENTICES IN THE TYPICAL WORK ENVIRONMENT. FOR THOSE SPECIFIC INDIVIDUALS OR JOBS WHERE SUCH A CONDITION IS NOT LOGICAL, SUPERINTENDANTS MAY SIMPLY LIMIT THE PARTICULAR CIRCUMSTANCES; NO REGULATIONS NEED BE PROMULGATED.

B. FORCING THE LOWER RATIO OF APPRENTICE TO JOURNEYMAN WILL RAISE THE COST OF ALL ELECTRICAL WORK DONE IN THE STATE, FOR NO EFFECTIVE PURPOSE WHATSOEVER.

C. MOST INDEPENDENT SHOPS HAVE ON THEIR EMPLOYMENT, A RATIO SIMILAR TO THE PRESENT AUTHORIZATION OF TWO-TO-ONE. IMPOSITION OF SUCH AN UNNATURAL LIMITATION NOW WOULD FORCE THEM TO DISCHARGE "SURPLUS" APPRENTICES, WHO WOULD THEN BE ON THE JOBLESS MARKET TO BE SUPPORTED BY THE STATE.

D. AIECA'S APPROVED APPRENTICESHIP TRAINING PROGRAM CURRENTLY HAS ENROLLED ALMOST 75 APPRENTICES IN VARIOUS LEVELS OF TRAINING. SOME OF THEM ARE NOT YET EMPLOYED, BUT ARE IN THE COURSES SEEKING EMPLOYMENT. (IMPOSITION OF THIS ARTIFICIAL LIMITATION WOULD RENDER THE PROGRAM IN COMPLETE DISARRAY, TO NO ONE'S BENEFIT BUT PERHAPS THE IBEW.)

E. PRESENTLY SHOPS BID WORK BASED UPON THE PRESENT RATIO, ENABLING PORTIONS OF THE WORK TO BE BID AT LOWER RATES THAN JOURNEYMAN. SUCH A NEW LIMITATION WOULD HAVE THE IMMEDIATE IMPACT OF RAISING THE COST TO HOME AND COMMERCIAL BUILDERS, FOR NO APPARENT GAIN OR REASON.

F. AIECA ANTICIPATES THAT THE PROPOSAL HAS EITHER COME FROM THE IBEW, NECA OR SOMEONE WITH SUCH LEANINGS. FOR JUSTIFICATION, WE'D SUSPECT THAT SAFETY AND QUALITY CONTROL ARE URGED. TO THIS WE'D REPLY: "SHOW US SOME ACCIDENT HISTORY; SHOW US SOME QUALITY CONTROL STUDIES THAT DIRECTLY RELATE TO THE RATIOS AND WE CAN ALL SIT DOWN AND GO THRU THEM TOGETHER."

WE FLATLY AND EMPHATICALLY REJECT THIS TRANSPARENT ATTEMPT TO RAISE INDEPENDENT COSTS AND PRICES FOR NO REAL REASON.

HAND OUT A DEMONSTRATES COST INCREASES.
HAND OUT B DEMONSTRATES THE EFFECT ON A SMALL SHOP.

8 AAC 90.170: WE HAVE NO DIFFICULTY WITH THIS REPEAL. IT APPEARS TO BE COUPLED WITH 90.115, COVERED AT THE BEGINNING OF THIS REPORT.

8 AAC 90.180: WE HAVE NO DIFFICULTY WITH THIS IN GENERAL, EXCEPT THAT (B)((3) MAKES REFERENCE TO A STATUTE NOT INCLUDED IN THE PACKAGE, AND NOT INCORPORATED IN EITHER OF THE DEPARTMENT'S PUBLISHED BOOKLETS. AS 18.62.580 ONLY DIRECTS THAT THE STATE'S STANDARDS ARE THE NATIONAL ELECTRICAL CODE AND THE NATIONAL ELECTRICAL SAFETY CODE. THERE IS NO REFERENCE TO WHETHER THE TRAINING SHALL BE RECURRENT TRAINING, UPGRADE TRAINING, BASIC STUDY, NEW CODE FAMILIARIZATION OR SOME MIX OF THE ABOVE. EVEN ARTICLE 8, 12 ACC RELATING TO CONTINUING EDUCATION FOR ADMINISTRTORS, GIVES B SLIGHT ADDITIONAL CLARIFICATION. THIS SECTION NEEDS SPECIFICS. HANDOUT C TO THIS DISCUSSION IS OUR RECOMMENDATION OF SOME SAMPLE WORDING.

THE AREA BRINGS UP SEVERAL QUESTIONS:

A. IF A PRESENT JOURNEYMAN CAN PERFORM THE FUNCTIONS OF EACH OF THE THREE NEW TITLES, MUST HE OR SHE THEN AMASS 24 HOURS OF TRAINING (8 IN EACH AREA) FOR HIS OR HER RENEWAL?

B. MAY A PRESENT JOURNEYMAN RENEW AND PERFORM IN ONE OR TWO OF THE CLASSIFICATIONS?

C. HOW WILL SUCH A JOURNEYMAN BE IDENTIFIED FOR INSPECTION AND JOB PERFORMANCE?

(WE'D NOTE THAT OUR PROPOSED MASTER JOURNEYMAN ELECTRICIAN IS ONE EASY WAY TO MEET THIS DIFFICULTY)

D. ARE THE 8 HOURS OF TRAINING FOR EACH YEAR OF A $40.00 CERTIFICATE, ANNUALLY, OR FOR EVERY 3 YEARS FOR A $75.00 CERTIFICATE, IAW AS 18.62.030?

E. ARE THE 8 HOURS OF TRAINING THE SAME FOR THE PRESENT JOURNEYMAN AND THE 3 NEW CLASSES?

F. ARE THE 8 HOURS APPLICABLE TO RESIDENTIAL ELECTRICIAN?

5-5-5-5-5

8 AAC 90.185 (4): WE HAVE A GREAT DEAL OF TROUBLE WITH THIS NEW LINE, AND WE PROJECT THAT YOU WILL ALSO. IT IS FAR TOO BROAD; GIVES MUCH TOO MUCH POWER TO THE FIELD WITH VIRTUALLY NO RESTRICTIONS. WE PROJECT THAT EVEN WITH THE BEST OF PEOPLE ON BOARD, THERE WILL BE BREAKDOWNS IN COMMUNICATION AND CONTROL AND THERE WILL BE ABUSES OF THIS SECTION.

WE FURTHER PROJECT THAT SHOULD SUCH AN ABUSE BE APPEALED THAT THIS REGULATION WILL BE STRUCK DOWN SUMMARILY AS UNCONSTITUTIONALLY BROAD. NOTE THAT MUCH MORE TIGHTLY WRITTEN REGULATIONS AND STATUTES THAN THIS HAVE BEEN SO STRUCK DOWN.

IT HAS ALL THE APPEARANCES OF A POWER GRAB. IT IS NOT REQUIRED, IT IS OVERLY GRABBY AND IS MOST LIKELY ILLEGAL.

8 AAC 90.900: WE HAVE SEVERAL PROBLEMS WITH THIS SECTION.

(1) "ACCREDITED". WE RESENT THIS DILLUTION OF THE ACCREDITATION PROCESS TO ENABLE COURSES OFFERED BY UNIVERSITIES, COMMUNITY COLLEGES, HIGH SCHOOLS, AND VOCATIONAL REHABILITATION SHOPS TO AUTOMATICALLY ACHIEVE THE SAME HIGH STATUS AS THOSE SCHOOLS ADMITTED UNDER THE U.S. DEPARTMENT OF L[illegible] BUREAU OF APPRENTICESHIP AND TRAINING.

THIS BUREAU HAS CONSIDERABLE AND NATIONAL CREDABILITY. TO TAKE A TIGHTLY CONTROLLED PROGRAM AND OPEN IT UP TO THE WORLD WITHOUT ANY CRITERIA, NO COURSE CONTENT, NO MINIMUM HOURS OF TRAINING, NO PROSPECTUS OR THE LIKE IS SO FOOLHEARDY AS TO MAKE READERS WONDER WHERE THE AUTHOR'S HEAD WAS. WHAT COULD POSSIBLY BE THE JUSTIFICATION FOR SUCH AN EDUCATIONAL CASTRATION?

ADDITIONALLY, THE BUREAU OF APPRENTICESHIP AND TRAINING WAS NOT SERVED OR CONSULTED ON THIS MASSIVE CHANGE; A REGRETTABLE OMISSION OF MAJOR PROPORTION.

(9) "JOURNEYMAN". AGAIN YOU HAVE MADE REFERENCE TO A STATUTE WHICH IS NOT NORMALLY IN THE ELECTRICIAN'S LIBRARY. IT ALSO APPEARS OVERLY BROAD AND OPEN-ENDED - NEEDS SPECIFICS.

(9)(A) CHANGING "THE TRANSFORMER" TO "PAD-MOUNTED TRANSFORMER" IS A CHANGE THAT DEFIES LOGIC AND OUR UNDERSTANDING. IT WOULD HAVE THE EFFECT OF MOVING TRANSFORMER VAULTS AND POLE MOUNTED TRANSFORMERS TO SOME OTHER CLASS OF CRAFTSMAN. WHY IS THIS SOUGHT? WHO PROPOSED IT? WHAT IS IT SUPPOSED TO ACCOMPLISH?

WE OBJECT BECAUSE IT WOULD REMOVE HISTORICALLY ACCOMPLISHED WORK FROM AN EXISTING CRAFTSMAN TO SOME OTHER CRAFTSMAN, WITH NO DEMONSTRATED PURPOSE.

(D) WHY DELETE REFERENCE TO THE NATIONAL ELECTRICAL CODE?

(11) "JOURNEYMAN LINEMAN". THE PROPOSED CHANGE AT THE END OF THIS PARAGRAPH IS IN DIRECT OPPOSITION TO THE CHANGE IN JOURNEYMAN ABOVE. IF A JOURNEYMAN CAN RUN LINE TO THE SECONDARY SIDE OF A TRANFORMER, DOES THIS CHANGE MEAN THAT A JOURNEYMAN LINEMAN MAY ALSO? WHY THE DUPLICTY? IS IT DUPLICITY?

(13) "MAINTENANCE ELECTRICIAN". AGAIN, AS ABOVE, WE'D HEARD THAT THIS WAS A TOUGH CATAGORY TO POLICE. WHY NOT DUMP IT NOW?

(14) "RESIDENTIAL ELECTRICIAN". WE HAVE NO DIFFICULTY WITH CHANGING HIS OR HER NAME FROM "WIREMAN" TO "ELECTRICIAN", BUT WHAT OF OUR SUGGESTION THAT WE END SOME CONFUSION ON HOW TO TREAT SUCH AN EMPLOYEE? WE SUGGESTED THAT WE ONCE AND FOR ALL PUT IN PRINT THAT A RESIDENTIAL ELECTRICIAN IS CONSIDERED A JOURNEYMAN FOR PURPOSES OF APPRENTICE ASSIGNMENT. WE SUGGESTED FURTHER, THAT HE OR SHE BE CONSIDERED A NON-SUPERVISING JOURNEYMAN WHEN HE OR SHE IS EMPLOYED AS PART OF A CREW ON A COMPLEX LARGER THAN A 4-PLEX. THESE SHOULD BE CONSIDERED NOW.

(15) "TRAINEE". DOES THIS PROPOSED CHANGE MEAN THAT A TRAINEE/APPRENTICE MAY NOT BE PLACED WITH A RESIDENTIAL ELECTRICIAN OR ONE OF THE OTHER NEW CLASSES?

(18) "LOW VOLTAGE ELECTRICIAN". WHY DOES THIS NOT INCLUDE INSTALLATION OF TELECOMMUNICATION EQUIPMENT? IF SAFETY IS A CONCERN, WE NOTE THAT AS ONE EXAMPLE ALONE, A TELECOMMUNICATIONS TECHNICIAN INSTALLS THE INTERCOMM SYSTEM ON A LARGE BUILDING WHERE THERE ARE SPECIAL FIRE DEPARTMENT CONNECTIONS FOR SAFETY. WE RECOMMEND THAT TELECOMMUNICATIONS TECHNICIANS BE INCLUDED.

WE HAVE NOT SEEN THIS HEARING NOTICED IN THE PRESS, AND WOULD LIKE A COPY OF YOUR PROOF OF PUBLICATION IN ACCORDANCE WITH THE ALASKA ADMINISTRATIVE CODE.

WE'D SUMMARIZE WITH THE OPENING COMMENTS: WHY WAS NO BACKGROUND STATEMENT INCLUDED, SHOWING WHAT PROBLEMS WERE ATTEMPTING TO BE OVERCOME? WHY WAS NOT A COPY OF THE REFERENCED STATUTES INCLUDED? WHY HAVE WE HEARD NOTHING FROM OUR SUGGESTIONS; SUBMITTED IN ENTIRELY COMPATIBLE FORMAT, INCLUDING COMPLETE JUSTIFICATION BY LINE ITEM?

THANK YOU FOR ALLOWING US TO PARTICIPATE. I AM PREPARED FOR GENERAL QUESTIONS?

HAND OUT B - Impact on small shop

Assume small shop with 3 employees: 1 Journeyman and 2 Apprentices under present statute.

Assume $18.00/hour for Journeyman plus 26% benefits and overhead = $22.68/hour.

Assume $10.00/hour for Apprentices plus 26% benefits and overhead = $12.60/hour each.

Assume 2 to 1 ratio -

1 X 22.68 + 2 X 12.60 = cost/hour = $47.88 for a total shop cost, or an average of $15.96/hour billed.

Now assume modified 3 man shop; 2 Journeymen and 1 Apprentice:

2 X 22.68 + 1 X 12.60 = $57.87 for a total shop cost, or an average of $19.29/hour billed out.

To minimize this impact, the shop then hires a 4th man; another apprentice:

2 X 22.68 + 2 X 12.60 = $70.47 for a total shop cost, or an average of $17.61.

This is an increase in cost of over 10%, and for the 3 man shop, it's over 18%!

Now the shop must go out and attempt to develop additional work to cover the cost increases, in an atmosphere in which other shops are doing the same thing. It will not work. Some will go out of business and the remaining firms will raise their costs to the public for absolutely no good reason.

HAND OUT A - LABOR CALCULATIONS

ASSUME A PROJECT OF $10,000 ELECTRICAL BILLING.

ASSUME LABOR REPRESENTS 42%. THEREFORE LABOR IS $4,200.00.

ASSUME A JOURNEYMAN IS EMPLOYED AT $18.00/HOUR NET AND AN APPRENTICE AT $10.00/HOUR NET. ASSUME 26% OVERHEAD AND BENEFITS AND YOU HAVE: $22.68/HOUR FOR JOURNEYMAN AND $12.60/HOUR FOR APPRENTICE.

ASSUME PRESENT 2 TO 1 RATIO:

1 X 22.68 + 2 X 12.60 = COST/HR = $47.88
$4,200.00 DIVIDED BY 47.88 = 87.71 HOURS.

87.71 X 22.68 =	$1,989.26	(JOURNEYMAN)
87.71 X 2 X 12.60 =	$2,210.29	(APPRENTICE)
CHECK SUBTOTAL	$4,199.55	

ASSUME 1 TO 1 RATIO:

3 X 87.71 HOURS = 263.13 HOURS

263.13 HOURS DIVIDED BY 2 = 131.56 HOURS

131.56 X 22.68 =	$2,983.78	(JOURNEYMAN)
131.58 X 12.60 =	$1,658.79	(APPRENTICE)
TOTAL COST	$4,542.57	[1 TO 1 RATIO]
MINUS ABOVE	$4,200.00	[2 TO 1 RATIO]
ADDITIONAL COST	$ 343.02	OR 8.16% LABOR INCREASE!

HAND OUT C - SAMPLE WORDING FOR TRAINING
8 AAC 90.180 (B)(3)

(3) SUBMITS EVIDENCE THAT THE CERTIFICATE HOLDER HAS SATISFACTORILY COMPLETED EIGHT HOURS OF CONTINUING TECHNICAL EDUCATIONAL TRAINING, APPROVED BY THE DEPARTMENT, MEETING THE MINIMUM STANDARDS OF AS 18.60.580 FOR ELECTRICIANS AND AS 18.60.705 FOR PLUMBERS, AND INCLUDING AT MINIMUM:

A) FOUR (4) HOURS OF REVIEW OF CHANGES IN THE LATEST APPLICABLE CODE; AND

B) TWO (2) HOURS OF BASIC THEORY REVIEWAND SAFETY; AND

C) TWO (2) HOURS OF GENERAL INDUSTRY PROCEDURES, APPLICATIONS AND NEW MATERIALS USE.

AIECA

ALASKA INDEPENDENT ELECTRICAL CONTRACTORS ASSOCIATION

SENATOR JAN FAIKS
Alaska State Senate
Pouch V, State Capitol Building
Juneau, Alaska 99811

Dear Senator Faiks, 14 February 1986

Thank you very much for sending me a copy of the Audit Report on the Electrical Examination Board, and for soliciting my comments.

I have taken the liberty of reviewing them and presenting my findings to our organization, in order that the response be that of a much wider population. It did not take very much study, for our files are full of difficulties relating to this Board, not the least of which is that it has been managed with severe overtones of politics and union control for many years. We will not, however, dwell on this aspect, but stick to the materials developed by the audit.

Generally: We support the first recommendation of the audit, to allow the Board to sunset as quickly as possible.

We also support the recommendation that much of the functions be taken over by the Department of Labor.

We make these UNANIMOUS recommendations because it is our position that the Board, as it is presently constituted and operated, is: Inefficient, duplicative, non-responsive, non-productive, non-cooperative; and its functions could be performed much more effectively by the Department of Labor.

Appended to this letter are two (2) parts: 1. Specific comments on the audit. 2. Comments on this organization's past attempts to make similar changes, proposed changes to statutes and regulations and the like.

In closing, we'd like to remind you and other legislators and staffers who may have access to this response, that our organization represents the Independent Electrical Contractors in the state. There are more of us than there are of the "others", by business licenses, by employees, by permits, by every measure except that small segment of cross-country high tension line contractors.

Our organization was founded in 1977 and is a non-profit trade association dedicated to safer and more efficient electrical practices and products in Alaska. We do NOT negotiate wages for our members as NECA does. We do NOT develop work rules for our employees as do NECA and the IBEW.

Thank you again for your interest and for contacting me. Please let us know what we can do to assist!

FOR THE PRESIDENT

KENT LEE WOODMAN
Director of Administration

encl: 1. comment's on Audit
2. Comments on AIECA's past input

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