

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672  
4824 HLAB HB 425 - HB 436

388

## PURPOSE AND SCOPE OF THE REPORT

### PURPOSE

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Registration for Architects, Engineers, and Land Surveyors for the past four fiscal years. Our examination was conducted to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the Board of Registration for Architects, Engineers, and Land Surveyors should be reestablished. The law now specifies that this Board will terminate on June 30, 1988, and have one year from that date to conclude its affairs.

### SCOPE

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

1. Applicable statutes and regulations.
2. Interviews with Board members.
3. Tests of files and documents of licensees.
4. Interviews with license examiners.
5. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Office, Attorney General's Office, and the Ombudsman's Office.
6. Minutes of Board meetings and Division correspondence files.
7. Attorney General's opinions applicable to professional boards.

## ORGANIZATION AND FUNCTION

The Board of Architects, Engineers, and Land Surveyors is a regulatory board with nine members consisting of two civil engineers, one land surveyor, one mining engineer, two engineers from other branches of the engineering profession two architects, and one public member.

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

1. Examining and issuing licenses to qualified applicants.
2. Establishing, amending, or eliminating regulations controlling architect, engineer, and land surveyor practices.
3. Revoking, annulling, or suspending licenses in accordance with the Administrative Procedures Act when a person has violated architect, engineer, and land surveyor statutes or regulations.

## REPORT CONCLUSION

### Policy Issues

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

### Report Conclusion

In our opinion, the Board of Registration for Architects, Engineers, and Land Surveyors should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. The Board provides this service by establishing minimum educational and experience requirements that provide reasonable assurance that persons licensed are qualified. Also, assurances that those licensed act in a competent manner is provided by active investigation of complaints and revocation or suspension of licenses where appropriate.

The following finding describe areas where weaknesses or conflict exist. We have made a recommendation which, if implemented, will improve the efficiency and effectiveness of the Board.

## FINDING AND RECOMMENDATION

### Recommendation No. 1

Legislation should be introduced requiring continuing education for architects, engineers, and land surveyors.

Architects, engineers, and land surveyors must demonstrate a high degree of educational and practical competence before they can become registered in Alaska. However, renewal of certificates is not dependent upon evidence of a professional's continued competence.

Continuing education, although not a absolute guarantee, provides a reasonable means of assuring continuing competency in a profession. A program of continuing education will help avoid professional obsolescence and keep practitioners aware of changes taking place in the profession.

Most professional licensing boards require continuing education to assure that license renewal is based upon evidence of professional continued competency.

## ANALYSIS OF PUBLIC NEED

### Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our examination.

- I. The extent to which the board, commission or program has operated in the public interest.
  - A. The Board holds at least four regular meetings each year.
  - B. The Board holds written exams at least twice each year, except for certain national examinations that are held only once a year.
- II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
  - A. The Board has received assistance from DOL relative to the drafting of legislation and regulatory changes.
  - B. The Board has received legal assistance from the Attorney General's Office.
- III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.

The Board adopted regulations that clarified various vague statutory and regulatory requirements.
- IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

The Board has published public notices of all examination, and meetings.
- V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

Public notices of proposed regulations are published in major newspapers. Public comment on proposed regulations, both written and oral, are considered at Board meetings.

- VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

The Board has taken appropriate action to resolve complaints filed with the Office of Ombudsman. No complaints were filed with the Attorney General's Office.

- VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

A. We found no instances where the Board has licensed unqualified practitioners.

B. Architects, engineers, and land surveyors are not required to demonstrate their continued competence through a continuing education program (see Recommendation No. 1).

- VIII. The extent to which State personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

According to the Office of Equal Employment Opportunity, no complaints were filed against the Board from FY84 through FY87.

- IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Finding and Recommendation.

APPENDIXES



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APPENDIX A

BOARD OF REGISTRATION FOR  
ARCHITECTS, ENGINEERS,  
AND LAND SURVEYORS  
SCHEDULE OF  
REVENUES COMPARED WITH EXPENDITURES  
For Fiscal Year 1987  
(Unaudited)  
(Note 1)

Average Revenue (Note 2)	\$149,302
Expenditures (Note 3)	<u>251,320</u>
Excess of Expenditures over Revenues	<u>\$102,018</u>

Note 1

The Schedule of Revenues Compared with Expenditures was prepared from available records and discussions with the Division of Occupational Licensing (DOL) personnel. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Schedule of Revenues Compared with Expenditures.

Note 2

A significant portion of revenues is composed of license renewal fees. Licenses are renewed biennially. Because of the renewals, revenues vary substantially between years. Therefore, we combined revenues collected in fiscal year 1986 and 1987; and calculated a total in order to obtain a representative amount of average annual revenues collected. Licensing fees were increased in November 1986 in response to legislative intent to make the Boards more self supporting. See Appendix C for the current fee schedule.

Note 3

Expenditures consist of direct costs resulting from board member activities, (i.e. travel and per diem) and an allocation of direct and indirect costs of DOL. It should be noted, that represented expenditures do not include expenses incurred by other Departments or other divisions of the Department of Commerce and Economic Development in assisting the Board.

APPENDIX B

BOARD OF REGISTRATION FOR  
ARCHITECTS, ENGINEERS,  
AND LAND SURVEYORS  
SCHEDULE OF ESTIMATED REVENUES  
COMPARED WITH BUDGETED EXPENDITURES  
For Fiscal Year 1988  
(Unaudited)  
(Note 1)

Average Revenue (Note 2)	\$296,000
Expenditures (Note 3)	<u>280,119</u>
Excess of Revenue Over Expenditure	<u>\$ 15,881</u>

Note 1

The Division of Occupational Licensing (DOL) prepared the above Schedule of Estimated Revenues Compared with Budgeted Expenditures. The schedule is included for informational purposes only and has not been audited by us. Accordingly, we do not express an opinion on the Board's Schedule of Estimated Revenues Compared with Budgeted Expenditures.

Note 2

Revenues were estimated based upon the current licensing fees (See Appendix C) and projected license renewals and application fees for fiscal years 1988, 1989, 1990 and 1991. Because of a downward trend in Alaska's economy the projection for revenues includes a factor representing a 20% to 30% decline in the number of licensed professionals.

Note 3

Expenditures consist of FY88 budgeted direct costs associated with board member activities (i.e. travel and per diem) and a allocation of direct and indirect costs of DOL. It should be noted that represented expenditures do not include expenses incurred by other Departments or other divisions of the Department of Commerce and Economic Development in assisting the Board.

APPENDIX C

BOARD OF REGISTRATION FOR  
ARCHITECTS, ENGINEERS,  
AND LAND SURVEYORS  
SCHEDULE OF TYPES OF REVENUES  
(Unaudited)  
(Note 1)

<u>Revenues</u>	<u>Amount</u>	<u>Collection Time</u>
Application For Individual By Exam	\$ 20	With Application
Application For Corporation Authorization	\$ 20	With Application
Application By Comity	\$120	With Application
Examination Fees*		
Fundamentals of Engineering (EIT)	\$ 50	With Application
Professional Engineering (PE)	\$100	With Application
Fundamentals of Land Surveying (LSIT)	\$ 50	With Application
Principals & Practices of Land Surveying	\$ 50	With Application
Alaska Land Surveying (AKLS)	\$ 75	With Application
Architect Registration Exam (ARE)		
Division A	\$ 40	With Application
Division B	\$ 40	With Application
Division C	\$ 75	With Application
Division D	\$ 25	With Application
Division E	\$ 20	With Application
Division F	\$ 15	With Application
Division G	\$ 25	With Application
Division H	\$ 30	With Application
Division I	\$ 30	With Application
For Entire ARE Exam	\$300	With Application
Individual Registration & Renewal Fee (Renewals paid biennially.)	\$100	
Corporate Authorization & Renewal Fee (Renewals paid biennially. Corporations registered in the second half of the biennium pay one-half of their first renewal fee.)	\$400	
Amendment to Corporate Authorization	\$ 50	With Amendment
Penalty for Reinstatement of Lapsed Registration	\$ 20	With Reinstatement
Postponement of Examination	\$ 20	With Request For Postponement
Duplicate License	\$ 5	With Request
Duplicate Certificate	\$ 20	With Request
Verification of Registration	\$ 5	With Request
Name Change	\$ 5	With Request
Returned Check (NSF)	\$ 20	

\* Reexamination fees are the same as the initial exam fees.

Note 1

This schedule represents the licensing fees currently in effect. Fees were raised in November 1986 in response to legislative intent to make the boards more self supporting.

# STATE OF ALASKA

STEVE COWPER, GOVERNOR

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

P. O. BOX D  
JUNEAU, ALASKA 99811-0800  
PHONE: (907) 465-2500

OFFICE OF THE COMMISSIONER

January 20, 1988

JAN 27 1988

ADMIT

Mr. Randy Welker  
Acting Legislative Auditor  
Division of Legislative Audit  
Budget and Audit Committee  
P.O. Box W  
Juneau, AK 99811-3300

Dear Mr. Welker:

This is written in response to the Budget and Audit Committee's (hereinafter "Committee") audit report of its sunset performance review of the Board of Registration for Architects, Engineers and Land Surveyors (hereinafter "AELS Board"). Below is the Department of Commerce and Economic Development's (hereinafter "Department") comments on the Committee's recommendation.

### Recommendation #1

The Committee has found that a program of continuing education "provides a reasonable means of assuring continuing competency in a profession" and has recommended that legislation "be introduced requiring continuing education for architects, engineers, and land surveyors." The Department is cognizant that this matter has been the subject of much discussion by the AELS Board and that action to set a continuing education program in place has not yet been taken by the Board.

Nevertheless, the Department concurs in the recommendation of the Committee and would support passage of legislation requiring continued education for AELS professionals. Such legislation could be made a part of the bill which reestablishes the AELS Board this Second Session of the Fifteenth Legislature.

Sincerely,



J. Anthony Smith  
Commissioner

JAS/mst 0867c  
011988c

HB

430

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HL+C

2-18-88

1:30 p.m.



# HOUSE COMMITTEE REPORT

2/29

(7)

Date referred: 2/3/88

FURTHER REFERRALS:

Finance

. DATE: 2/18/88

The Labor & Commerce Committee has considered HB 430

"An Act relating to the neighborhood business development program; and providing for an effective date."

**RECOMMENDS:**

- replace with CS HB 430 (L+C)       the same title
- attached amendment(s)                       a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact                                       same as previous fiscal note published \_\_\_\_\_
- zero fiscal note                                       same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

**SIGNING OTHER RECOMMENDATIONS:**

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Signature]

Ceiff Davidson (more)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Signature]

Chairman's signature

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Commerce & Econ. Dev.  
 Title: An Act relating to the Neighborhood Business Development Program BRU: Business Development  
 Sponsor: Labor and Commerce Committee Components: \_\_\_\_\_  
 Requester: Labor and Commerce Committee

**EXPENDITURES / REVENUES : (Thousands of Dollars)**

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		64.3	64.3	91.0	91.0	91.0
TRAVEL		6.0	6.3	6.6	6.9	7.3
CONTRACTUAL		4.5	4.5	4.0	3.5	3.5
SUPPLIES		.4	.4	.4	.4	.4
EQUIPMENT		10.7	.6	.6	.6	.6
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		85.9	76.1	102.6	102.4	102.8

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
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**FUNDING: (Thousands of dollars)**

GENERAL FUND		85.9	76.1	102.6	102.4	102.8
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		85.9	76.1	102.6	102.4	102.8

**POSITIONS:**

FULLTIME		1.5	1.5	2	2	2
PARTTIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary.)

SEE ATTACHED PAGE

Prepared by: Larry Merculieff, Director *Bonnie J. Bonchick* Phone: 465-2017  
 Division: Business Development Date: February 26, 1988

Approved by Commissioner: J. Anthony Smith *J. Anthony Smith* Date: 2/26/88  
 Agency: Department of Commerce and Economic Development

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

FISCAL NOTE CONTINUATION

ANALYSIS:

HB 430 states that the funds can only be used by communities of over 20,000 population which means only the Municipality of Anchorage, City and Borough of Juneau, City and Borough of Sitka, and City of Fairbanks can qualify.

The management of the fund will require the full time services of a Development Specialist I (Range 18) and the half services of an Accounting Clerk II (Range 9B). These two new positions will design, implement and administer the programs. By the third year, the Accounting Clerk II will be needed full time.

Development Specialist I (Range 18) (Salary and Benefits)	\$49,340
Accounting Clerk II (1/2 time)	<u>14,938</u>
	\$64,278

Administrative travel necessary to administer program will be \$6,000 in FY 89 increasing by 5% (inflation) a year through FY 93.

Contractual costs will be for communication items such as phone, postage, advertising, etc.

Supply costs will be minimal \$400 per year.

Equipment cost will be higher in the first year as two new offices will have to be equipped. This will include new modular units, two computer/word processors, two chairs and miscellaneous. Cost for each office is approximately \$5,500. After first year, equipment cost will be minimal.

5-1743L  
Chenoweth  
2/17/88

Original sponsor: Labor and Commerce  
Committee

1 IN THE HOUSE

BY THE LABOR AND  
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 430 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Alaska neighborhood business  
7 initiative; and providing for an effective date."

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

9 \* Section 1. PURPOSE. The purpose of AS 44.33.431 - 44.33.433, added  
10 by sec. 2 of this Act, is to promote a neighborhood business initiative by  
11 establishing a program of economic development of commercial neighborhoods  
12 in the state's principal cities by financial institutions, relying on local  
13 initiative for the specific design of local programs.

14 \* Sec. 2. AS 44.33 is amended by adding new sections to read:

15 ARTICLE 6A. NEIGHBORHOOD BUSINESS DEVELOPMENT PROGRAM.

16 Sec. 44.33.431. NEIGHBORHOOD BUSINESS DEVELOPMENT FUND. There  
17 is created the neighborhood business development fund, to be adminis-  
18 tered by the commissioner. The commissioner shall deposit to the  
19 credit of the fund

20 (1) grants and contributions to the fund; and

21 (2) appropriations to the fund.

22 Sec. 44.33.432. POWERS AND DUTIES OF THE DEPARTMENT. (a) The  
23 commissioner may use money in the fund to make grants to nonprofit  
24 development corporations that qualify for assistance from the Neigh-  
25 borhood Reinvestment Corporation organized under 42 U.S.C. 8101-8107  
26 (Neighborhood Reinvestment Corporation Act), for purposes of neighbor-  
27 hood housing services, community revitalization, and economic develop-  
28 ment projects in a city that has more than 20,000 persons.

29 (b) The commissioner may adopt regulations necessary to carry

1 out the department's functions under AS 44.33.431 - 44.33.433.

2 (c) The commissioner shall provide for an annual audit of the  
3 grants to nonprofit development corporations made under (b) of this  
4 section.

5 Sec. 44.33.433. DEFINITIONS. In AS 44.33.431 - 44.33.433

6 (1) "commissioner" means the commissioner of commerce and  
7 economic development;

8 (2) "department" means the Department of Commerce and  
9 Economic Development;

10 (3) "fund" means the neighborhood business development fund  
11 established in AS 44.33.431.

12 \* Sec. 3. AS 44.33.020 is amended by adding a new paragraph to read:

13 (30) administer the neighborhood business development pro-  
14 gram under AS 44.33.431 - 44.33.433.

15 \* Sec. 4. This Act takes effect July 1, 1988.



January 29, 1988

Representative Dave Donley  
Alaska State House of Representatives  
Pouch V  
Juneau, AK 99811

ATTN: Mark Begich

Dear Representative Donley:

At your request, I am enclosing the annual report of the Neighborhood Reinvestment Corporation and some material describing the breadth of program services developed within local corporations as part of the Neighborhood Housing Services of America (NHS) network.

Also enclosed is a copy of the Community Development Amendments of 1978 which originally chartered Neighborhood Reinvestment by Congress and provides for annual appropriation to support the corporation. At the request of a local government, Neighborhood Reinvestment will conduct an assessment of a community with that community and provide assistance in developing local public and private partnerships that are necessary to set up a Neighborhood Housing Services Corporation. Once established, the corporations are independent, local non profits, chartered by state and local incorporation requirements, but are provided ongoing network assistance and occasional program development capital to test new programs within the local community as required.

Typically the local Neighborhood Housing Services Corporation operating under a public private partnership board administers a loan fund for housing and economic development type of activities. The national track record for leveraging capabilities is quite high and on the average has provided a ratio of 32:1 in private to public dollars. The secondary market support comes from our network consortium of NHS, which purchases loans made by the local NHS to continue to replenish needed loan fund dollars.

Anchorage Neighborhood Housing Services is currently one of small handful of Neighborhood Housing Services Corporations which is providing Commercial Development loans which I described to you previously. If the city of Fairbanks is interested in creating a local non profit corporation modeled after the NHS, my suggestion is that they seek assistance through Neighborhood Reinvestment in developing that corporation. Anchorage Neighborhood Housing Services would be happy to assist both Neighborhood Reinvestment and Fairbanks in that effort, but it is paramount in my mind that it be a locally controlled private non profit. In establishing public private partnerships, local control is essential, as is an adequate resource base of funds to do the work at hand. If the state legislature were to provide additional capital for commercial revitalization, ANHS most certainly could utilize those funds because we have some significant projects that need funding and will help to stabilize the economy, as I am sure could a Fairbanks NHS.

**Anchorage Neighborhood Housing Services, Inc.**

3700 Woodiana Park Drive, Suite 500, Anchorage, Alaska 99517. (907) 243-1558

TITLE VI—NEIGHBORHOOD REINVESTMENT  
CORPORATIONNeighborhood  
Reinvestment  
Corporation Act.

## SHORT TITLE

SEC. 601. This title may be cited as the "Neighborhood Reinvestment Corporation Act". 42 USC 8101  
note.

## FINDINGS AND PURPOSE

SEC. 602. (a) The Congress finds that— 42 USC 8101.

(1) the neighborhood housing services demonstration of the Urban Reinvestment Task Force has proven its worth as a successful program to revitalize older urban neighborhoods by mobilizing public, private, and community resources at the neighborhood level; and

(2) the demand for neighborhood housing services programs in cities throughout the United States warrants the creation of a public corporation to institutionalize and expand the neighborhood housing services program and other programs of the present Urban Reinvestment Task Force.

(b) The purpose of this title is to establish a public corporation which will continue the joint efforts of the Federal financial supervisory agencies and the Department of Housing and Urban Development to promote reinvestment in older neighborhoods by local financial institutions working cooperatively with community people and local government, and which will continue the nonbureaucratic approach of the Urban Reinvestment Task Force, relying largely on local initiative for the specific design of local programs.

## ESTABLISHMENT OF CORPORATION

SEC. 603. (a) There is established a National Neighborhood Reinvestment Corporation (hereinafter referred to as the "corporation") which shall be a body corporate and shall possess the powers, and shall be subject to the direction and limitations specified herein. 42 USC 8102.

(b) The corporation shall implement and expand the demonstration activities carried out by the Urban Reinvestment Task Force. Duties.

(c) The corporation shall maintain its principal office in the District of Columbia or at such other place the corporation may from time to time prescribe. Offices.

(d) The corporation, including its franchise, activities, assets, and income, shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local governing authority, except that any real property of the corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

## BOARD OF DIRECTORS; ESTABLISHMENT

SEC. 604. (a) The corporation shall be under the direction of a board of directors made up of the following members: Membership.  
42 USC 8103.

- (1) the Chairman of the Federal Home Loan Bank Board;
- (2) the Secretary of Housing and Urban Development;
- (3) a member of the Board of Governors of the Federal Reserve System, to be designated by the Chairman of the Board of Governors of the Federal Reserve System;



(4) the Chairman of the Federal Deposit Insurance Corporation;

(5) the Comptroller of the Currency; and

(6) the Administrator of the National Credit Union Administration.

Chairman.

(b) The Board shall elect from among its members a chairman who shall serve for a term of two years, except that the Chairman of the Federal Home Loan Bank Board shall serve as Chairman of the Board of Directors for the first such two-year term.

Compensation and expenses.

(c) Each director of the corporation shall serve ex officio during the period he holds the office to which he is appointed by the President.

(d) The directors of the corporation, as full-time officers of the United States, shall serve without additional compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as directors of the corporation.

(e) The directors of the corporation shall adopt such bylaws, policies, and administrative provisions as are necessary to the functioning of the corporation and consistent with the provisions of this title.

Quorum.

(f) The presence of a majority of the board members shall constitute a quorum.

(g) The corporation shall be subject to the provisions of section 552 of title 5, United States Code.

(h) All meetings of the board of directors will be conducted in accordance with the provisions of section 552b of title 5, United States Code.

#### OFFICERS AND EMPLOYEES

42 USC 8104.

Sec. 605. (a) The board shall have power to select, employ, and fix the compensation and benefits of such officers, employees, attorneys, and agents as shall be necessary for the performance of its duties under this title, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, classification, and General Schedule pay rates, except that no officer, employee, attorney, or agent of the corporation may be paid compensation at a rate in excess of the highest rate provided for GS-18 of the General Schedule under section 5332 of title 5, United States Code.

(b) The directors of the corporation shall appoint an executive director who shall serve as chief executive officer of the corporation.

(c) The executive director of the corporation, subject to approval by the board, may appoint and remove such employees of the corporation as he determines necessary to carry out the purposes of the corporation.

(d) No political test or political qualification shall be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, agent, or employee of the corporation or of any recipient, or in selecting or monitoring any grantee, contractor, or person or entity receiving financial assistance under this title.

(e) Officers and employees of the corporation shall not be considered officers or employees of the United States, and the corporation shall not be considered a department, agency, or instrumentality of the Federal Government. The corporation shall be subject to administrative and cost standards issued by the Office of Management and Budget similar to standards applicable to non-profit grantees and educational institutions.

#### POWERS AND DUTIES

Sec. 606. (a) (1) The corporation shall continue the work of the Urban Reinvestment Task Force in establishing neighborhood housing services programs in neighborhoods throughout the United States, supervising their progress, and providing them with grants and technical assistance. For the purpose of this paragraph, a neighborhood housing services program may involve a partnership of neighborhood residents and representatives of local governmental and financial institutions, organized as a State-chartered non-profit corporation, working to bring about reinvestment in one or more neighborhoods through a program of systematic housing inspections, increased public investment, increased private lending, increased resident investment, and a revolving loan fund to make loans available at flexible rates and terms to homeowners not meeting private lending criteria.

Housing services programs, continuation. 42 USC 8105.

(2) The corporation shall continue the work of the Urban Reinvestment Task Force in identifying, monitoring, evaluating, and providing grants and technical assistance to selected neighborhood preservation projects which show promise as mechanisms for reversing neighborhood decline and improving the quality of neighborhood life.

Preservation projects.

(3) The corporation shall experimentally replicate neighborhood preservation projects which have demonstrated success, and after creating reliable developmental processes, bring the new programs to neighborhoods throughout the United States which in the judgment of the corporation can benefit therefrom, by providing assistance in organizing programs, providing grants in partial support of program costs, and providing technical assistance to ongoing programs.

(4) The corporation shall continue the work of the Urban Reinvestment Task Force in supporting Neighborhood Housing Services of America, a nonprofit corporation established to provide services to local neighborhood housing services programs, with support which may include technical assistance and grants to expand its national loan purchase pool and may contract with it for services which it can perform more efficiently or effectively than the corporation.

(5) The corporation shall, in making and providing the foregoing grants and technical and other assistance, determine the reporting and management restrictions or requirements with which the recipients of such grants or other assistance must comply. In making such determinations, the corporation shall assure that recipients of grants and other assistance make available to the corporation such information as may be necessary to determine compliance with applicable Federal laws.

(b) To carry out the foregoing purposes and engage in the foregoing activities, the corporation is authorized—

(1) to adopt, alter, and use a corporate seal;

(2) to have succession until dissolved by Act of Congress;

(3) to make and perform contracts, agreements, and commitments;

(4) to sue and be sued, complain and defend, in any State, Federal, or other court;

(5) to determine its necessary expenditures and the manner in which the same shall be incurred, allowed, and paid, and appoint, employ, and fix and provide for the compensation of consultants, without regard to any other law, except as provided in section 608(d);

(6) to settle, adjust, and compromise, and with or without compensation or benefit to the corporation to release or waive in whole



or in part, in advance or otherwise, any claim, demand, or right of, by, or against the corporation;

(7) to invest such funds of the corporation in such investments as the board of directors may prescribe;

(8) to acquire, take, hold, and own, and to deal with and dispose of any property; and

(9) to exercise all other powers that are necessary and proper to carry out the purposes of this title.

Contracts and grants.

(c) (1) The corporation may contract with the Office of Neighborhood Reinvestment of the Federal home loan banks for all staff, services, facilities, and equipment now or in the future furnished by the Office of Neighborhood Reinvestment to the Urban Reinvestment Task Force, including receiving the services of the Director of the Office of Neighborhood Reinvestment as the corporation's executive director.

(2) The corporation shall have the power to award contracts and grants to—

(A) neighborhood housing services corporations and other non-profit corporations engaged in neighborhood preservation activities; and

(B) local governmental bodies.

Services and facilities.

(3) The Secretary of Housing and Urban Development, the Federal Home Loan Bank Board and the Federal home loan banks, the Board of Governors of the Federal Reserve System and the Federal Reserve banks, the Federal Deposit Insurance Corporation, and the Comptroller of the Currency, the National Credit Union Administration or any other department, agency, or other instrumentality of the Federal Government are authorized to provide services and facilities, with or without reimbursement, necessary to achieve the objectives and to carry out the purposes of this title.

(d) (1) The corporation shall have no power to issue any shares of stocks, or to declare or pay any dividends.

(2) No part of the income or assets of the corporation shall inure to the benefit of any director, officer, or employee, except as reasonable compensation for services or reimbursement for expenses.

(3) The corporation may not contribute to or otherwise support any political party or candidate for elective public office.

#### REPORTS AND AUDITS

Transmittal to President and Congress.

42 USC 8106.

Sec. 607. (a) The corporation shall publish an annual report which shall be transmitted by the corporation to the President and the Congress.

(b) The accounts of the corporation shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of the jurisdiction in which the audit is undertaken.

(c) In addition to the annual audit, the financial transactions of the corporation for any fiscal year during which Federal funds are available to finance any portion of its operations may be audited by the General Accounting Office in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States. The financial transactions of the corporation shall be audited by the General Accounting Office at least once during each three years.

(d) For any fiscal year during which Federal funds are available to finance any portion of the corporation's grants or contracts, the General Accounting Office, in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States, may audit the grantees or contractors of the corporation.

(e) The corporation shall conduct or require each grantee or contractor to provide for an annual financial audit. The report of each such audit shall be maintained for a period of at least five years at the principal office of the corporation.

#### AUTHORIZATION

Sec. 608. (a) There are authorized to be appropriated to the corporation to carry out this title not to exceed \$12,500,000 for fiscal year 1979.

Appropriation authorization.  
42 USC 8107.

(b) Funds appropriated pursuant to this section shall remain available until expended.

(c) Non-Federal funds received by the corporation, and funds received by any recipient from a source other than the corporation, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds.

(d) The corporation shall prepare annually a business-type budget which shall be submitted to the Office of Management and Budget, under such rules and regulations as the President may establish as to the date of submission, the form and content, the classifications of data, and the manner in which such budget program shall be prepared and presented. The budget of the corporation as modified, amended, or revised by the President shall be transmitted to the Congress as a part of the annual budget required by the Budget and Accounting Act, 1921. Amendments to the annual budget program may be submitted from time to time.

Annual budget  
submission.

Transmittal to  
Congress.

31 USC 1.

## HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1980

PUBLIC LAW 96-399—OCT. 8, 1980

94 STAT. 1645

#### NEIGHBORHOOD REINVESTMENT CORPORATION

Sec. 315 Title VI of the Housing and Community Development Amendments of 1978 is amended—

(1) by striking out "National" in section 603(a);

42 USC 8102

(2) by striking out "supervising" in the first sentence of section

603(a)(1) and inserting in lieu thereof the word "monitoring"; and

42 USC 8105

(3) by striking out "and not to exceed \$12,000,000 for fiscal year

1980" in section 608(a) and inserting in lieu thereof the following:

42 USC 8107

"not to exceed \$12,000,000 for fiscal year 1980, and not to exceed \$13,426,000 for fiscal year 1981"

GARN-ST GERMAIN DEPOSITORY  
INSTITUTIONS ACT OF 1982.

96 STAT. 1544

PUBLIC LAW 97-320—OCT. 15, 1982

NEIGHBORHOOD REINVESTMENT CORPORATION

42 USC 8103      SEC. 710. (a) Section 604 of the Neighborhood Reinvestment Corporation Act (Public Law 95-557) is amended—

(1) by redesignating subsections (f), (g), and (h) as subsections (g), (h), and (i), respectively, and by inserting after subsection (e) the following:

"(f) A director who is necessarily absent from a meeting of the board, or of a committee of the board, may participate in such meeting through a duly designated representative who is serving, pursuant to appointment by the President of the United States, by and with the advice and consent of the Senate, in the same department, agency, corporation, or instrumentality as the absent director, or in the case of the Comptroller of the Currency, through a duly designated Deputy Comptroller."; and

(2) by inserting in section 604(g), as redesignated, after "members" a comma and the words "or their representatives as provided in subsection (f)."

42 USC 8105

(b) Section 606(c)(3) of such Act is amended by inserting "funds," after "provide".

" AN ACT RELATING TO THE NEIGHBORHOOD BUSINESS DEVELOPMENT PROGRAM "

HB 430 and the companion appropriation bill HB 431 is a program modeled after an existing loan program run by a non-profit corporation within Anchorage. The concept of the program is to leverage state money with the secondary financial markets, which include over \$30 million from national insurance companies. Some national insurance companies have made such "social investments" funds available for community service and public relation purposes. The purpose of this program is to redevelop commercial business zones.

The objectives of the program is:

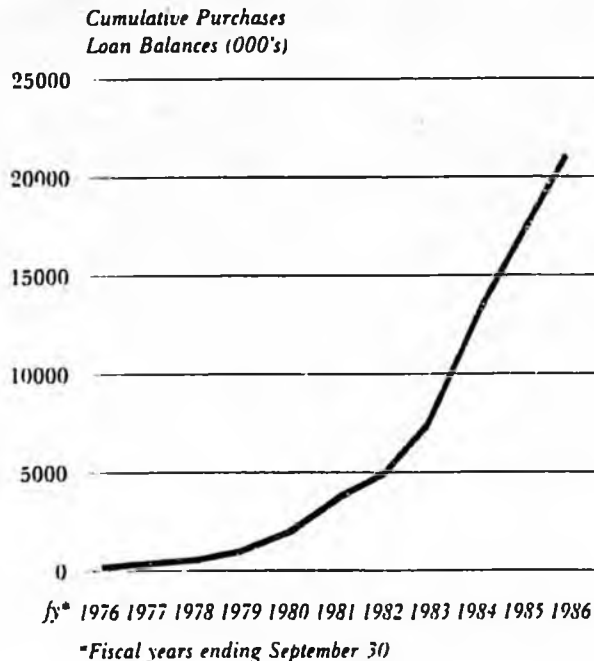
- Create new short term and long term jobs.
- Create an incentive mechanism for attracting new businesses to an area.
- Help make existing businesses more viable, attractive, and stable.
- Leverage business loans made with conventional financing.
- Create a business climate that better services the community.

The bill also stipulates that any non-profit that applies for the grant funds from the Department of Commerce and Economic Development must meet the criteria set out in the Neighborhood Reinvestment Corporation.

The purpose of this bill is to offer an opportunity to develop a "true" public/private partnership in communities.

## ■ Adding Strength through Private Sector Support

### NHS Secondary Market Loan Purchases For the years 1976 to 1986



### NHSA Secondary Market, 1986

*Note Purchase Agreements (in millions)*

Prudential	\$12.5
Metropolitan	5.0
Aetna	4.0
Allstate	4.0
Equitable	3.0
Mutual Benefit Life	1.0
Employers Insurance of Wausau	.5
<b>Total</b>	<b>\$30.0</b>

By leveraging social investments, NHSA has been able to purchase more than \$21 million in loans from 112 NHSs.

Affordable financing for home purchase and repair is essential to neighborhood revitalization. Because many residents in NHS neighborhoods cannot afford the cost of major home repairs under traditional loan repayment terms or do not meet conventional credit criteria, each NHS maintains a revolving loan fund to provide loans at interest rates and terms that meet these borrowers' ability to repay.

Neighborhood Housing Services of America (NHSA), a national corporation created in 1974, provides support to the NHS network and Neighborhood Reinvestment by operating a secondary market to keep NHS loan funds capitalized so that local NHSs will continue to have the resources they need to solve neighborhood problems.

NHSA buys loans from local NHSs and then sells collateralized securities, backed by pools of these NHS loans, to social investors. Initially, NHSA used its own funds to purchase NHS loans. In 1978, the Ford Foundation and Neighborhood Reinvestment contributed loan-fund working capital and the Equitable Life Assurance Society of the United States agreed to invest \$1 million in NHSA notes backed by NHS loans, thus introducing private-sector funds into the process and creating a true secondary market.

The secondary market quickly proved to be both a major resource for the NHS network and a sound and satisfying social investment (participating investors agree to "give up" the difference between the rate of return on their notes with NHSA and the market rate). Currently, seven major insurance companies have active note participation agreements with NHSA totaling \$30 million dollars.



HB

431

# HOUSE COMMITTEE REPORT

2/29

(7)

Date referred: 2/3/88

FURTHER REFERRALS: Finance

DATE: 2/18/88

The Labor & Commerce Committee has considered HB 431

"An Act making an appropriation to the neighborhood business development fund; and providing for an effective date."

**RECOMMENDS:**

- replace with CS HB 431 (exc)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

[Signature]

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SIGNING OTHER RECOMMENDATIONS:**

[Signature]

[Signature]

[Signature]

[Signature]

[Signature] (no rec.)

[Signature]

Chairman's signature

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HL+C

2-18-88

1:30 p.m.

" AN ACT RELATING TO THE NEIGHBORHOOD BUSINESS DEVELOPMENT PROGRAM "

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The objectives of the program is:

- Create new short term and long term jobs.
- Create an incentive mechanism for attracting new businesses to an area.
- Help make existing businesses more viable, attractive, and stable.
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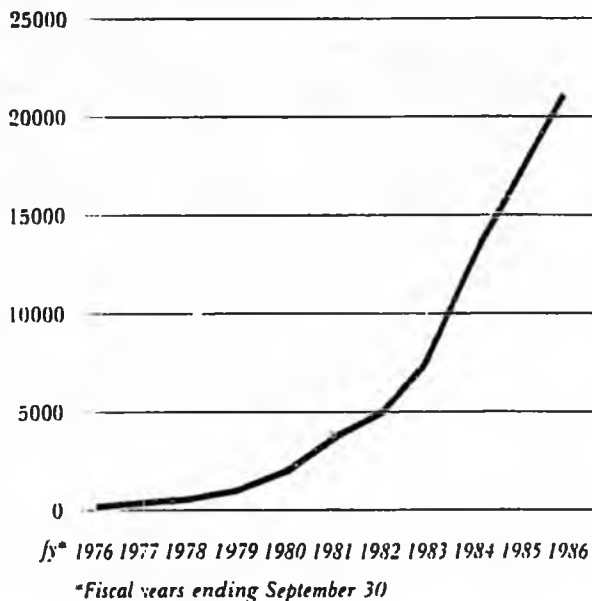
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## ■ Adding Strength through Private Sector Support

### NHS Secondary Market Loan Purchases For the years 1976 to 1986

*Cumulative Purchases  
Loan Balances (000's)*



### NHSA Secondary Market, 1986

*Note Purchase Agreements (in millions)*

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HB

432

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act authorizing AHFC to accept trades in certain cases."  
Sponsor: Labor and Commerce  
Requestor: House Labor & Commerce

Agency Affected: Revenue  
BKU: AHFC  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	15,210	-	-	-	-	-
TOTAL	15,210	-	-	-	-	-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

It is unclear at this time what the total volume of the program would be under this bill. The maximum amount would be 1% of \$1.521 billion or \$15,210,000.

Prepared By: Ron Lehr, Executive Director Phone: 276-5599  
Division: Alaska Housing Finance Corporation Date: 03/03/88

Approved by Commissioner: Hugh Malone Date: 03/03/88  
Agency: Department of Revenue

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

# HOUSE COMMITTEE REPORT

(7)

Date referred: 2/3/88

FURTHER REFERRALS:

Judiciary  
Finance

DATE: 2/23/88

The Labor & Commerce Committee has considered HB 432

"An Act authorizing the Alaska Housing Finance Corporation to accept trades in certain cases; and providing for an effective date."

**RECOMMENDS:**

- replace with CSHB 432 (L+C)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(s):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

David Wiley  
Ellis  
Ch. A. Brasher  
Grant Munn  
W. Furnace  
Cliff Davidson  
Alto Kozman

**SIGNING OTHER RECOMMENDATIONS:**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

David Wiley  
 Chairman's signature

# STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907.465-3800

## LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HL+C

2-18-88

1:30 p.m.

HL+C

2-23-88

1:30 p.m.



Official Business

**COMMITTEE:**

HOUSE LABOR & COMMERCE

**DATE:** February 18, 1988

**SIGN-IN**

**Subject of meeting:**

- HB 432 An Act authorizing AHFC to accept trades
- HB 430 An Act relating to the neighborhood business development program.
- HB 431 An Act making an appropriation to the neighborhood business development fund.
- HB 313 An Act relating to insurance rate filings
- HB 310 An Act relating to payment under public construction contracts.
- HB 384 An Act relating to unemployment insurance
- HB 352 An Act relating to workers' compensation

**DO YOU WANT TO TESTIFY?**

**NAME**

**ADDRESS**

**PHONE**

**REPRESENTING**

NAME	ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Jim Coate	Box 3-7000 Juneau	465-2712	Dept LABOR	384 YES
Rod Wilson		465-2960	DOT/PT	310 Answer Questions
Nesw Terred	134 No. Franklin - JUNEAU <sup>99801</sup>	586-1740	A.O.C.	H B 310
DWIGHT PERKINS	723 W. 10TH ST. JUNEAU	586-2874	PLUMBERS & PIPEFITTERS LOCAL UNION 262	H B 310
Doug RICKEY		465-3720	Rep. Grossendorf	HB 310
Darrell Smith	610 W. 54th St. Anch	562-2810	Plumbers & Pipefitters Union Local 367	H B 310
Keith Korsmo	2555 DAVID - 99801	304-2509		H B 432
Don Koch	POUCH D	2577	DIV INSURANCE	YES HB 313





Feberuary 16, 1988

To Whom It May Concern,

My name is Rick Bierman, I am a 9 year resident of Alaska. My family and I live in a mobile home in Juneau. We have been paying an AHFC loan on our home for 4 years. In addition we have made approximately 5000 dollars worth of improvements including a new kitchen, fence, wood shed, rear deck, flower beds and an approved wood stove...We have done needed maintenance. My point is, we love , respect and care for our home.

Our problem is we've out grown our home and need a larger one. Our family is growing and our present home can no longer accommodate our needs, our income has also grown and we can afford a larger home.

Due to market conditions we are unable to sell our home even at a substantial loss. I'm willing to take this loss and trade my home at market value for a larger more satisfactory home. I'm not asking for something for nothing, I don't want a gift, I want to buy.

By allowing people like me to trade up AHFC would hold a smaller note on a well kept home as opposed to a large note on a repossessed home, possibly not as well kept.

By allowing people in financial trouble to trade a larger home for mine, or one like mine AHFC would be sparing people the indignity of repossession.

Isn't the reason for AHFC to help Alaskans have homes? In 1982 that purpose was filled by creating financing to help Alaskans acquire homes. In 1988 that purpose, in some cases, may only be filled by allowing Alaskans to trade homes in order to keep our homes.

Sincerely,

Rick Bierman & Family  
9951 Spruce Wood Park  
#25  
Juneau, Alaska 99801  
789-0076



Original sponsors: Donley, Ellis,  
Boucher, et al.

1 IN THE HOUSE

BY THE LABOR AND  
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 432 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing the Alaska Housing Finance Corpo-  
7 ration to accept trades in certain cases; and provid-  
8 ing for an effective date."

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

10 \* Section 1. PURPOSE AND AUTHORIZATION. (a) The legislature finds  
11 that a sizeable proportion of the residents of the state have mortgages  
12 that exceed both the present value of the property and the present ability  
13 of the mortgagors of the property to make the payments agreed to in the  
14 past. The purpose of this Act is to direct the Alaska Housing Finance  
15 Corporation to use creative solutions to the present crisis in the housing  
16 market and, at the same time, to permit the corporation to seek the dis-  
17 posal of surplus residences within the corporation's inventory.

18 (b) The Alaska Housing Finance Corporation may permit mortgagors who  
19 are experiencing difficulty in meeting their mortgage payments to return  
20 the residence and its mortgage to the Alaska Housing Finance Corporation  
21 and to enter into a new mortgage for different residential property subject  
22 to the control of the corporation at rates that are more within the ability  
23 of the mortgagors.

24 (c) The Alaska Housing Finance Corporation may also permit a mortga-  
25 gor who is willing to accept the responsibility for a larger mortgage to  
26 offer an existing residence and its mortgage to the corporation and enter  
27 into a new mortgage for different residential property subject to the  
28 control of the corporation.

29 (d) The Alaska Housing Finance Corporation, the mortgage insurers,

1 and the mortgagor shall, in each case, work together to reduce ~~a portion of~~  
2 the negative equity that may be present in individual cases.

3 (e) Subject to appropriations, the Alaska Housing Finance Corporation  
4 may use up to 1 percent of its total fund equity to achieve the purposes  
5 of this section.

6 (f) In this section, "residence" includes mobile homes.

7 \* Sec. 2. This Act is repealed July 1, 1991.

8 \* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).  
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# HOUSE COMMITTEE REPORT

(7)

Date referred: 2/3/88

FURTHER REFERRALS: Judiciary  
Finance

DATE: 2/25/88

The Labor & Commerce Committee has considered HB 433  
HOUSE BILL NO.

"An Act establishing a moratorium on judicial and nonjudicial foreclosures;  
and providing for an effective date."

### RECOMMENDS:

- replace with CS HB433(LHC)  the same title -
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS:  \_\_\_\_\_ letter of intent

### ATTACHES NEW FISCAL NOTE(S):

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

### SIGNING DO PASS:

### SIGNING OTHER RECOMMENDATIONS:

[Signature]  
W. F. W. W. W.  
Cliff Davidson  
[Signature]  
[Signature]  
[Signature]  
[Signature]  
[Signature]

\_\_\_\_\_  
 \_\_\_\_\_  
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[Signature]  
 Chairman's signature

STATE OF ALASKA 1988 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST: \_\_\_\_\_ Bill Version: CS HB 433 L&C  
 Publish Date: 2/25/88

Revision Date: \_\_\_\_\_ Agency Affected: Alaska Court System  
 Title: An act related to a moratorium on foreclosures BRU: Trial Courts  
 Sponsor: House Labor & Commerce Components:  
 Requestor: \_\_\_\_\_

EXPENDITURES/REVENUES:		(Thousands of Dollars)				
OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
Personal Services	. . . .	68.7	68.7	68.7	68.7	68.7
Travel	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Contractual	. . . .	45.0	45.0	45.0	45.0	45.0
Supplies	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Equipment	. . . .	4.3	. . . .	. . . .	. . . .	. . . .
Land & Structures	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Grants & Claims	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL OPERATING	0.0	118.0	113.7	113.7	113.7	113.7

CAPITAL	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
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REVENUE	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
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FUNDING:		(Thousands of Dollars)				
General Funds	0.0	118.0	113.7	113.7	113.7	113.7
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	118.0	113.7	113.7	113.7	113.7

POSITIONS:		(Thousands of Dollars)				
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	3.0	3.0	3.0	3.0	3.0
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: Jan Strandberg, General Counsel Phone: 264-8228  
 Division: Alaska Court System Date: 02/26/88

Approved by: Arthur H. Snowden, II, Administrative Director Date: 02/26/88  
 Agency: Alaska Court System

- Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management & Budget  
 Impacted Agency(ies)  
 Senate Secretary

ALASKA COURT SYSTEM FISCAL ANALYSIS

CSHB 433

This fiscal note is based on the assumption that 90 percent of state-wide residential mortgagors in financial distress will request extensions of the redemption period. Based on an estimated number of 4,258 residential non-judicial and judicial foreclosures for 1987, with an estimated hearing time of twenty minutes per request, the court system will need a one half-time standing master in Anchorage and will contract for standing masters' services in Kenai, Palmer and Fairbanks.

This fiscal note is also based on these assumptions:

- (1) the court will not be required to hire appraisers to determine "reasonable economic value";
- (2) no extensive hearings will be held on this issue or on the issues of past-due or anticipated taxes, insurance, amounts due to a payment by the owner of amounts due as principal; and
- (3) these issues will not be contested.

Finally, this fiscal note is based on the assumption that the number of residential foreclosures in 1988 will not change substantially from those for 1987.

Alaska Court SystemCS HB 433 (L&C) - Fiscal ImpactPersonal Services:

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Standing Master, Range 24A, PPT, Anchorage	\$28,122	\$8,299	\$36,421
In-court Clerk, Range 12B, PPT, Anchorage	12,870	4,964	17,834
Court Clerk I, Range 08B, PPT, Anchorage	10,122	4,363	14,485
			-----
	Total Personal Services		68,740

Contractual Services

Contractual standing master fees (500 hours at \$90 an hour)	45,000
--	--------

Equipment: (one-time cost)

Desk, chair, typewriter, and filing cabinet	4,266
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Total First Year Cost	\$118,006
	=====



Original sponsor: Labor and Commerce Committee

1 IN THE HOUSE

BY THE LABOR AND  
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 433 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a moratorium on judicial and  
7 nonjudicial foreclosures on residential property; and  
8 providing for an effective date."

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

10 \* Section 1. LEGISLATIVE DETERMINATION AND FINDINGS. The legislature  
11 finds that an economic emergency currently exists in the state that threat-  
12 ens to undermine a substantial public investment in residential housing and  
13 that is causing residents of the state to be displaced from their homes and  
14 has substantially increased insolvencies and bankruptcies among individuals  
15 and private and public financial institutions in the state that has brought  
16 great harm to the people of the state. The legislature further finds that  
17 the compelling public interest requires the legislature to enact legis-  
18 lation granting the courts of the state emergency authority to deal with  
19 the economic emergency facing the state residential housing market in order  
20 to prevent further damage to the public welfare. The legislature further  
21 determines that the following legislation does not impair the obligation of  
22 contract guaranteed under the Constitution of the United States or of the  
23 State of Alaska when it enacts legislation within its police power and  
24 within its reserved power to protect its sovereignty, its government, its  
25 people, and their welfare against exigencies that may arise in the present  
26 great emergency.

27 \* Sec. 2. NONJUDICIAL FORECLOSURES. (a) In a nonjudicial foreclosure  
28 of a mortgage or deed of trust on residential property where the period for  
29 the redemption by the mortgagor or trustor has not expired, the owner of



1 the residential property may apply to the superior court for an order  
2 delaying the expiration of the period for redemption or other proceedings  
3 related to the foreclosure until one year after the effective date of this  
4 Act. Until one year after the effective date of this Act, the owner of the  
5 residential property has the exclusive right to redeem the property and is  
6 entitled to possession of the property.

7 (b) The superior court, on an application for an extension of the  
8 period of redemption or of other proceedings related to the foreclosure of  
9 residential property under (a) of this section, shall issue an order delay-  
10 ing the expiration of the period for redemption on its determination, after  
11 notice and an opportunity for a hearing, that the property is residential  
12 property and that the owner of the residential property has agreed to and  
13 has made the payment of a reasonable rental for the residential property  
14 for the period. The reasonable rental shall be determined by the court  
15 based on the reasonable economic value of the residential property on the  
16 date of the request, the past-due or anticipated expenses of taxes, insur-  
17 ance, amounts due to a common interest community, and other amounts requir-  
18 ed to preserve the residential property, and the payment by the owner of  
19 the amounts due as principal under the mortgage. In no case may the rea-  
20 sonable rental determined by the court be less than 50 percent of the total  
21 of the monthly mortgage payment and any amounts due to a common interest  
22 community.

23 (c) If the owner of the residential property subject to an order  
24 issued under (b) of this section fails to comply with the order, the order  
25 extending the period of redemption may be set aside after notice and an  
26 opportunity for a hearing.

27 (d) The provisions of (a) - (c) of this section supersede, for one  
28 year after the effective date of this Act, the provisions of any other law  
29 inconsistent with this section.

1 \* Sec. 3. JUDICIAL FORECLOSURES. (a) In a judicial foreclosure of a  
2 mortgage or deed of trust on residential property where the period for the  
3 redemption by the mortgagor or trustor has not expired under AS 09.35.250,  
4 other law, or under the mortgage or deed of trust, the owner of the resi-  
5 dential property may apply to the superior court for an order delaying the  
6 expiration of the period for redemption or other proceedings related to the  
7 foreclosure until two years after the effective date of this Act. Until  
8 two years after the effective date of this Act, the owner of the residen-  
9 tial property has the exclusive right to redeem the property and is enti-  
10 tled to possession of the property.

11 (b) The superior court, on an application for an extension of the  
12 period of redemption under (a) of this section, shall issue an order delay-  
13 ing the expiration of the period for redemption on its determination, after  
14 notice and an opportunity for a hearing, that the property is residential  
15 property and that the owner of the residential property has agreed to and  
16 has made the payment of a reasonable rental for the residential property  
17 for the period. The reasonable rental shall be determined by the court  
18 based on the reasonable economic value of the residential property on the  
19 date of the request, the past-due or anticipated expenses of taxes, insur-  
20 ance, amounts due to a common interest community, and other amounts re-  
21 quired to preserve the residential property, and the payment by the owner  
22 of the amounts due as principal under the mortgage. In no case may the  
23 reasonable rental determined by the court be less than 50 percent of the  
24 total of the monthly mortgage payment and any amounts due to a common  
25 interest community.

26 (c) If the owner of the residential property subject to an order  
27 issued under (b) of this section fails to comply with the order, the order  
28 extending the period of redemption may be set aside after notice and an  
29 opportunity for a hearing.

1 (d) The provisions of (a) - (c) of this section supersede, for two  
2 years following the effective date of this Act, the provisions of any other  
3 law inconsistent with this section.

4 \* Sec. 4. If the period for the redemption by the mortgagor or trustor  
5 of residential property expires within 30 days after the effective date of  
6 this Act, the period for the redemption is extended to 30 days after the  
7 effective date of this Act.

8 \* Sec 5. In this Act, "residential property" includes vessels used for  
9 residential purposes.

10 \* Sec. 6. This Act is repealed two years after the effective date of  
11 this Act.

12 \* Sec. 7. This Act takes effect immediately under AS 01.10.070(c).  
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RECEIVED  
FEB 16 1987

John F. Ellingson  
Attorney-at-Law  
9 Gray Birch Trail  
Madison, Wisconsin 53717  
608-833-6261

February 11, 1988

Ref: Alaska HB 433

To: Representative Dave Donley

From: John F. Ellingson

Dear Representative Donley,

I am an attorney representing a number of borrowers from Alaska banks. All of my clients have left Alaska for economic reasons and are now located in the Pacific Northwest. All have suffered severe economic loss because of the poor banking practices in Alaska that resulted in over-inflation of real estate prices followed by the deep decline in prices. This situation has been exacerbated by the actions of the lenders by their auction sales.

Below are my comments on HB 433. Without addressing in detail the potential constitutional challenge such legislation might face, I would point out that similar "breathing space" provisions are included in the United States Bankruptcy Code at 11 USC 362.

COMMENTS: The purposes of the legislation, stated at Sections 1.(a), 1.(b)(1) thru (6) are laudable and necessary. They imply, but do not address directly, the cause of the problem, nor does the legislation provide for a solution. This bill would create a necessary "breathing period" in which an overall solution could be sought and implemented. The cause of this problem was well stated by the president of the National Bank of Alaska, when he recently addressed the State Chamber of Commerce. He said that the sole cause of the present economic plight in the real estate market was the mismanagement of the failed banks. This statement is in line with comments of the FDIC, which pointed to the mismanagement of First Interstate Bank of Alaska in their public statement following the closure of that bank.

The secondary lenders participated in this mismanagement by accepting loan participations and packages that did not meet prudent underwriting requirements. Two well placed FNMA employees have admitted to this writer that FNMA is holding a large number of loans from Alaska that did not meet FNMA underwriting requirements. The over indulgence of the banks in the real estate loan market created unrealistic inflated real estate prices without adding value. The inevitable bursting of this bubble caused the destruction of the real estate market and has depressed prices well below real value. The present circumstance has placed the real estate lenders, the mortgage insurance industry and the economy of Alaska in a precarious position.

There has been no recognition on the part of the secondary lending market of the damage their imprudence has caused. The damage caused by the failed banks and their upstream partners did not stop at the front door of the banks, but like a plague has spread throughout the state. Any solution to the problem must involve a recognition of the damage cause by the lenders. No moratorium, by itself, can solve this problem because it only delays the inevitable. It is not right, fair or just that the borrowers and real property owners of Alaska be asked to bear the burden for the errors of the lending industry. There must be a fair apportionment of the damages. Because Alaska has a bright future and the real estate in Alaska is currently priced below its intrinsic value, there is an upside potential that all should share in. However, the borrowers liability should be fixed at the present market price. That price has not been determined by normal market conditions, but has been solely influenced by the errors of the lending institutions.

The specific provisions of HB 433 address the method of applying to the court for relief by a borrower, who has been foreclosed upon, and now seeks to extend the period of redemption. However, it is not clear what procedure a borrower in default that has not been foreclosed upon should follow. In such a case the period of redemption is not the issue, but the foreclosure is the issue. The Bankruptcy Code provision, mentioned above, provides automatic relief that is triggered by the filing of the initial Bankruptcy petition. The provisions of HB 433 might be similarly triggered by the lender sending the notice of intent to foreclose to the borrower. The underlying cause of the default could well be laid at the feet of the lender, but this bill would allow the foreclosure to proceed under the rules set forth.

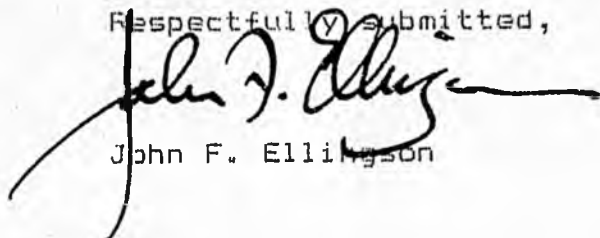
The rules and conditions allowing for the payment of principle fail to address the situation wherein many loan documents allow the lender to allocate any payment to either principle or interest. Under the proposed procedure, a borrower could find himself required to make both reasonable rent payments and loan payments. This combination of payments could exceed the payment required under the defaulted loan. It is hard to imagine a borrower, who cannot make the current loan payment, paying the loan payment plus reasonable rent. The language of the bill should be tightened to set a ceiling on the total payment that could be recovered by a lender or ordered by the court. not  
final

One suggestion would be to allow the court to determine the value of the lenders' security interest in the property (similar to the procedure in Bankruptcy) and limit total payments to principal on a thirty year loan at market rates with a normal amortization schedule. The loan amount should be equal to the value of the lenders security interest in the property. The total payment should be this principle amount plus reasonable rent on the property. This procedure would recognize the role of the lender in creating the decline in the price of the real estate that the loan was made on. It would prevent a double recovery. The lender should be prohibited from accruing interest during the period of the moratorium. The decreased value of the property, as determined by the court, should be taken into account in determining the "reasonable rent". Such a provision would prevent the double recovery referenced in section 1. As the bill now stands, the lender could make a double recovery in terms of rent and principle, these new payments could well exceed the payments due under the defaulted loan.

This is by far the best proposal I have seen to date. With some technical corrections it goes a long way toward stopping the bleeding, but it does nothing to provide for the transfusion required to save the economy. Time alone will not solve this problem. It has been estimated that the order of magnitude of this problem is \$3,000,000,000.00. Unless some step is taken to affirmatively address this problem, the \$3,000,000,000.00 deficit in real property values will haunt the economy of Alaska far into the future.

I have submitted to Governor Cowper and Senator Murkowski a sketch of one potential plan for recovery and would be pleased to discuss this plan with you.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John F. Ellingson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John F. Ellingson

cc: Charity Kadow  
Randall Moen  
David Rose



HB

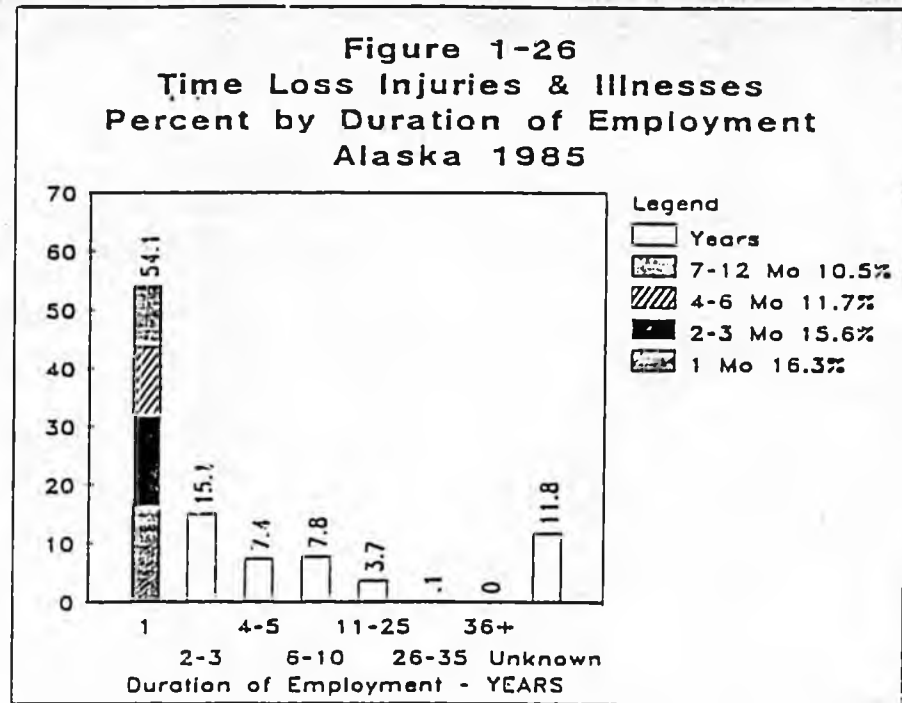
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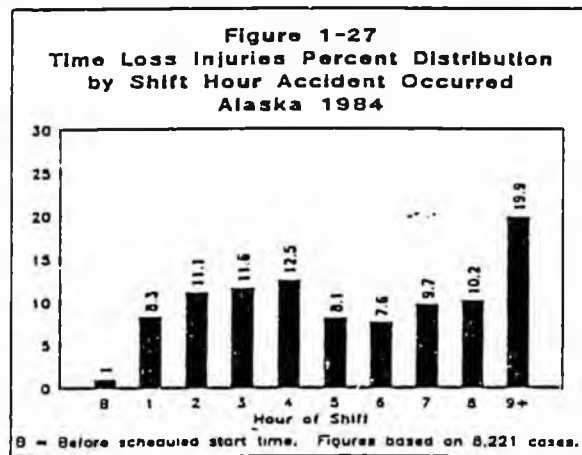
## Duration of Employment

The first few months on a job are the most hazardous for an employee. In 1985, 54% of the job related injuries occurred during the first year of service and 16% during the first month. Figure 1-26 shows the percent distribution for all time loss cases reported in 1985. For all known duration cases, 61% involved employees during their first year on the job and 18% during the first month.

In construction industries, 32% of all cases of known duration occurred in the first month of employment and over one half (57%) occurred within the first three months. Manufacturing was similar with 31% of known duration cases in the first month and 57% within the first three months on the job. Construction and manufacturing are seasonal industries where the jobs are of limited duration. Employees may not work for the same firm from one season to the next. An experienced worker for a new firm may therefore be counted as an injury case



after only a short duration on that job. Table B-15 contains duration of employment data on injured workers by major industry.



## Shift Hour Accident Occurred

The shift hour in which an accident occurs is computed from the elapsed time between the scheduled start of the work day and the recorded time of the accident. The distribution of cases from the 1980-1984 for which these data were available (1984) is presented in Figure 2-14. Almost identical patterns are seen in the distributions for 1980 to 1984. Less than

one-half of the accidents happened during the first half of the day. Most of the accidents that occurred during the second half of the day occurred after the seventh shift hour. A small portion of the cases involved accidents which happened prior to the scheduled start of the shift, indicating that in some cases the individual began working prior to the usual time that day. Fatigue appears to play a

**Table 1-18**  
**Percent of Injuries after the 8th Work Hour**  
**by Industry Division**  
**Alaska 1980-1984**

	1980	1981	1982	1983	1984
Private Sector	23.6	23.6	23.6	19.5	20.4
Mining	34.7	34.8	36.5	31.9	34.7
Oil & Gas	36.0	35.8	39.5	32.4	36.0
Construction	27.8	25.9	26.5	22.0	21.3
Manufacturing	27.0	25.1	24.0	19.8	24.9
Seafood	38.6	35.8	32.6	28.9	37.1
Lumber & Wood	17.8	16.5	15.2	11.1	16.1
Transportation	20.7	24.1	22.7	19.2	20.3
Trade	16.8	17.1	17.3	14.9	16.9
Finance	12.9	15.0	27.2	19.5	18.7
Services	19.1	20.2	20.5	16.3	16.2
State & Local Govt.	13.4	14.9	18.1	15.4	17.0

significant role in the occurrence of time loss accidents. A historical summary of the portion of cases after the eighth hour of work is given in Table 1-18. For industries which characteristically have long working hours, the percentage of accidents occurring after eight work hours is greater than the average.

5-1337B  
Cramer  
2/25/88

Original sponsor: Labor and Commerce  
Committee

1 IN THE HOUSE

BY THE LABOR AND  
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 436 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act requiring payment to certain employees of  
7 time and a half or double time wages for work in  
8 excess of eight hours a day or 40 hours a week."

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

10 \* Section 1. AS 23.10.060 is amended to read:

11 Sec. 23.10.060. PAYMENT FOR OVERTIME. (a) Except as provided  
12 in (b) of this section, an [AN] employer who employs employees engaged  
13 in commerce, or other business, or in the production of goods or  
14 materials in the state [ALASKA] may not employ an employee [NOT ACTING  
15 IN A SUPERVISORY CAPACITY, EITHER MALE OR FEMALE,] for a workweek  
16 longer than 40 hours or for more than eight hours a day.

17 (b) If an [, EXCEPT THAT IF THE] employer employs [FINDS IT  
18 NECESSARY TO EMPLOY] an employee more than [IN EXCESS OF] 40 hours but  
19 not more than 60 hours a week or more than eight but not more than 12  
20 hours a day, the employer shall pay compensation for this [THE] over-  
21 time at the rate of one and one-half times the regular rate of pay.

22 If an employer employs an employee more than 60 hours a week or more  
23 than 12 hours a day, the employer shall pay compensation for this  
24 overtime at the rate of two times the regular rate.

25 (c) This section [SHALL BE PAID, AND THIS PROVISION] is con-  
26 sidered included in all contracts of employment.

27 (d) This section does not apply with respect to

28 (1) an employee employed by an employer employing less than  
29 four employees in the regular course of business, as "regular course

1 of business" is defined by regulations of the commissioner;

2 (2) [REPEALED

3 (3) REPEALED

4 (4)] an employee employed in handling, packing, storing,  
5 pasteurizing, drying, preparing in their raw or natural state, or  
6 canning agricultural or horticultural commodities for market, or in  
7 making cheese or butter or other dairy products;

8 (3) [(5)] an employee of an employer engaged in small  
9 mining operations where not more than 12 employees are employed, if  
10 the employee is employed not in excess of 12 hours a day or 56 hours a  
11 week during a period or periods of not more than 14 workweeks in the  
12 aggregate in a calendar year during the mining season, as the season  
13 is defined by the commissioner;

14 (4) [(6) REPEALED

15 (7)] an employee engaged in agriculture;

16 (5) [(8)] an employee employed in connection with the  
17 publication of a weekly, semiweekly, or daily newspaper with a circu-  
18 lation of less than 1,000;

19 (6) [(9)] a switchboard operator employed in a public  
20 telephone exchange that [WHICH] has fewer than 750 stations;

21 (7) [(10)] an employee of an employer engaged in the busi-  
22 ness of operating taxicabs;

23 (8) [(11)] an employee in an otherwise exempted employment  
24 or proprietor in a retail or service establishment engaged in handling  
25 telegraphic, telephone, or radio messages for the public under an  
26 agency or contract arrangement with a telegraph or communications  
27 company where the telegraph message or communications revenue of the  
28 agency does not exceed \$500 a month;

29 (9) [(12)] an employee employed as a seaman;

1           (10) [(13)] an employee employed in planting or tending  
2 trees, cruising, or surveying, or bucking, or felling timber, or in  
3 preparing or transporting logs or other forestry products to the mill,  
4 processing plant, railroad, or other transportation terminal, if the  
5 number of employees employed by the employer in the forestry or lum-  
6 bering operations does not exceed 12;

7           (11) [(14)] an individual employed as an outside buyer of  
8 poultry, eggs, cream, or milk in their raw or natural state;

9           (12) [(15)] casual employees as may be liberally defined by  
10 regulations of the commissioner;

11           (13) [(16)] an employee of a hospital whose employment  
12 includes the provision of medical services;

13           (14) [(17)] work performed by an employee under a flexible  
14 work hour plan if the plan is included as part of a collective bar-  
15 gaining agreement;

16           (15) [(18)] work performed by an employee under a voluntary  
17 flexible work hour plan if

18                   (A) the employee and the employer have signed a writ-  
19 ten agreement and the written agreement has been filed with the  
20 department; and

21                   (B) the department has issued a certificate approving  
22 the plan which states the work is for 40 hours a week and not  
23 more than 10 hours a day; for work over 40 hours a week or 10  
24 hours a day under a flexible work hour plan not included as part  
25 of a collective bargaining agreement, compensation at the rate of  
26 one and one-half times the regular rate of pay shall be paid for  
27 the overtime;

28           (16) an employee acting in a supervisory capacity.  
29

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to overtime wages."  
Sponsor: House Labor & Commerce  
Requestor: House Labor & Commerce

Agency Affected: Labor  
BRU: Labor Standards & Safety  
Components: Wage and Hour

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Tom Stuart, Director  
Division: Labor Standards and Safety  
Approved by Commissioner: Jim Sampson  
Agency: Labor

Phone: 264-2452  
Date: 2/22/88  
Date: 2/22/88

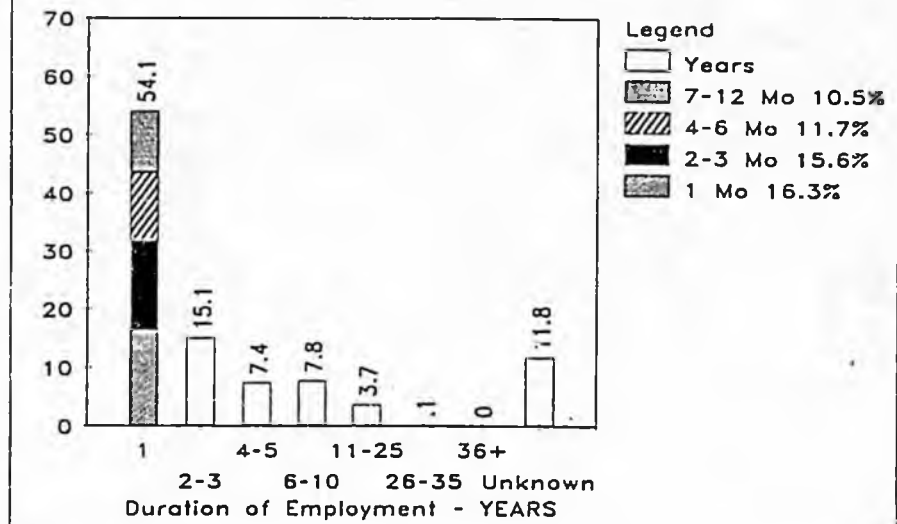
Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

## Duration of Employment

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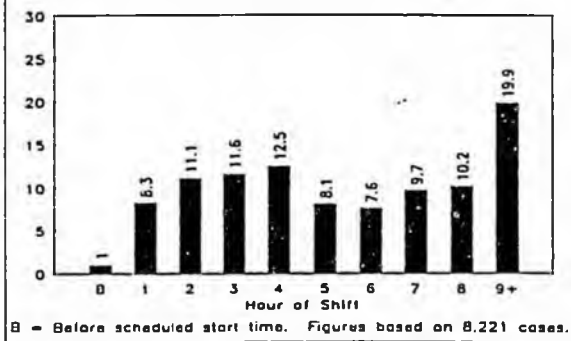
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**Figure 1-26**  
Time Loss Injuries & Illnesses  
Percent by Duration of Employment  
Alaska 1985



after only a short duration on that job. Table B-15 contains duration of employment data on injured workers by major industry.

**Figure 1-27**  
Time Loss Injuries Percent Distribution  
by Shift Hour Accident Occurred  
Alaska 1984



## Shift Hour Accident Occurred

The shift hour in which an accidents occurs is computed from the elapsed time between the scheduled start of the work day and the recorded time of the accident. A distribution of cases from the last year for which these data were available (1984) is presented in Figure 2-14. Almost identical patterns are seen in the distributions for 1980 to 1984. Less than

one-half of the accidents happened during the first half of the day. Most of the accidents that occurred during the second half of the day occurred after the seventh shift hour. A small portion of the cases involved accidents which happened prior to the scheduled start of the shift, indicating that in some cases the individual began working prior to the usual time that day. Fatigue appears to play a

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Manufacturing	27.0	25.1	24.0	19.8	24.9
Seafood	38.6	35.8	32.6	28.9	37.1
Lumber & Wood	17.8	16.5	15.2	11.1	16.1
Transportation	20.7	24.1	22.7	19.2	20.3
Trade	16.8	17.1	17.3	14.9	16.9
Finance	12.9	15.0	27.2	19.5	18.7
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significant role in the occurrence of time loss accidents. A historical summary of the portion of cases after the eighth hour of work is given in Table 1-18. For industries which characteristically have long working hours, the percentage of accidents occurring after eight work hours is greater than the average.



BRIEFING PAPER - OVERTIME APPLICATION

ALASKA DEPARTMENT OF LABOR  
Office of the Commissioner  
P.O. Box 21149  
Juneau, AK 99802-1149

The State of Alaska mandates the payment of overtime for any hours worked over eight in a day and 40 in a workweek. This law (AS 23.10.060) applies to all employees employed by employers in the state, with the following exceptions:

(1) an employee employed by an employer employing less than four employees in the regular course of business, as regular course of business is defined by regulations of the commissioner;

(2) an employee employed in handling, packing, storing, pasteurizing, drying, preparing in their raw or natural state, or canning agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products;

(3) an employee of an employer engaged in small mining operations where not more than 12 employees are employed, if the employee is employed not in excess of 12 hours a day or 56 hours a week during a period or periods of not more than 14 workweeks in the aggregate in a calendar year during the mining season, as the season is defined by the commissioner;

(4) an employee engaged in agriculture;

(5) an employee employed in connection with the publication of a weekly, semiweekly, or daily newspaper with a circulation of less than 1,000;

(6) a switchboard operator employed in a public telephone exchange which has fewer than 750 stations;

(7) an employee of an employer engaged in the business of operating taxicabs;

(8) an employee in an otherwise exempted employment or proprietor in a retail or service establishment engaged in handling telegraphic, telephone, or radio messages for the public under an agency or contract arrangement with a telegraph or communications company where the telegraph message or communications revenue of the agency does not exceed \$500 a month;

(9) an employee employed as a seaman;

(10) an employee employed in planting or tending trees, cruising, or surveying, or bucking, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by the employer in the forestry or lumbering operations does not exceed 12;

(11) an individual employed as an outside buyer of poultry, eggs, cream, or milk in their raw or natural state;

(12) casual employees as may be liberally defined by regulations of the commissioner;

(13) an employee of a hospital whose employment includes the provision of medical services;

(14) work performed by an employee under a flexible work hour plan if the plan is included as part of a collective bargaining agreement;

(15) work performed by an employee under a voluntary flexible work hour plan if

(A) the employee and the employer have signed a written agreement and the written agreement has been filed with the department; and

(B) the department has issued a certificate approving the plan which states the work is for 40 hours a week and not more than 10 hours a day; for work over 40 hours a week or 10 hours a day under a flexible work hour plan not included as part of a collective bargaining agreement, compensation at the rate of one and one-half times the regular rate of pay shall be paid for the overtime;

(16) a person acting in a supervisory capacity.

The following provisions also apply to overtime exemptions, but include minimum wage as well:

(1) an individual employed in agriculture which includes farming in all its branches and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices, including forestry and lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with the farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market;

(2) an individual employed in the catching, trapping, cultivating or farming, netting or taking of any kind of fish, shellfish, or other aquatic forms of animal and vegetable life;

(3) an individual employed in the hand picking of shrimp;

(4) an individual employed in domestic service, including a baby-sitter, in or about a private home;

(5) an individual employed by the United States or by the state or political subdivision of the state including prisoners not on furlough detained or confined in prison facilities;

(6) an individual engaged in the activities of a nonprofit religious, charitable, cemetery or educational organization where the employer-employee relationship does not, in fact, exist, and where services rendered to the organization are on a voluntary basis;

(7) an employee engaged in the delivery of newspapers to the consumer;

(8) an individual employed solely as a watchman or caretaker of a plant or property that is not in productive use for a period of four months or more;



(9) an individual employed in a bona fide executive, administrative or professional capacity or in the capacity of an outside salesman or a salesman who is employed on a straight commission basis;

(10) an individual employed in the search for placer or hard rock minerals;

(11) an individual under 18 years of age employed on a part-time basis not more than 30 hours in a week; or

(12) employment by a nonprofit educational or child care facility to serve as a parent of children while the children are in residence at the facility if the employment requires residence at the facility and is compensated on a cash basis exclusive of room and board at an annual rate of not less than

(A) \$10,000 for an unmarried person; or

(B) \$15,000 for a married couple.

This means that persons performing work such as laborer, clerical, waitress, bookkeeping, etc., providing the employer employs more than three (3) persons, are entitled to the payment of overtime (one and one-half times the regular rate of pay).

A general misconception on the part of the employer is when a salary is paid to an employee, overtime does not need to be compensated. Although a title may be given to an employee that alludes to exempt status, it is the actual duties performed that must be reviewed to determine if that employee is indeed exempt. The following definitions are found at 8 AAC 15.910 to assist in determining exempt status of certain job classes:

(1) "administrative employee" means an employee

(A) whose primary duty consists of work directly related to management policies or supervising the general business operations of his employer;

(B) who customarily and regularly exercises discretion and independent judgment;

(C) who performs his work under only general supervision;

(D) who is paid on a salary or fee basis;

(E) who regularly and directly assists a proprietor or an exempt executive employee of the employer; and

(F) who performs work along specialized or technical lines requiring special training, experience or knowledge and does not devote more than 20 percent of his weekly hours to activities which are not described in this paragraph or paragraphs (7) or (11) of this section;

(2) "casual employee" as used in AS 23.10.060(15), means an employee engaged in an activity which occurs without regularity and is not in the usual course of trade, business, occupation or profession of his employer;

(3), (4) and (5) Not shown inasmuch as they are not applicable to determining overtime eligibility.

(6) "domestic service in or about a private home" as used in AS 23.10.055(4), means a person employed in or about a private home of a person by whom he is employed and who performs such services or activities as a babysitter, a cook, a butler, a valet, a maid, a housekeeper, a governess, a janitor, a laundress, a caretaker, a handyman, a gardener, a footman, a groom, or a chauffeur of automobiles for family use;

(7) "executive employee" means an employee

(A) whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized branch, department, or subdivision of the enterprise;

(B) who customarily and regularly directs the work of two or more other employees;

(C) who has authority to hire or fire or effect any other change of status of other employees or whose suggestions or recommendations regarding these kinds of changes are given particular weight;

(D) who customarily and regularly exercises discretionary authority;

(E) who does not devote more than 20 percent of his weekly hours to activities which are not directly and closely related to the work described in this paragraph or paragraphs (1) or (11) of this section; and

(F) who is compensated on a salary basis;

(8) "outside salesman" means a person

(A) who is customarily and regularly away from the employer's place of business;

(B) who is employed for the purpose of making sales, contracts for sales, consignments, or shipment for sale, or for obtaining orders for service or for use of facilities for which consideration will be paid by the client or customer; and

(C) whose hours of work of a nature other than that described in this paragraph or in (12) of this subsection do not exceed 20 percent of the hours worked in the workweek;

(9) "professional employee" means an employee, except for the classifications of registered nurse and licensed practical nurse

(A) whose primary duty is

(i) to perform work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes, or

(ii) to perform work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee, or

(iii) to teach, tutor, instruct, or lecture in the activity of imparting knowledge, and who is employed and engaged in this activity as a teacher certified or recognized as such in a school or other educational establishment or institution; and

(B) whose work

(i) requires the consistent exercise of discretion and judgment in its performance,

(ii) is predominately intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized on a time basis, and

(iii) is compensated on a salary or fee basis;

(10) "salesman employed on a straight commission basis" means a person

(A) who is regularly employed on the business premises of the employer;

(B) who is compensated on a straight commission basis for the purpose of making sales, contracts for sales, consignments, or shipments for sale or for obtaining orders for services or the use of facilities for which a consideration will be paid by the client or customer; and

(C) whose hours of work of a nature other than that described in this paragraph or in (10) of this subsection do not exceed 20 percent of the hours worked in the workweek;

(11) "supervisory capacity" means those primary duties performed by an employee who is employed solely for the purpose of regularly assigning and directing the activities of other employees; and is responsible for results of the work performed and; who does not perform duties regularly performed by the employees supervised, except for brief periods of time not to exceed 20 percent of the hours worked in the workweek; for the purpose of AS 23.10.060, "supervisory capacity" does not apply to an employee required by the employer to perform those activities on an intermittent or substitute basis during the course of employment;

If an employee is employed on an hourly rate, the method of calculating the overtime rate is one and one-half times is basic hourly rate. An employee need not actually be hired at an hourly rate. The employee may be paid by piece-rate salary, commission, or any other basis agreeable to the employer and employee. However, the applicable compensation basis must be converted to an hourly rate when determining the regular rate for computing overtime compensation and must be presented to the employee (AS 23.05.160) at the time of hire, in writing.

When an employee is employed on a salary basis (8 AAC 15.100 summarized):

1) The employment contract must set out the specific number of hours the employee is expected to work each day and each week. The contract must establish a regular hourly rate of pay with respect to the salary to be paid and the hours to be worked. This written document must show the overtime rate, based on the regular hourly rate, if hours required to work exceed eight in a day or 40 in a week.

2) If a contract fails to establish a fixed number of daily and weekly hours for which the salary is intended to compensate, or if the actual hours of work deviate from the hours specified in the contract, the salary will be considered to be compensation for an eight-hour work day and forty-hour workweek, and overtime will be computed on that basis.

When converting a salary to an hourly rate the following method is used:

Monthly salary X 12 months = yearly salary  
 Yearly salary ÷ 52 weeks = weekly salary  
 Weekly salary ÷ number of hours worked  
                                 during normal workweek = hourly rate  
 Hourly rate x 1.5 = overtime rate

From July 1986 through December 1987, the Anchorage Wage & Hour office processed 274 claims that contained an overtime violation. Of these claims, 70 involved employees that were paid on a salary basis. The other 204 were paid on an hourly rate, piece rate, commission or other basis.

0183s

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February 16, 1988

6  
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\*ALASKA AND DISTRICT OF COLUMBIA BARS

\*\*WISCONSIN BAR

ALL OTHERS DISTRICT OF COLUMBIA BAR

Honorable Dave Donley, Chairman  
House Labor & Commerce Committee  
State Capitol Building  
P. O. Bcx V (Mail Stop 3100)  
Juneau, AK 99811

RECEIVED  
FEB 19 1987

Re: Proposed amendments to the Alaska  
Wage and Hour Act, H.B. 436  
(Our file 901.22)

Dear Representative Donley:

We write on behalf of several regional native non-profit associations to suggest one of two amendments to the Alaska Wage and Hour Act. We request that one of these amendments be included in the House Labor and Commerce Committee substitute for H.B. 436.

We are general counsel for the Yukon-Kuskokwim Health Corporation, the Aleutian/Pribilof Islands Association, and several other similar native non-profit regional associations in Alaska. These associations are unique in that they administer a very special category of federal contract in Alaska called a "Public Law 93-638" contract (or simply a "638" contract). Public Law 93-638 is codified at 25 U.S.C. 450 et seq., and is commonly known as the Indian Self-Determination and Education Assistance Act of 1975. The statute authorizes certain entities to undertake unique contracts with the U. S. Indian Health Service and the Bureau of Indian Affairs of the U. S. Department of the Interior. Under these contracts -- which are neither ordinary procurement-type contracts nor government grant programs -- the Federal Government will turn over the operation of certain federal health and social service programs benefiting Alaska Natives to a Native-controlled contracting party. For instance, the Yukon-Kuskokwim Health Corporation annually operates approximately \$8 million in Indian Health Service programs under its Public Law 93-638 contract. (The idea behind the federal law is

Honorable Dave Donley  
February 16, 1988  
Page 2

to encourage Alaska Native organizations to themselves administer programs benefiting their own people.) Under this unique type of federal contracting, the regional Native association actually stands in the shoes of the Federal Government.

In the area of wage and hour matters, these 638 contractors are governed by the federal wage and hours laws. In addition, their contracts typically contain restrictions on the extent to which the 638 contractor may incur liability for expenses such as overtime wages. These restrictions may conflict with state overtime laws.

Given the unique nature of the relationship between these Native entities and the United States Government, and given the fact that federal wage and hour laws govern their activities, one might expect that they would be exempt from the Alaska Wage and Hour Act by virtue of the Act's exemption in A.S. 23.10.055(5). However, it appears that this exemption does not, in fact, reach 638 contractors. We believe that these unique federal contractors should not be subject to the potentially conflicting and inconsistent application of laws by two sovereigns -- the United States and the State of Alaska. Accordingly, our first suggestion is that H.B. 436 be amended to add the following language to A.S. 23.10.055(5):

"or an organization administering a federal contract pursuant to 25 U.S.C. 450 et seq."

2. Proposed Amendment to A.S. 23.10.060

Our second suggested change to the Alaska Wage and Hour Act is in the nature of a lesser alternative to our first suggestion. The area of greatest concern regarding the application of Alaska's Wage and Hour Act to 638 contractors has been in the area of overtime wages. Section 60 of the overtime law contains a number of exemptions designed to reflect a variety of public policy decisions. Some of the exemptions are not easily applied to the rural context and apparently were not drafted with the realities of rural Alaska in mind.

Specifically, the exemption for employees of a "hospital" is not reflective of the fact that in most of rural Alaska health care services are not provided through a facility that would be considered a hospital. Understandably, the Wage and Hour Division seeks an aggressive, narrow interpretation of these exemptions to carry out its mission of protecting the employee's right to overtime wages. In a recent instance this led to a somewhat peculiar result in connection with the Yukon-Kuskokwim Health Corporation (YKHC). In Bethel, YKHC administers the U. S.



Honorable Dave Donley  
February 16, 1988  
Page 3

Indian Health Service Dental Program (as well as a number of other IHS programs). These programs are administered out of the IHS-operated Bethel Hospital, just as they would be were the Indian Health Service operating these programs. YKHC does not actually administer the entire hospital, only several of the programs in the hospital. (In the course of the next two years YKHC will actually take over administration of the hospital from the Indian Health Service as part of an expansion of its 638 contract.) In a recent decision, the Wage and Hour Administration concluded that an employee in the dental department was not an employee of a "hospital" (and therefore not exempt under Section 60) because YKHC does not at present administer the entire hospital. We believe this hypertechnical, narrow reading of the exemption is not consistent with the Legislature's intent in this Section.

Institutional medical care providers generally work out of hospitals in metropolitan regions of the State, and even in many of the sub-regional hubs. But in the balance of Alaska -- in bush Alaska -- institutional health care providers like YKHC employ a decentralized mechanism to reach village residents. We believe the "hospital" exemption unfairly (though unintentionally) discriminates against rural health care providers by restricting the coverage of the exemption strictly to the major metropolitan areas of the State. The consequence is that the considerably higher expense of providing medical services in bush Alaska is compounded by the apparent lack of an exemption from the overtime laws. And too, as noted earlier, this in turn leads to conflicts with the federal wage and hour laws.

We believe that our first suggested amendment will take care of this problem. However, in the event a narrower, "surgical" approach is desirable, we propose the following new subsection to A.S. 23.10.060:

"(19) An employee of an organization which provides rural health care services or social services and whose employment includes delivery, and assistance in delivery, of health care and social services, including but not limited to medical and dental services and substance abuse control."

This new exemption we believe would more fairly reflect the manner in which health care services are delivered in bush Alaska, and is fully consistent with the Alaska Legislature's public policy as embodied in the current exemptions.

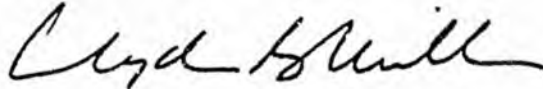
Neither of these amendments should be controversial. If the Federal Government is immune from the Alaska Wage and Hour Laws,

Honorable Dave Donley  
February 16, 1988  
Page 4

a special 638 contractor who is required to stand in the shoes of the Federal Government should not be subject to those laws, especially when the contractor is subject to the federal wage and hour laws. Nor should the exemptions from the overtime provisions of the Act reflect biases in the manner in which health care services are provided around the State. We have tried in our proposal to suggest narrow language to meet these goals. Of course, we would be most pleased to work with the Committee to refine this language further consistent with the overall framework of the Alaska Wage and Hour Act.

Please do not hesitate to call upon us if you have any questions regarding our proposals.

Sincerely,



Lloyd B. Miller

LBM/kg  
cc: All Committee Members  
Ginger Baine  
Donley.AWHA



PUBLIC OPINION MESSAGE

6

DEAR: REPRESENTATIVE DONLEY

NAME: HENRY HARTMAN  
TITLE:  
ADDRESS: 125 GAIL DRIVE  
CITY: WASILLA ZIP: 99687  
PHONE: 376-3469  
BILL NO: HB 436  
SUBJECT: OVERTIME PAY  
MESSAGE: I SUPPORT HB436 AND IN PARTICULAR THE ASPECT OF SEPARATING SUPERVISORS FROM LABORERS.

POMID: 14172201  
DATE: 02/17/88  
TIME: 17:22:01  
LIONAME: MAT-SU LIO

COPIES: REPRESENTATIVES SENATORS

MENARD  
LARSON  
BOUCHER  
DAVIDSON  
ELLIS  
FURNACE  
KOPONEN

KERTTULA  
SZYMANSKI

REPRESENTATIVE DAVE DONLEY  
JUNEAU, ALASKA

2/8/88

DEAR DAVE,

I am writing in regards to HB436, introduced by you according to a newspaper article I recently read. Congratulations on what I hope will become law.

This has been kind of a thorn in my side ever since I have worked on the Pipeline, 10 1/2 years. At present we work 84 hours on our work week and get time and a half for all hours over 40. I realize these are good jobs and the pay is good but in the years I have been out here I have seen the benefits eroding and work increasing due to a reduction in personnel. Therefore, I urge you to gather all the support you can and pass this thing when it's up for consideration. I'm sure the oil interests will lobby for it's defeat.

One side note to the pay package we now enjoy, is the overtime payed, for a holiday worked. In our on week the last two days of the seven day work week are normal overtime days. Therefore, if a holiday falls on those days we get no premium pay for working that holiday other than what we would normally get. Because, our pay policy states "on a holiday worked you will get time and a half for all hours worked plus 12 hours straight time" In the case I stated the person who replaces me, on my off week, will get the same pay for that pay period that I get and they would be at home for the holiday. You can't pyramid overtime is their explanation.

Thank you for your efforts in this matter and keep up the good work. I am not a voter in your district but I have sent letters to my Legislators, Terry Martin and Pat Pourchot, urging their support.

*Joe Cummings*  
WILFORD J. "JOE" CUMMINGS  
6930 DICKERSON DR  
ANCHORAGE, ALASKA 99504  
333-7390

RECEIVED  
FEB 18 1987

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February 12, 1988

Representative Dave Donley  
Chairman  
Labor and Commerce Committee  
House of Representatives  
P. O. Box V  
Juneau, Alaska 99811

RECEIVED  
FEB 19 1988

RE: House Bill Number 436

Dear Representative Donley:

I'm sure there was probably some good purpose behind the introduction of HB 436, although, I am not able to discern what it may be.

I am asking that your committee consider the impact this would have on a large portion of current and prospective jobs in Alaska.

As I am sure you know, most all of the jobs relating to employment on the North Slope, Alyeska Pipeline and remote work sites, are rotating twelve hour shifts, seven days a week. They are two weeks on, with corresponding relief time of two weeks off. Under this system current employees are paid forty hours straight time, and forty-four hours at time and one half. Additionally they are transported to and from the job, and they are furnished free room and board.

If this bill is passed; there will be forty hours of straight time, twenty hours of one and a half times, and twenty-four hours at double time. It does not take long to calculate the impact this would have on labor costs. Presently the pay is the same as one hundred and six hours straight time per week. The new bill would equate to one hundred and eighteen hours. This causes an increase of over an eleven percent raise in direct wage costs.

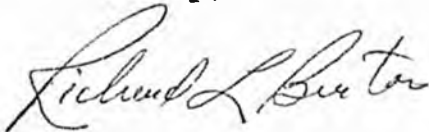
The net effect of this Bill, to me, and other employers, will be to either reduce base wages, or cut back on the number of employees.

I have been in the process for several months of negotiating under the current scheduling, for a job that starts this spring. As soon as this bill was introduced, all planning was stopped and it is now debatable if it will go forward

I see this as having a negative impact on the Alaska work force; and it will result in a further increase of unemployment. This is certainly the wrong thing at the wrong time for Alaska's economy.

Your consideration is earnestly solicited to give further thought to this bill. I would appreciate hearing from you concerning any reasons for supporting this Bill.

Sincerely,

A handwritten signature in cursive script that reads "Richard L. Burton".

Richard L. Burton  
President

RLBdrb

cc Committee Members  
House Judiciary Committee  
Chamber Legislative Committee

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 3, 1988

SUBJECT: Laws concerning payment of overtime wages  
(Work Order No. 5-1626)

TO: Representative Dave Donley  
Chairman  
House Labor and Commerce Committee

FROM: Teresa B. Cramer *BC*  
Legislative Counsel

You have requested an opinion concerning a salaried employee's right to payment of overtime wages. The right to overtime wages under both state and federal law makes no distinction on the basis of the method an employer uses to pay an employee. Salaried employees have the same rights as hourly employees.

The state law is contained in AS 23.10.050 - 23.10.150 and is based on the federal Fair Labor Standards Act, 29 U.S.C. 201-219. Where state and federal law establish different levels of protection, an employee is entitled to an application that results in the better coverage for the employee. 29 U.S.C. 218.

In state law, AS 23.10.060, payment for overtime is required if the employer finds it necessary to employ an employee in excess of 40 hours a week or eight hours a day, compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid, and this provision is considered included in all contracts of employment.

The section goes on to list particular employment situations to which the requirement for payment of overtime does not apply. A copy of AS 23.10.060 is attached for your information. In addition to the exemptions granted by AS 23.-10.060, there is a general exemption from the Wage and Hour

Act in AS 23.10.055, a copy of which is also attached. In neither of these sections does being a salaried employee affect the right to overtime.

Since salaried employees are not directly addressed under the Wage and Hour Act, the question becomes whether they are "employees" employed by an "employer." State law does not define either "employer" or "employee." Under AS 23.10.145, the federal definitions in the Fair Labor Standards Act apply to state law. Under 29 U.S.C. 203(d), an "employer"

includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

The definition of "employee," contained in 29 U.S.C. 203(e)(1), makes "any individual employed by an employer" an employee, with certain exceptions, in later paragraphs, for employees of public agencies and certain agricultural employees.

The state regulations address how to convert a salary into an hourly wage so that the amount of overtime can be computed. A copy of 8 A.A.C. 15.100 - 15.102 is included.

You asked whether an employee can bargain away overtime rights. Under state law, AS 23.10.060(17), work performed by an employee under a flexible work hour plan is exempt from the overtime requirements if the plan is part of a collective bargaining agreement. Under paragraph (18), which applies outside of collective bargaining, overtime is exempt if the work is performed under a voluntary flexible work hour plan and if the employer and employee have signed a written agreement which has been filed with the Department of Labor and the department has approved the plan. Plans under paragraph (18) are limited to 40 hours a week and no more than 10 hours a day. Work in excess of either of those figures must be compensated at one and one-half times the regular rate of pay. There is no other provision in state law for waiving application of the overtime requirements for employee bargaining.

The general federal law on payment of overtime is set out in 29 U.S.C. 207, with exceptions to the Fair Labor Standards

Representative Dave Donley  
Page 3  
February 3, 1988

Act set out in 29 U.S.C. 213. Copies of both statutes are included. Note that the federal provisions only cover employers "engaged in commerce" or the "production of goods for commerce." 29 U.S.C. 207(a). These are defined terms that further limit federal coverage.

Under federal law, 29 U.S.C 207(b), a collective bargaining agreement supercedes the overtime statutes as long as the agreement limits employment to 1,040 hours in a period of 26 consecutive weeks (which averages out to eight hours a day, five days a week) or to 2,240 hours in a period of 52 consecutive weeks with certain guarantees. There is also an exception in that subsection for certain wholesale or bulk distributors of petroleum products.

You have also asked whether an employer can respond to the added cost of overtime by reducing the level of an employee's base wage. Legally, as long as the employer is not violating other state and federal standards concerning pay equity and does not violate existing employment contracts, an employer may set wages at any level at which the employer wishes. The decision is a business decision, balancing the reduction of wages against the need to attract and retain employees.

If I may be of further assistance, please advise.

Attachment  
TBC:bb  
wkb2/038



8 AAC 15.050. DEDUCTIONS FROM AN EMPLOYEE'S WAGES. Repealed. (12/9/78, Reg. 68)

8 AAC 15.060. PLACE OF EMPLOYMENT FOR PURPOSES OF RECORD KEEPING. Repealed. (12/9/78, Reg. 68)

8 AAC 15.070. DEFINITIONS OF MISCELLANEOUS TERMS USED IN AS 23.10.050 - 23.10.150. Repealed. (12/9/78, Reg. 68)

ARTICLE 2.  
MINIMUM WAGES AND OVERTIME

Section

- 100. Payment for overtime
- 102. Voluntary flexible work hour plans
- 105. Minimum wage

8 AAC 15.100. PAYMENT FOR OVERTIME.

(a) An employee's regular rate is the basis for computing overtime. The regular rate is an hourly rate figured on a weekly basis. An employee need not actually be hired at an hourly rate. The employee may be paid by piece-rate, salary, commission, or any other basis agreeable to the employer and employee. However, the applicable compensation basis must be converted to an hourly rate when determining the regular rate for computing overtime compensation. The following provisions apply for an employee paid on a salary basis:

(1) The employment contract must set out the specific number of hours the employee is expected to work each day and each week. The contract must establish a regular hourly rate of pay with respect to the salary to be paid and the hours to be worked. Changes to the pay schedule of a salaried employee must conform to the provisions of AS 23 05.160.

(2) If a contract fails to establish a fixed number of daily and weekly hours for which the salary is intended to compensate, or if the actual hours of work deviate from the hours specified in the contract, the salary will be considered to be compensation for an eight-hour work day and 40-hour workweek, and overtime will be computed on that basis.

(b) In order to compute a regular hourly rate for the purpose of determining the overtime rate for an employee who is paid other than hourly or by salary, the following provisions of 29 C.F.R. Part 778 apply:

(1) for a pieceworker, 29 C.F.R. sec. 778.111;

(2) for an employee who works at two or more hourly rates, 29 C.F.R. sec. 778.115;

(3) for an employee who receives wages in a form other than cash, 29 C.F.R. sec. 778.116; or

(4) for an employee who receives a commission, 29 C.F.R. secs. 778.117 - 778.122.

(c) When computing an employee's hours for the purpose of determining overtime, the employer shall count all hours the employee worked during that week including periods of "on call" and "standby or waiting time" required for the convenience of the employer which were a necessary part of the employee's performance of his employment. However, if the employee is completely relieved from all duties for a certain period during which he may use the time effectively for his own purposes, then those periods need not be counted.

(d) The following are not acceptable methods of complying with the payment of overtime provisions of AS 23.10.060:

(1) guaranteed weekly pay for variable hours plan ("Belo" contracts) established under sec. 7(f) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207(f) as implemented in 29 C.F.R. 778.402 - 778.414);

(2) compensatory time off in place of payment for overtime; and

(3) flex-time or flexitime plans established under 29 C.F.R. 778.114 providing a fixed salary for fluctuating hours up to a predetermined maximum number of hours in a workweek. (Eff. 12/9/78, Reg. 68; am 9/28/85, Reg. 95)

Authority: AS 23.05.060

AS 23.10.085

AS 23.10.060

AS 23.10.095

Editor's Note: Copies of the federal regulations cited in 8 AAC 15.100(b) may be obtained from the office of the department's statewide wage and hour supervisor in Anchorage.

**8 AAC 15.102. VOLUNTARY FLEXIBLE WORK HOUR PLANS.** (a) A request for an exemption for a voluntary flexible work hour plan established under AS 23.10.060(18) must be filed by the employer with a wage and hour administration office of the department. The request must be in writing, and must include

(1) a statement that the employer and employee participating in the flexible work hour plan understand that work performed in excess of 10 hours in a day or in excess of 40 hours in a week must be compensated at the rate of one and one-half times the regular rate of pay;

(2) a description of the flexible work hour plan;

(3) a statement that the flexible work hour plan has not been made a condition of employment and that participation in the plan is voluntary; and

(4) the original signature of the employer or authorized representative.

(b) The department will approve a voluntary flexible work hour plan that conforms to the requirements of this section and the provisions of AS 23.10.060(18). An approved plan constitutes the certificate required in AS 23.10.060(18)(B). The department will issue the certificate, or a notice of denial, within five working days after receipt of the plan. A certificate issued under this section takes effect on the day it is signed by the department's representative. A voluntary flexible work hour plan may not be instituted until the certificate takes effect. A notice of denial issued by the department under this section will include the specific reason for the denial.

(c) An appeal of a notice of denial must be filed with the commissioner within 20 days after receipt of the notice of denial. The appeal must be in writing, and must set out the specific reasons upon which the appeal is based. The commissioner will grant or reject the appeal

within 10 workdays after receipt of the appeal. The commissioner's decision is final.

(d) As part of the records required under AS 23.10.100, an employer must maintain a signed statement of voluntary participation of each employee participating in an approved voluntary flexible work hour plan.

(e) An employee may choose to participate in an approved voluntary flexible work hour plan at initial employment or at any other time during employment. Once an employee has chosen to participate in an approved voluntary flexible work hour plan, that employee is bound to do so, and may opt out of participation in the voluntary flexible work hour plan only from November 1 through December 31 each calendar year. Termination of an employee, regardless of the cause of termination, voids that employee's participation. An employee who is rehired by the employer must again choose to participate in the voluntary flexible work hour plan in order to be included in the approved plan. Nothing in this subsection prohibits the employer and employee from agreeing to the withdrawal of the employee from an approved plan at any time. (Eff. 9/28/85, Reg. 95)

Authority: AS 23.05.060                      AS 23.10.085  
AS 23.10.060                      AS 23.10.100

**8 AAC 15.105. MINIMUM WAGE.** (a) As used in AS 23.10.065, "prevailing Federal Minimum Wage Law" means that rate established in Sec. 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. Sec. 206 (a)(1)) as the minimum wage generally applicable to employees subject to that Act.

(b) The department will determine compensable hours subject to the payment of the minimum wage or the contractually established wage in accordance with the provisions of 29 C.F.R. secs 785.11 - 785.25, 785.27 - 785.33, 785.35 - 785.45, and 785.47 - 785.48. (Eff. 12/9/78, Reg. 68; am 9/28/85, Reg. 95)

Authority: AS 23.05.060                      AS 23.10.085  
AS 23.10.065                      AS 23.10.095

Editor's Note: Copies of the federal statute and regulations cited in 8 AAC 15.105 may be obtained from the office of the department's statewide wage and hour supervisor in Anchorage.

pay,  
 generally, see § 15126.  
 relationship to other laws, see § 15128A.  
 selected lower court decisions, see § 15128.  
 statutory protection, see § 15496.  
 transition to federal employees, see § 15126A.  
 wage and hour law, see § 1451 et seq.  
 not to adjust differentials in pay, see § 16863.  
 retroactive relief, see § 16436.  
 minimum wages, see § 1451.41.  
 differentials, see §§ 16862, 16862A.  
 recovery of back pay, see § 16407.  
 teachers and other local government employees, see § 16401.

**Codes of Federal Regulations**  
 Appeals and appellate procedure, see 29 CFR 1613.231-1613.236.  
 Apprentices, employment, see 29 CFR 521.1 et seq.  
 Domestic service, see 29 CFR 552.1 et seq.  
 Employees engaged in commerce or in the production of goods for commerce, general policy statement, see 29 CFR 776.0 et seq.  
 Equal pay for equal work provisions, applicability, see 29 CFR 1620.19 et seq.  
 Forestry or logging operations, standards applicable, see 29 CFR 788.1 et seq.  
 Full-time students, employment, see 29 CFR 519.1 et seq.  
 Handicapped workers, employment, see 29 CFR 524.1 et seq. 525.1 et seq.  
 Homeworkers, employment,  
     Puerto Rico, see 29 CFR 545.1 et seq.  
     Virgin Islands, see 29 CFR 695.1 et seq.  
 Hours worked, computation, see 29 CFR 785.1 et seq.  
 Learners, employment, see 29 CFR 522.1 et seq.  
 Messengers, employment, see 29 CFR 523.1 et seq.  
 Procedures established by Equal Employment Opportunity Commission for issuing opinion letters, see 29 CFR 1621.1 et seq.  
 Puerto Rico, Virgin Islands and American Samoa,  
     Particular industries, minimum wage rates, see 29 CFR 601 to 730.  
     Wage order procedure, see 29 CFR 511.1 et seq.  
 Recordkeeping requirements, see 29 CFR 516.1 et seq.  
 Seamen, determination of exempted status, see 29 CFR 789.0 et seq.  
 Student learners, employment, see 29 CFR 520.1 et seq.  
 Student workers, employment, see 29 CFR 527.1 et seq.  
 Wage payments, see 29 CFR 531.1 et seq.

**Library References**  
 Labor Relations — 1081.  
 C.J.S. Labor Relations § 1018.

**Selected Court Decisions**  
 Under the Equal Pay Act [this section], courts and administrative agencies are not permitted to substitute their judgment for the judgment of an employer who has established and employed a bona fide job-rating system, so long as it does not discriminate on the basis of sex. *Washington County v. Gunther*, Or.1981, 101 S.Ct. 2242, 482 U.S. 161, 68 L.Ed.2d 751.  
 Employees could bring action in federal district court, alleging violation of minimum wage provisions of Fair

Labor Standards Act [this section], after having unsuccessfully submitted wage claim based on same underlying facts to joint grievance committee pursuant to provisions of their union's collective-bargaining agreement. *Barrentine v. Arkansas-Best Freight System, Inc.*, Ark.1981, 101 S.Ct. 1437, 450 U.S. 728, 67 L.Ed.2d 641.

The wage and hour provisions of the Fair Labor Standards Act [this chapter] compelling the payment of a minimum standard wage with a prescribed increased wage for overtime do not deny "due process of law" in violation of the Fifth Amendment, nor are they objectionable because applied alike to both men and women. *U.S. v. Darby Lumber Co.*, Ga.1941, 61 S.Ct. 451, 312 U.S. 100, 657, 85 L.Ed. 609.

Although neither the wage, the hour nor the overtime provisions of the Fair Labor Standards Act [this chapter] specifically provides for any other method of paying wages except by hourly rate, pay by the week, to be reduced by some method of computation to hourly rates, was also covered by the Act. *Overnight Motor Transp. Co. v. Missel*, Md.1942, 62 S.Ct. 1216, 316 U.S. 572, 86 L.Ed. 1682, rehearing denied 63 S.Ct. 76, 317 U.S. 706, 87 L.Ed. 563.

**§ 207. Maximum hours**

(a) Employees engaged in interstate commerce; additional applicability to employees pursuant to subsequent amendatory provisions

(1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(2) No employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this subsection by the amendments made to this chapter by the Fair Labor Standards Amendments of 1966 —

(A) for a workweek longer than forty-four hours during the first year from the effective date of the Fair Labor Standards Amendments of 1966,<sup>2</sup>

(B) for a workweek longer than forty-two hours during the second year from such date, or

(C) for a workweek longer than forty hours after the expiration of the second year from such date,