ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
4847 HLAB SB 461 - SB 498

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 461 (Jud.)

This bill adds a new section to AS 09.65 that sheilds hospitals from civil liability for the acts and omissions of those providing health care in a hospital who are not employees of the hospital, including physicians. Because this bill deals with the civil liability of hospitals, it will not have a direct fiscal impact on the Department of Law.

The committee substitute for this bill adds a new section that provides that the bill's provisions would apply prospectively to causes of action that accrue on or after the bill's effective date. Thus, the bill will still not have a fiscal impact on the Department of Law.

health association of alaska

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*REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES*

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March 16, 1988

Representative Dave Donley, Chairman
Labor & Commerce Committee
P.O. Box v
Capitol, Room 13
Juneau, AK 99811

Dear Representative Donley:

This letter is to ask your support for SB 461, regarding the liability of hospitals for acts and omissions of non-employee physicians and other health personnel.

SB 461, corrects a ruling by the Alaska State Supreme Court that a general acute care hospital has a nondelegable duty to provide emergency room services, and therefore, the hospital is vicariously liable for the negligence of a non-employed emergency room physician.

Enclosed is a summary of SB 461. We believe very strongly that if the "Jackson v. Powers" decision is not corrected, hospitals in this state will become a "very deep pocket" for all liability actions against physicians, regardless of any fault by the hospital.

We look forward to providing additional information on the need for SB 461 during the House Labor and Commerce hearing.

Your consideration is appreciated.

Sincerely,

Harlan R. Knudson
Executive Director

P.S. The Medicaid Rate Commission reports that overall liability rates for health facilities in this state went from $3,147,000 in 1986 to $5,377,000 in 1988.

HK/cdr

Enclosure (1)

HEALTH ASSOCIATION OF ALASKA
February 1988

LEGISLATIVE SUMMARY -- SB 461, LIABILITY OF HOSPITALS FOR NON-EMPLOYED PHYSICIANS AND OTHER HEALTH PERSONNEL

By: Senators Jones, Coghill, Faiks and Kelly

On October 16, 1987, the Alaska Supreme Court ruled in Jackson v. Power (no. 3237) that a general acute care hospital has a nondelegable duty to provide emergency room services, and therefore, the hospital is vicariously liable for the negligence of an emergency room physician.

** The Jackson decision imposes liability on hospitals for the negligence of non-employee emergency room physicians solely because the hospital is required by law to provide emergency room services and is regulated in the provision of those services, without requiring the plaintiff to show that the hospital has been negligent or that it has violated any specific regulatory requirement.

** The implications of the Jackson decision extend far beyond the emergency room. Although the Jackson case dealt only with the relationship between the hospital and non-employee emergency room physicians, the rationale of the case logically extends to other non-employee physicians and health care providers. Under the common law prior to the Jackson decision a hospital was not vicariously liable for the negligence of the non-employees if the hospital itself was not negligent and had complied with all applicable statutory and regulatory requirements.

** The Jackson decision runs counter to modern trends of apportioning liability according to fault. Recent tort reforms were designed to provide some relief to public entities, which were often named as "deep pocket" defendants, even though their share of the responsibility for the injury was negligible. The Jackson case insures that municipally owned and non-profit hospitals will be named as deep pocket defendants in every case involving physicians negligence, even though the hospital was not negligent and has done everything within its power to comply with statutory and regulatory requirements. In one recent case, for example, the plaintiff dismissed all of the allegedly negligent physician defendants and went to trial solely against the corporate hospital.

** The ruling will not improve hospital and emergency room care because, by definition, the Jackson rule applies where there is no fault on the part of the hospital. Hospitals have always been liable for their own negligence, and would continue to be so liable if Jackson were legislatively repealed.

** The Jackson ruling could decrease hospital and emergency room response time if hospitals react to the ruling by requiring emergency room physicians to practice more "legal" or "defensive medicine" -- more tests, more consultations, etc. Emergency

(over)

situations are inherently risky. The legislature, for example, has granted immunity to EMTs, paramedics and ordinary citizens acting in emergency situations. These legislative choices reflect a policy decision that the need for swift action in emergency situations outweighs the policy of compensating injured plaintiffs. The Jackson decision undercuts this legislative policy.

** Hospital and Emergency room operating costs could be increased also if hospitals react to Jackson by imposing more "defensive medicine" requirements.

** Unless hospitals dramatically restructure their relationship to physicians (by requiring them to become hospital employees, for example) the net result of the Jackson decision probably will be to increase insurance costs as both hospital and doctor insure to cover the same risk.

** There is no showing that medical malpractice plaintiffs have experienced difficulty collecting their judgments. Most physicians carry adequate malpractice insurance. The addition of a "deep pocket" corporate hospital to the cast of defendants, however, will probably increase the size of jury verdicts.

** The burden of the Jackson decision will fall on municipally owned and non-profit hospitals, which are already caught in a cost squeeze from state and federal regulatory and rate requirements.

** SB 461 corrects the Supreme Court ruling by clarifying that hospitals are not liable for acts or omissions of non-employed physicians or other health professionals, solely for the reason that they must provide those services under Alaska Statue or regulations. It returns the law to where it was prior to the decision, with the hospital liable for its negligence or intentional misconduct.

** The Medicaid Rate Commission reports that health facilities malpractice insurance premiums increased from a total of $3,147,262.00 in 1986 to $5,377,918.00 for 1988. An increase of over $2 million dollars.

The passage of SB 461 will prevent an even a greater escalation of hospital liability insurance costs.

For More Information Contact:

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# # #

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BERNARD P. KELLY
PAUL COSSMAN
STEVEN PRADELL

March 14, 1988

RECEIVED
MAR 17 1987

Senator Jalmar Kerttula
Chairman, Senate Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

RE: SB 461

Dear Mr. Chairman:

I oppose any passage of SB 416. This bill would insulate hospitals from any liability for the patients who are negligently injured by physicians who work in hospital emergency rooms, radiology departments, and other departments where the physicians are independent contractors with the hospital and not actual hospital employees. This would take the entire burden off hospitals for overseeing the quality control of the physicians who work in these departments in the hospital. This bill ignores the fact that hospitals are required by Alaska law to provide radiology and emergency room departments. If they must provide these departments, they should be responsible to see they are operated in a non-negligent fashion.

The only real risk management oversight that is in effect for emergency rooms and radiology departments is that of the hospital. Alaska's history of disciplining physicians for negligence and incompetence is very poor. The attached article from U.S.A. Today documents the fact that Alaska did not discipline any physicians in 1985 and disciplined only two physicians in 1986. I can assure you that there were many more cases of negligence that were successfully settled.

We need the risk management supervision of the hospitals over the physicians who work in the radiology and emergency room departments. Alaska does not have a successful record of disciplinary actions against physicians. Therefore, some other body has to provide that function. Currently hospitals provide it. Once the hospitals are freed from liability for the negligent acts of physicians in their own emergency rooms and

radiology departments, they will ease their risk management requirements, and the standard of care will drop. This is against the best interests of the citizens of Alaska, and I urge you to table or otherwise kill SB 461.

Sincerely yours,

BERNARD P. KELLY & ASSOCIATES

PAUL COSSMAN

amm

Enc.
0992m

USA TODAY 3-2-88

GRADING THE USA

# Doctors improperly disciplined, health advocacy agency says

Disciplinary actions against doctors increased 17 percent in 1986, but a health advocacy agency that prepared statistics said too many slipshod physicians still go unpunished.

"The absence, in most if not all states, of the maximum effort to discipline doctors is one of the most serious threats to the health of American patients," said the report by Public Citizen's Health Research Group, founded by its director, Dr. Sidney M. Wolfe, and Ralph Nader.

The 17 percent increase from 1985 to 1986 compared with a 46 percent increase between 1984 and 1985.

Surveying data from the Federation of State Medical Boards, the organization ranked all 50 states and the District of Columbia according to the number of "serious actions" per 1,000 doctors. A serious action was revocation or suspension of a medical license, or probation.

The national average was 2.37 actions per 1,000 doctors. Georgia led with 6.94 actions per 1,000, while Wyoming was in 51st place with none.

The group found there were 1,089 serious actions across the USA in 1985 and 1,277 in 1986, the most recent year for which figures from all localities were available.

"Since there is no evidence that doctors settle in certain states depending on how competent they are, differences in the rate of doctor discipline reflect differences in how serious states are about disciplining doctors," the report said.

The group claims "until the rate of doctor discipline in this country significantly increases, there is no realistic possibility of a major decrease in the amount of medical malpractice."

Here is a state-by-state list of the number of disciplinary actions taken against doctors in 1985 and 1986 as compiled by the group. The first column lists the actual number of actions in 1985. The second column lists actual actions in 1986. The third column is the rate of actions per 1,000 doctors in the state. The fourth column is the state's rank, first being the highest number of actions.

| State | Total 1985 | Total 1986 | Per 1,000 | rank |
|---|---|---|---|---|
| Alabama | 9 | 8 | 1.27 | 40 |
| Alaska | 0 | 2 | 2.76 | 19 |
| Arizona | 22 | 12 | 1.64 | 31 |
| Arkansas | 9 | 6 | 1.64 | 32 |
| California | 121 | 121 | 1.70 | 30 |
| Colorado | 14 | 24 | 3.41 | 10 |
| Connecticut | 4 | 9 | 0.92 | 46 |
| Delaware | 1 | 2 | 1.55 | 34 |
| D.C. | 8 | 9 | 2.36 | 25 |
| Florida | 55 | 75 | 2.69 | 20 |
| Georgia | 48 | 73 | 6.94 | 1 |
| Hawaii | 4 | 8 | 3.19 | 11 |
| Idaho | 5 | 4 | 2.93 | 14 |
| Illinois | 44 | 73 | 2.86 | 17 |
| Indiana | 39 | 57 | 6.53 | 2 |
| Iowa | 20 | 26 | 5.93 | 3 |
| Kansas | 10 | 7 | 1.57 | 33 |
| Kentucky | 28 | 22 | 3.56 | 9 |
| Louisiana | 21 | 13 | 1.54 | 35 |
| Maine | 4 | 6 | 2.60 | 22 |
| Maryland | 12 | 11 | 0.73 | 48 |
| Massachusetts | 22 | 42 | 2.12 | 28 |
| Michigan | 22 | 14 | 0.80 | 47 |
| Minnesota | 19 | 30 | 3.15 | 13 |
| Mississippi | 6 | 8 | 2.34 | 26 |
| Missouri | 39 | 38 | 3.80 | 8 |
| Montana | 0 | 2 | 1.51 | 36 |
| Nebraska | 0 | 4 | 1.45 | 38 |
| Nevada | 16 | 4 | 2.39 | 24 |
| New Hampshire | 1 | 1 | 0.47 | 50 |
| New Jersey | 76 | 49 | 2.59 | 23 |
| New Mexico | 2 | 4 | 1.46 | 37 |
| New York | 60 | 167 | 2.89 | 16 |
| North Carolina | 17 | 26 | 2.21 | 27 |
| North Dakota | 4 | 2 | 1.76 | 29 |
| Ohio | 39 | 58 | 2.67 | 21 |
| Oklahoma | 23 | 21 | 4.21 | 7 |
| Oregon | 25 | 28 | 4.76 | 6 |
| Pennsylvania | 57 | 27 | 0.95 | 45 |
| Rhode Island | 9 | 3 | 1.21 | 41 |
| South Carolina | 17 | 16 | 2.90 | 15 |
| South Dakota | 1 | 1 | 1.00 | 44 |
| Tennessee | 14 | 10 | 1.09 | 43 |
| Texas | 44 | 41 | 1.40 | 39 |
| Utah | 19 | 17 | 5.43 | 5 |
| Vermont | 1 | 1 | 0.68 | 49 |
| Virginia | 42 | 39 | 3.17 | 12 |
| Washington | 11 | 19 | 1.09 | 42 |
| West Virginia | 7 | 19 | 5.62 | 4 |
| Wisconsin | 9 | 26 | 2.82 | 18 |
| Wyoming | 1 | 0 | 0.00 | 51 |

SB 461

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March 14, 1988

Representative Dave Donley
Labor & Commerce
Room 17, Capitol Building
Juneau, Alaska 99811

Dear Representative Donley:

I want to take a few minutes of your time to have you reflect with me upon the following situations which I hope neither you nor your family will encounter. They are, however, situations which daily confront your constituents.

> In the middle of the night you awaken with an aching pain in your right shoulder which shoots into your left arm. Your face is covered with sweat and you gasp for breath. You manage to alert your spouse and she rushes you to the hospital emergency room for what hopefully will be life saving care by the hospital emergency room physician.
>
> Your spouse notices that she has a lump in her breast and is sent by her doctor to the hospital for a mammogram to be interpreted by a hospital radiologist. Later, a biopsy is performed at the hospital and sent to hospital pathology.
>
> Your son or daughter is hospitalized and you are told that immediate surgery is necessary. Shortly before the surgery is to be performed a physician or a nurse enters the room and advises you that he will be giving anesthesia to your child. While you and your wife have chosen your surgeon, the anesthesiologist who will attend your child during the operation will have been assigned by the hospital to provide this service on its behalf.

All of these situations have several things in common. First, you, your wife, and your child as patients are looking to the "hospital" for non-negligent emergency, radiology, pathology, and anesthesiology care. You have not sought out a physician for these critical health care services, but have looked to the hospital to provide these services. Second, the hospital is "required" by state law, by its own by laws, and by national accreditation standards, to provide these critical health care services to you and your family. Third, when these critical health care services are negligently delivered and cause serious injury or death to you or members of your family, hospitals

uniformly protest that they have "no civil liability" for the harm done, because they have hired a physician who is an "independent contractor" to perform these critical health care services.

The modern hospital is no longer, as it once was, merely a sanitary wayside for the convenience of the doctor and the patient. Over 50,000 emergency room visits occur annually in our state. The modern hospital is the focal point of quality health care available to the community. This is not only true in practice but also as required by statute, hospital by laws and accreditation.

The hospitals of this state now seek exemption under SB 461 from responsibility for quality hospital health care, by statutorily providing that only the independent contractor physicians which they may hire will have any civil responsibility for the harm which might be caused by those physicians in their emergency rooms, and in their radiology, pathology, and anesthesiology departments. They seek to be "hospitals" but not to be responsible for the harm to patients occurring from the medical procedures that they are required to provide for patient care as "hospitals". Inevitably, duty without responsibility leads to the lack of quality health care.

The hospitals have sought the passage of this restrictive and unwarranted legislation because of the horrible injuries sustained to a young Fairbanks boy by the name of Brett Jackson, as the result of gross malpractice which in part occurred in the Fairbanks Memorial Hospital. In 1981, this 16 year old boy fell 40 feet from a cliff. He was rushed to Fairbanks Memorial Hospital. When he finally regained consciousness days later he learned he had lost both kidneys during his stay in the hospital. He also learned that the loss of his kidneys resulted from the failure of the emergency room physician to order a simple urine test and to perform other basic medical diagnostic procedures.

Brett Jackson was in for another surprise when he decided to file suit against the hospital for that emergency room negligence. He learned that the hospital denied any responsibility for the activities of the emergency room. He was referred to a corporation he had never heard of called Emergency Room, Inc., and was told that if he was to have any recovery it must be against that unknown corporation or the doctor that it had employed to provide emergency room coverage--a physician that Brett Jackson had never met.

In a unanimous decision, the Alaska Supreme Court, in Jackson, et al., v. Power, et al., 743 P.2d 1376 (Alaska 1987) a copy of which I have attached, held that a hospital--required by

law to have an emergency room--could not hide behind a corporation like Emergency Room, Inc. when a hospital patient is injured in the emergency department.

SB 461 would reverse that Supreme Court ruling. It would allow hospitals again to attempt to "franchise" their operations and hide behind those franchises when negligence occurs at the hospital. SB 461 would, in fact, encourage hospitals to "franchise" all of their health care services to further insulate themselves from liability for negligent acts occurring under the hospitals' very roofs. The policy issue presented by SB 461 is whether the Alaska legislature will continue, as it has in previous legislation regarding hospitals, to consider the safety of hospital patients to be of higher priority. Alaska's earliest hospital licensing laws reflect the legislative policy of "promoting safe and adequate treatment of individuals in hospitals in the interest of public health, safety and welfare." (See AS 18.20.060, enacted in 1949). The legislature has continually reaffirmed that policy.

The holding of the Alaska Supreme Court in its unanimous decision is not revolutionary. The same rule of law has been applied for decades to numerous types of quasi-public businesses which have received special protections from the government in order to further the public good. In Alaska, airlines which are granted scheduled routes may not insulate themselves from liability for the airline operation by hiring "independent contractors" as pilots to fly their planes or franchising their operations to other airlines. Common carriers, bus lines, and railroad carriers who are given special route priorities by the government may not delegate their operations to "independent contractors" and hide from liability when those contractors are negligent. Are we as hospital patients not entitled to the same protection?

If SB 461 becomes law, the Alaska legislature's long-standing commitment to quality hospital care will be impaired. Hospitals will be encouraged to "franchise" even more of their vital public services in an attempt to avoid liability for injuries to hospital patients. The passage of SB 461 and the over-ruling of Jackson v. Power would send a message to hospital

administrators that the safety of hospital patients and quality health care is no longer a high priority in the State of Alaska. I would urge you to vote against this bill.

Yours truly,

L. Ames Luce

LAL/cb

Enclosure

Brett JACKSON and Linda Estrada, Petitioners,

v.

John POWER, M.D.; Fairbanks Memorial Hospital; Lutheran Hospital and Homes Society of America, Inc.; Emergency Room, Inc.; William H. Montano, M.D.; and George Vrablick, M.D., Respondents.

No. S-1677.

Supreme Court of Alaska.

Oct. 16, 1987.

Medical malpractice action was brought against hospital. The Superior Court, Fourth Judicial District, Fairbanks, Gerald J. Van Hoomissen, J., denied patient summary judgment and petition for review was filed. The Supreme Court, Burke, J., held that: (1) hospital could not be held vicariously liable for negligence or malpractice of independent contractor/physician under enterprise liability; (2) genuine issue of material fact as to whether hospital held itself out as providing emergency care services to public precluded summary judgment for patient on apparent authority theory; and (3) general acute care hospital's duty to provide physicians for emergency room care was nondelegable.

Affirmed in part, reversed in part, and remanded.

1. Hospitals ⇐7

Doctrine of corporate negligence holds that hospital owes independent duty to its patients to use reasonable care to insure that physicians granted hospital privileges are competent, and to supervise medical treatment provided by members of its medical staff.

2. Hospitals ⇐7

Generally accepted rule is that where employment relationship exists between physician and hospital, hospital will be liable, under traditional rule of respondeat superior, for any negligence or malpractice which results in injury to hospital patient, and conversely, no liability attaches to pital when physician is independent tractor.

3. Hospitals ⇐7

Hospital could not be held vicari liable for negligence or malpractice of pendent contractor/physician, comm while treating patient in hospital's e gency room under theory of enterpris bility.

4. Hospitals ⇐7

Two factors are relevant to findin ostensible agency in hospital context cluding whether patient looks to institu rather than individual physician, for and whether hospital holds out physicia its employee.

5. Principal and Agent ⇐137(2)

Under theory of agency by estop there must be actual reliance upon re sentation of principal by person inju

6. Principal and Agent ⇐99

Traditional rules of apparent autho are applicable to hospital-independent c tractor/physician relationship.

7. Judgment ⇐181(33)

Genuine issue of material fact as whether hospital held itself out as pro ing emergency care services to public whether patient reasonably believed t physician was employed by hospital to liver emergency room service preclu summary judgment for patient in med malpractice action against hospital on th ry of apparent authority.

8. Principal and Agent ⇐159(1)

Application of apparent authority hospital/emergency room physician sit tion does not require express represen tion to patient that treating physician employee of hospital; nor is direct testi ny as to reliance required absent evide that patient knew or should have kn that treating physician was not hosp employee when treatment was rende

9. Hospitals ⇐7

Hospital licensed as general acute c hospital had duty to provide emerge

room services and part of duty was to provide physician care in emergency room.

10. Hospitals ⇐7

General acute care hospital's duty to provide physicians for emergency room care was nondelegable, and thus hospital could not shield itself from liability by claiming that it was not responsible for results of negligently performed health care when law imposed duty on hospital to provide that health care.

11. Master and Servant ⇐315

Nondelegable duty is established exception to rule that employer is not liable for negligence of independent contractors.

12. Hospitals ⇐7

Rule that general acute care hospital's duty to provide physicians for emergency room care is nondelegable does not change standard of care with which physician must comply and does not extend to situations where patient is treated by his or her own doctor in emergency room provided for convenience of doctor.

13. Hospitals ⇐7

Acute care hospital was vicariously liable as a matter of law for negligence or malpractice committed by physician on a patient who came to hospital seeking emergency room services; physician was provided by hospital as part of its nondelegable duty to provide nonnegligent physician care in emergency room.

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Michael Cohn, Dan A. Hensley, L. Ames Luce, Law Offices of L. Ames Luce, Anchorage, for petitioners.

James J. Delaney, Howard A. Lazar, Delaney, Wiles, Hayes, Reitman & Brubaker, Anchorage, for respondents Fairbanks Memorial Hosp. and Lutheran Hosp. & Homes Soc.

Peter J. Maassen, Burr, Pease & Kurtz, Anchorage, for respondents John Power, M.D. and Emergency Room, Inc.

David C. Crosby, Council & Crosby, Juneau, for Health Ass'n of Alaska, amicus curiae.

Before RABINOWITZ, C.J., and BURKE, MATTHEWS and COMPTON, JJ.

## OPINION

BURKE, Justice.

This case presents an issue of first impression in this state, concerning health care delivery in hospital emergency rooms. The question that we must resolve is whether a hospital may be held vicariously liable for negligent health care rendered by an emergency room physician who is not an employee of the hospital, but is, instead, an independent contractor. We hold that the hospital in this case had a non-delegable duty to provide non-negligent physician care in its emergency room and, therefore, may be liable.

### I

On the evening of May 22, 1981, sixteen year old Brett Jackson was seriously injured when he fell from a cliff. Jackson was airlifted to Fairbanks Memorial Hospital (FMH). Shortly after midnight, he was received in the hospital's emergency room.

Jackson was examined by respondent John Power, M.D., one of two emergency room physicians on duty at the time. Dr. Power's examination revealed multiple lacerations and abrasions of the patient's face and scalp, multiple contusions and lacerations of the lumbar area, several broken vertebrae and gastric distension, suggesting possible internal injuries. Dr. Power ordered several tests, but did not order certain procedures that could have been used to ascertain whether there had been damage to the patient's kidneys. Jackson had, in fact, suffered damage to the renal arteries and veins which supply blood to and remove blood from the kidneys. This damage, undetected for approximately 9 to 10 hours after Jackson's arrival at FMH, ultimately caused Jackson to lose both of his kidneys.

### II

Jackson and his mother, Linda Estrada, (hereinafter referred to collectively as Jack-

son) filed suit. In their complaint they alleged negligence in the diagnosis, care and treatment Jackson received at FMH. Jackson moved for partial summary judgment seeking to hold FMH vicariously liable as a matter of law for the care rendered by Dr. Power. In support of his motion, Jackson advanced three separate theories: (1) enterprise liability; (2) apparent authority; and (3) non-delegable duty.

After briefing and argument, the superior court held, as a matter of law, that FMH could not be held liable under an enterprise liability theory, and that genuine issues of material fact precluded summary judgment on the two remaining theories.[1] We subsequently granted Jackson's petition for review of the court's ruling.

## III

[1] Initially, it is important to clarify the exact issue that we have been asked to resolve. Jackson has conceded, for purposes of this appeal, that Dr. Power was not an employee of FMH, but an independent contractor employed by respondent Emergency Room, Inc. (ERI), and that ERI and FMH are separate legal entities. Traditional rules of *respondeat superior* are, therefore, inapposite. Jackson also makes no claim that FMH was itself negligent in its selection, retention, or supervision of Dr. Power. Consequently, we have no occasion to consider the doctrine of corporate negligence.[2] Jackson asks us to resolve only whether a hospital should be vicariously liable, as a matter of public policy, for the negligence or malpractice[3] of an independent contractor/physician, committed while treating a patient in the hospital emergency room, under theories of (1) enterprise liability; (2) apparent authority; (3) non-delegable duty.

## IV

As previously noted, this case presents this court with an issue of first impression.[4]

[2] The generally accepted rule is that where an employment relationship exists between the physician and the hospital, the hospital will be liable, under the traditional rule of *respondeat superior*, for any negligence or malpractice which results in injury to a hospital patient. *E.g., Bing v. Thunig*, 2 N.Y.2d 656, 163 N.Y.S.2d 3, 11, 143 N.E.2d 3, 9 (N.Y.1957); *Weldon v. Seminole Municipal Hospital*, 709 P.2d 1058, 1059 (Okla.1985). Conversely, no liability attaches to the hospital when the physician is an independent contractor. *E.g. Greene v. Rogers*, 147 Ill.App.3d 100, 101 Ill.Dec. 543, 547, 498 N.E.2d 867, 871 (1986); *Hill v. St. Clare's Hosp.*, 67 N.Y.2d 72, 499 N.Y.S.2d 904, 908, 490 N.E.2d 823, 827 (1986). *See generally* Comment, *The Hospital-Physician Relationship: Hospital Responsibility for Malpractice of Phy-*

1. The superior court also rejected three motions for summary judgment by various respondents seeking to have Linda Estrada's claim against them dismissed on the ground that it was time barred by the statute of limitations. None of the respondents cross-petitioned for review of that issue.

2. The doctrine of corporate negligence holds that a hospital owes an independent duty to its patients to use reasonable care to insure that physicians granted hospital privileges are competent, and to supervise the medical treatment provided by members of its medical staff. *See Tucson Medical Center v. Misevich*, 113 Ariz. 34, 545 P.2d 958, 960 (1976); *Darling v. Charleston Community Mem. Hosp.*, 33 Ill.2d 326, 211 N.E.2d 253 (1965); *Pedroza v. Bryant*, 101 Wash.2d 226, 677 P.2d 166, 170 (1984); *Johnson v. Misericordia Community Hosp.*, 99 Wis.2d 708, 301 N.W.2d 156 (1981). *See generally*, Janulis & Hornstein, *Damned If You Do, Damned If You Don't: Hospitals' Liability for Physician Malpractice*, 64 Neb.L.Rev. 689, 702–08 (1985); Note, *Hospital Corporate Liability: An Effective Solution to Controlling Private Physician Incompetence*, 32 Rutgers L.J. 342, 360–72 (1979).

3. Jackson has yet to prove that any negligence or malpractice did in fact occur. In order to resolve the issue presented here, however, we must assume negligence. We, of course, express no opinion as to the actual merits of Jackson's claim.

4. In *Baker v. Werner*, 654 P.2d 263, 267 n. (Alaska 1982), Baker appealed the trial court's rejection of his theory of vicarious liability in a wrongful death action against a physician, hospital and attending nurse. Because we upheld the jury's finding that the defendants were not negligent, we did not reach the merits of the issue, "any theory of vicarious liability [being] irrelevant." *Id.*

*sicians*, 50 Wash.L.Rev. 385 (1975) (hereinafter "Comment, *Hospital Responsibility*").

Jackson concedes that Dr. Power was an independent contractor; however, he asserts that Alaska's law of *respondeat superior* mandates a result different than that which would be reached under the general rule.[5] Jackson argues that our decision in *Fruit v. Schreiner*, 502 P.2d 133 (Alaska 1972), establishes that the law of "vicarious legal responsibility" in Alaska is "enterprise liability." Thus, he contends, if the enterprise impacts society and the negligent act occurred during an activity performed for the benefit or in the interest of the enterprise, the enterprise is liable.

[3] Jackson's argument proves unpersuasive. First, Jackson's interpretation of *Fruit* is flawed. A close reading of that case shows that we did not view "enterprise liability" as a separate theory of liability or a distinct cause of action. Rather, enterprise liability was seen as one of two widely accepted theories used by courts to justify imposition of vicarious liability in an established employer/employee context. *Id.* at 138–39. As was noted in *Fruit*:

> [T]he "enterprise" theory ... finds liability whenever the enterprise of the employer would have benefited by the context of the act of the *employee* but for the unfortunate injury.
>
> ....
>
> The rule of *respondeat superior* however, ... is *limited* to requiring an enterprise to bear the loss incurred as a result of the *employee's* negligence. The acts of the *employee* need be so connected to his employment as to justify requiring that the employer bear that loss.

*Id.* at 140–41 (emphasis added) (footnotes omitted). *See generally* Morris, *Enterprise Liability and the Actuarial Process—the Insignificance of Foresight*, 70 Yale L.J. 554 (1961).

Additionally, our decisions since *Fruit* show that we have applied the theory of *respondeat superior* only in an employer/employee context, unless one of the well established exceptions to that rule exists. *See, Parker Drilling v. O'Neill*, 674 P.2d 770, 775 (Alaska 1983); *Williams v. Alyeska Pipeline Service Co.*, 650 P.2d 343, 349 (Alaska 1982); *Hammond v. Bechtel Inc.*, 606 P.2d 1269, 1273 (Alaska 1980); *Barton v. Lund*, 563 P.2d 875, 876 (Alaska 1977); *Luth v. Rogers & Babler Construction*, 507 P.2d 761, 763–64 (Alaska 1973). Jackson's theory presents no such exception.

Finally, the cases from other jurisdictions cited by Jackson provide little support for his theory; those cases deal only with theories of apparent agency or corporate negligence. Moreover, although at least two courts appear to have implicitly indicated a willingness to recognize a theory of enterprise liability, *see Alden v. Providence Hospital*, 382 F.2d 163, 166 (D.C. Cir.1967); *Adamski v. Tacoma General Hospital*, 20 Wash.App. 98, 579 P.2d 970, 977 & n. 5 (1978), to date, no court has explicitly embraced that concept.[6]

In short, Jackson's theory of enterprise liability is not yet the law in Alaska.

## V

Jackson next argues that the trial court erred in holding that genuine issues of material fact prevented it from granting summary judgment on his theory of apparent authority.

5. The trial court decided the issue of the applicability of enterprise liability as a matter of law. We scrutinize questions of law under a *de novo* or independent judgment standard of review. *Hicklin v. Orbeck*, 565 P.2d 159, 163 n. 6 (Alaska 1977), *rev'd on other grounds*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978). When reviewing a question of law, it is our "duty to adopt the rule of law that is most persuasive in light of precedent, reason and policy." *Guin v. Ha*, 591 P.2d 1281, 1284 n. 6 (Alaska 1979).

6. Some commentators have suggested an enterprise tort doctrine as a basis for imposing liability for any tort occurring as part of the hospital enterprise. *See* Southwick, *Hospital Liability: Two Theories Have Been Merged*, 4 J. Legal Med. 1, 3–5 (1983); Comment, *Hospital Responsibility*, *supra* at 418–19.

Although we have recognized the doctrine of apparent authority in other contexts, *see City of Delta Junction v. Mack Trucks*, 670 P.2d 1128, 1129–30 (Alaska 1983) (national distributor and local franchise); *Perkins v. Willacy*, 431 P.2d 141, 142 (Alaska 1967) (husband and wife), this is the first time we have been asked to apply this doctrine to a hospital-independent contractor/physician relationship.

Cases from other jurisdictions show a strong trend toward liability against hospitals that permit or encourage patients to believe that independent contractor/physicians are, in fact, authorized agents of the hospitals.[7] These courts have held hospitals vicariously liable under a doctrine labeled either "ostensible" or "apparent" agency or "agency by estoppel." *See Gorubiansky v. Emory University*, 156 Ga. App. 602, 275 S.E.2d 163, 168 (1981); *Paintsville Hospital v. Rose*, 683 S.W.2d 255, 257 (Ky.1985); *Mehlman v. Powell*, 378 A.2d 1121 (Md.1977); *Grewe v. Mt. Clemens General Hospital*, 404 Mich. 240, 273 N.W.2d 429, 432–33 (1978); *Arthur v. St. Peters Hospital*, 169 N.J.Super. 575, 405 A.2d 443 (1979); *Hannola v. City of Lakewood*, 68 Ohio App.2d 61, 426 N.E.2d 1187, 1192 (1980); *Weldon*, 709 P.2d at 1060; *Themins v. Emanuel Lutheran Charity Bd.*, 54 Or.App. 901, 637 P.2d 155, 158–59 (1982); *Adamski v. Tacoma General Hospital*, 20 Wash.App. 98, 579 P.2d 970, 977 (1978); *see generally* Janulis & Hornstein, *supra* at 696–702. Although courts and commentators often use these terms interchangeably, they are not theoretically identical.

[4] The "ostensible" or "apparent" agency theory is based on Section 429 of the Restatement (Second) of Torts (1965), which provides:

> One who employs an independent contractor to perform services for another which are accepted in the reasonable belief that the services are being rendered by the employer or by his servants, subject to liability for physical harm caused by the negligence of the contractor in supplying such services, to the same extent as though the employer were supplying them himself or by his servants.

Two factors are relevant to a finding of ostensible agency: (1) whether the patient looks to the institution, rather than to an individual physician, for care; and (2) whether the hospital "holds out" the physician as its employee. *Simmons v. St. Clair Memorial Hospital*, 332 Pa.Super. 444, 481 A.2d 870, 874 (1984); *see also Irving v. Doctors Hospital of Lake Worth*, 415 So.2d 55, 60–61 (Fla.App.1982); *Smith v. St. Francis Hospital*, 676 P.2d 279, 282 (Okla.App.1984).

[5] "Agency by estoppel," in contrast, is predicated on the arguably stricter standard of the Restatement (Second) of Agency § 267 (1958). Section 267 provides:

> One who represents that another is his servant or agent and thereby causes a third person justifiably to rely upon the care or skill of such apparent agent is subject to liability to the third person for harm caused by the lack of care or skill of the one appearing to be a servant or other agent as if he were such.

Under this theory, there must be actual reliance upon the representations of the principal by the person injured. *Mehlman*, 378 A.2d at 1123.

> Thus, theoretically, there need be no causal relationship between the principal's conduct and the plaintiff's reliance to warrant a conclusion of ostensible agency; such a causal relationship and such a change of position, however, are the essence of estoppel to deny agency.

Janulis & Hornstein, *supra* at 697.

[6] Jackson, in essence, asks us to adopt a rule of ostensible agency. FMH

7. The only exception to this modern trend of which we are aware is *Greene v. Rogers*, 147 Ill.App.3d 1009, 101 Ill.Dec. 543, 498 N.E.2d 867 (1986). In *Greene*, the court specifically refused to apply apparent agency to a hospital-emergency room doctor relationship because "[t]he absence of the power to control the decision-making of the emergency room physician demands that the independent relationship between hospital and emergency room physician be recognized." *Id.* 101 Ill.Dec. at 547, 498 N.E.2d at 871. We view *Greene* as an aberration dependent upon reasoning which is not particularly persuasive.

on the other hand, requests that we follow *Greene* and refuse to apply this doctrine in the hospital-physician context or, alternatively, that we adopt a rule which is essentially estoppel by agency. Although we find nothing antithetical about applying the doctrine of apparent authority to a hospital-independent contractor/physician relationship, we perceive no reason to adopt a special rule in this area. We believe that traditional rules of apparent authority provide sufficient guidelines.

In *City of Delta Junction*, we defined the doctrine of apparent authority in Alaska as follows:

> Appa[illegible]thority to do an act is create[illegible] to third persons by written or spoken word or any other conduct of the principal which, reasonably interpreted, causes the third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him.

670 P.2d at 1130 (quoting Restatement (Second) of Agency § 27, at 103 (1958)). We went on to emphasize that it is the *principal's* conduct that gives rise to his liability and not the conduct of the alleged agent; "one dealing with an alleged agent must prove that the principal was responsible for the appearance of authority, by doing something or permitting the alleged agent to do something that led others, including the plaintiff, to believe that the agent had the authority he purported to have." *Id.* (quoting W. Seavy, *Handbook of The Law of Agency* § 8, at 13 (1964)).

Relying on *City of Delta Junction*, the trial court held that existing factual disputes required Jackson to submit his apparent authority theory to the jury. When reviewing the denial of a motion for summary judgment, we must determine whether genuine issues of material fact exist, and if not, whether the moving party is entitled to judgment as a matter of law. Alaska R.Civ.P. 56(c); *Shatting v. Dillingham City School District*, 617 P.2d 9, 11 (Alaska 1980). In reaching this decision we must draw all reasonable inferences in favor of the non-moving party and against the movant. *Id.*

Drawing all reasonable inferences in the light most favorable to FMH, the record shows the following: at the time of Jackson's accident, FMH was the only civilian hospital north of Anchorage providing emergency room services in Alaska. Two road signs in Fairbanks note the location of the hospital. However, neither of these signs specifically refer to the existence of emergency room services. The signs were not constructed or situated by FMH. In fact, FMH does no advertising at all.

From the time of its establishment in 1972, FMH has never staffed its emergency room with its own physician employees, but has always relied upon local physicians to provide that service. Prior to the formation of ERI in 1977, FMH's emergency room was serviced by three local clinics, each providing one physician on a nightly basis. After 1977, ERI provided one physician on a nightly basis who worked a 14-hour graveyard shift (6:00 p.m. to 8:00 a.m.).[8] While on duty in the emergency room, the ERI physician was "in charge" and no FMH personnel were responsible for either scheduling or monitoring the emergency room physicians. No contractual arrangement existed between FMH and ERI for the provision of emergency room physicians.

In apparent non-life threatening situations the first person an incoming patient sees at the emergency room is the admissions clerk. Immediately adjacent to the clerk's desk is a sign which indicated that physicians from ERI were working in the emergency room. Although the exact state of Jackson's awareness is not entirely clear, there is evidence suggesting that he was admitted in a conscious state.[9] Nei-

8. The clinics continued to provide an additional physician for the graveyard shift on a rotation basis.

9. Jackson testified at his deposition that he recalled being placed in the helicopter but had no recollection of being removed from it, being taken to FMH, or of meeting the doctor who treated him. On the other hand, the medical records indicate that Jackson appeared to be neurologically stable, completely oriented and gave no indication that he was unconscious or in distress. Moreover, at his deposition, Dr.

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ther Jackson nor his mother selected FMH as the place of treatment nor Dr. Power as Jackson's physician.

[7, 8] From the above, a jury could conclude that FMH held itself out as providing emergency care services to the public. A jury could also find that Jackson reasonably believed that Dr. Power was employed by the hospital to deliver emergency room service. It is also possible, however, that a jury could find to the contrary.[10]

Unless the evidence allows but one inference, the question of apparent authority is one of fact for the jury. *City of Delta Junction*, 670 P.2d at 1131; *Themins*, 637 P.2d at 159; *Adamski*, 579 P.2d at 978. In the case at bar, the record is not susceptible to a single inference. Thus, the trial court properly denied summary judgment on this issue.

## VI

Jackson's final point is that the trial court erred in refusing to rule, as a matter of law, that FMH, as a general acute care hospital, has a non-delegable duty to provide non-negligent physician care in its emergency room. In essence, Jackson's position is that when a hospital undertakes to operate an emergency room as an integral part of its health care enterprise, public policy dictates that it not be allowed to insulate itself from liability by shunting that responsibility onto another.

FMH, on the other hand, argues that a hospital does not have a non-delegable duty to guarantee safe treatment in its emergency room. Physicians, not hospitals, FMH asserts, have a duty to practice medicine non-negligently. Thus, according to FMH, a hospital cannot be held to have delega away a duty it never had.

The trial court ruled that "[t]here can be a non-delegable duty if there is no c tractual relationship." Since it was uncle from the evidence whether or not th was any contractual relationship betwe ERI and FMH, the court denied Jackso motion for summary judgment. Initia we note the trial court's erroneous char terization of the issue. By holding t there can be no "non-delegable duty there is no contractual relationship," t court confused the question of the exi ence of a duty with the issue of whether duty is non-delegable. The flaw in t reasoning is self-evident. As FMH poir out, a party cannot be held to have deleg ed away a duty it never had. Thus, t threshold question is whether FMH had duty to provide emergency room ca Only if it did, is it necessary to determi what that duty entailed.

[9] FMH is licensed as a "general acu care hospital."[11] As such, it is required comply with state regulations designed promote "safe and adequate treatment individuals in hospitals in the interest public health, safety and welfare." AS 1 20.060. These regulations provided, at t time of Jackson's accident, that an acu care hospital *shall* "insure that a physici is available to respond to an emergency all times." Former 7 AAC 12.110(c)(2) Thus, at a minimum, the law imposed duty on FMH to provide emergency ca physicians on a 24-hour basis.

FMH, however, voluntarily assumed much broader duty. At the time of Jac son's accident, FMH was accredited by t

Power testified that "Jackson was talking" and "completely oriented."

10. In this regard, we agree with the weight of authority that application of apparent authority in the hospital/emergency room physician situation does not require an express representation to the patient that the treating physician is an employee of the hospital. Nor is direct testimony as to reliance required absent evidence that the patient knew or should have known that the treating physician was not a hospital employee when the treatment was rendered. *See* cases cited *supra* p. 1380.

11. A general acute care hospital is a "facil which provides hospitalization for inpatie medical care of acute illness or injury and c stetric care." 7 AAC 12.100.

12. In 1983, this regulation was amended to p vide that "[a] general acute care hospital *m* provide ... [among other services not relev here] emergency care services." 7 AAC 12.: (emphasis added).

Joint Committee on the Accreditation of Hospitals (JCAH).[13] In order to receive and maintain accreditation,[14] FMH had to comply with the JCAH's standards promulgated in the *Accreditations Manual For Hospitals, Emergency Services.* Standard I mandates that all accredited hospitals implement a well defined plan for emergency care based on community need and the capability of the hospital. The JCAH standards also mandate, among other things, that: (1) FMH's emergency room be directed by a physician member of the active medical staff (Standard II); (2) FMH's emergency room be integrated with other units and departments of the hospital (Standard III); (3) that emergency care be guided by written policies and procedures; and (4) that the quality of care be continually reviewed, evaluated and assured through establishment of quality control mechanisms (Standard V).

Additionally, FMH's own bylaws provided for the establishment and maintenance of an emergency room. Article X, section 1(d)(1)(b) of FMH's Medical Bylaws provides for an emergency room as one of the services of the hospital. Article XI, section 3(e) provides for the creation of an emergency room committee which is required among other things to:

(a) formulate rules and regulations for the continuous coverage of the emergency room; and

(b) supervise the clinical work in that department.

[10] Based upon the above, it cannot seriously be questioned that FMH had a duty to provide emergency room services and that part of that duty was to provide physician care in its emergency room. Having so determined, we must next ascertain whether FMH's duty to provide physician care in the emergency room is non-delegable. That is, we must determine whether, having assumed the duty to staff an emergency room, FMH should be allowed to avoid responsibility for the care rendered therein by claiming that the physicians it provides are not its employees. We conclude that it cannot.

[11] A non-delegable duty is an established exception to the rule that an employer is not liable for the negligence of an independent contractor. W. Keeton, D. Dobbs, R. Keeton, D. Owen, *Prosser and Keeton on The Law of Torts*, § 71 at 511-12 (5th ed. 1984). According to the late Professor Prosser, such a duty "may be imposed by statute, by contract, by franchise or by charter, or by the common law." *Id.* Among the duties considered non-delegable are the following:

> [T]he duty of a carrier to transport its passengers in safety, of a railroad to fence its tracks properly or to maintain safe crossings, and of a municipality to keep its streets in repair; the duty to afford lateral support to adjoining land, to refrain from obstructing or endangering the public highway, to keep premises reasonably safe for business visitors, to provide employees with a safe place to work; the duty of a landlord to maintain common passageways, to make repairs according to covenant, or to use proper

13. The JCAH was formed in the early 1950's by the American College of Surgeons, the American College of Physicians, the American Hospital Association, and the American Medical Association. Its purpose was to establish minimum hospital standards for patient care. For details of the program, see Dornette, *The Legal Impact on Voluntary Standards in Civil Actions Against the Health Care Provider*, N.Y.L.Sch.L.Rev. 925, 925-28 (1977); Holbrook & Dunn, *Medical Malpractice Litigation: The Discoverability and Use of Hospitals' Quality Assurance Committee Records*, 16 Washburn L.J. 54, 57 (1976).

14. Hospitals voluntarily seek accreditation for financial and professional prestige reasons. First, accreditation by the JCAH means the hospital qualifies to participate in the federal Medicare and Medicaid programs. Accreditation by JCAH is deemed substantial compliance with the Medicare conditions of participation. 42 U.S.C. § 1395bb (1982); 42 C.F.R. § 405.1901(d) (1986). *See generally,* Dornette, *supra* n. 13 at 927, Holbrook & Dunn, *supra* n. 13, at 58. Second, JCAH accreditation is often a prerequisite to obtaining approval of internship and residency programs. *See generally, American Medical Association Directory of Accredited Residencies* J (1975-76), *quoted in* Dornette, *supra* n. 13, at 928. Finally, the institution's reputation and standing in the community is affected by whether it receives JCAH accreditation. *See* Holbrook & Dunn, *supra* n. 13.

care in making them, and no doubt others.

*Id.* (footnotes omitted). However:

> It is difficult to suggest any criterion by which the non-delegable character of such duties may be determined, other than *the conclusion of the courts that the responsibility is so important to the community that the employer should not be permitted to transfer it to another.*

*Id.* at 512 (emphasis added). *Accord, Alaska Airlines v. Sweat*, 568 P.2d 916, 925–26 (Alaska 1977).

Our principal decision on non-delegable duty is *Swe[illegible]*, 568 P.2d 916. In that case, Sweat sued Alaska Airlines for injuries sustained in an air crash while traveling aboard a Chitina Air Service plane. *Id.* at 922. Chitina had been engaged under a contract with Alaska Airlines to service a portion of Alaska Airlines' regularly scheduled routes. *Id.* at 921, 922. Alaska Airlines contended that Chitina was an independent contractor and therefore it was not liable for Chitina's negligence. *Id.* at 923. The trial court found Alaska Airlines vicariously liable based on Restatement (Second) of Torts § 428. *Id.* On appeal, we affirmed the trial court's decision on the alternative ground that Alaska Airlines owed a common law nondelegable duty of safety to its passengers. *Id.* at 925. We reasoned:

> We believe that the responsibility of a common carrier for the safety of its passengers is so important that the carrier should not be permitted to transfer it to another. A scheduled common carrier such as Alaska is given a monopoly or semi-monopoly primarily for the purpose of furnishing safe and reliable scheduled air transportation. It should not be permitted to barter away its responsibility to the traveling public by means of contracts with other carriers. If this were permissible, an air carrier could avoid liability by engaging in independent contracts for furnishing food, maintenance of its planes and conceivably even for supplying crews. Regardless of whether such contracts may be permitted by regulatory authorities, the traveling public is entitled to look for protection to the certificated carrier responsible for the scheduled route.

*Id.* at 926.

We have little trouble concluding that patients, such as Jackson, receiving treatment at a hospital emergency room are as deserving of protection as the airline passengers in *Sweat*. Likewise, the importance to the community of a hospital's duty to provide emergency room physicians [illegible] vals the importance of the common-carriers' duty for the safety of its passengers. We also find a close parallel between the regulatory scheme of airlines and hospitals. Undoubtedly, the operation of a hospital is one of the most regulated activities in the state. Besides the license,[15] and certificate of need,[16] requirements mentioned above, a hospital must comply with state regulations promulgated to control its activities. AS 18.20.070, 7 AAC 12.610; adopt a state approved risk management program "to minimize the risk of injury to patients," AS 18.20.075; and undergo "annual inspections and investigations" of its facilities, AS 18.20.080. Failure to comply with these statutory requirements can lead to suspension or revocation of the hospital's license. AS 18.20.050.

The hospital regulatory scheme and the purpose underlying it (to "provide for the development, establishment, and enforcement of standards for the care and treatment of hospital patients that promote safe and adequate treatment" AS 18.20.010, along with the statutory definition of a hospital, (an institution devoted primarily to providing diagnosis, treatment or care for individuals, AS 18.20.130(3)), manifests the legislature's recognition that it is the hospital as an institution which bears ultimate responsibility for complying with the mandates of the law. It is the hospital that is required to ensure compliance with the regulations and thus, relevant to the instant case, it is the hospital that bears final

15. *See* AS 18.20.020.

16. *See* AS 18.07.031.

countability for the provision of physicians for emergency room care. We, therefore, hold that a general acute care hospital's duty to provide physicians for emergency room care is non-delegable. Thus, a hospital such as FMH may not shield itself from liability by claiming that it is not responsible for the results of negligently performed health care when the law imposes a duty on the hospital to provide that health care.

We are persuaded that the circumstances under which emergency room care is provided in a modern hospital mandates the rule we adopt today. Not only is this rule consonant with the public perception of the hospital as a multifaceted health care facility responsible for the quality of medical care and treatment rendered, it also treats tort liability in the medical arena in a manner that is consistent with the commercialization of American medicine. Finally, we simply cannot fathom why liability should depend upon the technical employment status of the emergency room physician who treats the patient. It is the hospital's duty to provide the physician, which it may do through any means at its disposal. The means employed, however, will not change the fact that the hospital will be responsible for the care rendered by physicians it has a duty to provide.

[12] This holding is necessarily limited. We do not change the standard of care with which a physician must comply, nor do we extend the duty which we find non-delegable beyond its natural scope. Our holding does not extend to situations where the patient is treated by his or her own doctor in an emergency room provided for the convenience of the doctor. Such situations are beyond the scope of the duty assumed by an acute care hospital. Rather our holding is limited to those situations where a patient comes to the hospital, as an institution, seeking emergency room services and is treated by a physician provided by the hospital. In such situations, the hospital shall be vicariously liable for damages proximately caused by a physician's negligence or malpractice.

[13] In the instant case, Jackson came to FMH as an institution seeking emergency room services. Dr. Power was a physician FMH had a non-delegable duty to provide. FMH is, therefore, vicariously liable as a matter of law for any negligence or malpractice that Dr. Power may have committed. Accordingly, the trial court's ruling on this issue must be reversed. Jackson is entitled to partial summary judgment on the issue of FMH's vicarious liability.

## VII

For the reasons outlined above, the trial court's denial of summary judgment on Jackson's theories of enterprise liability and apparent authority are AFFIRMED. However because we hold that FMH has a non-delegable duty to provide non-negligent physician care in its emergency room, the trial court's denial of summary judgment on the theory of non-delegable duty, is REVERSED and REMANDED with instructions to enter partial summary judgment on the issue of FMH vicarious liability in favor of Jackson.

AFFIRMED in part; REVERSED in part; and REMANDED.

MOORE, J., not participating.

SB461

ROBERT ALBERTS, M.D., M.P.H., A.P.C.
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(907) 561-6600

April 21, 1988

RECEIVED
APR 25 1987

The Honorable Dave Donley
Alaska House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Representative Donley,

I would like to thank you for allowing me some time in your heavy schedule last week. It was enlightening to listen to your concerns about the effect of S.B. 461 if this bill were to be enacted. One problem professional people have is that they often become myopic in the way they look at the world and don't understand why other people don't see the world the same way. Physicians are no exception.

Unfortunately a certain segment of medicine is becoming commercialized, with the purpose of providing a financial return for stock holders. I understand your concern about that industry not being willing to accept liability. We cannot have it both ways. My concern however is what the effect of not passing S.B. 461 (if needed in an amended form) would have on the nonprofit and small community hospitals. Making these hospitals liable when no malpractice can be traced to the institution or the employees would be like suing the court when a trial lawyer were to make a serious mistake while pleading his case in the court room.

Although the relationship between the private physician and the traditional community hospital such as Providence Hospital is unique the comparison with the relationship between the trail lawyer and the court may help to clarify my concern.

If S.B. 461 were not passed into law I am afraid that the health care of our patients would suffer by creating an adversary climate between the physicians and the hospitals on which we depend for inpatient care. Already I have observed the disastrous impact on the trust relationship between the two parties when Providence Hospital, being vicariously sued, in turn was advised to cross-claim one of its physicians. The quality of health care depends to a great extent on a close working relationship among all the health care providers. For the sake of our patients, we cannot afford to have this relationship further disturbed.

I foresee still another problem. The increased exposure as the deep pocket could effectively put the nonprofit and community hospitals out of business due to further significant increases in the already skyrocketing insurance rates.

For these reasons I strongly urge you to bring S.B. 461 out of committee for consideration by the full House.

Sincerely,

Robert Alberts, M.D., M.P.H.

RA/dp

# ALASKA STATE LEGISLATURE

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## Senator Lloyd Jones

MEMORANDUM



TO: Representative Dave Donley, Chair
House Labor & Commerce Committee

FROM: Senator Lloyd Jones

RE: Senate Bill 461

---

I respectfully request that Senate Bill 461 be scheduled for a hearing.

So I may contact the people who would like to testify on this important piece of legislation, could you have staff contact Jim Lottsfeldt (465-3743) of my office if you plan on hearing this bill.

Lastly, Jerry Reinwand and David Crosby are representing one of the groups (Alaska Health Association) who are supporting this bill. Staff may wish to contact them for back-up or questions.

Thank you.

L&C / HES / JUD

# SB 461 AND THE ALASKA SUPREME COURT OPINION IN JACKSON V. POWER

## INTRODUCTION

In 1981, 16 year old Brett Jackson fell 40 feet from a cliff and suffered severe injuries. He was rushed to Fairbanks Memorial Hospital. When he finally regained consciousness he learned he had lost both kidneys during his stay in the hospital. He also learned that the loss of his kidneys was probably the result of failure of the emergency room physician to order certain kidney function tests.

Brett Jackson was in for another surprise when he decided to file suit against the hospital for that emergency room negligence. He learned that the hospital denied any responsibility for the activities of the emergency room. He was referred to a corporation he had never heard of called Emergency Room, Inc., and was told that if he was to have any recovery it must be against that unknown corporation.

In a unanimous decision, the Alaska Supreme Court, in Jackson, et al., v. Power, et al., 743 P.2d 1376 (Alaska 1987) rectified this gross inequity. The court held that a hospital--required by law to have an emergency room--could not hide behind a corporation like Emergency Room, Inc. when a hospital patient is injured in the emergency department.

SB 461 would reverse that Supreme Court ruling. It would allow hospitals again to attempt to "franchise" their

operations and hide behind those franchises when negligence occurs at the hospital. SB 461 would, in fact, encourage hospitals to create new "franchises" to further insulate the hospital from liability for negligent acts occurring under the hospital's very roof.

## THE PUBLIC POLICY OF THE STATE OF ALASKA MUST BE TO PROTECT THE SAFETY OF HOSPITAL PATIENTS

The policy issue presented by SB 461 is whether the Alaska legislature will continue, as it has in previous legislation regarding hospitals, to consider the safety of hospital patients to be of highest priority.

Alaska's earliest hospital licensing laws reflect the legislative policy of "promoting safe and adequate treatment of individuals in hospitals in the interest of public health, safety and welfare." (See AS 18.20.060, enacted in 1949). The legislature has continually reaffirmed that policy. In 1976, the requirement for an internal risk management program was instituted. (AS 18.20.075). Important amendments to the certificate of need program were adopted in 1983. The rule in Jackson v. Power merely reiterates that important commitment to the public health and safety. The rule recognizes that when hospitals are finally held accountable for activities occurring under the hospital's own roof, a hospital will have full incentive to take whatever measures are necessary to ensure that patients are not injured during their hospital stay.

The Alaska legislature, by its certificate of need

program (AS 18.07.031), has given hospitals special protection from competition in order to allow hospitals to devote energy to providing safe medical treatment to patients, rather than engaging in "bidding wars" and other competitive activities. In fact, this statute has been used in legal proceedings to prevent the establishment of an additional hospital in Anchorage.

However, in exchange for this protection from competition, Alaska law has required semi-monopoly hospitals to provide certain basic services to the public, including emergency room treatment, radiology, pathology, anesthesiology and the like. In Jackson v. Power, the Alaska Supreme Court merely reasoned that if a hospital is granted special legislative treatment it must bear full responsibility for the operations carried out under that special protective legislation.

The civil liability rule adopted by the Alaska Supreme Court in its unanimous decision is not revolutionary. The same rule has been applied for decades to numerous types of quasi-public businesses which have received special protections from the government in order to further the public good. In Alaska, airlines which are granted scheduled routes may not insulate themselves from liability for operation of those routes by franchising those operations to other airlines. Common carriers such as trucking lines, bus lines and railroad carriers who are given special route priorities by the government may not delegate their operations to "independent contractors" and hide from liability when those contractors are negligent.

If SB 461 becomes law, the Alaska legislature's commitment to quality hospital care will be reversed. Hospitals will be encouraged to "franchise" even more of their vital public services in an attempt to avoid liability for injuries to hospital patients. The passage of SB 461 and the overruling of Jackson v. Power would send a message to the public, and to hospital administrators, that the safety of hospital patients is no longer a high priority in the State of Alaska.

## THERE IS NO EVIDENCE THAT INSURANCE RATES WILL INCREASE AS A RESULT OF THE RULE IN JACKSON V. POWER

Although claims have been made that the Supreme Court ruling will drastically increase hospital insurance premiums, no evidence has been presented to support those claims. The same contention was made before the Alaska Supreme Court, again with no evidence to support that argument. In fact, one commentator who has addressed the issue has suggested that "if the hospital, all its employees, and all physicians admitted to membership on the medical staff" are "insured by the same insurance carrier, . . . the costs and the excessive length of the litigation process" would be greatly reduced. Southwick 4, Journal of Legal Medicine, 1 (1983).

The costs to the consumer of medical treatment should not increase under the Jackson v. Power rule. If, for example, a "franchised" emergency room is presently carrying adequate insurance, then the burden of paying the costs of that insurance will merely shift from the "franchise" to the hospital. However,

the total overall insurance costs for the emergency room operation, and thus the costs to the public, should remain the same. These costs may even be reduced if, in carrying out its obligation under Jackson v. Power, a hospital undertakes a greater role in requiring quality medical treatment in the emergency room, and therefor reduces the risk factor for those operations. The Jackson v. Power rule merely places the primary responsibility for providing that insurance coverage upon the hospital, rather than leaving that important decision to a less regulated franchise.

THE JACKSON V. POWER RULE AND RURAL HOSPITALS

The Jackson v. Power rule applies to those services which a hospital is required to provide to the public by law, by its own national accreditation process and by its own bylaws. If a rural hospital is not required by law, accreditation, or its own bylaws to provide such services, then the reasoning in Jackson v. Power may not apply to that rural hospital. If, on the other hand, a rural hospital is required to provide such services, the sound public policy reasoning behind the rule should apply to that hospital. Safe, quality health care is just as important for the rural residents of this state as it is for urban residents.

CONCLUSION

In mind's dim memory are the days when hospitals served merely as sanitary waysides where individual physicians practiced their professions. The modern day hospital is a fully-integrated

commercial enterprise which provides essential services to the public. In Jackson v. Power the Alaska Supreme Court recognized this modern day fact. The passage of SB 461 would result in a step backward in time, to the detriment of the citizens of our state.

# 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

House L&C:

May 5, 1988

May 6, 1988

(7)

# HOUSE COMMITTEE REPORT

Date referred: 4/15/88 FURTHER REFERRALS: Finance

DATE: 5/6/88

The Labor & Commerce Committee has considered CSSB 471(Fin)am

"An Act establishing a program in the Alaska Industrial Development and Export Authority to guarantee business loans, and limiting the Authority's ability to issue bonds; and providing for an effective date."

**RECOMMENDS:**

[X] replace with HCS CSSB 471 (L+C) [X] the same title
[ ] attached amendment(s) [ ] a new title

[X] 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
[ ] zero fiscal note
[ ] zero with analysis
[X] same as previous fiscal note published 4/8/88
[ ] same as previous zero fiscal note published _____

**SIGNING DO PASS:**

Cliff Davidson

**SIGNING OTHER RECOMMENDATIONS:**

(NO REC)

Chairman's signature

5-1796Z
Chenoweth
5/5/88

Original sponsors: Halford, Faiks, Uehling, et al.

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 471 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act establishing a program in the Alaska Industrial Development and Export authority to guarantee business loans, and limiting the Authority's ability to issue bonds; and providing for an effective date."

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

* Section 1. AS 44.88.090 is amended by adding a new subsection to read:

(i) After January 1, 1990, the authority may not issue bonds, other than refunding bonds, without securing the prior approval of the legislature.

* Sec. 2. AS 44.88 is amended by adding new sections to read:

ARTICLE 6A. BUSINESS ASSISTANCE PROGRAM.

Sec. 44.88.500. BUSINESS ASSISTANCE FUND. (a) The business assistance fund is established in the authority from money in the authority's reserves designated by the authority for the purpose. Subject to the requirements of AS 44.88.500 - 44.88.599, the authority may use money in the fund

(1) to guarantee new loans; and

(2) to guarantee loans made to refinance existing loans.

(b) The holder of a debt instrument for a loan guaranteed by the authority does not have recourse to the assets of the authority beyond those designated by the authority from its reserves for the purpose.

Sec. 44.88.505. QUALIFICATIONS OF [illegible]

under AS 44.88.500(a)(1).

(b) The authority may establish additional applicant qualifications by regulation. These qualifications may vary depending upon the type of business the applicant is engaged in.

Sec. 44.88.510. APPLICATION FOR NEW LOAN GUARANTEE. An applicant for a new loan guarantee shall provide information that the authority may require by regulation. The authority may require submission of an economic benefit analysis prepared by a person acceptable to the authority.

Sec. 44.88.515. QUALIFICATIONS OF APPLICANT FOR DEBT REFINANCING GUARANTEE. A business enterprise may apply under AS 44.88.500(a)(2) to guarantee the refinancing of existing debt.

Sec. 44.88.520 APPLICATION FOR DEBT REFINANCING GUARANTEE. An applicant for a debt refinancing guarantee shall provide the information that the authority may require by regulation.

Sec. 44.88.525. CONDITIONS OF DEBT REFINANCING GUARANTEE. The authority may not guarantee refinanced debt

(1) unless the refinancing

(A) is necessary to extend substantial debt payments over a longer period of time, thereby improving the applicant's net cash flow and working capital position consistent with the useful life of the assets being refinanced;

(B) assists with short-term debt or cash expenditures when lenders will not extend reasonable longer terms to the applicant; and

(C) creates additional economic opportunity or improves the viability of the borrower rather than just reducing the liability of the lender; or

permanent loan subsequent to an interim loan for financing construction of the project.

Sec. 44.88.530. APPLICABILITY OF PROVISIONS. AS 44.88.535 - 44.88.560 apply to

(1) new loan guarantees under AS 44.88.500(a)(1); and

(2) debt refinancing guarantees under AS 44.88.500(a)(2).

Sec. 44.88.535. CONDITIONS OF LOAN GUARANTEE. (a) The authority may guarantee a loan under AS 44.88.500 - 44.88.599 if the

(1) loan is commercially reasonable, contains amortization provisions satisfactory to the authority, is secured by adequate collateral, and the net cash flow from the borrower provides adequate coverage for the debt service on the loan;

(2) term of the loan does not exceed 20 years;

(3) loan is originated with and serviced by a state chartered or federally chartered financial institution;

(4) portion of the loan not guaranteed by the authority is held by the originating financial institution or another financial institution approved by the authority;

(5) loan is made to a business with a majority interest held by state residents; and

(6) loan guarantee provides a benefit to the borrower.

(b) The authority may provide a guarantee from the fund for up to 70 percent of a loan that qualifies under AS 44.88.500 - 44.88.599. The ratio of the guarantee to the outstanding principal of the loan may not increase over the term of the loan.

(c) The authority may not guarantee the payment of interest on the guaranteed portion of a loan.

Sec. 44.88.540. LIMITATIONS OF GUARANTEES FROM THE FUND. The

(1) a total of more than $50,000,000 of loans;

(2) more than $25,000,000 of loans in which the amount of the loan guarantee exceeds $500,000.

Sec. 44.88.545. LIMITATIONS OF GUARANTEES WITH RESPECT TO BORROWERS. The authority may not guarantee

(1) a loan of more than $1,000,000;

(2) loans to an individual borrower that cumulatively exceed $1,000,000 of indebtedness.

Sec. 44.88.550. INTEREST ON GUARANTEED LOAN. The maximum interest rate on a loan guaranteed by the authority is

(1) for a loan guarantee that exceeds 65 percent of the loan, one and one-half percentage points above the prime rate on the day the loan guarantee is made; and

(2) for a loan guarantee that is equal to or less than 65 percent of the loan, two and three-quarters percentage points above the prime rate on the day the loan guarantee is made.

Sec. 44.88.555. SERVICING OF GUARANTEED LOANS. (a) The financial institution that holds a loan guaranteed by the authority under AS 44.88.500 - 44.88.599 shall

(1) service the loan;

(2) exercise diligence in collecting amounts due under the loan; and

(3) comply with all requirements of the loan guarantee agreement.

(b) Amounts received toward satisfaction of a default on a loan guaranteed under AS 44.88.500 - 44.88.599 shall be allocated between the lender and the fund according to the guaranteed percentage of the loan until the principal balance has been repaid.

(1) adopt regulations to implement AS 44.88.500 - 44.88.-599;

(2) establish terms and conditions for loan guarantees and refinancing agreements subject to the requirements of AS 44.88.500 - 44.88.599;

(3) make and execute contracts and other instruments to implement AS 44.88.500 - 44.88.599;

(4) charge one percent of the amount guaranteed as a one time fee for the service it provides under AS 44.88.500 - 44.88.599;

(5) acquire real or personal property by purchase, transfer, or foreclosure when the acquisition is necessary to protect an interest in the fund; and

(6) exercise any other power necessary to implement AS 44.-88.500 - 44.88.599.

Sec. 44.88.570. DISTRIBUTION OF LOANS. The authority shall distribute guarantees of new loans and guarantees of loans made to refinance existing loans under AS 44.88.500 - 44.88.599 to all regions of the state in an equitable manner.

Sec. 44.88.599. DEFINITIONS. In AS 44.88.500 - 44.88.599

(1) "fund" means the business assistance fund established under AS 44.88.500;

(2) "prime rate" means the lowest money center prime rate of interest that is published in the Wall Street Journal.

* Sec. 3. PROCEDURES GOVERNING PROGRAM REVIEW. (a) AS 44.66.050 and 44.66.060 apply to AS 44.88.500 - 44.88.599 (Business Assistance Program of the Alaska Industrial Development and Export Authority).

(b) The Second Session of the Sixteenth Alaska State Legislature shall conduct the legislative oversight proceedings [illegible]

* Sec. 4. AS 44.88.500 - 44.88.599 are repealed July 1, 1991.

* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSSB 471 (Fin)
PUBLISH DATE: SENATE 4/8/88

# FISCAL NOTE

REQUEST:

Revision Date:
Title: Act establishing a program to guarantee business loans
Sponsor:
Requestor: Senate Finance Committee

Agency Affected: Dept. of Commerce
BRU: & Economic Development
Components: Alaska Industrial Development Authority

**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 | 25 million | 0 | 0 | 0 | 0 | 0 |
| REVENUE | | | | | | |

**FUNDING:** (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | 25 million | 0 | 0 | 0 | 0 | 0 |
| TOTAL | | | | | | |

**POSITIONS:**

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

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

The operating cost will be absorbed by the existing authority budget. The $25 million represents funds that would be appropriated from existing authority funds to the Business Assistance Fund.

Prepared by: Bert Wagnon, Executive Director
Phone: 274-1651
Division: Alaska Industrial Development Authority
Date: 4-7-88

Approved by Commissioner:
Date:
Agency: J. Anthony Smith, Commissioner
Dept. of Commerce & Economic Development

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

page ___ of ___

# STATE OF ALASKA
# THE LEGISLATURE

## LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM April 7, 1988

SUBJECT: Draft CSSB 471 (Finance)

TO: Senator Rick Halford

FROM: Jack Chenoweth
Legislative Counsel

I have redrafted the legislation based on yesterday's discussions.

As redrafted, the business assistance program is intended as a source of business loan guarantees and would not serve (as indicated in earlier drafts) as an independent source of money for refinancing existing loans.

Proposed AS 44.88.500(a) establishes the business assistance fund. The purpose of the fund is to serve as a source of (1) guarantees of new loans and (2) guarantees of loans used to refinance existing loans. Unlike earlier versions, proposed subsection (a) limits the source of money for the fund to the Industrial Development and Export Authority's own reserves; I have, therefore, abandoned the "appropriation" language of earlier versions and substituted "money in the reserves designated by the authority for the purpose." Subsection (b) of AS 44.88.500 is new: as suggested by Bert Wagnon, it limits the recourse of holders of debt instruments to the reserves designated by the Authority for inclusion in the fund.

Proposed AS 44.88.505 and 44.88.510 are specifically applicable to new loan guarantees. These provisions follow similar provisions of the earlier draft.

Proposed AS 44.88.515, 44.88.520, and 44.88.525 are specifically applicable to debt refinancing guarantees. The first two sections follow earlier versions, with changes as were discussed yesterday. Note especially AS 44.88.525: it is a condition of obtaining a debt refinancing guarantee

that the applicant meet all of the conditions of paragraph (1)(A) - (C) or the condition of paragraph (2).

Proposed AS 44.88.530 - 44.88.560 apply to all loan guarantees to be considered for support from the fund. To clarify, I have included a new section, AS 44.88.530, that defines the applicability of those sections.

In proposed AS 44.88.535, I have made the revision requested in (b): a guarantee may not exceed 75 percent.

In proposed AS 44.88.550, I have made the related revisions, adjusting the interest rate payment break to 65 percent.

Proposed AS 44.88.555 is new. Subsection (a) is intended to relate the obligations of the participating financial institution in servicing the loan, aggressively collecting amounts due, and complying with the provisions of any loan guarantee agreement. The change of the first word of subsection (b) from "payments" to "amounts" follows the suggestion of Mr. Wagnon.

Proposed AS 44.88.560 carries forward the substance of an earlier provision. I have made adjustments, omitting reference to "designating agents and delegating powers" as unnecessary and adding a provision, referred to by Mr. Wagnon, authorizing the Authority to "charge fees for services [the Authority] provides."

Proposed AS 44.88.599 and bill sections 2, 3, and 4 are unchanged from the earlier draft.

Please contact me if this bill draft or memorandum prompts questions.

Thank you for the opportunity to sit with you, Commissioner Smith, Director Wagnon, and your staff in the analysis and revision of the committee substitute.

Enclosure

JBC:bb
b4/104

# Senator Rick Halford

Senate District 1
Chugiak, Eagle River, East Anchorage, Fort Richardson

Senate Finance Committee
Co-Chairman


April 21, 1988

MEMORANDUM

TO: Representative Dave Donley, Chairman
House Labor and Commerce Committee

FROM: Senator Rick Halford, Co-Chairman
Senate Finance Committee

Rick Halford

SUBJECT: Senate Bill 471 - AIDEA Loan Guarantee and Debt Refinancing

The committee substitute before your committee is a result of extensive work in the Economic Recovery Committee and represents comments received from committee members, the Alaska Industrial Development Authority, bankers, and the Small Business Administration.

The main differences between the original bill and the Finance Committee Substitute amended by the Senate are as follows:

* The bill allows AIDEA to guarantee up to 70% of new loans made by financial institutions and to guarantee loans up to 70% made to refinance existing loans.

* The bill restricts recourse to assets designated by the authority for the purpose in order to make it clear to the bond market that AIDEA's other assets are protected.

* It sets a cap on the total amount of loan funds that can be guaranteed by AIDEA at $50 million. Half of the cap is reserved for loan guarantees and refinancing of debt under $500,000.

* The bill also sets a limit on the amount any one individual can receive at $1 million.

* The bill has a sunset date of July 1, 1990 so the Legislature can review the program and determine how well it is working.


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* It stipulates that a loan guarantee has to provide a benefit to the borrower - not just the financial institution.

* It calls for a regional distribution for the guarantees.

* The bill allows AIDEA to charge 1% of the amount guaranteed as a one time service fee.

* After 1990 the bill restricts the Authority's ability to issue bonds without prior legislative approval.

ALASKA INDUSTRIAL DEVELOPMENT & EXPORT AUTHORITY
ENTERPRISE DEVELOPMENT FUND

Balance Sheets

June 30, 1987 and 1986

| Assets | 1987 | 1986 |
|---|---|---|
| Cash | $ 11,685 | $ 4,123 |
| Investments, partially restricted (note 3) | 278,329,162 | 204,458,429 |
| Loans (note 4) | 329,070,910 | 372,833,597 |
| Less allowance for possible loan loss | 10,173,101 | 4,247,360 |
| Net loans | 318,897,809 | 368,586,237 |
| Accrued interest receivable | 6,404,839 | 7,258,811 |
| Unamortized bond issue costs | 2,716,359 | 2,864,036 |
| Other real estate owned | 8,797,589 | 2,977,186 |
| Other | 473,883 | 432,239 |
| | $615,631,326 | $586,581,061 |
| **Liabilities and Equity** | | |
| Notes and bonds payable (note 6) | $252,720,225 | $245,256,775 |
| Accrued interest payable | 6,283,633 | 6,135,818 |
| Deposits from others | 997,292 | 1,003,400 |
| Other | 204,331 | 235,960 |
| | 260,205,481 | 252,631,953 |
| Equity: | | |
| Contributed capital (note 1) | 197,800,632 | 189,800,632 |
| Retained earnings | 157,625,213 | 144,148,479 |
| Total equity | 355,425,845 | 333,949,107 |
| | $615,631,326 | $586,581,061 |

Commitments (note 12)

See accompanying notes to financial statements.

ALASKA INDUSTRIAL DEVELOPMENT & EXPORT AUTHORITY
ENTERPRISE DEVELOPMENT FUND

Statements of Earnings and Retained Earnings

Years ended June 30, 1987 and 1986

| | 1987 | 1986 |
|---|---|---|
| Revenues: | | |
| Interest, net of servicing fees | $ 47,880,777 | $ 53,832,444 |
| Fees (note 7) | 142,132 | 1,086,371 |
| Miscellaneous | 336,316 | 40,995 |
| Total revenues | 48,359,225 | 54,959,810 |
| Expenses: | | |
| Interest | 25,712,539 | 24,208,747 |
| Salaries and employee benefits | 733,567 | 818,570 |
| Professional fees | 96,205 | 119,809 |
| Travel | 14,497 | 19,454 |
| Rent | 105,808 | 93,699 |
| Furniture and equipment | 28,576 | 62,267 |
| Amortized bond issue costs | 137,807 | 135,396 |
| Provision for loan loss | 6,450,000 | 323,515 |
| Write-downs and loss on sale of assets | 1,223,369 | 31,727 |
| Other | 380,114 | 271,425 |
| Total expenses | 34,882,482 | 26,084,609 |
| Net earnings | 13,476,743 | 28,875,201 |
| Retained earnings at beginning of year | 144,148,470 | 115,273,269 |
| Retained earnings at end of year | $157,625,213 | $144,148,470 |

See accompanying notes to financial statements.

Notes to Financial Statements

Allowance for Loan Loss

Management regularly reviews the loan portfolio and determines provision for loss based upon experience and management's estimate of potential loss.

Other Real Estate Owned

Other real estate owned represents property acquired through foreclosure on loans or a deed received in lieu of foreclosure. It is carried at the lower of the unpaid loan balance at the time of foreclosure or the estimated fair market value of the property. When the balance of the Authority's investment in the loan is greater than the fair market value of the property, the difference is charged to the allowance for loan losses.

Retirement Plan

All employees of the Authority participated in the State of Alaska Public Employees' Retirement System. The State's policy is to fund pension costs accrued.

Bond Issue Costs

When advanced by the Authority, costs of bond issues, including underwriters' fees and commissions, legal fees, bond insurance and printing, are amortized over the life of the bond issue on the straight-line method and are recovered from the borrowers primarily as a part of the interest rate charged. Current practice is to require borrowers to pay for bond costs at the time of funding.

Furniture and Equipment

Purchases of furniture and equipment are expensed, as such items are the property of the State of Alaska.

(3) Investments

At June 30, 1987, investments were in certificates of deposit, United States Government securities or commercial paper, yielding interest at 4.8% to 13.0% and maturing generally within one year, except $5,479,261 in United States Treasury Notes maturing in subsequent years through 1992 for restricted purposes and $6,305,000 in Seward C.O.P.'s maturing serially to 2000.

At June 30, 1986, all investments were in certificates of deposit, United States Government securities or commercial paper, yielding interest at 6.4% to 13.0% and maturing within one year, except United States Treasury Notes of which $997,930 mature in 1987 and $5,189,683 mature in subsequent years through 1992.

Certain invested funds are restricted by the terms of the Authority's bond resolutions and are held and invested by the trustees. A summary of these investments follows:

(Continued)

Notes to Financial Statements

Investment Summary

| Name | Restriction | June 30 1987 | 1986 |
|---|---|---|---|
| Loan participation funds | Committed loans not closed at June 30 | $ -0- | $ 550,000 |
| Capital reserve funds | Secure debt service payment - bonds | 26,468,794 | 25,562,325 |
| Debt service funds | Loan repayments and funds held for debt service - bonds | 28,815,638 | 21,437,070 |
| | | $55,284,432 | $47,549,395 |

The Capital Reserve Funds are maintained for the purpose of making principal and interest payments on the bonds payable if monies received by the Authority and available for the payment of bond principal and interest are insufficient to make the required debt service payments. The amounts held in the capital reserve funds are equal to the average of the amounts required to be paid for principal and interest in each future fiscal year until maturity of the outstanding bonds. On the first day of January, April, July and October of each year, the Authority must replenish the capital reserve funds to the required amounts or may withdraw any excess amounts.

(4) Loans

Loans outstanding at June 30, 1987 and 1986 are classified as follows:

| Loan Type | 1987 Number | 1987 Amount | 1986 Number | 1986 Amount |
|---|---|---|---|---|
| Appropriated & purchased | 549 | $ 75,353,222 | 626 | $ 89,319,047 |
| Federally guaranteed | 63 | 11,278,600 | 174 | 34,097,213 |
| Bond sale | 396 | 242,439,088 | 423 | 249,417,337 |
| | 1,008 | $329,070,910 | 1,223 | $372,833,597 |

An aging of loans as of June 30, 1987 and 1986 follows:

(Continued)

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSSB 471 (Fin
PUBLISH DATE: _____

# FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Act establishing a program to guarantee business loans
Sponsor: _____
Requestor: Senate Finance Committee

Agency Affected: Dept. of Commerce
BRU: & Economic Development
Components: Alaska Industrial Development Authority

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 | 25 million | 0 | 0 | 0 | 0 | 0 |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | 25 million | 0 | 0 | 0 | 0 | 0 |
| TOTAL | | | | | | |

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

The operating cost will be absorbed by the existing authority budget. The $25 million represents funds that would be appropriated from existing authority funds to the Business Assistance Fund.

Prepared by: _____ Phone: 274-1651
Division: Bert Wagnon, Executive Director Date: _____
Alaska Industrial Development Authority

Approved by Commissioner: _____ Date: _____
Agency: J. Anthony Smith, Commissioner
Dept. of Commerce & Economic Development

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

Alaska State Legislature

Senate

OFFICIAL BUSINESS

POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

RECEIVED MAR 18 1988

SENATE JOINT COMMITTEE ON ECONOMIC RECOVERY

TO: Senator Jan Faiks
Senate President

FROM: Senator Arliss Sturgulewski, Co-Chairman
Senator Lloyd Jones, Co-Chairman
Senate Joint Committee on Economic Recovery

RE: SB 471

DATE: March 17, 1988

During the meeting of the Senate Joint Committee on Economic Recovery on March 16, 1988, the Committee unanimously endorsed the concepts contained in SB 471 - "An Act establishing a program in the Alaska Industrial Development and Export Authority to guarantee loans and to refinance debt..." and recommends that it proceed through the standing committee hearing process.

cc: Max Gruenberg, Chairman
House Joint Committee on Economic Recovery

SSSB471 - Senator Halford - "An Act establishing a program in the Alaska Industrial Development and Export Authority to guarantee business loans and to refinance debt; and providing for an effective date."

Status: Senate Finance

Endorsement qualifications:
The committee endorsed this legislation at the March 16, 1988 and adopted the following intent at its meeting on March 22, 1988. "The bill needs further refinement in the Senate Finance Committee and the SJCER recommends that the Finance Committee review setting a cap or maximum limit on the total amount of loan funds that can be guaranteed by AIDEA. This will prevent uncontrollable liability at some future date. The committee also recommends that AIDEA develope guidelines for allowing private financial institutions to offer refinanced debt packages as well as guidelines for new business loans that will stimulate economic growth. Finally, in order to evaluate its progress, the committee suggests a sunset date on the AIDEA loan guarantee program."

SSSB474 - Senator Halford - "An Act increasing property exemptions; and providing for an effective date."

Status: Senate Finance

SB476(CRA) - Senator Halford - "An Act creating the Supplemental Municipal Assistance Fund for Railbelt communities; and providing for an effective date."

Status: Senate Finance

SB477 - CRA Committee - "An Act making a special appropriation to the Department of Community and Regional Affairs for supplemental municipal assistance to Railbelt communities; and providing for an effective date."

Status: Senate Finance

Endorsement qualifications:
The committee adopted an amendment that reduces the appropriation amount to $25,000,000.

National Bank of Alaska

Corporate Headquarters P.O. Box 100600 • Anchorage, Alaska 99510-0600 • (907) 276-1132

March 8, 1988

Senator Lloyd Jones, Co-Chair
Alaska State Legislature
Senate Joint Economic Recovery Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Jones:

It was an honor to be invited to Juneau to speak on economic issues and on Senate bill 471. We believe this bill is in the best interest of the people of Alaska and an important tool for creating new jobs and saving existing ones. The major points of my testimony were as follows:

1. A guarantee program will offer confidence to a shaken state banking system and encourage banks to actively participate in the lending process.

2. A guarantee program will share risk in lending which could encourage surviving banks to deal with borrowers whose credits are currently hung up in FDIC loan portfolios. Without sharing of risk, banks may be reluctant to solicit these credits.

3. A loan guarantee program will encourage local banks to put existing capital to work within Alaska without further risk to the state banking system; otherwise, these resources may otherwise be utilized in government securities or loans outside the state.

4. AIDEA has been primarily a conduit to the national bonding markets. Issuances of bonds by AIDEA and Alaska Housing on an uncontrolled basis may ultimately affect the State's credit rating as they carry the moral obligation of the State. Utilizing non-bonding sources of funds which are readily available within the state will have no effect in the long run on the State's bonding capacity.

5. A guaranteed loan program should decrease the cost of money to the consumers. AIDEA has issued commitments at extremely high rates with commitment fees of 4% of the loan which is no bargain. (AIDEA has lowered their rates in the past week as a result of this criticism.) We believe that interest rates and fees to the consumer will decrease with such a program; however, with the bonding program remaining in place, if it is more advantageous for a consumer to utilize the bond approach, they would still have the opportunity.

6. A guarantee program would reduce the loss exposure to AIDEA. Under a bond program if AIDEA takes a loss on a loan, they take a double loss: an initial loss after the liquidation of assets and a subsequent loss on the bonds. That is, AIDEA locked itself into long-term bonds, in many cases at high interest, which they have to continue making payments on even if a customer stops making payments.

7. We believe the banks under a guaranteed program will be able to work with the consumers on a more flexible and competitive manner. Under such a program the banks in the state can compete on rates, fees, and flexibility in terms. Under AIDEA's bond program the rates, fees, and terms are generally as quoted by AIDEA. If a consumer has problems due to a change in the economy, AIDEA has tended to be inflexible in their dealing with the public.

8. A guaranteed loan program will add liquidity to the state's banking system. This would be an advantage to little banks as well as large banks. Banks could hold the loan in their own portfolio or sell the loan to other participating financial institutions. They could use the guarantee as security for deposits of municipalities and State agencies and other large depositors. Such a program should overall increase the health of the financial system within the state.

9. Perhaps the most important feature is that we believe such a guarantee program will encourage lenders to participate in new projects in basic industries in Alaska which will create new jobs as well as save existing jobs in the state.

10. The refinance part of the bill provides a tool for the state's businesses to restructure debt at lower interest rates. This may enable many businesses to survive. Nationwide the trend of interest rates from 1981 has been down. It is very difficult to attract long-term capital from lenders into Alaska; therefore, Alaskans are often stuck at higher interest rates.

We all know what effect the reduction in jobs has had in the Railbelt in recent years; however, this phenomenon has not been centrally located to one region in the state, but economic recessions have been a fact of life in Southeast Alaska and other rural communities in past times as well.

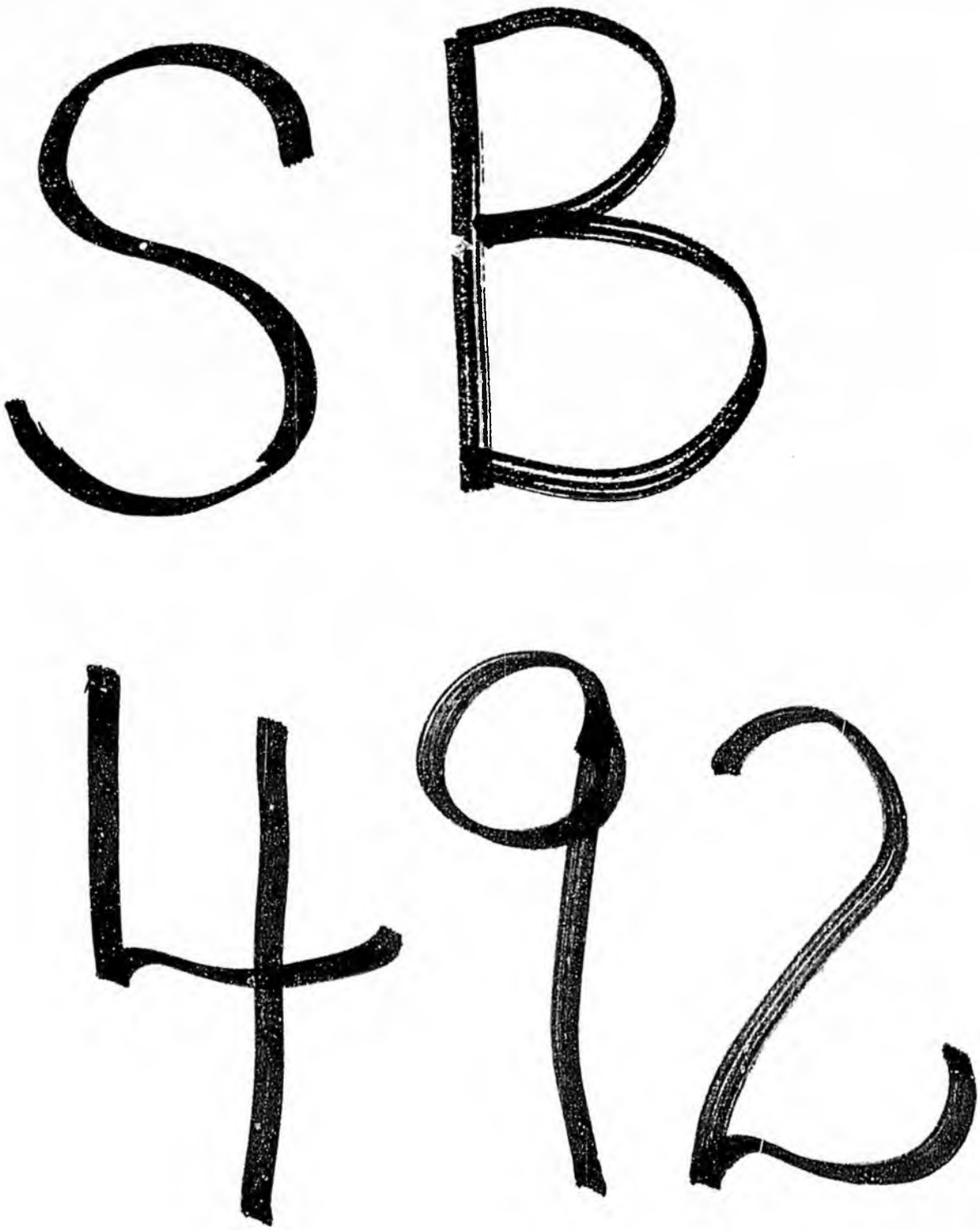
There are other important issues in the state, but we feel this one piece of legislation would be one small part to be used in a recovery from our overall economic situation. If there are any comments I can provide in the future, please feel free to call me at 265-2991.

Sincerely yours,

J. K. Sieberts
Senior Vice President

gs

cc: Jan Faiks
Rick Halford
Jack Coghill
Dick Eliason
Fred Zharoff
Joe Josephson


SB
492

# 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

House Labor & Commerce:

May 6, 1988

(7)

# HOUSE COMMITTEE REPORT

Date referred: 5/5/88 FURTHER REFERRALS: HESS

DATE: 5/6/88

The Labor & Commerce Committee has considered CSSB 492(L&C)

"An Act relating to the practice of naturopathy."

**RECOMMENDS:**

[X] replace with HCS CSSB 492(L&C) [X] the same title
[ ] attached amendment(s) [ ] a new title

- [ ] do pass
- [ ] do not pass
- [X] no recommendation
- [ ] individual recommendations
- [ ] additional referral to the _____ Committee

**ADOPTS:** [ ] _____ letter of intent

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

- [ ] fiscal impact
- [ ] zero fiscal note
- [ ] zero with analysis
- [ ] same as previous fiscal note published _____
- [X] same as previous zero fiscal note published 4/15/88

**SIGNING DO PASS:**

Walter L Furnace

**SIGNING OTHER RECOMMENDATIONS:**

David Dowley (NO REC)
Cliff Davidson (no rec)
Ellis (no rec)
Fred Kopasa (no rec)

David Dowley
Chairman's signature

5-2054P

Original sponsor: Health, Education and Social Services

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 492 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the practice of naturopathy."

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

* Section 1. AS 08.45.030 is amended to read:

Sec. 08.45.030. ISSUANCE OF LICENSE. The division shall issue a license to practice naturopathy to an applicant who provides proof satisfactory to the division that the applicant has [RECEIVED]

(1) received a degree from an accredited four-year college or university;

(2) received a degree from a school of naturopathy that required four years of attendance at the school; and

(3) a license to practice naturopathy in a state that required an examination for the license, and has passed the Naturopathic Physicians Licensing Examination sponsored by the American Association of Naturopathic Physicians and administered by the state where the exam was taken.

* Sec. 2. AS 08.45.030 is amended by adding a new subsection to read:

(b) For an applicant who has completed the applicant's naturopathic studies after December 31, 1987, the division shall issue a license to practice naturopathy to the applicant if the applicant provides proof satisfactory to the division that the applicant has

(1) satisfied the requirements of (a)(1) - (3) of this section;

(2) graduated from a naturopathic school that is accredited or that is a candidate for accreditation by the Council on

Naturopathic Medical Education or a successor organization recognized by the United State Department of Education; and

(3) been certified by the American College of Naturopathic Obstetricians as having performed 40 or more deliveries, if childbirth is to be a part of the person's practice; a person who practices naturopathy is subject to the provisions of AS 18.05.056 that are applicable to a lay midwife.

* Sec. 3. AS 08.45.200(3) is amended to read:

(3) "naturopathy" means the use of hydrotherapy, dietetics, electrotherapy, sanitation, suggestion, mechanical and manual manipulation for the stimulation of physiological and psychological action to establish a normal condition of mind and body; in this paragraph, "dietetics" includes herbal and homeopathic remedies.

* Sec. 4. AS 08.45.030, as amended by secs. 1 - 2 of this Act, does not apply to a person who applies before the effective date of this Act for a license to practice naturopathy in the state.

5-2054N
Bannister
5/6/88

Original sponsor: Health, Education and Social Services

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 492 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

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* Sec. 4. AS 08.45.030, as amended by secs. 1 - 2 of this Act, does not apply to a person who applies before the effective date of this Act for a license to practice naturopathy in the state.

Official Business

**COMMITTEE:**
HOUSE LABOR & COMMERCE

**DATE:** May 6, 1988

# SIGN-IN

## Subject of meeting:

SB 471 Business loan guarantee/refinance program
SB 392 Purchase of loans by AIDEA
SB 333 Priority wage claims in bank liquidations
SB 414 Foreign trade zones
SB 492 Practice of Naturopathy
SCR 30 Encouraging resident hire by the state
SCR 32 Urging flexibility by lenders/collectors

| PLEASE PRINT **NAME** & TITLE | **REPRESENTING** | **ADDRESS** & ZIP | **PHONE** | **DO YOU WANT TO TESTIFY?** | SUBJECT: BILL # |
|---|---|---|---|---|---|
| Cary Jasper N.D. | Naturopathic Assoc. | 901 W. 24 Anch AK 99503 | H 337-6709<br>W 276 4611 | Yes | SB 492 |
| Rick Urion | Am Med Assoc | | H<br>W | | |
| | | | H<br>W | | |
| | | | H<br>W | | |
| | | | H<br>W | | |
| | | | H<br>W | | |
| | | | H<br>W | | |
| | | | H<br>W | | |
| | | | H<br>W | | |
| | | | H<br>W | | |

SB

498

# STATE OF ALASKA
# THE LEGISLATURE

POUCH V · 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

House Labor & Commerce:

May 5. 1988

# HOUSE COMMITTEE REPORT

(7)

Date referred: 4/28/88 FURTHER REFERRALS:

DATE: 5/5/88

The Labor & Commerce Committee has considered CSSB 498(Fin)(title am)

"An Act relating to certain plumbing installations and repairs; and providing for an effective date."

**RECOMMENDS:**

[ ] replace with _____ [ ] the same title

[ ] attached amendment(s) [ ] a new title

[X] 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

[ ] zero fiscal note

[ ] zero with analysis

[ ] same as previous fiscal note published _____

[X] same as (2) previous zero fiscal note published 4/12/88

**SIGNING DO PASS:**

Dave Donley

Kott Kozora

Clif Davidson

**SIGNING OTHER RECOMMENDATIONS:**

Dave Donley

Chairman's signature

# STATE OF ALASKA
# 1988 LEGISLATIVE SESSION

BILL VERSION : CSSB 498 (Fin) title am
PUBLISH DATE :

## FISCAL NOTE

REQUEST:
Revision Date:
Agency Affected: Labor
Title: "An Act relating to certain plumbing installations and repairs; "
BRU: Labor Standards & Safety
Sponsor: Senate Labor & Commerce
Components: Mechanical Inspection
Requestor: House Labor & Commerce

**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 | 0.0 | 0.0 | 0.0 |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

**FUNDING:** (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

**POSITIONS:**

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

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

Prepared by: Tom Stuart, Director
Phone : 264-2452
Division: Labor Standards & Safety
Date : 4/29/88

Approved by Commissioner: Jim Sampson
Date: 4/29/88
Agency: Department of Labor

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

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSSB 498 (FIN)(Title
PUBLISH DATE: 4/28/88

# FISCAL NOTE

REQUEST:

Revision Date:
Title: An Act relating to certain plumbing installations and repairs
Sponsor: Senate Labor & Commerce
Requestor: House Labor & Commerce

Agency Affected: DEC
BRU: Environmental Quality
Components: Water Quality Management

**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 | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 |

**POSITIONS:** None

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

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

Prepared by: Amy Kyle
Division: Commissioner's Office
Phone: 465-2600
Date: 4/28/88

Approved by Commissioner: Dennis D. Kelso
Agency: Commissioner
Date: 4/29/88

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

# STATE OF ALASKA

**DEPT. OF ENVIRONMENTAL CONSERVATION**

STEVE COWPER, GOVERNOR

POSITION PAPER
CSSB 498 (Fin)(TITLE AM)

Title

An act relating to certain plumbing installations and repairs; and providing for an effective date.

Effect of the Bill

The bill would amend Department of Labor statutes to ban the use of lead solders and fluxes in installation of new water systems and repair of existing water systems.

Department position

The Department supports the bill. The bill would implement a key provision of the federal Safe Drinking Water Act Amendments, passed in 1986.

Use of lead solder in drinking water systems is a leading cause of elevated lead levels in drinking water.

Lead has extremely adverse effects on persons exposed to it. These effects range from acute swelling of the brain and seizures at high blood levels to symptoms such as fatigue, loss of appetite, or abdominal pain at low levels. Lead is known to damage the digestive system, reproductive system, gastro-intestinal system, and kidneys. It also interferes with the blood-forming process and exposure has been related to increased miscarriages. Lead accumulates in the human body and has no beneficial uses in the body. Young children and fetuses are at highest risk because they absorb a higher percentage of the lead to which they are exposed than adults do.

Individuals who are exposed to lead in water have been shown to have increases in blood lead levels. Lead solder in plumbing has been identified as the most significant source of lead in drinking water. Lead in raw water is rare.

In Alaska, high lead levels have been found in drinking water systems in St. Michaels, Gambell, Shishmaref, Point Hope, Point

Lay, Barrow, Nuiqsut, Atquasak, Wainwright, Fairbanks, Birch Creek and Mekoryuk due to corrosive water in contact with lead solder. The problem could be expected in most water systems using surface water and in some systems using ground water. No comprehensive testing for lead in distribution systems has been done. The North Slope Borough has imposed a ban on the use of lead solders and fluxes.

The federal Safe Drinking Water Act was amended in June, 1986 to include a new section 1417 titled "Prohibition on Use of Lead Pipes, Solder, and Flux." This section bans the use of solder and flux containing greater than 0.2% lead and pipes and pipe fittings containing more than 8.0% lead. The Act requires that states with primacy in the drinking water program implement this requirement. In Alaska, the Department of Environmental Conservation has primacy for the drinking water program.

The most effective way to ban use of lead fluxes and solders is to do so in conjunction with laws and regulations that govern plumbing. Under Alaska law, this requires an amendment to Title 18, the statute pertaining to the Department of Labor. Both the Department of Environmental Conservation and the Department of Labor support this change.

Alternative tin solders are available and are preferable to lead solders in terms of strength. Material unit cost is slightly higher, but less solder is used so that overall cost is equivalent. Initial education will be needed to help industry address the change of requirements.

Dennis D. Kelso, Commissioner
Department of Environmental Conservation

# INFORMATION PACKET ON SB 498

# BAN ON THE USE OF LEAD SOLDERS AND FLUXES

# IN DRINKING WATER SYSTEMS

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Offered: 4/25/88
Referred: Rules

5-2102B

Original sponsor: Labor and Commerce Committee

IN THE SENATE BY THE FINANCE COMMITTEE

CS FOR SENATE BILL NO. 498 (Finance)(title am)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to certain plumbing installations and repairs; and providing for an effective date."

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

* Section 1. AS 18.60.705 is amended by adding a new subsection to read:

(b) Notwithstanding (a) of this section, the use of a pipe or pipe fitting containing more than 8.0 percent lead, or of solder or flux containing more than 0.2 percent lead in the installation or repair of a public water system or in the installation or repair of plumbing of a residential or nonresidential facility that provides water for human consumption is prohibited. This subsection does not apply to the use of leaded joints necessary to repair cast iron pipe.

* Sec. 2. AS 18.60.740(1) is repealed and reenacted to read:

(1) "code" means the code adopted under AS 18.60.705(a) as amended by AS 18.60.705(b).

* Sec. 3. APPLICABILITY. Section 1 of this Act applies to the installation or repair of a water system or plumbing begun on or after the effective date of this Act.

* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

# STATE OF ALASKA

**DEPT. OF ENVIRONMENTAL CONSERVATION**

STEVE COWPER, GOVERNOR

POSITION PAPER
CSSB 498 (Fin)(TITLE AM)

Title

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Dennis D. Kelso, Commissioner
Department of Environmental Conservation

# STATE OF ALASKA
# 1988 LEGISLATIVE SESSION

BILL VERSION: CSSB 498 (Fin) title am
PUBLISH DATE:

## FISCAL NOTE

REQUEST:
Revision Date:
Agency Affected: Labor
Title: "An Act relating to certain plumbing installations and repairs; "
BRU: Labor Standards & Safety
Sponsor: Senate Labor & Commerce
Components: Mechanical Inspection
Requestor: House Labor & Commerce

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 | 0.0 | 0.0 | 0.0 |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Tom Stuart, Director
Phone: 264-2452
Division: Labor Standards & Safety
Date: 4/29/88

Approved by Commissioner: Jim Sampson
Date: 4/29/88
Agency: Department of Labor

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

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSSB 498 (FIN)(Title A
PUBLISH DATE: 4/28/88

# FISCAL NOTE

**REQUEST:**

Revision Date: _____
Title: An Act relating to certain plumbing installations and repairs
Sponsor: Senate Labor & Commerce
Requestor: House Labor & Commerce

Agency Affected: DEC
BRU: Environmental Quality
Components: Water Quality Management

**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 | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 |

**POSITIONS:** None

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

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

Prepared by: Amy Kyle
Division: Commissioner's Office
Phone: 465-2600
Date: 4/28/88

Approved by Commissioner: Dennis D. Kelso
Agency: Commissioner
Date: 4/29/88

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

DEPARTMENT OF SOCIAL & HEALTH SERVICES
DIVISION OF HEALTH

# TOXIC SUBSTANCES FACT SHEET

# LEAD IN DRINKING WATER

State of Washington DATE: August 1987

## GENERAL INFORMATION ABOUT LEAD

Everyone has some exposure to lead. Lead from automobile exhaust and industry are the major sources for contamination of air, water and soil. People who live in cities are exposed to more lead than those who live in rural areas. Lead enters the body through breathing (inhalation) or eating (ingestion).

Lead poisoning can cause a variety of symptoms such as loss of appetite, fatigue, crankiness and anemia (low blood count). Because these symptoms can resemble the flu - lead poisoning can sometimes be unrecognized. The early symptoms of lead poisoning are reversible and complete recovery is possible. However, if lead poisoning progresses - symptoms become more severe and permanent damage may occur to the blood, nervous system, kidneys, brain and sex organs. A person can be tested for lead poisoning by having a blood sample taken for a blood lead level.

Lead poisoning is especially dangerous for young children and the unborn babies of pregnant women.

In Washington State, no cases of elevated blood lead levels or lead poisoning have been linked with lead in drinking water. Cases which have occurred have been associated with: pottery contaminated with lead; certain occupations which have high lead exposure; children who eat dirt contaminated with lead from highly industrialized areas near freeways and busy streets; or children exposed to lead dust brought into the home on their parents' work clothes.

## LEAD IN DRINKING WATER

Studies have been done to analyze drinking water for lead. These studies show that for public water systems the lead content of the water delivered to the homeowner is higher at the faucet in the home than the lead content where the water originates. This indicates that the lead is "picked up" in the household plumbing system. This is most likely to occur when there is water low in mineral content (soft water) or the water is acidic. These conditions can cause lead to leach from lead pipes or lead soldering materials into the drinking water.

Even though adults and children are exposed to some lead through drinking water - the major source of lead comes from food. In fact it appears that the average lead intake from drinking water is about 1/10 of that obtained from an ordinary diet.

May 1987

# Utilities 'lead' aim

year on the serious subject of lead in water.

College Utilities Corporation last month had 14 places tested for lead in water, and six of them had higher than federally safe levels. But the lead isn't due to College Utilities' water supply, which tests substantially lower than required.

Lead-based solder appears to be the major culprit, particularly in newer structures. However, CUC's water is corrosive, a quality that helps water pick up lead and other metals within plumbing systems.

Not only did the company pay for the testing itself, but College Utilities Friday sent informational letters to all its customers, began a three-week advertising campaign [illegible] officials to answer questions [illegible] offered its results to the Alaska Department of Environmental Conservation.

People can learn more about this issue during National Drinking Water Week this next week. CUC is having an open house Friday.

(See LEAD, page 3)

(Continued from page 1)

Under the Federal Safe Drinking Water Act of 1986, new language in 1988 will require public water suppliers to inform customers of lead hazards even if the lead is not coming from the main water supply.

Water at Gordon's home, four public schools, and at professional offices and homes were sampled and tested.

The first sample at all 14 showed a higher lead content than CUC's supplied water. Six of those places exceeded the federal safe limit. Then, after a three-minute flushing, a second sample was taken. All 14 were within the federal limit, Gordon said.

Currently the federal standard on lead is .05 parts per million, but that will change next year to .02. The utility, which draws underground water through wells and treats it, tested at .002 parts per million.

Of the four schools—Woodriver and University Park elementary schools, West Valley High School and Hutchison Career Center—only Woodriver's initial sample exceeded the federal limit, Gordon said.

Lead can be a serious health hazard, particularly to children. Studies link lead to hyperactivity, decreased intelligence and learning disabilities in youngsters. High blood pressure and cardiovascular problems also are linked with lead.

The federal law prohibits public water suppliers from using lead pipes and lead-based solder, and eventually building codes will prohibit lead-based solder as well. That's the solution for new construction, but what about existing buildings?

Ideally buildings should be replumbed if there's a serious problem, Gordon said, but that's costly and not practical.

Flushing, or letting the tap run, is the easier answer.

"Before they consume water from the tap, first thing in the morning they should run the water cold, which will insure they're not getting water directly from our distribution system," said Gordon. Water sitting for a long period in the line is more likely to have a higher lead content. Letting the water run helps purge it from the lines.

What people should not do is drink hot water from the tap, even indirectly, he said. That is water most likely to have the lead content.

College Utilities hired Northern Testing Laboratories in Fairbanks to do the testing. Mike Pollen, president of that company, said testing water corrosiveness is a common test, particularly for utilities. It's called the Langelier Index, and it tests pH, alkilinity, chemical composition, hardness, temperature and total dissolved solids. Homeowners pay about $55 for the test.

A zero means the water is neither scaling or corroding, said Pollen. Water that tests positive on the index is protective, it builds a film on the inside walls of pipes. A negative on the index indicates corrosive water. There is no protective film and corrosive water picks up virtually any metal in the pipes.

"It kind of caught us by surprise that George (Gordon) brought these results in," said Stan Justice, environmental engineer with the ADEC. "Since then I've been calling around to the other major utilities to see what kind of corrosion control program they have."

"I was pleasantly surprised that all the utilities are doing something," Justice said.

Water suppliers in the area include the military, the University of Alaska, Fairbanks Municipal Utilities System, the City of North Pole, and another private company, Valley Water Co.

The ADEC next year will enforce the lead ban and public notification requirements under the federal law. Justice credited College Utilities for its effort. "They have taken some initiative to address this issue in light of the regulations actual-

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# BSSD will replace pipes

by CAT STEPHENSON

A recent discussion with Bob Collins, director of the Bering Straits School District, revealed the district's plans to renovate the St. Michael elementary school's water system which is currently sloughing off particles of lead into the water at levels higher than what the Department of Environmental Conservation deems safe. District officials are waiting until the summer to replace about two-thirds mile of copper water pipes which are soldered together with lead and to rebuild the wooden utilidor which houses the water and sewage pipes and electrical lines.

The lead-soldered water system was installed by the Bureau of Indian Affairs which built the school. Bob Collins moved to St. Michael in 1977 to teach at the BIA school and was appointed as its principal the following year. He recalled that the lead content was discovered during his last years at the school and that the BIA added soda ash to the water to slow the erosion process. When put in hard water the soda ash will form a hard coat on the inside of the water pipes, but the water in St. Michael is soft, reducing the effectiveness of the preventative measure.

"We were told by the BIA in Nome that the soda ash [illegible] would prevent the water erosion of the lead," Collins said.

The school was transferred to the Rural Education Attendence Area's Bering Straits School District last summer. Collins said the district must wait until next summer to remedy the problem in full. The lead-soldered copper tubing goes all the way up the building walls to the water taps so they must wait for the warm weather before tearing the walls out. The copper pipes will be replaced with about 3,000 feet of new tubing which will be joined with silver solder. He could not estimate the cost for the two work crews to be sent there or the pipes, solder, and new utilidor housing.

"What we've done now is shut off the water supply to all drinking and cooking water," he said. "The toilets are connected to a salt water flush system. We are carrying drinking and cooking water from holding tanks to coolers in the classrooms."

One piece of construction is underway at this time. Silver-soldering piping is being installed from the school's holding tank to the kitchen for the convenience of the cook who must prepare meals for the 75 students and staff members daily.

by Stan Justice

# Lead in Alaskan Village Water Systems

St. Michael, 1975. (Photo by J.M. Antonson; courtesy of the Alaska Division of Parks, Office of History and Archeology.)

High lead concentrations have been discovered in the water systems of the four remote villages of St. Michael, Birch Creek, Gambell and Shishmaref. This paper covers preliminary findings by the state, federal, and local agencies involved, for the purpose of alerting engineers to the problems and how they may best be avoided.

The problem was discovered during a sampling program to assess water quality in rural Alaska, conducted jointly by the State Village Safe Water Program, the Alaska Department of Environmental Conservation (DEC), and the Federal Public Health Service (PHS). Under this program water samples are collected by the PHS sanitarians and mailed to the DEC lab in Douglas. The lab analyzes the samples for 11 toxic elements (arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver, sodium, fluoride, and nitrate) and the 13 aesthetic and operational parameters, including iron, manganese, calcium, magnesium, potassium, chloride, sulfate, carbonate alkalinity, total filterable residue, pH, turbidity, color and conductivity. The results are then distributed to the agencies involved in water programs.

## ST. MICHAEL

St. Michael is a village of 206 Eskimo people on the south shore of Norton Sound, 125 miles southeast of Nome. The situation there best illustrates the problem, so this paper covers it in some detail. On July 20, 1979, Ray Van Ostran, PHS sanitarian, collected two samples in St. Michael. The raw water sample showed no lead, but the sample collected from

**Stan Justice** *is an environmental engineer who worked for the Alaska Department of Environmental Conservation for the past year, directing the regional drinking water program. He has an M.S. from the University of Alaska and spent two years as a Peace Corps volunteer constructing water systems in Nepal.*

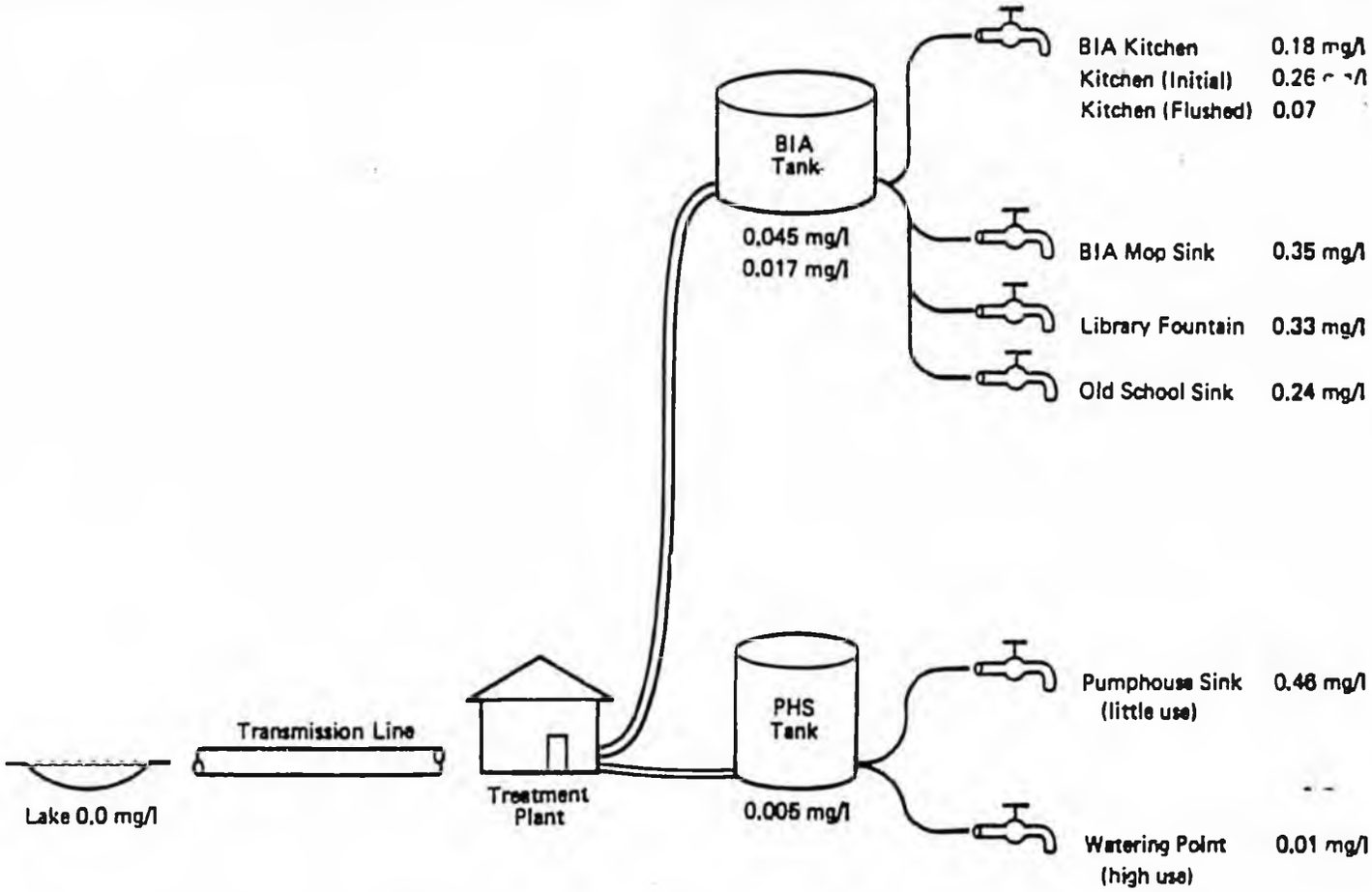


**Figure 1. St. Michael water system showing locations of water samples and lead values.**

the Bureau of Indian Affairs school showed 0.18 mg/l, over three times the 0.05 mg/l limit set by the Environmental Protection Agency.

The water source consists of a shallow lake located 3½ miles from town across wet tundra. Attempts have been made to locate a ground water source for the village, but to date all test wells have produced salt water. The water transmission line is four-inch diameter portable aluminum irrigation pipe. The line is assembled twice a year and gasoline-powered pumps are used to supply the water treatment plant. The treatment scheme consists of pressure sand filtration, HTH (the trade name for calcium hypochlorite) chlorination and fluoridation. The treated water is stored in the 100,000 gallon PHS wood stave tank adjacent to the plant and a 150,000 gallon steel tank at the BIA school. The PHS distribution system consists of a watering point and a sink in the pumphouse. The watering point is the primary source of water for the village. The BIA tank provides water to the school at various taps, water fountains, lavatories and the kitchen. Both distribution systems are constructed primarily of copper pipe joined by soldered joints. Water is heated by oil-fired boilers via heat exchangers and circulated by pumps.

Additional samples were collected on various dates and locations to determine the source of the lead (Fig. 1). The raw water contained no lead, so we knew the lake was not the source. Lead contents in the samples from the storage tanks were low also, which eliminated tank coatings and the treatment process as the lead source. All the high lead samples were from various points in the distribution system. The lead concentration was highest in the water taps with low use, such as the drinking fountains. We also noted a drop in lead concentration between the initial water from the kitchen tap and a sample taken after flushing the tap for five minutes. All this indicated a possible corrosion problem in the distribution system. Investigation established that the pipes had been joined with solder containing 50% lead, a standard construction technique, and inspection of some open pipes revealed a splattering of solder on the inside of the pipe.

### *Water Pipe Corrosion*

Several indices are available for quantifying the tendency of water to corrode pipe materials, but one of the easiest to use is the Aggressive Index (AI).[1,2,3] The formula for calculating the AI is

$$AI = pH + \log (Ca \times Alk)$$

where Ca is the calcium concentration expressed as mg/l $CaCO_3$ and Alk is the alkalinity also expressed as mg/l $CaCO_3$. The scale below is used to interpret the figures:

| | |
|---|---|
| $AI < 10$ | highly aggressive |
| $10 < AI < 12$ | moderately aggressive |
| $AI > 12$ | not aggressive |

Tests of the St. Michael raw water showed AIs from 6.9 to 8.5, well within the highly aggressive range. This indicates that the source water is derived from rain and snow melt which has not contacted earth minerals.

Corrosion in a lead-copper-water system is similar to a galvanic battery. The copper acts as the cathode, lead the anode and water the medium for transporting the charged particles. Lead in this system is a sacrificial anode, releasing lead ions into solution. This will not occur with hard, non-aggressive waters due to the layer of calcium carbonate which builds up on the pipe walls.[3]

Literature indicates that high lead historically has been a problem in soft water areas of the 'lower 48' (Boston), Scotland and northern England. In some areas water is distributed in lead pipes and even stored in lead-lined cisterns. Other instances have been documented in which copper pipes joined with lead solder have raised lead concentrations in soft water.[4,5]

Several factors contribute to the acuteness of the problem in rural Alaska.

1) Soft surface water sources are often the only ones available due to the presence of permafrost or of saline aquifers.
2) Water use is low, so contaminant concentrations build up instead of being flushed away.
3) To prevent pipe freezing the water is usually heated and pumped through circulation loops. Heat and higher water velocity contribute to corrosion.[3]

## BIRCH CREEK

Birch Creek is a small Athabascan village south of Fort Yukon, where the PHS has recently completed a new water system similar to that at St. Michael. The water source is Birch Creek, which has an AI of 10.3 to 11.6, or moderately aggressive. Again, the only lead found was in the distribution system, with the river source, water tank, added chemicals and even surrounding soils showing little lead. Literature indicates that new water systems have lead values higher than do ones five years old; since the Birch Creek system was completed recently, lead values may decrease as the system ages.

## OTHER VILLAGES

Gambell and Shishmaref have only recently been sampled, so little data are available. Check samples are being collected to determine the extent of the problem in those villages.

## HEALTH IMPLICATIONS

Lead poisoning is a disease long recognized for its ability to cause weakness, depression, constipation, anemia and paralysis.[5,6] Young children are particularly susceptible.[7] For this reason the lead limit in drinking water has been set at 0.05 milligrams per liter by the Federal Environmental Protection Agency.[5]

Health aspects of the investigation have been conducted by the state epidemiologist, Dr. John Middaugh. He collected blood samples from the residents of Birch Creek and tested for erythrocyte protoporphyrin (EP), an enzyme which changes rapidly with increase in lead consumption. EP is used to indicate potential health problems prior to the onset of serious symptoms.[7] All samples were well within acceptable limits, with the highest value being from Dr. Middaugh himself. The blood test results are inconclusive tests of the health hazard from the water system, because many of the people have reverted to drinking river water because of the lead reports. Further blood tests will be done to determine if the high lead concentrations are affecting human health.

## SOLUTIONS

The solution to the lead problem is relatively easy for future installations. In planning for new facilities, water samples are commonly collected from possible sources to determine potability and palatability. It is a simple matter to check the Aggressive Index as well. When corrosive waters can not be avoided, pipe and fitting materials can be selected to prevent contamination. For example, copper pipe with threaded joints or corrosion-resistant plastic pipe could be used.

For existing facilities it is usually not economically feasible to replace all the piping. Other possible solutions include:

1) Install a second distribution system made of corrosion-resistant materials and sized to serve only the drinking water needs.
2) Install chemical addition equipment for adding lime, sodium hydroxide, phosphates, or other corrosion inhibitors. (The problem with this is that corrosion control requires careful analytical control, control which may be difficult to obtain in remote villages.)
3) An alternate source of water could be developed to avoid extremely soft surface waters.

## CONCLUSIONS

We know that lead limits are being exceeded in some village water systems. No high lead values have been noted in non-soft water areas. We are fairly certain that soft corrosive waters are attacking the lead solder at the copper sweat joints. Investigations are continuing to determine the extent of the problem and the effects on human health, and solutions are being tried to mitigate the problem.

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