

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 86/2

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Bill No. Senate Bill 111

Title "An Act extending the termination date of the Board of Electrical Examiners."

Date February 25, 1987

Contact: Tom Stuart
465-4870

Eileen Plate
465-2700

Senate Bill 111 extends the termination date of the Board of Electrical Examiners to June 30, 1990. The Board is presently operating under the one-year termination period provided under AS 08.03.020, and it will be dissolved on June 30, 1987 if legislation is not passed to extend the termination date.

Under AS 08.40.005, the purpose of the Board of Electrical Examiners is "to protect the safety of people and property in the state from the danger of improperly installed electrical wiring and equipment by providing a procedure to assure:

- 1) the public that persons responsible for making electrical installations in this state are qualified; and
- 2) a sufficient number of persons are so qualified".

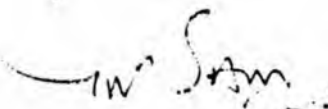
The Board carries out its responsibilities by examining and licensing electrical administrators, and by suspending and revoking the licenses of persons who fail to perform competently. Electrical administrators are held accountable by the Board for electrical work performed under their individual licenses.

Continuation of the Board of Electrical Examiners will assist in protecting the public from life safety hazards and from financial losses that result from improper or faulty electrical installations.

The Department of Labor supports Senate Bill 111.

It will not have a fiscal impact on the Department.

APPROVED:


Jim Sampson, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: SB 111
Publish Date: _____

REQUEST: _____

Revision Date: _____
Title: "An Act extending the termination date of the Board of Electrical Examiners..."
Sponsor: Zharoff
Requestor: Senate Labor and Commerce

Agency Affected: Labor
BRU: Labor Standards and Safety
Components: Mechanical Inspection

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: TS Tom Stuart, Director Phone: 465-4870
Division: Labor Standards and Safety Date: 02/24/87
Approved by Commissioner: JS Jim Sampson Date: 02/24/87
Agency: Labor

Distribution (by preparer):

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

SB 111: An Act extending the termination date of the Board of Electrical Examiners; and providing for an effective date.

SB 111 extends the termination date for the Board of Electrical Examiners from June 30, 1986 to June 30, 1990. The board is currently in its final year of existence for the purposes of concluding its affairs in accordance with AS 08.03.020(a). Unless the termination date is extended, the board will cease to exist on June 30, 1987.

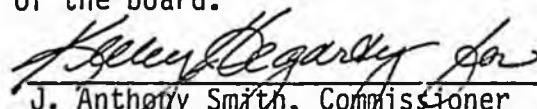
The September 1985 performance audit of the Board of Electrical Examiners identified areas of concern regarding the responsibilities and conduct of the board and, thus, recommended sunset. Since the audit, the board has devoted its efforts to complying with the audit recommendations and to satisfying those identified areas of concern. In compliance with the audit report, the board has developed regulations to require evidence that electrical jobs have been personally inspected by electrical administrators. They have also revised their procedures for approving applicants by designating a check list to ensure applications are complete prior to review.

Another area of major concern identified in the audit was the examination. In the past, examinations combined categories such as outside linework with outside communication questions and inside wiring with inside communications questions. The average failure rate for the examination was 73%. Since the audit, the examination was revised by the board to separate these categories of questions. However, the average failure rate for the examination is still 61%. The department is concerned that the high failure rate may be attributed to the quality of the examination and would recommend the board conduct an analysis of the exam.

Another recommendation contained in the audit was for the board to improve communications with the Department of Labor so that violations are reported in order for the board to take necessary action.

Daily coordination and communication now occur between the investigations unit of the Division of Occupational Licensing, and inspectors of the Department of Labor. However, there is no formal mechanism for reporting violations. The department intends to implement a quarterly report of enforcement activity to be exchanged with the Department of Labor and will request that the same be done by Labor.

In summary, the department maintains its support for continuation of the licensing of electrical administrators and recognizes the fact that the Board of Electrical Examiners performs many functions which the Division of Occupational Licensing currently is unable to provide. For example, the board has the expertise needed to evaluate the work experience of applicants, conduct exam reviews, and provide an appeals process for individuals who fail the examination. For these reasons, the department does not oppose the continuation of the board.



J. Anthony Smith, Commissioner
Department of Commerce & Economic
Development

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version : SB 111
Publish Date : 2/9/87

REQUEST: _____

Revision Date: _____
Title: An Act extending the termination date of the Board of Electrical Examiners;
Sponsor: Senator Zharoff
Requestor: _____

Agency Affected: Commerce & Econ. Dev.
BRU: Occupational Licensing and providing for an effective date.
Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Funding for continuation of the Board of Electrical Examiners is budgeted for in the department's FY 88 operating budget request and is anticipated to be covered primarily through program receipts.

Jennifer Strickler
Prepared by: Jennifer Strickler, Management Analyst
Division: Occupational Licensing

Phone: 465-2144
Date: 2/26/87

Approved by Commissioner: *J. Anthony Smith*
J. Anthony Smith
Agency: Commerce and Economic Development

Date: 2/26/87

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

AD HOC COMMITTEE PERTAINING TO THE BOARD OF ELECTRICAL EXAMINERS

POSITION PAPER

For "An act extending the termination date of the Board of Electrical Examiners; and providing for an effective date."

This position paper is a product of an Ad Hoc Committee which was formed during the summer of 1986, to address the "sunsetting" review of the Board of Electrical Examiners under AS 08.40.005. The Committee is comprised of the following members representing their respective organizations:

- Dixie Hudish - Government Relations Representative,
Chair
IBEW Local No. 1547
- Don Lederhos - Raven Electric (non-union
electrical contractor)
- Walt Gardner - Chairman for the Board of Electrical
Examiners
- John Hopkins - NECA/IBEW Electrical
Apprenticeship School
- Don Cather - Chief Mechanical Inspector, Department of
Labor
- Dick Wyland - Chairman, Alaska Chapter of the
International Association of
Electrical Inspectors
- Stan Hafferman - Communications Representative, IBEW Local
No. 1547

The Department of Commerce and Economic Development was contacted (former Commissioner Lounsbury, See Attached Letter), and has been kept abreast of the activities of the Committee as well as the National Electrical Contractors' Association, (NECA) and the Department of Labor, (DOL) (former Commissioner Robison, See Attached Letter). Minutes of all meetings were recorded.

Below is a summary of the purpose of the Electrical Examiners' Board, its organization, and functions of responsibility.

I. PURPOSE OF THIS COMMITTEE

Primary purpose of this Committee is to make recommendations concerning the "continuing or sunseting" of the Board of Electrical Examiners during the Legislative session.

II. PURPOSE OF THE BOARD OF ELECTRICAL EXAMINERS

Section AS 08.40.005, for the purpose of establishing the Board -- "to protect the safety of people and property in the State from the danger of improperly installed electrical wiring and equipment, to provide a procedure to assure the public: 1) that persons responsible for making electrical installations in this State are qualified; and, 2) a sufficient number of persons are so qualified."

III. ORGANIZATION OF THE BOARD

Members: Two licensed Electrical Administrators; one public member.

Appointed by: The Governor and confirmed by the Legislature

Terms: Three (3) year terms -- staggered;
limited to two terms

Staff: One part-time investigator (as assigned for reported infractions) and one part-time Licensing Examiner.

Board Meetings: One regular annual meeting.

IV. FUNCTIONS OF RESPONSIBILITY OF THE BOARD

1. Qualifies an applicant in order to take an exam for an Electrical Administrator's license.
2. Adopts regulations establishing categories of Electrical Administrators, establishing qualifications for those categories, and the content of examination for applicants for each category.
3. Establishes the continued competency of an applicant for license renewal and reinstatement, and the suspension and revocation of licenses.
 - (a) Continuing education for renewal of an Electrical Administrator's license is required when the National Electrical Code or the National Electrical Safety Code is revised.

- (b) For license renewal, applicant must attend at least an eight (8) hour Board approved course.
4. Adopts regulations relating to the examination and licensing of Electrical Examiners (monitors and administers the examination). A licensing exam shall be conducted at least twice during each year at appropriate places in the State.
 5. Investigation by the Board. The Board is responsible in responding to complaints by the public for unsafe installation violations. The Board may make, or have made, a physical inspection or investigation into the work of a licensee, which it considers necessary. May issue subpoenas and process, compelling the attendance and production of any papers for purpose of investigation and examination.

AD HOC'S COMMITTEE'S FINDINGS

The Ad Hoc Committee examined the Legislative Audit of September 25, 1985, and concluded the following:

Legislative Audit Recommendation No. 1:

The Legislative Audit points out that "the licensing and regulation of electrical administrators can be adequately performed in the absence of the Board."

The Committee opposes this finding. The Committee felt strong in supporting a non-partisan Board which will provide the procedures in insuring the public that persons responsible for making the electrical installations in the State are qualified and competent.

The Committee further finds the importance to provide the public with a non-partisan Board of Electrical Examiners which will hold fair and impartial hearings to revoke, suspend, or deny licenses as stipulated under the present statute.

The Committee finds that the licensing function of the Electrical Administrators should continue to be regulated.

In order to protect the public it is found that contractor compliance with the electrical code is essential.

It is vital to the public's safety to have one person accountable, the licensed Electrical Administrator, for all electrical work performed by his employer, and/or his employees, or by himself to be in compliance with installation laws, current

wiring and safety codes. The State has a responsibility to the public to insure that persons responsible for making electrical installations in this State be qualified.

Poor electrical wiring, by irresponsible and incompetent electrical installers will cause irreparable harm to the public. Life safety hazards will result from inadequate electrical installation, financial loss will result from damaged property caused by fire.

Legislative Audit Recommendation No. 2:

The Committee agreed that "the Board should require evidence of personal supervision to insure that jobs have been inspected". The Board has recently implemented an affidavit to be notarized which will:

- A. Insure evidence of jobs being personally inspected by Electrical Administrators.
- B. Help with the problem of absentee administrators by requiring them to personally inspect the work.
- C. Be required when, and if, the authority having jurisdiction deems it necessary.

NOTE: Electrical Administrators can only be licensed to a single contractor.

Legislative Audit Recommendation No. 3:

"The Board should clarify regulations relating to the scope of examinations in order to be consistent with other regulations pertaining to scope of licenses."

The Board has made changes revising examinations for the various licensed categories in order to be consistent with other regulations and in response to public input.

Regulations have been revised to reflect:

- A. That a person holding a current license in outside line work will not be granted a license in outside communication without taking a separate exam.
- B. That a person holding a current valid license in inside wiring will not be granted a license in inside communication without a separate exam.

- C. That the examination is separate for each category that an applicant is seeking to be licensed in. (This allows the applicant to be tested only on the subject matter of the licensed category.)

Legislative Audit Recommendation No. 4:

"The Board should comply with regulations over application for initial licensure to insure that applicants are adequately qualified."

The Committee's findings are that the Board is in compliance with current regulations with one technical exception, "Letters of recommendation for licensure as an Electrical Administrator from three persons licensed in any state in the electrical industry".

This item can not be enforced for the Communication Electrical Administrator's license because of a technical problem under 12 AAC 32.250(5). Only licensed persons in the industry may support an applicant's experience and qualifications for licensure as a Communication Electrical Administrator. Since Communication workers are not subject to certificate of fitness license, they therefore; cannot support an applicant's qualification as a Communication Electrical Administrator according to regulations.

It was further noted, that the regulations pertaining to applicable experience has been expanded to include one year of experience of the six years immediately proceeding the date of application as an electrical inspector, or as an instructor, which would count towards qualifications for an Electrical Administrator's license in the inside wiring and outside line work category (see 12 AAC 32.090). NOTE: There were concerns with some Committee members that felt this area needed additional review by the Board.

Legislative Audit Recommendation No. 5:

"The Board should improve communications with the Department of Labor (DOL) over violations by Electrical Administrators."

This Committee recognizes a major problem with communication between DOI and the Electrical Board, and feels that the primary reasons are the separation of the Department of Labor and Department of Commerce in regards to licensing, enforcement and communication between departments and the Electrical Board.

Example: All reports of investigation from the DOI, Mechanical Inspection Division, are to be sent to the Chief Investigator with the Division of Occupational Licensing. It was noted that

the above division is not aware of violations the Division of Occupational Licensing is investigating and vice versa.

There appears to be no tracking of investigations from one department to the other (DOL and DOC). It is further noted that investigations that are forwarded to the Department of Law for prosecution receive "little" or no attention due to the priorities set by the Department of Law. The Board recognizes that there needs to be some structural changes which would eliminate these communication problems.

The Alaska Professional Design Council in cooperation with the Alaska Central Chapter of ICBO (International Congress of Building Officials) is addressing these problems and published a report and recommendations on the need for building reform within in the State of Alaska dated December 11, 1986.

Legislative Audit Recommendation No. 6:

"The Board should establish regulations which provide for licensure by endorsement and/or reciprocity."

Committee findings indicate that the Board has repeatedly tried to obtain tests that were given to other licensures by other states. Varicus problems exist concerning reciprocity.

1. No uniformed tests are given in the varicus states.
2. The varicus states will not release their tests because of their confidentiality.
3. Lack of consistency in qualifications to take exams. NOTE: Some states allow anyone to take the exam without requiring qualifications.

SUMMARY

The Ad Hoc Committee has met in ten separate meetings with the final finding that the Board of Electrical Examiners should continue in existence.

International Brotherhood

of Electrical Workers

TELEPHONE
(907) 272-6571

DISPATCH
(907) 276-1547

2702 DENALI STREET
ANCHORAGE, ALASKA 99503-2779

J. J. "JACK" HULL
BUSINESS MANAGER • FINANCIAL SECRETARY

ERIC WORTHINGTON
PRESIDENT



Local 1547



August 5, 1986

Loren H. Lounsbury, Commissioner
Department of Commerce &
Economic Development
State of Alaska
P.O. Box D
Juneau, Alaska 99811

Dear Commissioner Lounsbury:

This letter is in regards to the Electrical Examiners Board. As you know, the Legislature did not pass legislation to continue the Board and it is our understanding that the Board is presently in a one year "wind down" unless new legislation is passed.

The IBEW has formed a committee, with Dixie Hudish, Government Relations Representative of the IBEW, as Chair, to address the "continuation or sunseting" of the Electrical Examiners Board.

It is our intention to have members serving on the committee that will represent not only the Electrical Examiners Board, the National Electrical Contractors Association (NECA), the Electrical Inspectors Association, and the IBEW, but also the Department of Labor, Division of Labor Standards & Safety and the Department of Commerce & Economic Development, Division of Occupational Licensing, so that a mutual understanding or position will develop among us.

I would like to ask if a member of your department, and in particular the Division of Occupational Licensing, could be appointed by you to participate on the committee. The committee meetings would be held approximately twice a month in Anchorage.

I would appreciate your consideration in having your department participate.

Commissioner Loren H. Lounsbury
August 5, 1986
Page TWO

The next scheduled meeting will be held on Wednesday, August 20, 1986, at 5:30 p.m. at the IBEW/NECA Apprenticeship School, 5144 East 22nd Avenue.

Hoping to hear from you.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. Hull", written in a cursive style.

James J. "Jack" Hull,
Business Manager
IBEW Local Union #1547

JJH.DLH.fs

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

P. O. BOX D
JUNEAU, ALASKA 99801 0800
PHONE: (907) 465-2534

DIVISION OF OCCUPATIONAL LICENSING

August 15, 1986

RECEIVED AUG 19 1986

Mr. J. J. "Jack" Hull
Business Manager, IBEW
2702 Denali Street
Anchorage, AK 99503-2779

Dear Mr. Hull:

Commissioner Lounsbury has forwarded your letter to me for response.

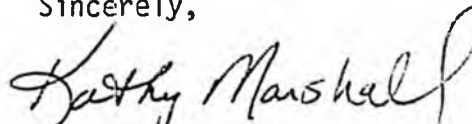
The Division of Occupational Licensing is very interested in being represented on the committee reviewing sunset legislation for the State Board of Electrical Examiners. However, due to budget constraints, it will not be possible to travel to Anchorage twice monthly for meetings, nor do we have a representative for the division in that location.

We would appreciate being kept informed through lists of agenda items, minutes of meetings, and being included by teleconferencing whenever possible.

We will be happy to lend you assistance concerning proposals, statutes, regulations, and the like. I will forward a copy of this letter to Donna Koryk, licensing supervisor for the State Board of Electrical Examiners, who will be your contact person in Juneau.

Thank you for your interest.

Sincerely,



Kathy Marshall
Director

KM/sa2138s
81486a

cc: Loren Lounsbury, Commissioner
Donna Kotyk, Licensing Supervisor
Wanda Fleming, Licensing Examiner

International Brotherhood

of Electrical Workers

TELEPHONE
(907) 272-6571

DISPATCH
(907) 276-1547

2702 DENALI STREET
ANCHORAGE, ALASKA 99503-2779

J. J. "JACK" HULL
BUSINESS MANAGER • FINANCIAL SECRETARY

ERIC WORTHINGTON
PRESIDENT



Local 1547



August 1, 1986

James Robison, Commissioner
Department of Labor
State of Alaska
P.O. Box 1149
Juneau, Alaska 99801

Dear Commissioner Robison,

This letter is in regards to the Electrical Examiners Board. As you know, the Legislature did not pass legislation to continue the Board and it is our understanding that the Board is presently in a one year "wind down" unless new legislation is passed.

The IBEW has formed a committee, with Dixie Hudish, Government Relations Representative of the IBEW, as Chair, to address the "continuation or sunseting" of the Electrical Examiners Board.

It is our intention to have members serving on the committee that will represent not only the Electrical Examiners Board, the National Electrical Contractors Association (NECA), the Electrical Inspectors Association, and the IBEW, but also the Department of Labor, Division of Labor Standards & Safety and the Department of Commerce & Economic Development, Division of Occupational Licensing, so that a mutual understanding or position will develop among us.

I would like to ask if Don Cather or a member of the Division of Labor Standards & Safety could participate on the committee. Dixie Hudish did speak to Don Wilson in regards to this subject.

The committee meetings would be held approximately twice a month in Anchorage.

Commissioner Jim Robison
August 1, 1986
Page TWO

I would appreciate your consideration in having your department participate. The next scheduled meeting will be held on Wednesday, August 20, 1986, at 5:30 p.m. at the IBEW/NECA Apprenticeship School, 5144 East 22nd Avenue.

Hoping to hear from you.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Hull", written in dark ink.

James J. "Jack" Hull,
Business Manager
IBEW Local Union #1547

JJH.fs



WALTER R. GARDNER
& ASSOCIATES
ELECTRICAL CONSULTANT

7731 ISLAND DRIVE
ANCHORAGE, ALASKA 99504
(907) 333-0771

February 20, 1987

PLAN REVIEW
CODE COMPLIANCE
JOBSITE INSPECTION
JOBSITE REPORTING
CONTRACT COMPLIANCE

PROJECT ESTIMATING
COST ANALYSIS
PROJECT MANAGEMENT
CHANGE ORDER REVIEW
CLAIMS

Senator Tim Kelly, Chairman
Senate Labor & Commerce Committee
P. O. Box V
Juneau, Alaska 99811

Reference: Senate Bill # 111

"An act extending the termination date of the Board of Electrical Examiners;
and providing an effective date."

Subject: Telephone conversation this date.

Dear Senator Kelly:

Pursuant to the above subject telephone conversation with your Mr. Mark Johnson, transmitted herewith is a copy of the Board of Electrical Examiners "position paper" for your use.

It is my understanding that the bill will be in Committee review on Friday, February 27 at 2:00 PM.

If this Bill appears to have any problems getting out of Committee, the Board will be in Juneau for the regular scheduled meeting, March 3, 4 & 5, to answer any questions that the Committee may have. I firmly believe that all the concerns of the audit committee have been addressed in the "position paper".

We would appreciate your support for the Bill.

Very truly yours,

Walter R. Gardner
Chairman

Board of Electrical Examiners

POSITION PAPER

BOARD OF ELECTRICAL EXAMINERS

Prepared by: Walter R. Gardner, Chairman
February 5, 1987

For: "An act extending the termination date of the Board of Electrical Examiners; and providing an effective date."

Below is a summary of the purpose of the Board of Electrical Examiners, its organization, and functions of responsibility.

I. PURPOSE OF THE BOARD OF ELECTRICAL EXAMINERS

Section AS 08.40.005, for the purpose of establishing the Board-- "to protect the safety and property in the State from dangers of improperly installed electrical wiring and equipment, to provide a procedure to assure the public; 1) that persons responsible for making electrical installations in the State are qualified; and, 2) a sufficient number of persons are so qualified."

II. ORGANIZATION OF THE BOARD

Members: Two licensed Administrators; one public member.

Appointed by: The Governor, and confirmed by the Legislature.

Terms: Three (3) year terms--staggered; limited to two (2) terms.

Staff: One part-time Investigator (as assigned for reported infractions) and one part-time License Examiner.

Board meetings: One regular annual meeting.

III. FUNCTIONS OF RESPONSIBILITY OF THE BOARD

1. Qualifies an applicant in order to take the examination, for an Electrical Administrator's license.
2. Adopts regulations establishing categories of Electrical Administrators, establishing qualifications for those categories, and content of examination, in each category.
3. Establishes the continued competency of an applicant for license renewal and reinstatement, and the suspension and revocation of licenses.
 - (a) Continuing education for the renewal of an Electrical Administrator's is required when the National Electrical Code or the National Electrical Safety Code is revised.

(b) For license renewal, applicant must attend at least eight (8) hour Board approved course.

4. Adopts regulations relating to the examination and licensing of the Electrical Administrators (monitors and administers the examination). A licensing examination shall be conducted at least twice a year at appropriate places in the State.
5. Investigations by the Board. The Board is responsible in responding to complaints by the public for unsafe installation violations. The Board may make, or have made, a physical inspection or investigation into the work of a licensee, which it considers necessary. May issue subpoenas and process, compelling the attendance and production of any papers for the purpose of investigation and examination.

IV. ANALYSIS OF PUBLIC NEED.

I-The extent of which the board, commission or program has operated in the public interest.

A- The Board has examined 170 applicants during FY 86, (July 1, 1985-June 30, 1986) resulting in the issuing of 28 new licenses, in all categories. The number of applications, not processed because of incomplete information, is not recorded. In August, 1985- 82 applicants took the test. 12 passed, 70 failed. In January, 1986- 88 took the test. 20 passed, 68 failed. (Note: The difference between the pass/license issued is some of the categories were added to existing license numbers.)

The Board has examined 125 applicants thus far, during FY 87. In August, 1986- 69 applicants took the test. 38 passed, 31 failed. In January, 1987-56 applicants took the test. 11 passed, 45 failed.

The Board, although not specifically mandated by regulations, does, in fact, monitor the examination's. A Board member, is normally in attendance during the testing period, to assist the Licensing examiner and to preserve the security of the Administrators examination. The Board member(s) review the test being given, to insure that a fair, reasonable and comprehensible questions are contained in the examination material, to test the applicant's knowledge of safe working procedures, safe installations, applicable Code's and standard practice procedures.

B- Continuing Education, established by 12 AAC 32.310, is a pre-requisite for the renewal of any license, in any category. The development of new materials, instructions in their application,

POSITION PAPER
BOARD OF ELECTRICAL EXAMINERS
Page -3-

and use, keeps the license holder abreast of new methods for an electrically safe environment.

- C- The development, and implementation, of the new test for all categories has made the applicants more aware of the knowledge required for an administrator's license.

V. LEGISLATIVE AUDIT/PERFORMANCE REPORT DATED September 25, 1985.

Legislative Audit Recommendation No. 1:

The Board of Electrical Examiners should be allowed to terminate on June 30, 1987. However, the licensing and regulation of the electrical administrators should be retained.

The Board opposed this finding.

The non-partisan Board has been actively engaged in performance of the mandated charges.

Enforcement Function

A minimum of thirteen (13) complaints have been received from the public sector and forwarded to the Investigators for processing, concerning unlicensed activities.

The Commissioner of Labor, under AS 08.40.175 (and DOL enforcement personnel), are required by this Section to enforce/investigate these complaints and issue Cease & Desist Orders, as applicable.

Under Section AS 08.40.070, should a complaint be received from DOL, it would be within the Board authority to review and recommend action to the Department of Law, under AS 08.40.180.

Mr. Steve Boyd, Board member in Ketchikan, was appointed as liaison between the Board and DOL, within the past year.

RECOMMENDATION NO. 2

The Board should require evidence of personal supervision to ensure that jobs have been inspected by the electrical administrators.

The Board has reviewed, a form (presently in use) by the DOL electrical inspectors, (a copy is attached), for adequacy. It is acceptable, pending review by Department of Law. These forms are utilized by the "Authority Having Jurisdiction" when they consider it advisable/necessary.

The Board has not been notified of any use of this form, to date.

RECOMMENDATION NO. 3

The Board should clarify regulations to the scope of examinations in order to be consistent with other regulations pertaining to the scope of the licenses.

POSITION PAPER
BOARD OF ELECTRICAL EXAMINERS
Page -4-

Pursuant to a number of complaints, from potential license holders, to remove the Inside Communications questions from the Inside Wiring examinations and the Outside Communications questions from the Outside Line Work examinations, the Board took the necessary steps to remove these questions from the disputed areas. This resulted in the applicant to be tested in ONLY the category listed in the application. Heretofore, the Outside Line Work license recognized the similar construction and safety requirements of Outside Communications resulting in the issuance of both licenses, when the Outside Line Work test, including Outside Communication questions, was completed with a passing grade.

A similar situation was with the Inside Wiring examination and the Inside Communication examination. Both licenses were issued if the applicant passed the Inside Wiring examination, with Inside Communication questions included, with a passing grade.

In making the above changes, the Board recognizes an additional problem, that needs to be addressed:

12 AAC 32.250(a)(5) requires "a notarized certificate in support of the applicant's experience and qualifications for licensure as an electrical administrator from each of three persons licensed in the electrical industry in any state."

The State of Alaska, Department of Labor does not license, nor require a Certificate of Fitness, for any communication workers as well as a considerable number of "Outside" states. Therefore, until regulations are changed, the Board could have a problem. This will be addressed in the next regularly scheduled meeting.

RECOMMENDATION NO. 5

The Board should improve communications with the Department of Labor (DOL) over violations by electrical administrators.

In an attempt to improve communications between the Board and DOL, the Board Chairman appointed Mr. Steve Boyd as liaison between the two entities, with the departments effected, properly notified.

Limited, if any, communications has transpired from the DOL.

Should the proposed "Building Code Bureau" legislation and enactment be immediately forthcoming, the communications between the enforcement group(s) and the Boards will be increased by 1000%

The Alaska Professional Design Council, in cooperation with the Alaska Central chapter of International Congress of Building Officials (ICBO) is addressing these, and other problems and has published a report and recommendations on the need for State restructuring of enforcement, as well as building Code reforms within the State of Alaska, dated December 11, 1986.

RECOMMENDATION NO.6

The Board should establish regulations which provide licensure by endorsement and/or reciprocity.

The Board, along with Licensing personnel, have attempted to comply with this regulation by contacting numerous State agencies, Inspector programs, and other regulatory agencies to determine if there is any other testing program that would serve the needs of the Alaskan public, as well as the present program, without success. Reasons are numerous; the major ones are:

- 1-No uniform testing procedures, in numerous States.
- 2-Tests will not be released to other than on a "need to know" basis, in their own State organization, to preserve confidentiality.
(This, also, is in Alaska.)
- 3-Lack of uniformity in qualifications, experience and certifications.
(Note: Washington, as an example, allows ANYONE to "set" for the examination, with out pre-qualification requirements. The last information available, was a pass rate of 1 in 249.)

SUMMARY

THE BOARD FINDS THAT; TO PRESERVE THE PRESENT ELECTRICAL SAFETY OF THE ALASKAN PUBLIC, MAKE THE TECHNICAL UP-GRADING OF THE ADMINISTRATOR'S KNOWLEDGE A LICENSE REQUIREMENT, BASED ON ALASKAN CONDITIONS, THE BOARD OF ELECTRICAL EXAMINERS SHOULD NOT BE ALLOWED TO "SUNSET"

Concurrence: _____ Date _____
Steve Boyd, Member, Board of Electrical Examiners

_____ Date _____
Michael Andrews, Member, Board of Electrical Examiners

_____ Date _____
Walter R. Gardner, Chairman, Board of Electrical Examiners

THIS FORM MUST BE NOTORIZED

STATE OF ALASKA

DEPARTMENT OF LABOR/MECHANICAL INSPECTION

P.O. BOX 874367

WASILLA, ALASKA 99687

(907) 376-8696

CERTIFICATE OF PERSONAL SUPERVISION

(AS 08.40.195)

Under penalty of perjury, I hereby certify that I am the holder of a
valid Electrical Administrator's License No. _____

for _____ in the category of
(name of contractor)

_____, and that I have personally
(name of licensed categories)

supervised and inspected the electrical installation or repair work

performed at _____.

(date)

(signature)

(printed or typed name)

(mailing address)

(city, state and zip code)

SB

126

5-0629B
Cramer
3/25/87

Original sponsors: Hensley and Binkley

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 126 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to payment of overtime and a good
7 faith exception to damages for unpaid overtime,
8 unpaid minimum wages, and liquidated damages; and
9 providing for an effective date."

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

11 * Section 1. AS 23.10.060 is amended by adding a new paragraph to read:
12 (19) work performed under a pay plan approved under AS 23.-
13 10.062.

14 * Sec. 2. AS 23.10 is amended by adding a new section to read:

15 Sec. 23.10.062. IRREGULAR AND FLEXIBLE WORK HOUR PLANS. (a)
16 The department may approve a pay plan that provides fixed rates of pay
17 for irregular or flexible work hours as provided in this section. The
18 department shall review a proposed plan or proposed changes to a plan
19 already approved. A plan or change to an approved plan is not valid
20 until it receives written approval from the department.

21 (b) The department may approve a plan if the plan

22 (1) is entered into under an agreement as part of a collec-
23 tive bargaining contract or in accordance with (c) of this section;
24 and

25 (2) is a flexible work hour plan that provides for a
26 40-hour work week and not more than a 10-hour work day and that re-
27 quires the employer to pay compensation at a rate of one and one-half
28 times the regular rate of pay for work over 40 hours per week or 10
29 hours per day.

1 (c) An employer and an employee shall enter a signed written
2 agreement at the time of hiring establishing the day and place of
3 payment, and the rate of pay for a work plan under this section.
4 These items may not be changed unless the change is agreed to on or
5 before the payday before the time of change.

6 * Sec. 3. AS 23.10 is amended by adding a new section to read:

7 Sec. 23.10.112. GOOD FAITH EXCEPTION. In an action to recover
8 unpaid minimum wages, unpaid overtime compensation, or liquidated
9 damages under AS 23.10.050 - 23.10.150, if the employer shows by clear
10 and convincing evidence that the act or omission giving rise to the
11 action was in good faith and that the employer had reasonable grounds
12 for the act or omission, the court may refuse to award liquidated
13 damages or may award an amount less than the amount established under
14 AS 23.10.110.

15 * Sec. 4. This Act applies to payment of wages for work performed on or
16 after the effective date of this Act.

17 * Sec. 5. ~~AS 23.10.050(17)~~ and 23.10.060(18) are repealed.

18 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
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5-0629L
Cramer
3/26/87

Original sponsors: Hensley and Binkley

1 IN THE SENATE

B .IE LABOR AND
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 126 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to employment practices and working
7 conditions; and providing for an effective date."

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

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10 (19) work performed under a pay plan approved under AS 23.-
11 10.062.

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9 action was in good faith and that the employer had reasonable grounds
10 for the act or omission, the court may refuse to award liquidated
11 damages or may award an amount less than the amount established under
12 AS 23.10.110.

13 * Sec. 4. AS 23.10.405 is amended to read:

14 Sec. 23.10.405. LEGISLATIVE DECLARATION OF HAZARD. Employment
15 in underground coal mines, underground lode mines, underground placer
16 mines, in underground coal, lode or placer workings, or in all other
17 underground mines or workings may be [IS] injurious to health and
18 dangerous to life and limb.

19 * Sec. 5. AS 23.10.410(a) is amended to read:

20 (a) A person may not be employed in an underground coal mine,
21 underground lode mine, underground placer mine, underground coal, lode
22 or placer workings, or other underground mine, or workings for more
23 than 10 [EIGHT] hours in 24 hours, except on a day when a change of
24 shift is made, excluding, however, an intermission of time for meals,
25 or otherwise going to or from the place where the work is actually
26 carried on, whether in going on or off shift, or in going to or
27 returning from meals.

28 * Sec. 6. AS 23.10.410(b) is amended to read:

29 (b) It is the purpose of this section to limit the hours of

1 employment in 24 hours to 10 [EIGHT] hours of actual labor at the
2 face, or other place where the work or labor to be done is actually
3 performed.

4 * Sec. 7. Sections 1 - 3 of this Act apply to payment of wages for work
5 performed on or after the effective date of this Act.

6 * Sec. 8. ~~AS 23.10.060(17)~~ and 23.10.060(18) are repealed.

7 * Sec. 9. This Act takes effect immediately under AS 01.10.070(c).
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5-0629B
Cramer
3/27/87

Original sponsors: Hensley and Binkley

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 126 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

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12 for the act or omission, the court may refuse to award liquidated
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15 * Sec. 4. This Act applies to payment of wages for work performed on or
16 after the effective date of this Act.

17 * Sec. 5. AS 23.10.060(18) is repealed.

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Original sponsors: Hensley and Binkley

BY THE LABOR AND
COMMERCE COMMITTEE

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11 action was in good faith and that the employer had reasonable grounds
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29 hours per day.

1 (c) An employer and an employee shall enter a signed written
2 agreement establishing the day and place of payment, and the rate of
3 pay for a work plan under this section. These items may not be chang-
4 ed unless the change is agreed to on or before the payday before the
5 time of change.

6 * Sec. 3. AS 23.10.110(a) is amended to read:

7 (a) An employer who violates a provision of AS 23.10.060 or
8 23.10.065 is liable to an employee affected in the amount of unpaid
9 minimum wages, or unpaid overtime compensation, as the case may be,
10 and in an additional equal amount as liquidated damages. An employer
11 who raises as a defense that the failure to pay was made in good faith
12 and that the employer had reasonable grounds for the act or omission
13 under AS 23.10.112 shall pay the employee the amount of unpaid minimum
14 wages and unpaid overtime compensation as determined by the depart-
15 ment. The employer may contest the department's determination if an
16 action is brought under (b) of this section and is not required to pay
17 liquidated damages unless ordered to do so by a court of competent
18 jurisdiction under (b) of this section.

19 * Sec. 4. AS 23.10 is amended by adding a new section to read:

20 Sec. 23.10.112. GOOD FAITH EXCEPTION. In an action to recover
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Alaska State Senate

P.O. Box V
Juneau, AK 99811
Phone: (907) 465-2444
465-3862/465-4923



William L. Hensley

Senate Finance Committee
State Affairs Committee
Vice-Chair, Rules Committee
Chair, Administrative Regulation Review

OK
M

MEMORANDUM

DATE: March 3, 1987
TO: Senator Tim Kelly, Chairman
Senate Labor and Commerce Committee
FROM: Senator Willie Hensley *WH*
SUBJ: Senate Bill 126, Flex Time bill

Tim, I would appreciate it if you could schedule Senate Bill 126 on Friday March 13th or shortly thereafter. The Department of Labor should have had sufficient time by then to develop their position on this bill.

Thank you for your consideration of this request.

WLH/mjs

Alaska State Senate

P.O. Box V
Juneau, AK 99811
Phone: (907) 465-2444
465-3862/465-4923



Senate Finance Committee
State Affairs Committee
Vice-Chair, Rules Committee
Chair, Administrative Regulation Review

William L. Hensley

M E M O R A N D U M

DATE: March 30, 1987

TO: Senator Tim Kelly, Chairman
Senate Labor and Commerce Committee

FROM: Senator Willie Hensley *WH*

SUBJ: Senate Bill 126 - Flex Time

Tim, I would like your committee to consider putting out a committee substitute for Senate Bill 126 that had the following features:

1. Keep the 4 tens work week option. Delete the 60 hour options,
2. That the 4 tens options can be a condition of employment, and
3. Retain some form of the "good faith" provision that protects workers from unscrupulous employer pay practices versus penalizing all employers for inadvertent and occasional errors.

Thank you for your consideration of this matter.

WLH/mjs

STATE OF ALASKA

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 1149
JUNEAU, ALASKA 99802
PHONE: (907) 465-2700

M
/

February 23, 1987

Honorable Tim Kelly, Chairman
Labor and Commerce Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

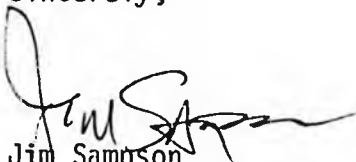
Dear Senator Kelly:

As you know, Senate Bill 126, dealing with the payment of overtime, is scheduled for hearing before the Senate Labor and Commerce Committee on February 25, 1987.

Inasmuch as the provisions of this bill significantly alter the existing overtime law, additional time beyond the February 25 hearing date will be required for the Department of Labor to fully evaluate the bill's affect on Alaska's workers. I would, therefore appreciate any additional time your committee could provide for our review of the bill.

Thank you.

Sincerely,


Jim Sampson
Commissioner

cc: Honorable Willie Hensley
Honorable John Binkley

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: SB 126
Publish Date: _____

REQUEST: _____

Revision Date: _____
Title: " An Act relating to payment
of overtime "
Sponsor: Hensley and Binkley
SRequestor: Senate Labor & Commerce

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: ^{NS} Tom Stuart, Director *Stuart* Phone: 465-4870
Division: Labor standards & Saftey Date: 2/25/87

Approved by Commissioner: ^{NS} Jim Sampson Date: 2/25/87
Agency: Labor *Jim Sampson*

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

Bill No. Senate Bill 126

Date March 13, 1987

Title "An Act relating to payment of overtime and a good faith exception to damages for unpaid overtime, unpaid minimum wages, and liquidated damages;"

Contact: Tom Stuart
465-4870

Eileen Plate
465-2700

Senate Bill 126 proposes significant changes to Alaska's overtime law by permitting the use of irregular and flexible work week pay plans and by providing discretion to courts in awarding liquidated damages in actions relating to unpaid wages.

These proposals erode existing statutes which are designed to prevent the exploitation of workers.

The irregular work hour plan proposed provides for payment of a fixed weekly salary for up to 60 hours per week if the nature of the employer's business and the duties of the worker require unpredictable and irregular hours of work that will average 40 hours per week over an extended period. Under such a plan, no overtime is payable unless the work week is in excess of 60 hours, and then overtime would be payable only for those hours in excess of 60 hours. Existing law, on the other hand, requires the payment of overtime after 40 hours per week.

Such irregular work hour plans effectively reduce a worker's rate of pay. For example, following is a comparison of a worker's pay calculated under the proposed irregular work week plan and under existing law. (This comparison assumes a rate of pay of \$400 per week).

Calculation of Pay Under Irregular Work Hour Plan

	<u>Hours Worked</u>	<u>Salary Guaranteed</u>	<u>Overtime pay (\$400÷60x1.5) \$10.00/Hr</u>	<u>Total Pay</u>
Week 1	60	\$400	0	\$400
Week 2	60	\$400	0	\$400
Week 3	60	\$400	0	\$400
Week 4	40	\$400	0	\$400
Week 5	10	\$400	0	\$400
Week 6	10	\$400	0	\$400
	<u>240</u>	<u>\$2400</u>	<u>\$0</u>	<u>\$2400</u>

(Average = 40 hours
per week)

Calculation of Pay under Current Law

	<u>Hours Worked</u>	<u>Regular pay (\$400÷40) \$10.00/Hour</u>	<u>Overtime pay (\$10.00 x 1.5) \$15.00/hour</u>	<u>Total Pay</u>
Week 1	60	\$400	\$300	\$700
Week 2	60	\$400	\$300	\$700
Week 3	60	\$400	\$300	\$700
Week 4	40	\$400	0	\$400
Week 5	10	\$100	0	\$100
Week 6	10	\$100	0	\$100
Total	<u>240</u>	<u>\$1800</u>	<u>\$900</u>	<u>\$2700</u>

As this comparison shows, under the irregular work hour plan, a worker would be paid \$300 less than required under existing law for the same number of hours worked in a six week period.

The flexible work week plan proposed differs from the irregular work hour plan proposal in the following respects.

- (1) The hours of work under a flexible plan need not be uncontrollable or unpredictable; and
- (2) The flexible plan provides for the payment of overtime under a two-tiered calculation, one calculation applying to hours worked in excess of 40 but less than 60 per week and the other applying to hours worked in excess of 60 per week.

The flexible work week plan embraces the concept of reducing a worker's rate of pay as more hours are worked. This is totally contrary to the purpose of overtime laws. (See Attachments 1 and 2 for samples of pay schedules under the proposed flexible work week plan and under current law.)

In addition to being counter to the philosophy upon which overtime laws are based, irregular work hour and flexible work week plans have an extremely high failure rate. In practice, the requirement that the work hours average 40 per week over an extended period does not occur because the work week does not fluctuate below 40 hours to the same extent that it fluctuates above. A determination that a plan is failing of course, is an "after the fact" situation, since the work schedule is not known at the onset of employment under such a plan. Administration of such plans is difficult at best.

This bill also proposes to relieve an employer of mandatory liquidated damages if he fails to prevail in a court action initiated to recover wages if the employer acted in good faith. Current law, on the other hand, mandates the award of liquidated damages in all such actions when the employer fails to prevail.

Relaxation of the liquidated damages requirement will dilute the legal process which now focuses on facts to establish whether or not wages are due. This will protract the litigation process and further delay the payment of wages due Alaska's workers. Further, under such a good faith exception, it would be in an employer's interest to remain unknowledgeable of Alaska's wage and hours laws in order that such a defense could be put forth should a wage action arise. The incentive presently provided for proper payment of wages would be lost under the provisions of this bill.

This bill is not in the best interest of Alaska's workers, and the Department of Labor is opposed to it.

APPROVED:



Jim Sampson, Commissioner
Department of Labor

Sample Pay Schedule Under Proposed Flexible Work Week Plan

Assumes Fixed Rate of Pay of \$400 for up to 60 hour work week

<u>Hours Worked</u>	<u>Fixed Salary</u>	<u>Overtime Rate</u>	<u>Overtime Pay</u>	<u>Total Pay</u>
41	\$400	\$4.87	\$4.87	\$404.87
42	\$400	\$4.77	\$9.54	\$409.54
43	\$400	\$4.65	\$13.95	\$413.95
44	\$400	\$4.55	\$18.20	\$418.20
45	\$400	\$4.45	\$22.25	\$422.25
46	\$400	\$4.34	\$26.04	\$426.04
47	\$400	\$4.26	\$29.82	\$429.82
48	\$400	\$4.17	\$33.36	\$433.36
49	\$400	\$4.08	\$36.72	\$436.72
50	\$400	\$4.00	\$40.00	\$440.00
51	\$400	\$3.92	\$43.12	\$443.12
52	\$400	\$3.85	\$46.20	\$446.20
53	\$400	\$3.77	\$49.01	\$449.01
54	\$400	\$3.70	\$51.80	\$451.86
55	\$400	\$3.64	\$54.60	\$454.60
56	\$400	\$3.57	\$57.12	\$457.12
57	\$400	\$3.51	\$59.67	\$459.67
58	\$400	\$3.44	\$61.92	\$461.92
59	\$400	\$3.39	\$64.61	\$464.61
60	\$400	\$3.33	\$66.60	\$466.60

Note: Calculation of overtime rate = Fixed Salary ÷ hours worked ÷ 2

Sample Pay Schedule for up to 60 Hour Work Week Under Current Law

Assumes regular rate of pay of \$10/hr. (\$400 ÷ 40)

<u>Hours Worked</u>	<u>Regular Pay</u> <u>(10.00/hr.)</u>	<u>Overtime rate</u>	<u>Overtime Pay</u>	<u>Total Pay</u>
41	\$400	\$15.00	\$15.00	\$415.00
42	\$400	\$15.00	\$30.00	\$430.00
43	\$400	\$15.00	\$45.00	\$445.00
44	\$400	\$15.00	\$60.00	\$460.00
45	\$400	\$15.00	\$75.00	\$475.00
46	\$400	\$15.00	\$90.00	\$490.00
47	\$400	\$15.00	\$105.00	\$505.00
48	\$400	\$15.00	\$120.00	\$520.00
49	\$400	\$15.00	\$135.00	\$535.00
50	\$400	\$15.00	\$150.00	\$550.00
51	\$400	\$15.00	\$165.00	\$565.00
52	\$400	\$15.00	\$180.00	\$580.00
53	\$400	\$15.00	\$195.00	\$595.00
54	\$400	\$15.00	\$210.00	\$610.00
55	\$400	\$15.00	\$225.00	\$625.00
56	\$400	\$15.00	\$240.00	\$640.00
57	\$400	\$15.00	\$255.00	\$655.00
58	\$400	\$15.00	\$270.00	\$670.00
59	\$400	\$15.00	\$285.00	\$685.00
60	\$400	\$15.00	\$300.00	\$700.00

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version : SB 126

Publish Date : _____

REQUEST: _____

Revision Date: _____

Title: " An Act relating to payment

of overtime "

Sponsor: Hensley and Binkley

SRequestor: Senate Labor & Commerce

Agency Affected: Labor

BRU: Labor Standards & Saftey

Components: Wage and Hour

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: NE Tom Stuart, Director *Stuart* Phone: 465-4870
 Division: Labor standards & Saftey Date: 2/25/87

Approved by Commissioner: Jim Sampson *J. Sampson* Date: 2/25/87
 Agency: Labor

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

The Alaska Legislature should repeal the statutory eight-hour limit on underground mining shifts

The following points should be considered with regard to the request that you repeal A. S. 23.10.405 through 415.

First, this statute is not wage and hour legislation and has nothing whatsoever to do with ensuring that mine workers will be compensated properly. Those legal requirements are contained in other sections of the code.

The statutory language to be repealed has been on the books in Alaska unchanged since 1917. There are no annotations behind these statutory provisions, giving rise to the implication that they have never been construed by the courts. Since there has been very little underground mining in Alaska since World War II, it is not surprising that these sections have not received much attention in recent history.

Section 405 of the act indicates that mining is "injurious to health and dangerous to life and limb." Even if this were true in 1917, many giant strides have been taken since that time to make underground mining a safe profession. For one thing, the federal government has virtually pre-empted the field of underground mine safety with the Federal Mine Safety and Health Act of 1977 (P.L. 95-164). That Act granted to the Secretary of Labor broad authority to regulate conditions underground through the Mine Safety and Health Administration or MSHA. MSHA is a very good watchdog on all underground operations, and MSHA inspectors have made frequent visits to the Greens Creek mine as well as all other underground operations which have been worked on over the past several years. MSHA inspectors are required by law to make their inspections without warning. This requirement, of course, is designed to make mine operators function at a high level of safety at all times, which is very positive.

Mining today is a safer occupation than it was 70 years ago. It is no more dangerous to work ten or twelve hours at a shift underground than it would be to work at any other occupation which involves the use of heavy equipment.

The Greens Creek Mine hopes to be operating within the year with two ten-hour shifts per day underground. If it cannot, because of the existing

requirements of law, employ the miners more than eight hours per shift, it will in effect lose a half shift of production every day even though the costs of transportation and mobilization of each shift will remain the same. The economics of the mine will be severely reduced by such a loss. Clearly, two ten-hour shifts per day is the most economical way to proceed.

The workers at Greens Creek will also prefer the opportunity to work four ten-hour shifts per week rather than five eights, because they will have to spend less time in transit to and from their place of work. In discussing this with the Laborers Union, they have not identified any substantive reason why this statute should not be repealed.

The Alaska Department of Labor Division of Occupational Safety and Health has indicated that it does not enforce this law at this time.

An outright repeal of all three of these sections is requested because although the Greens Creek Mine will probably be the first major underground mine to come on line in Alaska, it may be followed rather quickly by others, and the considerations which dictate their management practices may be different from those of Greens Creek. In order to encourage others, it is recommended that the management of mining companies have the maximum reasonable flexibility in scheduling work shifts underground.

We have had informal discussions with the State Departments of Commerce and Economic Development, Labor, and Natural Resources. No objections by any of those agencies have been identified to us at this time.

It is hoped that this law can be changed during this legislative session because Greens Creek would like to be up and running before the next legislative session convenes. It would be helpful to have this bill adopted this session if for no other reason than to send a clear signal to the world that Alaska supports the efforts of those mining companies like Greens Creek which are trying to get an environmentally sound and socially responsible foothold in the state. In order for the legislation to be most effective, it will have to proceed through the legislature rapidly.

U. S. Department of Labor

Mine Safety and Health Administration
1745 West 1700 South
Salt Lake City, UT 84104



ROCKY MOUNTAIN DISTRICT
Metal/Nonmetal Mine Safety & Health
Salt Lake City Subdistrict
Federal Building, Drawer 10042
Helena, MT 59626 0042

FEB 19 1987

February 17, 1987

MEMORANDUM FOR: Whom It May Concern

FROM: Virgil A. Cain, Supervisory Mine Safety & Health Inspector
Helena, Montana Field Office *Virgil A. Cain*

SUBJECT: Working Hours

This letter deals with the working hours of employees. About five years ago one large mine in my area changed from the eight hours a day, five days a week with two days off to a four day a week, ten hours a day. On the eight hours a day, five days a week, the company had quite a few lost time accidents. After the change to ten hour shifts, four days a week, this company went five months without any accidents and compiled one of the best mining accident records for its size of any mine I have ever had any dealing with.

Just recently this same mine under new management went back to a eight hour day, five days a week and the lost time accidents increased five to six hundred percent. This change has affected the moral of the workers, plus taking away some of their family time.

I am talking about a mine working upto three hundred employees. So what I am really saying, ten hour shifts don't hurt anyone as long as the moral and the time spent with the family plays a big part in the employees work habits and cuts down on accidents.

Presented by: The Assembly
Introduced: 02/09/87
Drafted by: J.P.T.

RESOLUTION OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 1221

A RESOLUTION URGING THE ALASKA LEGISLATURE TO REPEAL OR AMEND THE STATUTORY EIGHT-HOUR LIMIT ON UNDERGROUND MINING SHIFTS.

WHEREAS, Alaska state law provides that underground mining is a dangerous occupation and that no one should be allowed to work underground more than eight hours in a twenty-four hour period, and

WHEREAS, this law has been on the books in Alaska since 1917 unchanged, and

WHEREAS, present safety and health laws and work standards have made this requirement obsolete, and

WHEREAS, the Greens Creek Mining Company is evaluating the possibility of commencing production from its underground mine on Admiralty Island within the next several months, but could be severely handicapped in maintaining an efficient economic underground operation if it were not able to operate two ten-hour shifts per day;

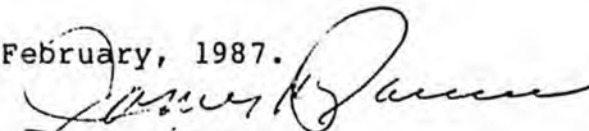
NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

1. That the Legislature of the State of Alaska be and hereby is requested to amend or repeal Article 6 of Title 23 of the Alaska Statutes to restrict or remove the prohibition against a ten-hour underground shift.

2. That the lobbyists for the City and Borough of Juneau be directed to facilitate the introduction and passage of legislation which will accomplish the purposes of this resolution.

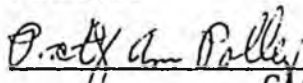
Effective Date. This resolution shall be effective immediately upon adoption.

Adopted this 9th day of February, 1987.



Mayor

Attest:



Clerk

SB

128

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SB 128
Publish Date: _____

REQUEST _____

Revision Date: _____
Title: An Act Relating to State Employees
Sponsor: Binkley
Requestor: Senate Labor and Commerce Committee

Agency Affected: A11
BRU: A11
Components: A11

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	0	(27,519.9)	(27,251.0)	(26,713.3)	(25,637.8)	(23,486.8)
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	(27,519.9)	(27,251.0)	(26,713.3)	(25,637.8)	(23,486.8)
CAPITAL	0	0	0	0	0	0
REVENUE	0	(27,519.9)	(27,251.0)	(26,713.3)	(25,637.8)	(23,486.8)

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	(27,519.9)	(27,251.0)	(26,713.3)	(25,637.8)	(23,486.8)

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

See attached.

Prepared By: Diana DeSimone *[Signature]*
Division: Personnel

Phone: 465-4430
Date: 2/24/87

Approved by Commissioner: Garrey Peska *[Signature]*
Agency: Department of Administration

Date: 2/25/87

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

FISCAL NOTE ANALYSIS CONTINUATION
SB 128

The fiscal note analysis for SB 128 deals with cost savings related to 1) changes in the geographic differential; 2) awarding merit pay increases for only outstanding employees; 3) establishing a 40-hour work week and 4) contracting services.

1. Geographic Differentials. Effective January 1, 1987, the geographic differentials paid to employees in the General Government, Supervisory and Confidential bargaining units were changed as the result of a 1985 geographic differential study conducted by the State and a subsequent arbitration decision. In implementing the new differentials, in areas where the differential went down, employees' salaries were frozen. This fiscal note assumes that in those same areas, employees' salaries would not be frozen for all affected bargaining units. It also assumes no change in the number of employees affected and no change to the current salary schedule for subsequent fiscal years.

Employees in General Government, Supervisory, Confidential and Public Safety Employees Association Bargaining Units, and Partially Exempt Service:

<u>Pay Differential</u>	<u>Monthly Savings</u>	<u>Monthly Cost</u>	<u>Total</u>
\$ 0	\$(122,230)		\$(122,230)
117	(438,586)		(414,155)
147	(1,629)		(1,629)
264	(6,664)		(6,664)
323	(20,092)		(20,092)
469	(405)	727	258
587	(1,868)		(1,868)
792	(2,077)	\$ 1,389	(688)
880	(6,282)		(6,282)
997	(4,519)	2,471	(2,048)
1,115	(163)	15,990	15,827
1,232	(893)	11,188	10,295
(389)	(585)	<u>468</u>	<u>(117)</u>
		Net Differential	\$(549,393)
		(549,393) Monthly	
		x 12	
		<u>\$(6,592,716) Annual Savings</u>	

(NOTE: Figures reflect changes to current expenditures.)

Employees in Labor, Trades and Crafts Bargaining Unit:

<u>Pay Differential</u>	<u>Annual Savings</u>	<u>Annual Cost</u>
\$ 0	\$ (322,877)	\$
117	(890,834)	
147	(6,673)	
264		5,417
323	(86,163)	
469		4,802
587	(13,268)	
792		103,725
880		130,130
997		58,659
1,115		81,728
1,232		545,545
(389)	(9,336)	
	<u>\$(1,329,151)</u>	<u>\$930,006</u>

Net Difference: \$(399,145)

(NOTE: Figures reflect difference between total subsistence paid in calendar year 1986 and proposed legislation.)

2. Limiting Merit Pay Increases to Outstanding Employees. This part of the fiscal note is based on two assumptions:

- An estimate of 5% of State employees rated outstanding each year currently.
- A substantial increase in the number of outstanding ratings given in each subsequent fiscal year. We assume the percentage will double with each year.

It is estimated that merit increases currently account for \$5,377,450 per year.

<u>Fiscal Year</u>	<u>Percentage of Outstandings</u>	<u>Amount</u>	<u>Cost Avoidance</u>
1988	5	\$ 268,873	\$5,108,577
1989	10	537,745	4,839,705
1990	20	1,075,490	4,301,960
1991	40	2,150,980	3,226,470
1992	80	4,301,960	1,075,490

3. Establishment of a 40-hour work week.

The numbers used in this section of the fiscal note are based on a January 1987 report from the Division of Finance which reports 12,027 executive branch employees on the payroll as of this date.

The monthly overtime report issued by the Division of Finance shows 42,279 overtime hours worked during January 1987. The figures used on this fiscal note assumes the number of employees and overtime hours worked will remain constant.

The figures also take into account two other factors:

- An estimated 1,000 employees already work a 40-hour work week thus reducing the amount of hours of overtime that could be saved per year.
- Most employees who work the overtime are institutional and construction type employees who cannot avoid the overtime. We therefore estimate that only 30% of the current overtime hours could actually be reduced.

<u>Total Employees</u>	<u>Increase in Hours per Employee</u>	<u>Increase in Hours per Year</u>	<u>Estimated Actual Increase in Hours</u>
12,027	130	1,563,510	1,433,510
<u>Total OT Hours</u>	<u>OT Cost</u>	<u>Actual Hours Saved</u>	<u>Actual Savings</u>
507,348*	\$12,592,044**	152,204.4	\$(3,777,613)

* Based on 42,279 OT hours for January 1987.

** Based on cost of \$1,049,337 OT for January 1987.

4. Contracting Out. This fiscal note is based on experience with the Local 71 contract, which currently has the most restrictive language concerning contracting out.

Experience in communities of less than 2,500 where Local 71 subcontracting has occurred without restrictions, shows 30% to 50% reductions in total personal services costs to the State.

Personal services cost budgeted for FY 88 for the LTC bargaining unit equals \$72,761.3 thousand.

This fiscal note assumes that 40% of work currently performed in this bargaining unit can be contracted. This assumption is made for demonstration purposes and has no supporting background.

If 30% to 50% can be saved on Local 71 work that is contracted, total savings in Local 71 personal services costs could vary between \$8,731.7 thousand and \$14,532.3 thousand for FY 88. Application of a 40% savings, or \$11,641.8, is used for the purposes of this fiscal note. The savings is assumed to be constant over subsequent fiscal years.

POSITION PAPER
SB 128

Senate Bill 128 makes three major changes concerning State employees: 1) it changes the manner in which geographic differentials are provided (including geographic differentials for judges and justices); 2) it statutorily limits the criteria for award of a performance incentive increase, and 3) it creates a statutory 40-hour work week. The Bill also amends the Public Employment Relations Act to restrict the State and a collective bargaining representative to the terms of the Bill concerning these three items and for contracting for services. The Department of Administration requests consideration of the following comments.

Geographic differentials. The geographic differential is currently paid as a percentage or number of steps above the basic salary schedule. Section 7 of the proposed legislation would pay geographic differentials as a fixed dollar amount as an addition to the basic salary. This change in methodology of payment, because of the requirements for overtime calculation imposed by the Federal Fair Labor Standards Act (FLSA), would require an individual calculation of the hourly rate each time overtime hours are worked. Under the FLSA, overtime must be calculated on the hourly rate of compensation. The hourly rate is derived by dividing the amount paid by the total hours worked each week. If the geographic differential is paid as a separate amount rather than a figure added to the base monthly salary, the hourly rate would vary each week based on the number of hours in a month.

We suggest that proposed geographic differential amounts be added to all steps in the basic salary. If this were done, the formula in 2 AAC 07.390, which provides a method for calculation of the hourly rate that does not change monthly, could be applied for overtime calculations.

For example, February has four equal work weeks. Assume: employee earns \$10.00 per hour plus \$117 geographic differential per month. The differential would be worth in additional \$.73 per hour if no overtime is worked in a work week ($\$117 \div 4 \text{ weeks} = \$29.25 \div 40 \text{ hours} = \$.73 \text{ per hour}$). If more than 40 hours are worked in a workweek, the hourly rate of the geographic differential changes for that workweek. These calculations would need to be prepared manually and would require a separate payroll document for each employee each pay period.

	<u>Hours Worked</u>		<u>Hourly Rate</u>
Week 1	= 40		\$10.00
		+	<u>.73</u>
			\$10.73 hourly rate
Week 2	= 42		\$10.00
		+	<u>.70</u>
			\$10.70 hourly rate

Week 3	=	41		\$10.00
			+	<u>.71</u>
				\$10.71 hourly rate
Week 4	=	45		\$10.00
			+	<u>.65</u>
				\$10.65 hourly rate

If on the other hand, the geographic differential were added to the employee's base salary, the hourly rate for this employee would remain constant. A one-time programming change would accommodate the changed payrate. No additional individual calculations or documents would be required.

$$\begin{array}{rcl} \$10.00 \text{ per hour} \times 40 \text{ hours} & & \\ \text{per week} \times 52 \text{ weeks} & = & \$20,800 \\ & + & \$117 \times 12 = 1,404 \\ & & \hline & & 22,204 \\ & & \div *2,080 \text{ hours in a} \\ & & \text{year} \\ & = & \$ 10.68 \text{ hourly rate} \end{array}$$

* 2080 = 40 hours per week x 52 weeks

Performance Incentives. Under the current performance evaluation system there are five possible overall performance ratings: unacceptable, low acceptable, mid-acceptable, high acceptable and outstanding. There are currently two criteria applied for determining whether an employee is awarded a performance incentive increase. The employee must have received an overall performance rating of acceptable or better and the employee must have demonstrated satisfactory service of a progressively greater value to the State. The proposed legislation would limit the award of a performance incentive increase only to those employees rated outstanding. The vast majority of employees currently receive overall performance ratings of mid or high acceptable. We estimate that less than 5% of State employees are currently rated outstanding. Performance incentives are awarded generally for mid acceptable or higher ratings. (Although under the first criteria for awarding performance incentive increases it is possible to receive one for low acceptable performance, the second criteria, "satisfactory service of a progressively greater value" makes this an unlikely occurrence.)

This performance evaluation system is consistent the theoretical basis for the State's pay plan, which is founded in the classic approach to public pay policy. Pay plans which provide for periodic increases for good employees have long been popular, especially for public employers. The classical approach to public pay policy is that the public employer should be neither a leader nor a follower. A new employee would be hired below the average pay, but not at the lowest pay, for the kind of work as paid by the "competition." A good employee could progress to pay above the average pay, but not at the highest pay, for the kind of work as paid by the competition.

In reality, if the award of a performance incentive increase were limited to those rated outstanding, we speculate that the percentage of employees being

rated "outstanding" would substantially increase in future fiscal years as supervisors sought a means to provide a monetary incentive for good employees. This will particularly be the case if there is no general increase to the salary schedule. Section 6, as proposed, also appears to impact the ability to promote an employee to a higher paying position based on good performance in a lower range position. We recommend insertion of the words "in a given range" after the word "salary" on page 3, line 22.

Forty-hour work week. The language in Section 8 of the Bill establishing a 40-hour week, as written, appears to preclude the use of part-time employees. Second, the inclusion of specific times--"12:01 a.m. Sunday to 11:59 p.m. Saturday"--within the definition impacts current flexibility to establish alternative workweeks such as the current 12-hour shifts; week on, week off arrangements at certain correctional institutions; and the week on, week off arrangement currently in effect on the Dalton Highway. These alternative workweeks allow arrangement of schedules to minimize overtime cost and accommodate shift work.

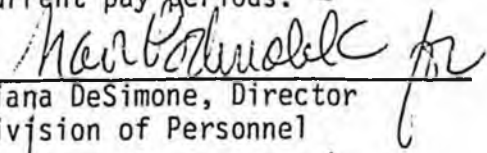
We recommend the following language for Section 8 of the Bill to allow continuation of our current flexibility.

WORK WEEK. The normal work week for full-time State employees who are not members of a collective bargaining unit under the Public Employment Relations Act (AS 23.40) consists of 40 hours in work status.

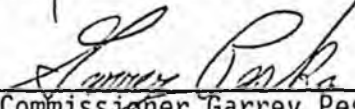
Amendments to Public Employment Relations Act. The proposed amendment to AS 23.40.210 would ensure that any collective bargaining agreement incorporate the three major changes discussed above. The fourth provision under the proposed amendment would prohibit an agreement from limiting the state's ability to contract for services if contracting out would be more cost effective than having State employees perform the services. The proposed prohibition would have a real impact on only one current collective bargaining agreement, that with the Public Employees Local 71 covering Labor, Trades and Crafts Unit employees. The Local 71 agreement currently requires a contractor or subcontractor to pay Local 71 wages plus an additional hourly "in lieu of benefits" amount. This requirement effectively limits the cost effectiveness of contracting services performed by that bargaining units employees.

Other agreements either have no provisions concerning contracting out or provide that contracting out of services can occur if it is shown to be more cost effective, an intent similar to the proposed legislation.

Finally, the Department of Administration requests that the effective dates in Section 10 and 11 be changed from July 1, to July 16 to coincide with the current pay periods.


Diana DeSimone, Director
Division of Personnel

2-24-87
Date


Commissioner Garrey Peska
Department of Administration

2/25/87
Date

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: SB 128
Publish Date:

REQUEST:

Revision Date: Agency Affected: Alaska Court System
 Title: An act relating to state employees
 BRU: Appellate Courts
 Trial Courts
 Sponsor: Binkley, Faiks, Fischer... Components:
 Requestor: Senate Labor & Commerce

EXPENDITURES/REVENUES:		(Thousands of Dollars)				
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
Personal Services	(52.5)	(52.5)	(52.5)	(52.5)	(52.5)
Travel
Contractual
Supplies
Equipment
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	(52.5)	(52.5)	(52.5)	(52.5)	(52.5)
CAPITAL
REVENUE

FUNDING:		(Thousands of Dollars)				
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
General Funds	0.0	(52.5)	(52.5)	(52.5)	(52.5)	(52.5)
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	(52.5)	(52.5)	(52.5)	(52.5)	(52.5)

POSITIONS:						
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Robert G. Fisher, Fiscal Officer Phone: 264-8215
 Division: Alaska Court System Date: 3-2-87
 Approved by: *Stephanie J. Cole* Deputy Director Date: 3-2-87
 Agency: Alaska Court System

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

ALASKA COURT SYSTEM
Fiscal Analysis - SB 128

Geographic Pay Differential

This legislation provides fixed-amount-geographic pay differentials in contrast to present percentage-base differentials. The new pay differentials are based on the application of area cost-of-living indices to an annual salary amount of \$35,200. The pay differentials range from zero to \$1,232 per month. Fixed-amount differentials favor lower pay range employees. The \$1,232 amount provides lower pay employees with geographic differentials of up to 76% above base pay. Higher pay range employees receive differentials of less than 20% above base pay.

Presently, 261 court employees receive a geographic pay differential. The legislation will reduce the number of employees receiving differentials to 197. This legislation will increase pay for 82 employees and reduce pay for 179 employees. Pay increases range from under \$100 to over \$11,000 per year. Pay reductions range from under \$200 to nearly \$10,600 per year. This legislation primarily affects employees in Fairbanks and judges, presently receiving geographic differentials.

The legislation will reduce permanent position gross salaries (\$54,432) and overtime (\$9,000) by \$63,432 per year. The cost of supplemental (SBS) and variable benefits for permanent positions will increase \$11,533 per year. Non-permanent position salaries and benefits will decrease by \$623 per year. The net savings from this legislation is \$52,522 per year. Please refer to the attached financial summary.

The increase in benefit costs is due to the increase in pay for lower range employees. Lower-range employees are under the annual SBS limit and thus, pay increase translates into higher SBS costs. The pay increase for lower-range employees also results in higher variable benefit costs. Reductions in pay for higher-range employees do not reduce SBS costs because the salaries are above the SBS limit.

40 Hour Work Week

This legislation changes the work week to 40 hours from the present 37.5 hours. One-half hour will be added to the standard workday. It is estimated that \$9,000 of overtime pay costs will be saved annually. It is not anticipated the change will reduce staffing requirements. Professional and judicial staff generally work in excess of 40 hours per week. The additional half-hour per day will not affect this group. It is anticipated clerical staff will use the additional time to reduce caseload backlog.

ALASKA COURT SYSTEM

Summary of Fiscal Impact of SB 128

Category	Trial Courts			Appellate Courts			Net Change (Savings) Cost
	Current	SB 128	Difference	Current	SB 128	Difference	
Permanent Positions:							
Salaries-							
Full-time gross salaries	\$16,608,800	\$16,573,464	(\$35,136)	\$2,043,884	\$2,022,744	(\$21,120)	(\$56,258)
Part-time gross salaries	360,351	352,175	1,824	10,716	10,716	0	1,824
Overtime	27,000	18,000	(9,000)	0	0	0	(9,000)
Total	18,996,951	18,943,639	[42,312]	2,054,580	2,033,460	[21,120]	[63,432]
Benefits-							
Supplemental benefit system	982,806	980,941	8,135	112,282	111,581	(881)	7,454
Variable benefits	4,812,924	4,919,080	8,136	782,565	780,508	(2,057)	4,079
Health insurance	1,601,444	1,601,444	0	168,714	168,714	0	0
Total	7,497,174	7,511,465	14,271	1,043,541	1,040,803	[2,738]	11,533
Non-Permanent Positions:							
Salary & benefits	0	0	0	145,932	145,909	(823)	(823)
Total salaries and benefits	\$24,493,125	\$24,455,084	[\$28,041]	\$3,244,053	\$3,219,572	[\$24,481]	[\$52,522]



NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

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FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET
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(907) 456-4435

March 3, 1987

TC: Senator Tim Kelly; Chair
Members; Senate Labor and Commerce Committee

RE: Senate Bill Number 128; "An act relating to state employees; and providing for an effective date."

As it pertains to the restrictions and restraint on the collective bargaining process under the Public Employees Relations Act, NEA-Alaska opposes this legislation and encourages that the Committee not pass this bill in its present form.

The PERA has a long history of effectively serving the interests of both the State, various political subdivisions, and their respective employees on matters and procedures attendant to the collective bargaining process.

The changes which are proposed in this legislation on page 3, lines 3-16, are all matters which should be dealt with by the parties in the collective bargaining process.

To legislate these issues is to compromise the policy of the State as it has been articulated in AS 23.40.070.

In recent years the record shows that employees have been positively responsive to the specific needs of the State when they have had to respond to those needs through the collective bargaining process. The PERA, in its present form absent the changes proposed in SB 128, best serves the interests of everyone.

Thank you for your consideration.

Respectfully submitted:

Robert Manners
Executive Secretary

M1:02

POSITION PAPER

SB 128

Senate Bill 128 makes three major changes concerning State employees: 1) it changes the manner in which geographic differentials are provided (including geographic differentials for judges and justices); 2) it statutorily limits the criteria for award of a performance incentive increase, and 3) it creates a statutory 40-hour work week. The Bill also amends the Public Employment Relations Act to restrict the State and a collective bargaining representative to the terms of the Bill concerning these three items and for contracting for services. The Department of Administration requests consideration of the following comments.

Geographic differentials. The geographic differential is currently paid as a percentage or number of steps above the basic salary schedule. Section 7 of the proposed legislation would pay geographic differentials as a fixed dollar amount as an addition to the basic salary. This change in methodology of payment, because of the requirements for overtime calculation imposed by the Federal Fair Labor Standards Act (FLSA), would require an individual calculation of the hourly rate each time overtime hours are worked. Under the FLSA, overtime must be calculated on the hourly rate of compensation. The hourly rate is derived by dividing the amount paid by the total hours worked each week. If the geographic differential is paid as a separate amount rather than a figure added to the base monthly salary, the hourly rate would vary each week based on the number of hours in a month.

We suggest that proposed geographic differential amounts be added to all steps in the basic salary. If this were done, the formula in 2 AAC 07.390, which provides a method for calculation of the hourly rate that does not change monthly, could be applied for overtime calculations.

For example, February has four equal work weeks. Assume: employee earns \$10.00 per hour plus \$117 geographic differential per month. The differential would be worth in additional \$.73 per hour if no overtime is worked in a work week ($\$117 \div 4 \text{ weeks} = \$29.25 \div 40 \text{ hours} = \$.73 \text{ per hour}$). If more than 40 hours are worked in a workweek, the hourly rate of the geographic differential changes for that workweek. These calculations would need to be prepared manually and would require a separate payroll document for each employee each pay period.

	<u>Hours Worked</u>		<u>Hourly Rate</u>
Week 1	= 40		\$10.00
		+	<u>.73</u>
			\$10.73 hourly rate
Week 2	= 42		\$10.00
		+	<u>.70</u>
			\$10.70 hourly rate

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 4, 1987

The Honorable Tim Kelly, Chair
Senate Labor and Commerce
Committee

The Honorable Dave Donley, Chair
House Labor and Commerce
Committee

The Honorable Johne Binkley
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Sirs:

RE: SB 128 by Senator Binkley pertaining to State Employees

The timing and content of SB 128 dictate that this Administration oppose such legislation. Governor Cowper and this Administration categorically support the collective bargaining process. SB 128 essentially takes the "bargaining" out of the collective bargaining.

This bill attempts to control the very items which are at the heart of collective bargaining: wages, hours, and conditions. Presently six public employee bargaining units are at the table negotiating their respective contracts with the state. This Administration is bargaining in good faith and seeks to reach agreements which are in the best interest of Alaska's very capable public workforce and in full recognition of the state's severe long-term economic circumstances. SB 128 does not contribute in a positive way to these very critical negotiations. This Administration would be willing to consider reasonable changes to the collective bargaining act which would improve the efficiency of the negotiating process. However, that is not the intent of SB 128 and this Administration cannot support this bill.

Sincerely,

A handwritten signature in cursive script that reads "Pete Jeans".

Pete Jeans
Chief of Staff



POLARIS DATA SYSTEMS
Division of Polaris Business Systems

POST OFFICE BOX 80175

FAIRBANKS, ALASKA 99708

February 23, 1987

The Honorable Tim Kelly, Chairman
Senate Labor and Commerce Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

M

Dear Senator Kelly;

Last week I performed an analysis of the impact of Senate Bill 128 on the economy of the Fairbanks area. The results shocked me, which prompts me to write. A copy of a synopsis is enclosed.

The Fairbanks economy is fragile and can ill afford further downward pressures. While savings to the state through reduced Fairbanks geographic differential pay (less than \$6.1 million) would be a drop in the bucket in an operating budget of hundreds of millions of dollars, the negative impact on the Fairbanks economy would be substantial. The direct economic loss to Fairbanks would be the equivalent of 2.5% jump in the unemployment rate. Taking into account the turnover of State payroll dollars in the economy, this would snowball to an estimated 10.6% reduction in Fairbanks payrolls through losses in the private sector. The result would likely be a full-blown depression.

An article by Scott Hawkins and Louise Brown in the February, 1987 issue of Alaska Business Monthly (p.9) concluded that the proper role of state government in these difficult times is to sustain the state's economy until the private sector is able to generate new jobs and take up the slack. Senate Bill 128 would have exactly the opposite effect and would instead tend to reduce the number of jobs in the private sector. I would anticipate, in addition, increases in foreclosure and bankruptcy rates as a result of passage of SB128.

My business, and other Fairbanks businesses, cannot afford further reductions in State payrolls in our community. I strongly urge you to kill this unwise piece of legislation in committee.

Sincerely,

R. E. Thalmann
Managing Principal

RT/ms
Encl.

IMPACT OF PROPOSED GEOGRAPHIC DIFFERENTIAL REDUCTIONS UNDER SB128

Analysis of the proposed reduction in State payrolls due to new geographic differential provisions in Senate Bill 128 indicates that the impact on the Fairbanks economy would be catastrophic.

ASSUMPTIONS:

1. Per October 1986 data from the Community Research Center, Fairbanks North Star Borough, average State employee salary is equivalent to a Range 17, Step E (APEA GGU 1984-86 contract, 7/15/86 schedule).
2. Existing Geographic Differential steps (4) subtracted from average yield a BASE salary equivalent to a Range 17, Step A (\$2,895).
3. Wage reduction is the difference between a Range 17, Step E (\$3,336) and a Range 17, Step A plus the \$117 geographic differential proposed under Senate Bill 128.
4. Estimated total economic losses to Fairbanks use an economic multiplier (turnover factor) of four, which is conservative.

OCTOBER 1986		ANNUALIZED	AVERAGE	TOTAL	ANNUAL	ANNUAL
TOTAL	TOTAL	TOTAL	EMPLOYEE	MONTHLY	LOSS TO	LOSS TO
EMPLOYED	WAGES	WAGES	MONTHLY	WAGE	FAIRBANKS	FAIRBANKS
			WAGE	REDUCTION	ECONOMY	ECONOMY
			REDUCTION	REDUCTION	(DIRECT)	(ESTIMATED)
1564	\$5,264,622	\$63,175,464	\$324	\$506,736	\$6,080,832	\$24,323,328

Total annual wages for the Fairbanks North Star Borough including extrapolated military wages are projected at \$ 230,089,598 and the impact of State payroll reductions, with the economic multiplier (turnover), is thus estimated at 10.5712% of the total Fairbanks economy. Direct losses in State payrolls represents 2.6428% of total wages in the Fairbanks economy, equivalent to an additional 2.5% unemployment in economic terms.

Fairbanks already suffers from one of the highest unemployment rates in Alaska. The result of the equivalent of a further 2 1/2% increase in unemployment, even discounting the loss of additional jobs due to reductions in State employee spending, would be disastrous.

In Alaska's present economic condition, State government is the largest driving force toward either survival or deterioration of the present recession into a full-blown depression. Failure of State government to support and sustain the economy of Alaskan communities will result in a disaster for small businesses, and will cause a further increase in the number of mortgage foreclosures and bankruptcies.

Data source: Fairbanks North Star Borough Community Research Center.

Analysis copyright (c)1987, Polaris Data Systems, division of Polaris Business Systems, Fairbanks, Alaska 99708.

SB

131

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

STEVE COWPER, GOVERNOR

February 27, 1987

POSITION PAPER

Bill No: SB 131

Contact: Amy D. Kyle
465-2600

Title: An Act regulating the role and use of TBT-based marine anti-fouling paints and coatings.

Department's Position

The Department supports the intent of the bill to prohibit sale and use of TBT-based paints and coatings. The Department is prepared to enforce a prohibition on the sale of the coatings.

Bill Analysis

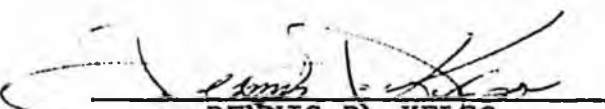
The bill would prohibit the sale and use of TBT-based anti-fouling paint. Such coatings have been shown to release TBT into waters. TBT is a harmful and toxic substance. DEC supports the ban on introduction of the substance into waters of the state. (Since 1985, DEC has prohibited use of TBT as an anti-fouling agents in hatcheries, through conditions placed on state certifications of federal permits for hatcheries.)

The bill does not propose a specific role for any agency in enforcing a ban on sale or use of TBT-based coatings. Rather, the bill establishes general prohibitions.

Effect on the Agency

DEC understands that it is the intent of the bill's sponsors primarily to prohibit the sale of TBT in the state. DEC can play an active role in enforcing this prohibition through notification to retail outlets and marketplace inspections to confirm that the ban is complied with. TBT is a pesticide under the federal pesticide laws. The ban would be imposed and enforced as an extension of the state's pesticide program. A fiscal note for resources needed to enforce this aspect of the bill is being prepared.

The Department understands that the bill's sponsors do not intend that any additional activities be undertaken by DEC in response to the legislation in order to detect or take enforcement action under other provisions. In light of this understanding, no resources beyond those required to enforce the ban on sale are included in the fiscal note.


DENNIS D. KELSO
COMMISSIONER



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Tim Kelly
Chairman - Senate Labor and Commerce Committee

FROM: Senator Fred F. Zharoff *F. Zharoff*

DATE: February 26, 1987

RE: House hearing on TBT bill

The House Resources Committee is holding a hearing tomorrow (Friday) at 8 a.m. on the House companion bill (HB 138) to Senate Bill 131, "An Act regulating the sale and use of TBT-based marine antifouling paints and coatings..."

The hearing will feature testimony, via teleconference, by Mary Morgan, consultant to the Pacific Fisheries Legislative Task Force, and by Dr. Bob Huggett of the Virginia Institute of Marine Science. Dr. Huggett probably is the nation's leading expert on the effects of TBT.

I wanted to bring this hearing to your attention so that you could have one of your staff people attend, if you wish, to obtain more background information about the use of TBT. SB 131, of course, is scheduled to be heard in your committee tomorrow at 2 p.m.

Mark: guess who?



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

POUCH V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474 • 465-3844 (Labor and Commerce Committee)

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

SECTIONAL ANALYSIS

SB 131 -- "An Act regulating the sale and use of TBT-based marine antifouling paints and coatings; and providing for an effective date."

Section 1

46.03.715: SALE AND USE OF TBT-BASED ANTIFOULING PAINT.

- (a) Bans the sale and use of TBT-based antifouling paint in the state. Prohibits a person from importing into the state or selling, renting, or leasing in the state, or using in state water, any vessel or fishing gear or other item that is put into the water, if the vessel, gear, or item has already been treated with TBT paint.
- (b) Persons who have already applied TBT paint to their boats, gear, or other items before the bill becomes law do not have to remove the paint, but they may not reapply the TBT paint. Fish pen nets that have been treated may continue to be used for five years after the bill becomes law.
- (c) Exempts four classes of vessels from the TBT ban: (1) United States government vessels; (2) foreign vessels temporarily in state water; (3) vessels of 5,000 gross tons or more, which covers commercial ships other than commercial fishing and processing vessels; and (4) passenger vessels of 3,000 gross tons, which covers the vast majority of cruise ships. The purpose of these exemptions is to avoid running afoul of federal preemption, in the case of U.S. government vessels, and to avoid the practical problems of trying to prohibit TBT use on foreign vessels and on large commercial and cruise ships. Current statistics indicate that 70 percent of the TBT paint is used on small recreational vessels and 28 percent on commercial ships.
- (d) Definition of "TBT-based" and "vessel".

Section 2 Effective date.

The injunction, penalty, and liability provisions of AS 46.03.760, 46.03.765, 46.03.780, and 46.03.790 would automatically apply to violations under this bill because the new statute is a part of AS 46.03 (Water, Air, Energy, and Environmental Conservation).

TRIBUTYLTINS/TBT

Tributyltins (TBT) have been called the most toxic compounds ever deliberately introduced by societies into natural waters.¹ A growing body of scientific research indicates that TBT may seriously affect non-target organisms and have unknown effects on humans who eat marine organisms containing TBT or are exposed to it in the workplace.

In the United States, many bodies of water have concentrations of TBT that have reached levels which may cause lethal and sublethal effects in non-target organisms. For example, TBT levels in San Diego Bay have been measured at levels which could cause lethal effects in fish, mollusks, crustaceans, and algae.²

TBT is used in antifouling paints and is primarily applied to boat and ship hulls to control the growth of fouling organisms such as barnacles, tubeworms, algae, bacteria, and sponges. These organisms increase hull friction and weight, which in turn increases fuel consumption by reducing vessel speed. The antifouling paints are also used to control fouling organisms on docks, buoys, and other marine structures. TBT has been used in antifouling paints for almost 10 years and replaced the copper-based antifouling paints. The paints with tributyltins last approximately 5-7 years, whereas the copper-based paints last approximately two years.

There are two types of antifouling paints containing TBT: copolymer paints and free association paints. The copolymer antifouling paints contain TBT which is chemically bonded to the paint polymer and is released through a chemical bond breaking process called hydrolysis. New TBT molecules are exposed and released by the gradual erosion of the paint as the vessel moves through the water. The release rate is slow except during the initial one month "conditioning" period and can be controlled by

altering the paint's water absorption characteristics. The free association paints contain TBT which is physically incorporated into the paint matrix; the TBT is released through diffusion as surface paint particles dissolve. This type of paint has a short time period of protection and is characterized by a high initial release.

Antifouling paints containing TBT are registered, in the United States, for use on aluminum, steel, fiberglass, wood and cement hulls.³ These paints are used on commercial and recreational vessels and some military ships. However, the Navy is the major domestic user of antifouling paints. The Navy is planning to replace the copper-based paints it is currently using on its steelhulled vessels with antifouling paints containing TBT compounds. This Navy conversion would take approximately 5 years and add an additional 90,000 pounds of TBT active ingredients to the environment. Economically, if all the Navy ships are painted, it would annually save the Navy \$150 million.⁴ However, this cost does not include the cost to the marine environment.

Currently, there are 340 federally registered antifouling paints containing TBT active ingredients. U.S. domestic usage of TBT in antifouling paints range from 250,000 to 300,000 pounds.⁵ In addition to antifouling paints, TBT compounds are registered for use as disinfectants, textile biocides, wood preservatives, paper and pulp mills, leather processing and as plastics stabilizers, etc. In the United States, total usage of TBT pesticides (for all uses) ranges from 730,000 to 860,000 pounds of active ingredients.⁶

In 1981 France banned the use of TBT paints on all vessels less than 80 feet in length because of shellfish deformations, particularly in Arcachon Bay.⁷

England researched and then combined their studies with France's experience and banned the use of free association paints and copolymer formulations with more than 7.5 percent TBT on January 1, 1986.⁸ Germany and Switzerland have banned TBT paints for fresh water usage. Japan has banned the use of TBT compounds in household products such as house paints and textiles, but has not restricted its use in vessel antifouling paints.⁹

In the United States, Senators Cohen and Tribble introduced Senate Resolution 272 in December 1985 calling for "public hearings to determine if further action is warranted with respect to the future use of TBT compounds" and "urging EPA to accelerate its investigation into the environmental and health effects of organotin bearing paints...." The resolution has been referred to the Senate Committee on Environment and Public Works.

On June 11, 1986 Congressman Parris introduced HR 5015, calling for a temporary ban on TBT-based paints on the hulls for commercial and recreational vessels until, "EPA has completed their ongoing studies to determine the safety of such paints and their impact on the aquatic environment.

Currently, only North Carolina has limited the input of TBT into its waters. North Carolina instituted regulations on January 1, 1985 to limit discharges from industries to 2 ppt for salt water and 3 ppt for fresh water.¹⁰ These regulations were initiated because it was determined that hundreds of North Carolina companies were using TBT to control odor-causing bacteria in textiles or to control slime in piping. Some of the discharges from the textile mills were high enough to kill aquatic organisms.

On January 8, 1986, EPA commenced a special review of the nine most common TBT antifoulant paint formulations. EPA's support

document indicates that EPA is concerned about the acute and chronic toxicity potential of tributyltin compounds to nontarget aquatic organisms. Water samples have been found to contain TBT levels that may have direct effects on aquatic organism populations (mollusks). The TBT compounds may bioaccumulate in aquatic habitat and may pose a hazard to the food chain. Absorption of tributyltin compounds to sediment may have long-term toxicity effects on benthic browsing organisms such as crustaceans and snails. Contamination of estuarine areas at sublethal concentrations can influence the reproduction of several aquatic groups from fish to plankton, thus impacting the marine environment. The present use of tributyltin in antifouling paints presents a potential hazard to nontarget aquatic organisms.

The Pacific Fisheries Legislative Task Force, working in coordination with the Pacific Coast Federation of Fishermen's Associations, has passed three task force resolutions offered by Assemblyman Dan Hauser, the Task Force Vice Chairman, regarding TBT. The resolutions:

1. Urged and encouraged the Environmental Protection Agency to take the lead in creating a public information education brochure about TBT that could be distributed to every boat owner in America. The pamphlet concept is based on a similar project done in the United Kingdom entitled, Don't Foul Things Up. Short of a Congressional ban on the use of TBT, a nationwide public information awareness program is thought to be the next best alternative for controlling the amount of TBT introduced into the marine environment. It is thought by some scientists that this type of education program could reduce the amount of active TBT in the marine environment by 50%.¹²

2. Memorializes the Food and Drug Administration, the Environmental Protection Agency and the National Marine Fisheries Service to impose an immediate ban on all salmon imported into or produced in the United States in pens treated with TBT. This is important because TBT levels for safe human consumption have not been established. TBT was found in the flesh of salmon that were pen-reared in TBT-treated pens. Moreover, the study found that cooking does not remove the TBT from the fish.¹³
3. Memorializes Congress to enact an immediate ban on the use of TBT-based bottom paints on all military, commercial, and recreational vessels until such time, and if, methods of use of TBT-based bottom paints or derivatives of organotin paints are developed that pose no threat to the marine environment.

In addition to the resolutions passed by the task force, it is anticipated that the participating states may introduce state legislation to further regulate TBT usages in their states. Currently, efforts are underway to explore legislation to monitor dry docks, set water quality standards, ban or restrict the uses of TBT, or regulate the amount of TBT used in antifouling paints.

REFERENCES

1. Edward D. Goldberg, Environment, Vol. 28, No. 8, Page 17, October 1986.
2. Committee Advisory, U.S. House of Representatives Committee on Merchant Marine & Fisheries, Page 2, September 26, 1986.
3. EPA Tributyltin Support Document, Page III-1, December 1985.
4. Ibid.
5. EPA Tributyltin Support Document, Page III-2, December 1985.
6. Ibid.
7. EPA Tributyltin Support Document, Page II-22, December 1985.
8. Michael A. Champ, Oceans 86 Proceedings, Volume 4, Organotin Symposium, Page 1095, September 1986.
9. Ibid.
10. Peter J. Kuch, Oceans 86 Proceedings, Volume 4, Organotin Symposium, Page 1114, September 1986.
11. EPA Tributyltin Support Document, Page II-21, December 1985.
12. Phone conversation with Michael A. Champ.
13. Jeffrey W. Short & Frank P. Thowar, Oceans 86 Proceedings, Volume 4, Organotin Symposium, Page 1117, September 1986.

TRIBUTYLTIN CONTAMINATION OF PEN-REARED SALMON?*

Pen-reared salmon contaminated with tributyltin (TBT) are entering U.S. seafood markets according to a recent report released by the National Marine Fisheries Service's Auke Bay Laboratory. According to a report by Jeffery W. Short and Frank P. Thrower, salmon reared in sea pens treated with TBT, sold as aquaculture products and purchased in public markets were found to contain concentrations of 0.081-0.20 ug/g of TBT.

TBT has been described as the most toxic compound ever deliberately introduced by society into natural waters. TBT, an organotin, is used as a wood preservative, an additive to bottom paints, and to treat netting used in salt water pens for rearing salmon. It can be toxic in levels as low as 5 parts per trillion (see FRIDAY, 17 October, pp. 5-7).

The most common pen-reared salmon products entering the U.S. market are the so-called "pan-sized" or "baby" coho, Oncorhynchus kisutch, harvested as juveniles from pens in places such as Puget Sound, and the Norwegian Salmon, an Atlantic salmon or salmon trout, Salmo salar or Salmo trutta, raised in salt water pens in fjords in Norway. The farmed salmon has proved popular with some restaurants and markets seeking to promote "fresh" fish year-round.

The research of Short and Thrower on TBT contamination of salmon began when they sought to determine the rate of mortality of salmon transferred into TBT-treated marine pens. According to them, TBT compounds "are emerging as the leading compounds in the effective control of marine fouling of sea pens, a serious problem in the salmon farming industry."

In their paper: "Tri-N-Butyltin Caused Mortality of Chinook Salmon, Oncorhynchus tshawtscha, on Transfer to a TBT-Treated Marine Net Pen," Short and Thrower reported that, "TBT compounds are widely used in the salmon aquaculture industry....Salmon at aquaculture facilities are raised to market size in marine pens for 1 to 3 years, during which they gain most of their body mass. Nets must be periodically cleaned or chemically coated to retard fouling by marine organisms; fouling will reduce sea water exchange and result in fish kills. Antifoulants are much more economical than manual cleaning and are therefore preferred by the industry. Several antifoulant formulations are used to treat nets, but TBT compounds are among the most effective ingredients. These compounds have low solubility in seawater, are exceptionally toxic to marine fouling organisms, and can be formulated for slow release."

In their study, Short and Thrower used chinook salmon raised for one year in fresh water and acclimated to sea water for four months before testing. The chinook salmon died in all doses of TBT oxide tested, "but none died in the clean water control tank during or immediately after the bioassay. Only five salmon in the lowest exposure dose survived the bioassay; of these, three died within the next 24 hours in clean seawater," reported the researchers.

They went on to say that "juvenile salmon are very sensitive to TBT poisoning in sea water....TBT concentrations in salmon that died during the bioassay were nearly constant for all doses, suggesting that TBT continues to accumulate until a threshold concentration is reached in critical tissues and causes death....low doses of TBT can impair the immune system of rats, which suggests that salmon raised in TBT-treated marine net pens may be more susceptible to disease."

In this first report on TBT, Short and Thrower concluded that "juvenile chinook salmon are very sensitive to TBT poisoning in sea water, that they rapidly accumulate TBT to high concentration in tissues, and that lethal effects are dose and time dependent."

Recognizing that aquaculturists would not likely use high dosages of TBT that may be found in the flesh of pen-reared salmon in the marketplace that was exposed to lower amounts of TBT, (i.e., those that survived the pens). They purchased both Atlantic salmon (e.g., Norwegian) and coho salmon in addition to chinook; all the fish was advertised as farm (pen-reared) raised aquaculture fish. They found no traces of TBT in the chinook but concentrations in the muscle tissue of both coho and Atlantic salmon of organotins as TBT as high as 0.81 ug/g.

The purchases of the fish were from markets in Seattle and Portland. The results were published in their report "Accumulation of Butylins in Muscle Tissue of Chinook Salmon Reared in Sea Pens Treated with Tri-N-Butyltin." The following is Short and Thrower's summary in this report of their research:

Rearing salmon in sea pens treated with antifoulant containing TBT compounds resulted in the accumulation of organotins in the muscle tissue of salmon. Organotins were detected in several fish from different countries purchased from the marketplace and advertised as products of aquaculture. Additionally, cooking was found to be ineffective in destroying or removing accumulated organotins. We believe this is the first evidence of entry of organotins into the human diet in the United States.

The report of TBT-laced pen-reared salmon is not the first indicating tainting of these aquaculture-bred fish. There have also been reports received by PCFFA that farmed salmon from Norway and Scotland may contain the artificial coloring agent, canthaxanthin, an agent added to the feeding stuffs of the pen-reared fish (see FRIDAY, 16 August 1985, pp. 10-11). Although canthaxanthin is banned by the U.S. Food & Drug Administration, there is no evidence that PCFFA has received that the FDA is checking imported pen-reared salmon for traces of this substance used to give the fish their deep-red coloring.

The use of TBT as an additive to bottom paints has already been restricted in both France and Great Britain following the die-offs of shellfish beds attributed to TBT paints on vessel bottoms. The PCFFA Board of Directors at their 9-10 October meeting called for a ban on the use of TBT (see FRIDAY, 17 October, pp. 5-7).

In Great Britain, Environment Minister William Waldergrave announced last year that nation's intent to place new controls on paints with the TBT additive including a proposed ban on the use of those paints on vessels less than 12 meters long, and "free association" paints with high levels of organotin were banned. The Government action was "prompted by complaints from the fisheries industry that such paints are responsible for declining catches," according to the 13 March 1985 issue of the International Environmental Reporter. France has imposed a complete ban on such paints.

According to that issue of IER, "research carried out by the British Ministry of Agriculture, Fisheries & Food, and the French Institute Scientifique et Technique des Pesches Maritime, the effects of organotin compounds, the active agents in anti-fouling paints, are especially acute where pleasure craft and fisheries share the same waters."

High levels of TBT have been found in most marinas along the California coast, indicating that action similar to that taken by Britain and France should be taken. Fortunately, TBT has a short half-life and, unlike toxics such as DDT, the beneficial affects of a ban could be seen within a short time on the marine environment.

* From PCFFA Friday, October 31, 1986

with my colleagues—to explore this issue further, and to result in some legislation that will help us curb the very rapidly declining farmland prices and the panic that that brings to the farm economy.

Mr. President, at this point I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

§ 427

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Farm Mortgage Guarantee Act of 1987".

SEC. 2. PURPOSE.

It is the purpose of this Act to encourage agricultural lenders to provide long term financing for the purchase of agricultural land by providing a secondary market for sound mortgages that are adequately secured by farm real estate and guaranteed by the Farmers Home Administration.

SEC. 3. FARM MORTGAGE GUARANTEES.

The Consolidated Farm and Rural Development Act is amended by adding after section 352 (7 U.S.C. 2000) the following new section:

"SEC. 152. FARM MORTGAGE GUARANTEE.

"(1) FARM REAL ESTATE LOANS.—The Secretary may purchase or repurchase under this section any qualifying farm real estate loan or an interest in the loan.

"(2) TERMS AND CONDITIONS.—The Secretary may make such purchases on such terms and conditions as the Secretary considers appropriate.

"(3) FEES AND CHARGES.—The Secretary may charge to sellers of loans under paragraph (1) such fees and charges as the Secretary determines to be necessary.

"(4) QUALIFYING FARM REAL ESTATE LOAN.—For the purposes of this section a loan is a qualifying farm real estate loan if—

"(A) the loan is initiated by an approved federally or State chartered commercial bank, savings and loan association, credit union, mutual savings bank, mortgage banker, cooperative lending agency, or other legally organized lending agency, including an institution of the Farm Credit System established under the Farm Credit Act of 1971 (12 U.S.C. 2001 et. seq.) or an insurance company;

"(B) the Secretary finds that the loan is secured by adequate collateral in the form of farm land to ensure low risk of loss of principal by the maker of the loan or the successor in interest of the maker;

"(C) the Secretary finds the borrower to have sufficient resources or cash flow to ensure a high probability that the borrower will be able to maintain payments in accordance with the terms of the loan contract; and

"(D) the loan meets such other requirements as the Secretary may impose.

"(b) LOAN GUARANTEE.—

"(1) SECURED LOANS.—The Secretary shall guarantee, with respect to principal and interest, any loan or interest in any loan purchased under subsection (a) on such terms and conditions as the Secretary finds to be prudent and that will assure an adequate market for the purchase of loans so guaranteed.

"(2) FARM LOANS.—The Secretary may guarantee a farm real estate loan held by the Farmers Home Administration that meets the requirements of subsection (a)(4)(B) and (a)(4)(C) or any other farm

real estate loan or interest in such loan that meets the requirements of subsection (a)(4).

"(c) FARM LOAN SALES.—A loan or interest in such loan guaranteed under subsection (b) and held by the Farmers Home Administration may be offered for sale by the Secretary on such terms and conditions as the Secretary finds appropriate.

"(d) SECURITIES BACKED BY LOANS.—The Secretary may sell, resell, purchase, and repurchase securities backed by loans or interests in loans guaranteed under this section.

"(e) LOAN AGENT.—

"(1) SERVICING LOANS.—The Secretary may contract with any person to act as an agent to perform functions necessary for the ongoing servicing of a loan as the Secretary may direct.

"(2) OTHER FUNCTIONS.—The Secretary may contract with any person to act as an agent to perform functions necessary for the purchase, repurchase, sale, and resale of qualifying farm real estate loans or an interest in such loan as authorized by this section, or for the ongoing servicing of a loan or interest in a loan sold under the provisions of this section as the Secretary may direct.

"(f) FARM MORTGAGE REVOLVING FUND.—

"(1) ESTABLISHMENT.—There is established the Farm Mortgage Revolving Fund (hereinafter in this section referred to as the "Revolving Fund") consisting of such amounts as may be appropriated or credited to the Revolving Fund.

"(2) REVOLVING FUND CREDITS.—The Secretary shall credit to the Revolving Fund—

"(A) all sums received by the Secretary from the sale of loans under this section;

"(B) any interest earned from the investment of a part of the Revolving Fund under paragraph (4);

"(C) all principal and interest payments received by the Secretary on loans being held for sale under this section; and

"(D) all fees and charges the Secretary directs to be charged to sellers or buyers of loans under this section that the Secretary finds should be credited to the Revolving Fund.

"(3) AVAILABILITY OF AMOUNTS.—Amounts from the Revolving Fund shall be available—

"(A) for the purchase or repurchase of loans or interests in loans under subsection (a);

"(B) for paying the costs of administering this section, including the cost of services authorized by subsection (e); and

"(C) for the purpose set forth in subsection (g)(4).

"(4) EXCESS DEMAND DEPOSITS.—If the Secretary determines that the Revolving Fund contains demand deposits in excess of current needs, the Secretary shall invest such excess in obligations whose principal and interest are guaranteed by the United States.

"(g) FARM REAL ESTATE INSURANCE FUND.—

"(1) ESTABLISHMENT.—There is established the Farm Real Estate Insurance Fund (hereinafter in this section referred to as the "Insurance Fund").

"(2) APPROPRIATIONS.—There are authorized to be appropriated \$100,000,000 to the Insurance Fund to be available without fiscal year limitation.

"(3) INSURANCE FUND CREDITS.—Except as provided in paragraph (5), the Secretary shall credit to the Insurance Fund—

"(A) all fees or charges the Secretary directs to be charged sellers or buyers of loans under this section that the Secretary finds should be credited to the Insurance Fund; and

"(B) any interest earned from the investment of Insurance Fund amounts under paragraph (7).

"(4) TRANSFERS FROM REVOLVING FUND.—The Secretary shall transfer to the Insurance Fund such funds from the Revolving Fund as the Secretary determines are necessary to carry out paragraph (5).

"(5) DISCHARGING OBLIGATIONS.—Amounts from the Insurance Fund shall be available, as provided in advance by appropriations acts, for discharging obligations of the Secretary to guarantee loans under subsection (b)(1).

"(6) AMOUNTS PAID TO TREASURY.—The Secretary shall pay the amounts described in paragraph (3) into the general fund to the Treasury during any period if—

"(A) the amount in the Insurance Fund exceeds an amount equal to 5 percent of the aggregate value of loans and interests in loans for which a guarantee is in effect under subsection (c), and

"(B) until an amount equal to any amount appropriated under subsection (g)(2) to the Insurance Fund has been repaid.

"(7) INSURANCE FUND HOLDINGS.—The Insurance Fund shall be held in the form of demand deposits and obligations whose principal and interest are guaranteed by the United States.

"(h) LOANS NOT GUARANTEED.—No loan shall be guaranteed under this section if the loan amount exceeds 70 percent of the most probable price that a property securing the loan should bring as determined by the Secretary at the time the loan is guaranteed.

"(i) PROGRAM TERMINATION.—The authority of the Secretary to guarantee a loan under this section shall terminate on December 31, 1991, except that a guarantee made prior to that date shall remain in effect for the life of the loan.

"(j) REGULATIONS.—The Secretary of Agriculture shall promulgate regulations necessary to carry out this section."

By Mr. TRIBLE (for himself, Mr. COHEN, and Mr. WARNER):

S. 428. A bill to enact the "Tributyltin-Based Antifouling Paint Control Act of 1987"; to the Committee on Environment and Public Works.

TRIBUTYL TIN-BASED ANTI FOULING PAINT CONTROL ACT

Mr. TRIBLE. Mr. President, I introduce today legislation to suspend the use of highly toxic marine paints containing tributyltin (TBT) until the Environmental Protection Agency determines such paints do not pose an unacceptable hazard to the marine environment.

Today over 70 percent of the world's commercial and recreational ships are painted with the antifouling paint known generally as organotin. This antifouling paint, which contains biocide tributyltin (TBT), is extremely effective in eliminating barnacles and other fouling organisms on vessels. This leads to lower operating and maintenance costs and reduced fuel consumption.

TBT paints, however, may also have a lethal effect on marine and freshwater life. EPA is now conducting a special review of TBT compounds because the Agency has determined that this highly toxic substance may present unreasonable risks to nontarget aquatic organisms such as mussels, clams, oysters, and fish.

I am deeply concerned about the harmful effects TBT paints pose to

marine life and public health and believe that it is important to act now and limit the use of these paints until EPA is able to complete its lengthy review process.

The United States lags far behind other nations in regulating this toxic compound. France, England, and Japan all have limits on the use of TBT. Germany and Switzerland have totally prohibited its fresh water use.

TBT paint can generally be classified in two categories based on how the TBT compound is incorporated into the paint coating. In copolymer paints TBT is chemically integrated within the matrix and releases the TBT at a steady rate. Free association paints have TBT mixed in freely and tend to dump the toxic compound at a high rate when first put into the water. Everyone agrees that free association paints are bad, but some copolymer paints also leach at unacceptably high rates.

Therefore, this legislation suspends the use of all marine paints that release large concentrations of the toxic TBT compound—release rates greater than 0.5, ± 20 percent micrograms per square centimeter per day as certified by EPA—regardless of how the TBT is incorporated into the paint matrix. The suspension will remain in effect until EPA determines which TBT paints pose an unacceptable hazard to the marine environment. The enactment of this legislation will immediately reduce the amount of TBT introduced into the marine environment and make the world safer for water life and people.

Mr. President, this is an emergency situation we face. TBT levels found in the Chesapeake Bay and other waterways around our country are alarmingly high. Something must be done now to reduce the levels of this highly toxic compound. This bill is supported by the Chesapeake Bay Foundation and the Environmental Policy Institute and is cosponsored by Senators COHEN and WARNER. I commend it to the attention of all my colleagues, and ask unanimous consent that the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 428

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Tributyltin-Based Antifouling Paint Control Act of 1987".

DEFINITIONS

SEC. 2. As used in this Act, the term—

(1) "Administrator" means the Administrator of the Environmental Protection Agency;

(2) "steady-state release rate" means that rate measured after the initial 30-day exposure to seawater of a freshly painted surface, which remains constant over a four-week period at $\pm 20\%$, as measured in accordance with procedures specified by the Administrator;

(3) "vessel" includes any ship, boat, watercraft or other marine structure (whether or not private, commercial, public, or military); and

(4) "person" means any individual, corporation, partnership, or other entity.

FINDINGS AND PURPOSE

SEC. 3(a) The Congress hereby finds that:

(1) more than 70 percent of the worldwide commercial shipping fleets and recreational boats are painted with an antifouling paint known generally as organotin;

(2) this antifouling paint, which contains the biocide tributyltin (TBT), is extremely effective in eliminating barnacles and other fouling organisms;

(3) the elimination of fouling growths on vessels is highly beneficial for operating capability and leads to lower operating and maintenance costs and substantial fuel consumption reductions;

(4) laboratory studies and data show that TBT is highly toxic and potentially lethal to marine and freshwater organisms at very minute levels and the Environmental Protection Agency has determined that their continued use may present unreasonable risks to nontarget aquatic organisms such as mussels, clams, oysters, and fish; and

(5) organotin paints which release organotin at steady rates not greater than 0.5 micrograms per square centimeter per day are available from United States paint manufacturers, and provide long-term protection from fouling, while significantly reducing the impact on the environment.

(b) The purpose of this Act, subject to section 4, is to immediately reduce the quantities of tributyltin in the marine environment by prohibiting the use of antifouling paints containing tributyltin which have a release rate greater than 0.5, $\pm 20\%$ micrograms per square centimeter per day as certified by the Administrator of the Environmental Protection Agency.

PROHIBITION

SEC. 4. (a)(1) The use by any person in the United States of paints containing tributyltin as an antifouling paint for the painting of any vessel is prohibited if such paints have a steady-state release greater than 0.5, $\pm 20\%$ micrograms per square centimeter per day as certified by the Administrator. Any person who uses, or permits, authorizes, or orders the use of, any such paint shall be in violation of this section and subject to a civil penalty in accordance with section 5 of this Act.

(2) The Administrator shall determine the steady-state release rates at which organotin paints do not pose an unacceptable hazard to the marine environment and shall publish such rates in the Federal Register.

(b) On and after the date on which such rates referred to in subsection (a) of this section have been published in the Federal Register, the prohibition set forth in subsection (a) of this section shall not be applicable to the use of any such paint which is in compliance with such rates so published.

CIVIL PENALTIES

SEC. 5. (a) Any person who uses, or permits, authorizes, or orders the use of, any paint in violation of subsection (a) of section 4 shall be liable to the United States for a civil penalty in an amount not to exceed \$5,000 for each such violation. Each day such a violation continues shall, for purposes of this section, constitute a separate violation of subsection (a) of section 4.

(b) A civil penalty for a violation of subsection (a) of section 4 shall be assessed by the Secretary of the Interior (hereinafter referred to in this section as the "Secretary") by an order made on the record after

opportunity (provided in accordance with this section) for a hearing in accordance with section 554 of title 5, United States Code. Before issuing such an order, the Secretary shall give written notice to the person to be assessed a civil penalty under such order of the Secretary's proposal to issue such order and provide such person an opportunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order.

(c) In determining the amount of a civil penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, economic benefit to violation resulting from such violation, any history of prior violations, the degree of culpability, and such other matters as justice may require.

(d) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this section. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(e) Any person who requested in accordance with subsection (b) a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

(f) If any person fails to pay an assessment of a civil penalty—

(1) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with subsection (e), or

(2) after a court in an action brought under subsection (e) has entered a final judgment in favor of the Secretary,

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in subsection (e) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

● Mr. COHEN. Mr. President, my good friend and colleague from the State of Virginia, Senator TRIBLE, and I are introducing legislation today to prohibit the use of certain highly toxic marine paints containing the chemical tributyltin (TBT).

Organotin is an effective, tin-based antifouling compound used in paint. TBT is the active ingredient in organotin-bearing paints. It is used to keep ship hulls free from barnacles, sea grasses, and other fouling organisms that may damage or increase friction on the hull. The increased friction requires more power and hence more fuel to maintain ship speed. Increased fuel consumption means higher operating costs. Navy officials estimate that fleetwide use of TBT copolymer paints would save \$150 million per year in fuel costs and \$5 million in

maintenance once the entire fleet is so treated. TBT is superior to copper-based paints that were used in the past because it extends the duration of the antifouling action. A majority of the worldwide commercial shipping fleets and pleasure craft are painted with organotin-bearing paints.

While there may be substantial economic benefits derived from the use of TBT based antifouling paints, there are potentially severe environmental and human risks. The Environmental Protection Agency (EPA), the Navy, the Virginia Institute of Marine Science, the States of Maine, Maryland, Virginia, Florida, North Carolina, and California, and several environmental groups have voiced such concerns. Others are joining the debate daily.

The principal concern is not whether organotin-bearing paints kill the organisms that foul a ship's hull. Rather, concern centers on whether the organotins leach out of the paints into the water at rates and toxicity levels that contaminate or kill non-target aquatic organisms such as clams, shrimp, oysters, crabs, lobsters, and fish.

Last year, Senator TRIBLE and I introduced a sense of the Senate resolution urging the EPA to accelerate its investigation into the environmental and health effects of organotin-bearing paints. While organotin-bearing paints are presently registered with the EPA as pesticide antifouling compounds, many of these compounds were registered for use over 25 years ago. More recent studies raise new and troubling questions about the acute and chronic toxicity of these compounds even at extremely low concentrations, and their potential transmission into the food chain.

Biological damage by organotin leaching from boat bottoms has been noted in other countries. In 1982, France banned the use of TBT on boats under 25 meters—80 feet—in length. French scientists noted that oysters in and around boat moorings and marinas were found to have abnormal shell growth, reduced reproduction rates, and mutations in oyster larvae. Evidence of these abnormalities was no longer present following the prohibition.

In 1935, William Waldegrave, England's Junior Environmental Minister, stated that he had "seldom been faced with clearer scientific evidence of the need for environmental action—and fast; that the apparent tendency of organotin-bearing paints to stunt the growth of Britain's pacific oyster is just the visible tip of a potentially massive environmental iceberg." England is now regulating the use of TBT. In addition, Japan has regulated the use of TBT, and Germany and Switzerland have prohibitions on freshwater use.

Mr. President, preliminary findings seem to confirm the suspicion that contamination levels that are adverse to our marine resources may be

present at some marinas and shipyards in this country. Very high levels of TBT were recorded in the Chesapeake Bay last summer. These high readings have led many scientists to conclude that we must, without delay, take whatever steps are necessary to reduce the levels of TBT being introduced into our marine environment.

Mr. President, a large part of my strong concern about the dangers involved in this compound relate to Maine, a State with a long coastline, thousands of boats, and tens of thousands of individuals and families whose livelihood depends on a clean and productive marine environment. Few States would be as adversely affected by any unhealthy side effects of this organotin-bearing paint as Maine, and the interests of my State and all coastal States are clearly at stake here. Any coastal area with recreational, commercial, or naval activities has the potential for being so affected.

I applaud EPA's efforts to determine the potentially harmful effects these highly toxic pesticides of the organotin family of compounds may have on estuarine marine life and public health. I strongly urge the EPA's Office of Pesticide Programs to continue its special review to determine as quickly as possible how much TBT is present in our oceans, bays, rivers, and marinas, and what level of TBT concentration is dangerous to our Nation's marine resources and public health.

EPA's review is well underway, but far from complete. The legislation we are introducing today is urgently needed. It would significantly reduce the impact of TBT on the environment by suspending the use of antifouling paints containing TBT that have unacceptable release rates as certified by the Administrator of the EPA. The suspension would remain in effect until such time as the EPA completes its special review and certifies steady-State release rates generated by organotin paints which do not pose an unacceptable hazard to the marine environment.

I urge my colleagues to join Senator TRIBLE and me in supporting this legislation.

By Mr. DURENBERGER:

S. 429. A bill to amend the Tax Reform Act of 1986 to delay for 2 years the exception for certain technical personnel from certain rules for determining whether an individual is an employee or independent contractor for employment tax purposes; to the Committee on Finance.

EMPLOYMENT TAX DETERMINATION

Mr. DURENBERGER. Mr. President, I am today introducing legislation that would delay for 2 years the effective date of section 1706 of the Tax Reform Act of 1986. This legislation is vitally important to the thousands of technical service personnel whose status as employees or independent contractors is currently in limbo.

Section 1706 of the Tax Reform Act was adopted without a single minute of debate in the Senate Finance Committee or on the Senate floor. Indeed, some might contend that section 1706 was a mere afterthought which was included in the Tax Reform Act solely for the purpose of raising revenue to pay for a wholly unrelated amendment. Yet in the process, we have caused unwarranted confusion and certainty for engineers, designers, drafters, computer programmers, systems analysts, and other technical services personnel.

Mr. President, the classification of a worker as an independent contractor or employee has generally been determined under certain common law tests. But in 1978, Congress created a safe harbor for certain workers, including technical service personnel, when an employer had a reasonable basis for treating someone as an independent contractor. Even though the Senate Finance Committee never considered the issue, the Tax Reform Act eliminated the safe harbor for technical service personnel.

My legislation would delay for 2 years the implementation of section 1706. This would enable the Senate Finance and Ways and Means Committees to hold hearings on the classification of technical services personnel and make a reasoned decision as to how these workers should be classified.

By Mr. METZENBAUM:

S. 430. A bill to amend the Sherman Act regarding retail competition; to the Committee on the Judiciary.

RETAIL PRICE MAINTENANCE

Mr. METZENBAUM. Mr. President today I am introducing legislation to codify the well-established principle that vertical price fixing is per se illegal and to clarify the evidentiary standard for establishing the existence of vertical price-fixing agreements. I am pleased to be joined by Senator RUDMAN, SIMON, and BRADLEY as original cosponsors.

The bill would promote retail competition in two ways. First, it would codify current law that a vertical price-fixing conspiracy is per se illegal; that is, it is presumed to harm competition without the need for an elaborate analysis of economic effects. This principle was first articulated more than 75 years ago by the Supreme Court in *Dr. Miles Medical Co. v. J. D. Park & Sons Co.*, 220 U.S. 3 (1911). While the Supreme Court has restated this proposition on many occasions, its integrity was undercut by the enactment of State fair trade laws and a Federal exemption from antitrust laws for resale price maintenance.

Ultimately, however, in 1975, Congress repealed the antitrust exemptions for resale price maintenance, proclaiming that its action was