

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988

8672

5406 SLAB SB 329 - SB 357

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STEVE COWPER
GOVERNOR



E068
SB 329

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 11, 1988

The Honorable Jan Faiks
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Faiks:

Under the authority of art. III, secs. 18 and 23, of the Alaska Constitution, I am transmitting an Executive Order and a companion bill transferring the business license program from the Department of Revenue to the Department of Commerce and Economic Development. At the present time, businesses frequently must obtain licenses from both departments. The Executive Order will consolidate these licensing functions in one agency, making for greater administrative efficiency and, of even greater importance, better service to the public.

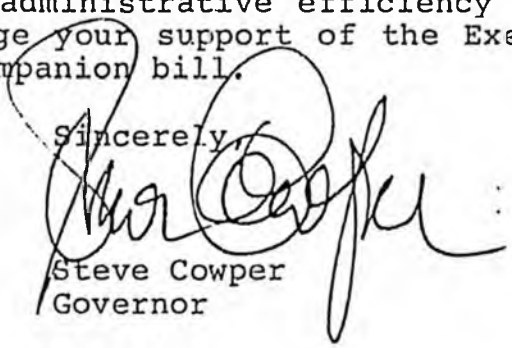
The Order simply transfers the business license program (AS 43.70) from the Department of Revenue to the Department of Commerce and Economic Development, by defining "commissioner" and "department" for purposes of that chapter as the commissioner of commerce and economic development and the Department of Commerce and Economic Development (secs. 5 and 6 of the Order), respectively, adding this authority to the duties of the Department of Commerce and Economic Development (sec. 7 of the Order), and making necessary technical changes to other statutes.

Although the functions of the business license program are reassigned by the Executive Order, I am requesting your support of the accompanying bill in order to make the program fit more easily within the current operations of the Department of Commerce and Economic Development, division of occupational licensing. Under the Order, current procedures and enforcement provisions must remain in effect. The bill will permit the division of occupational licensing to instead use the current procedures and enforcement provisions used for occupational licenses by placing the business license program under AS 08.01. Sections 1 -- 6 of the bill. The department will then issue biennial instead of annual business licenses (AS 08.01.100(a); see secs. 7, 8, and 10 of the bill), coordinated with any other licenses issued to the particular business, and use its own enforcement proce-

dures under AS 08.01.102 -- 08.01.105. Section 5 of the bill. The effective date of the bill is contingent upon the effective date of the Executive Order. Section 3 of the bill also makes an incidental correction, deleting a redundant sentence that appears in AS 08.01.065(c) due to inconsistent amendments made by sec. 1, ch. 87, SLA 1987 and sec. 5, ch. 94, SLA 1987 -- a correction also being proposed in the 1988 general revisor's bill.

The Department of Revenue presently administers a number of licensing and permitting programs in addition to the business license program. Unlike the business license program, however, each of these other programs is administered in conjunction with a particular tax. Used in this manner, licensing activities are an effective tool in tax compliance efforts. Since the 1978 repeal of the business gross receipts tax, this has not been the case for the business license program, and there is no longer any reason to retain the program in the Department of Revenue. To better serve the public and to promote administrative efficiency in operating this program, I urge your support of the Executive Order and passage of the companion bill.

Sincerely,



Steve Cowper
Governor

2061
SB 327

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: _____
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Executive Order
Sponsor: Rules Committee
Requestor: Governor's Office

Agency Affected: Com. & Econ. Dev./Revenue
BRU: Business Licensing
Occupational Licensing
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

*The Governor's FY 89 budget currently includes \$269,088 in general funds in the Department of Revenue. The appropriation will be transferred along with 5.5 positions to the Department of Commerce & Economic Development, Division of Occupational Licensing by budget amendment.

Prepared by: _____ Phone: 465-2505
Division: Administrative Services Date: 1/8/88

Approved by Commissioner: Larry Mosher for J. Anthony Smith Date: 1/8/88
Agency: Department of Commerce & Economic Development

Distribution (by preparer):

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

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 1/13/88 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER:

**FISCAL NOTE(S) ATTACHED **
IN ACCORDANCE WITH AS 24.08.035
(see below)

1/11/88

DATE TURNED INTO OFFICE 1/15/88

Mr. President:

Labor and Commerce Committee considered SB 329

transfer of business licensing functions of the Department of Revenue to the Department of Commerce and Economic Development; efd

and recommended:

replace with CS _____ same title
 attached amendment(s) and new title

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted and attached

** Committee attached or adopted fiscal note(s)
 zero fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Rich Kelly
Fahrenkamp
Stiles

[Signature]

Tim Kelly - Do Pass
Chairman signature and recommendation

Committee Backup Attached

S B

3 3 2

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 310 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to public construction and public
7 works contracts."

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

9 * Section 1. AS 36.25.020(b) is amended to read:

10 (b) However, a person having direct contractual relationships
11 with a subcontractor but no contractual relationship express or im-
12 plied with the contractor furnishing the payment bond has a right of
13 action on the payment bond upon giving written notice to the contrac-
14 tor within 90 days from the last date on which the person performed
15 labor or furnished material for which the claim is made. The notice
16 must state with substantial accuracy the amount claimed and the name
17 of the person to whom the material was furnished or for whom the labor
18 was performed. The notice shall be served by mailing it by registered
19 mail, postage prepaid, in an envelope addressed to the contractor at a
20 [ANY] place where the contractor maintains an office or conducts
21 business, or the contractor's residence, or in a [ANY] manner in which
22 a peace officer is authorized to serve summons. In this subsection,
23 "subcontractor" includes a subcontractor of another subcontractor,
24 whether or not the other subcontractor has a direct contractual rela-
25 tionship with the contractor.

26 * Sec. 2. AS 36.30.635(a) is amended to read:

27 (a) ~~Except as provided otherwise under (d) of this section,~~
28 ~~after [AFTER] consultation with the using agency and the attorney~~
29 ~~general and after a hearing conducted under [ACCORDING TO]~~

1 AS 36.30.670 and regulations adopted by the commissioner of adminis-
2 tration, the commissioner of administration or the commissioner of
3 transportation and public facilities may debar a person for cause from
4 consideration for award of contracts. Notice of a debarment hearing
5 shall be provided in writing at least seven days before the hearing.
6 The debarment may not be for a period of more than three years.

7 * Sec. 3. AS 36.30.635 is amended by adding new subsections to read:

8 (d) After consultation with the using agency and the attorney
9 general and after a hearing conducted under AS 36.30.670 and regula-
10 tions adopted by the commissioner of administration, the commissioner
11 of transportation and public facilities shall debar a person from
12 consideration for award of contracts if the person was the prime
13 contractor on an agency construction contract and failed to pay a
14 subcontractor on the project within the time established for the
15 payment in the construction contract.

16 (e) If a subcontractor on an agency construction contract com-
17 plains to the Department of Transportation and Public Facilities that
18 the prime contractor on the construction project has not paid the
19 subcontractor within the time established in the prime contractor's
20 contract with the agency, the commissioner shall investigate the
21 complaint. If the commissioner's investigation determines that the
22 complaint is valid, the commissioner shall proceed under (d) of this
23 section.

24 (f) In (d) - (f) of this subsection

25 (1) "construction contract" does not include a contract for
26 architectural, engineering, or land surveying services, unless the
27 contract includes other construction services;

28 (2) "prime contractor" means a person who has contracted
29 with an agency to perform a construction project;

1 (3) "subcontractor" means a person who has a direct con-
2 tractual relationship with a prime contractor to provide services,
3 materials, or labor for an agency construction project, but does not
4 include an employee.

5 * Sec. 4. AS 36.30.685(a) is amended to read:

6 (a) A final decision of the commissioner of administration or
7 the commissioner of transportation and public facilities under AS 36.-
8 30.610, 36.30.635(a), 36.30.635(d), 36.30.650, or 36.30.680 may be
9 appealed to the superior court in accordance with the Alaska Rules of
10 Appellate Procedure.

11 * Sec. 5. AS 36.90 is amended by adding a new section to read:

12 Sec. 36.90.020. NOTICE BY SUBCONTRACTOR. A person who contracts
13 other than as an employee to furnish services, materials, or equipment
14 for a public construction or public works project shall give the prime
15 contractor on the project written notice of the contract within 10
16 days of entering into the contract. In this section, "prime contrac-
17 tor" means the person who has contracted with the state to perform the
18 project.

19 * Sec. 6. This Act applies to contracts that are entered into on or
20 after the effective date of this Act.



Linda, Reply Info provided
by Dwight
OK Lumber Company, Inc. Perkins
Building Supply Center & Hardware

February 18, 1988

P. O. BOX 10449
FAIRBANKS, ALASKA 99710
(907) 457-6270
FAX (907) 457-3122

Representative Boucher
P.O. Box V
Juneau, Alaska 99811

Ref: S-B 332 - Relating to Mechanic' & Materialmen's Liens.

I cannot believe that Mr. Fischer could have possibly let Bill 332 by him or his staff. All this talk of helping business' in Alaska and you insert an amendment that gives the Alaskan Supplier and Subcontractor absolutely NO RECOURSE!

Again, as in the late 70s, This senate bill 332, gives General contractors the opportunity to take the money for jobs that they do from their customers and skip town with all thier sub and materialmen HOLDING THE BAG!

You legislators certainly know how to encourage the "fly by night" contractors to come to Alaska, Do a construction job, per construction standards not in unison of Alaska's needs, Charging the customer at a lower price, and then getting his money up front, and leave all the Alaskan Subs and Alaskan Materialmen UNPAID!

I urge you to oppose this bill! I will expect that you will send your affidavit to this amendment on Senate Bill 332. I will want to know how you vote on this piece of legislation!

On a positive note, I believe that even though our lien bill may still have some loopholes, it is far better than it was in the late 70s. Perhaps state funds that are issued for construction could be made out in the name of the Materialmen, as well as the General Contractor. That would possibly eliminate a General, who by either missusing his funds, or skipping the state would put the sub and materialman at risk.

After all, it is the materialmen who put out the money first, they have to have the inventory immediately available in order that the General does not lose valuable job time.

It seems highly unfair, that you should scratch out the materialmen's right to collect in one stroke of your pen!

FOR THE SAKE OF ALASKA'S ECONOMY, OPPOSE THIS BILL! Alaska can't afford to have more business's go down the drain because of a bill that gives away the store!

Sincerely yours,

Angie Kruckenberg
Angie Kruckenberg

Copy sent to each legislator and senator, and Governor Cowper.

TRUSS FABRICATION PLANT • DOORS • WINDOWS • CABINETS

FACILITIES LOCATED AT 649 ROHLOFF STREET, JUST OFF OF 4 MILE OLD STEESE HWY., ACROSS FROM CURRY'S CORNER

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

1 IN THE HOUSE

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Marked-up
version provided
by Dwight Perkins
x x x x x x
Evidently he feels
this bill approaches
the problem in a
better fashion.

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2 tration, the commissioner of administration or the commissioner of
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Alaska State Legislature

SENATE

Committee on Finance

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

January 9, 1987

MEMORANDUM

TO: Senator !FNAME! !LNAME!

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

SUBJECT: Co-Sponsorship of legislation concerning priority
claims during a bank liquidation.

Attached is a bill I will be introducing on Monday. The bill amends the banking and financial institutions statutes by changing the amount an employee may receive of his already earned wages and benefits during a bank liquidation. The legislation's intent is to bring this amount more in line with today's economic structure.

When the statute was originally written in 1978, earnings were much lower than they are today. The statute provides that when a financial institution is undergoing liquidation employee wages and salaries earned during the three month period prior to the Department of Commerce and Economic Development's takeover have priority status, but only for an amount not to exceed \$3,000 for each person. Today, because many employees make more than the allotted \$1,000 per month, I believe they should be paid for services already rendered to the banking institution.

Should you be interested in co-sponsoring the legislation, please give Theresa Maser of my office a call at 465-4958 by 9 a.m., Monday.

Thank you.

December 27, 1987

Honorable Jan Faiks
Alaska Senate
6060 Yukon Drive
Anchorage AK 99516

Dear Senator Faiks,

By now, I am sure you are aware of the December 11 closure of First Interstate Bank of Alaska. As an employee of First Interstate at the time of closing, several issues are of great concern to me. I would appreciate your help in looking into these matters, and will supply you with all the facts that are available to me.

As a state chartered bank, First Interstate was closed by the State Banking Commission and FDIC was appointed receiver of the bank. As such, FDIC is now administrator of the employees' 401K retirement plan. Approximately 150 employees are participants in the plan which is with Mutual of New York. FDIC has advised us that before any disbursements can be made, they must first review the plan, which may take up to 90 days. They will then turn it over to IRS for review. All of this may take up to one year. Until this process is complete, employees will not have access to their funds.

During this time, many employees have lost their jobs. Some have been offered temporary employment (60 to 90 days) with the acquiring bank. As a result, it is imperative that we have access to our money as soon as possible. Without jobs, many of us will need those funds just to meet every day living expenses. Considering the current economic conditions in Alaska, can the state afford the additional burden of more homes being foreclosed upon?

Another issue I would like to address is accrued vacation pay. According to FDIC, final pay to employees of a failed bank is regulated under Alaska State Statute 06.05.470 (t) (2). Subsequently, employees were paid for any vacation time which was accrued in the three months prior to the failure. Under those provisions, I was paid \$395.70. I am still owed \$1863.59 for accrued vacation pay. Although at some time we will be given the

opportunity to file a claim on these unpaid earnings. consensus is our chances of receiving further compensation are not good.

The former employees of First Interstate Bank are facing extremely unsettling times. While depositors have suffered no losses in this takeover, employees, on the other hand, do stand to sustain substantial losses, both through non-payment of earned vacation pay and unavailability of 401K funds. Any pressure that you can exert as an elected official upon the FDIC and the IRS to speed up the release of the 401K fund, and upon the State of Alaska Banking Commission to reimburse the employees for lost vacation pay would be greatly appreciated.

I anxiously await your response.

Sincerely,

A handwritten signature in cursive script that reads "Carole Panduren". The signature is written in dark ink and is positioned above the typed name.

Carole Panduren

PO Box 105038

Anchorage AK 99510

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

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 333 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to wage, salary, and benefit claims
7 having priority in certain bank liquidations and to
8 certain bank reports required by the Department of
9 Commerce and Economic Development."

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

11 * Section 1. AS 06.05.045(a) is amended to read:

12 (a) Each [EVERY] state bank shall make at least four reports of
13 condition each year to the department on days designated by it, and on
14 forms prescribed by it. The report shall be verified by an oath of
15 the president, vice president, or cashier and by at least three direc-
16 tors, certifying and subscribing under oath that they and each of them
17 have personal knowledge of the facts stated in the report and that the
18 facts are true. The reports shall exhibit in detail and under appro-
19 priate heads the resources and liabilities of the bank, and each
20 report shall be transmitted or mailed to the department no later than
21 30 [WITHIN 10] days after the date designated for the report [OF THE
22 RECEIPT OF THE REQUEST FROM THE DEPARTMENT].

23 * Sec. 2. AS 06.05.470(t) is amended to read:

24 (t) The following claims have priority in liquidation proceed-
25 ings, in the order listed:

26 (1) obligations incurred by the department;

27 (2) wages, [AND] salaries, and benefits of officers and
28 employees earned during the 12-month [THREE-MONTH] period preceding
29 the department's possession in an amount not exceeding \$12,000

1 [\$3,000] for each person;

2 (3) fees and assessments due to the department;

3 (4) deposits.

BY HALFORD, KELLY, UEHLING, BINKLEY,
HENSLEY, STURGULEWSKI, FAIKS,
KERTTULA

1 IN THE SENATE

2

SENATE BILL NO. 333

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to wage, salary, and benefit claims

7

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REPORTS TO THE DEPT. OF COMMERCE & ECONOMIC
DEVELOPMENT

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18

(4) deposits.

Section 2. AS 06.05.045 (a) is amended to read:

(a) Every state bank shall make at least four reports of condition each year to the department on days designated by it, and on forms prescribed by it. The report shall be verified by an oath of the president, vice president, or cashier and by at least three directors, certifying and subscribing under oath that they and each of them have personal knowledge of the facts stated in the report and that the facts are true. The reports shall exhibit in detail and under appropriate heads the resources and liabilities of the bank, and shall be transmitted or mailed to the department no later than 30 days after the designated date for the report of condition. [within 10 days of the receipt of the request from the department.]

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 3, 1988

SUBJECT: Versions of proposed CSSB 333 (L&C)

TO: Senator Tim Kelly
Chairman
Senate Labor and Commerce Committee

FROM: Theresa L. Bannister *TLB*
Legislative Counsel

This memo accompanies two versions of the proposed Labor and Commerce Committee Substitute for SB 333. The version that is numbered 5-1512B is the drafting version that is recommended by this office. The version that is numbered 5-1512L is the version with the language as you requested it. Aside from the title being tighter in the recommended version, there is no substantive difference between the two versions, only language differences in section 1.

If I may be of further assistance, please advise.

TLB:bb
wkb2/04

S B

3 4 3

Original sponsors: Sturgulewski, Uehling,
Fahrenkamp and Kelly

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 343 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the liability of directors of
7 corporations."

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

9 * Section 1. AS 10.05.255 is amended by adding new subsections to read:

10 (c) In addition to the matters required to be set out in the
11 articles of incorporation by (a) of this section, the articles of
12 incorporation may also contain a provision eliminating or limiting the
13 personal liability of a director to the corporation or its stock-
14 holders for monetary damages for the breach of fiduciary duty as a
15 director. The articles of incorporation may not eliminate or limit
16 the liability of a director for

17 (1) a breach of a director's duty of loyalty to the corpo-
18 ration or its stockholders;

19 (2) acts or omissions not in good faith or that involve
20 intentional misconduct or a knowing violation of law;

21 (3) wilful or negligent conduct involved in the payment of
22 dividends or the repurchase of stock from other than lawfully avail-
23 able funds; or

24 (4) a transaction from which the director derives an im-
25 proper personal benefit.

26 (d) The provisions of (c) of this section do not eliminate or
27 limit the liability of a director for an act or omission that occurs
28 before the effective date of the articles of incorporation or of an
29 amendment to the articles of incorporation authorized by (c) of this

1 section.

2 * Sec. 2. AS 10.20.151 is amended by adding new subsections to read:

3 (d) In addition to the matters required to be set out in the
4 articles of incorporation by (a) of this section, the articles of
5 incorporation may also contain a provision eliminating or limiting the
6 personal liability of a director to the corporation for monetary
7 damages for the breach of fiduciary duty as a director. The articles
8 of incorporation may not eliminate or limit the liability of a direc-
9 tor for

10 (1) a breach of a director's duty of loyalty to the corpo-
11 ration;

12 (2) acts or omissions not in good faith or that involve
13 intentional misconduct or a knowing violation of law; or

14 (3) a transaction from which the director derives an im-
15 proper personal benefit.

16 (e) The provisions of (d) of this section do not eliminate or
17 limit the liability of a director for an act or omission that occurs
18 before the effective date of the articles of incorporation or of an
19 amendment to the articles of incorporation authorized by (d) of this
20 section.
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23
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FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Relating to the liability
of directors of corporations
Sponsor: Sturgulewski, Uehling,
XXXXXXXX Fahrenkamp and Kelly
Requester: _____

Agency Affected: Commerce & Econ. Dev.
BRU: Banking, Securities & Corporations

Components: _____

EXPENDITURES / REVENUES : (Thousands of Dollars)

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

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Willis F. Kirkpatrick, Director Phone: 465-2521
Division: Banking, Securities and Corporations Date: _____
Approved by Commissioner: J. Anthony Smith, Commissioner Date: 1-26-88
Agency: Department of Commerce and Economic Development

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

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 343
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Relating to the liability
of directors of corporations
Sponsor: Sturgulewski, Uehling,
XXXXXX Fahrenkamp and Kelly
Requester: _____

Agency Affected: Commerce & Econ. Dev.
BRU: Banking, Securities & Corporations
Components: _____

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
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MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Willis F. Kirkpatrick, Director
Division: Banking, Securities and Corporations

Phone: 465-2521
Date: January 21, 1988

Approved by Commissioner: D. Anthony Smith, Commissioner
Agency: Department of Commerce and Economic Development

Date: January 21, 1988

Distribution (by preparer):

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

page _____ of _____

0644D-5/12288a

**Issues Facing U.S.
Corporate Directors**
December 1986

 **Touche Ross**

An opinion survey of directors of major U.S. corporations on the consequences of increased director's liability and other issues that affect the work of the board: the U.S. economy, foreign trade pressures, and the outlook on corporate America's future.



Are directors of large U.S. corporations concerned about their ability to make the right decisions in their work on the board? What do they think about foreign trade pressures, intense merger and acquisition activity, and access to capital markets? As directors, how do they deal with increased personal liability? Do they foresee problems recruiting qualified board candidates in the future?

These and other issues critical to the future of business in America were explored in a nationwide survey of corporate directors conducted by Touche Ross in the fall of 1986. More than 1,100 directors participated in the survey; nearly three-quarters of them serve on boards of companies with annual sales (or the equivalent in assets) of \$1 billion dollars or more, and 81 percent have more than five years of board experience.

Highlights

Directors' Issues

- Almost one-third of the directors surveyed say they have considered retiring from their boards because of the increased liability to which they are exposed.
- Ninety-three percent of the directors polled believe increased liability will make it more difficult to recruit talented, experienced people to serve on boards in the future.
- More than 80 percent of the directors surveyed believe today's directors, in general, are more effective than they were twenty years ago.

Corporate and Economic Issues

- Nearly half the directors surveyed believe merger and acquisition activity has hurt the U.S. economy. Nevertheless, when the survey was conducted in September and October of 1986, some 45 percent of the directors polled believed that merger and acquisition activity would remain at the same level, and 27 percent said it would increase, over the next twelve months.

- While half of the directors say foreign trade has adversely affected earnings of companies of which they are a board member, the large majority of all directors polled do *not* think Congress should pass legislation to protect U.S. business from foreign competition.
- Eighty-one percent of the directors polled do not believe that, over the next year, Third World debt will have an adverse effect on the balance sheets of companies where they serve on the board.
- Almost one-third of the directors surveyed think the bankruptcy rate for companies with sales of \$1 billion or more will increase in the coming year.
- Directors divide evenly in their opinion on whether corporate America's investment in capital equipment will increase, decrease, or continue at the same level in the next twelve months. However, 77 percent believe investment in capital *plant* will decrease or remain the same. The vast majority agree that corporate America will increase its investments in technology and in research and development in the next year.

Directors' Issues

Most survey participants are highly experienced board directors who serve major U.S. corporations: 71 percent of the respondents serve on at least one board of a business whose annual sales equal or exceed \$1 billion; 76 percent serve on more than one board; and 58 percent have ten or more years of board experience.

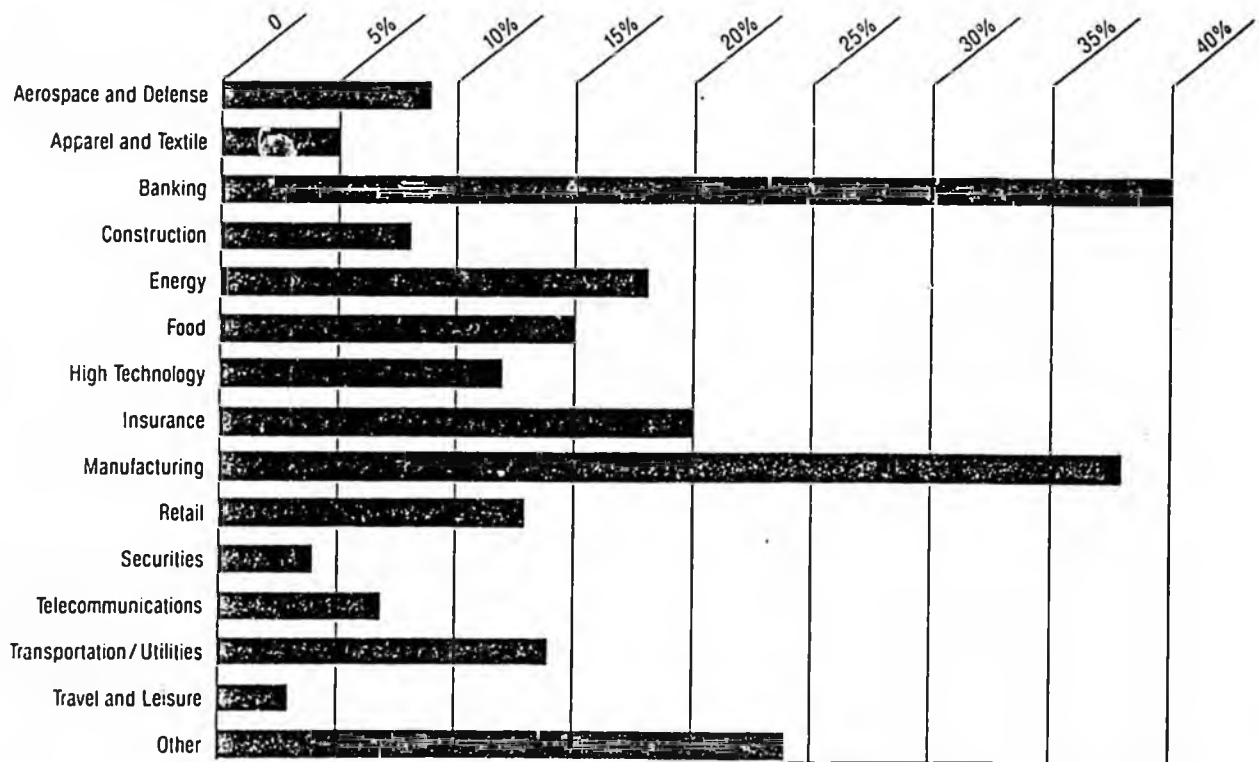
Participants in the Survey

The directors surveyed serve on a wide diversity of boards of large businesses and industries: 71 percent serve on at least one board of a business that has annual sales of \$1 billion (or the equivalent in assets) or more; 41 percent serve on at least one board of a company that has annual sales of \$500 million to \$999 million; and 45 percent serve on at least one board of a business that has annual sales of under \$500 million.

Of the directors surveyed, 24 percent serve on one board only; 26 percent serve on two boards; 21 percent serve on three boards; 13 percent serve on four boards; and 16 percent serve on five or more boards. Thus, most participants in the survey have extensive board experience.

This fact is supported by the amount of time the respondents have served as directors: less than one-fifth of the respondents have been directors for less than five years; 23 percent have five to nine years of

Industries Served by Survey Respondents



Note: Percentages total more than 100 percent because nearly three-quarters of the directors surveyed serve on more than one board.

experience; 23 percent have ten to fourteen years of experience; 15 percent have served as board members for fifteen to nineteen years; and 20 percent have served for twenty years or more. Eighty-one percent of the total respondents have at least five years of board experience, and 58 percent have served ten or more years. The majority of respondents, then, are widely experienced board directors who serve large U.S. businesses.

Nearly three-quarters of the respondents are officers of one or more companies where they serve on the board:

- 26% are Chief Executive Officers
- 9% are Chief Operating Officers
- 9% are Chief Financial Officers
- 6% are Executive Vice Presidents
- 9% are Senior Vice Presidents or Vice Presidents
- 4% are Chairmen
- 4% are Vice Chairmen
- 6% are Presidents, Legal Counsels, Secretaries, and other officers.

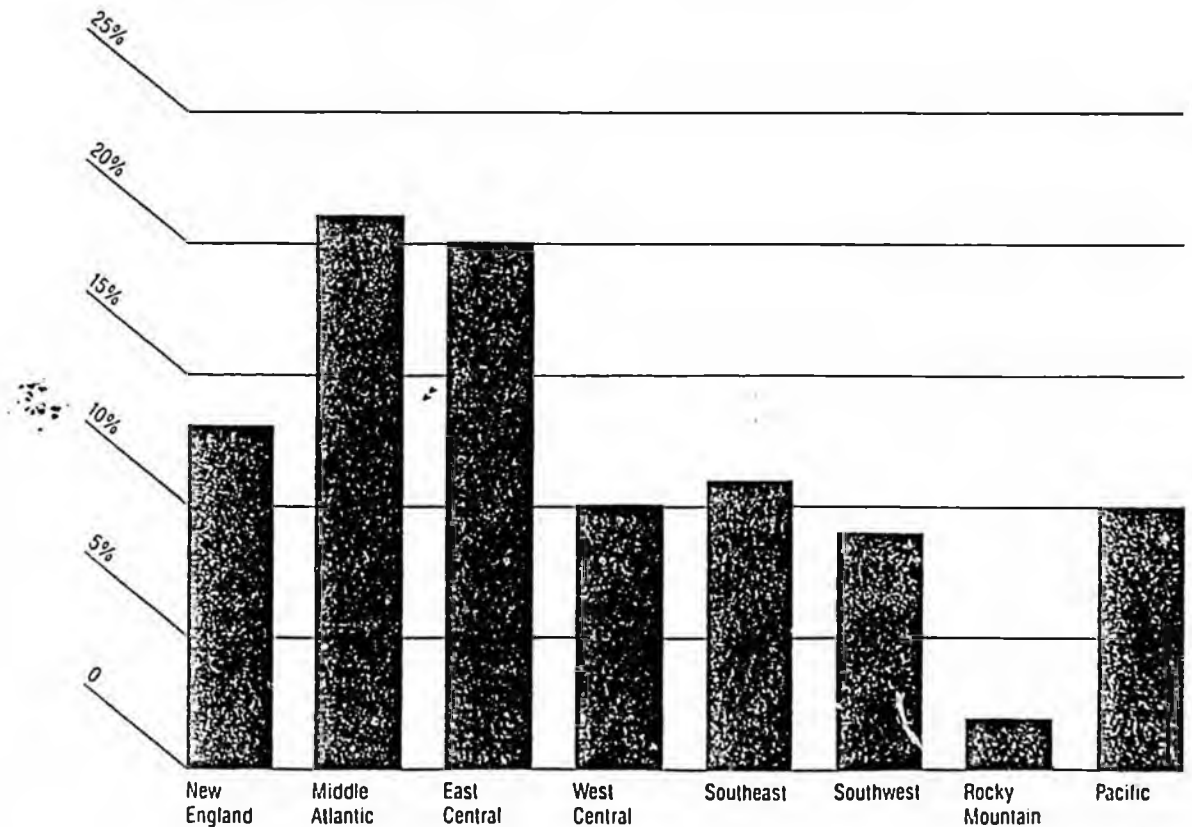
Eighty-eight percent of the outside directors were recruited by the chief executive officer; 7 percent by another officer of the company; 4 percent by an executive search firm; and 10 percent by others.

Twenty-three percent of the respondents are officers or retired officers of other companies, and 20 percent have special business experience or skills. Only 2 percent represent a special, external constituency.

Internal directors serving their board(s) tend to have the least board experience—both in number of years served and in number of boards served on. Predictably, the more years directors have served, the more likely they are to be officers or retired officers of another company, or to have special business-related experience or skills. However, directors who have served on a board for twenty years or more are *three times* more likely to be major stockholders of the company(ies) served than directors serving less than twenty years.

Nearly three-quarters of the directors surveyed are officers of one or more companies where they serve on the board. Of those who are outside directors, 88 percent were recruited by the chief executive officer.

Regions of the United States in Which Survey Participants Live



Some 93 percent of the directors surveyed believe that increased directors' liabilities will make it more difficult to recruit talented, experienced people in the future. The directors imply, then, that increased liability will create boards whose members will be less qualified or less effective than today's.

Ninety percent of the directors surveyed serve on board committees, and most serve on a number of these committees. Predictably, those who do not serve on committees have less than five years of board experience or serve on only one board. Directors who are officers of at least one company on whose board they serve are most likely to sit on the executive committee (64 percent), followed by the compensation committee (43 percent), the audit committee (40 percent), and the budget committee (11 percent). Thirteen percent of these directors serve on no board committees.

Outside directors—defined here as directors who are not officers of any company on whose board they serve—are most likely to serve on the audit committee (75 percent), followed by the compensation committee (63 percent), the executive committee (58 percent), and the budget committee (8 percent). Only 2 percent of these directors serve on no board committees.

Forty percent of the directors who are not officers of any company on whose board they serve sit on other committees, as do 25 percent of those directors who are officers of at least one company on whose board they serve. These committees include the nominating, contribution, social responsibility, public policy, and foundation committees.

The Challenge of Increased Liability

One-third of the directors surveyed say they have considered retiring from one or more of their board seats because of the increased liabilities to which they are exposed. In fact, the longer that directors have served on boards, the more likely they are to think of retiring because of increased liabilities. Only 16 percent of all the directors polled who have less than five years of board experience think of retiring, while the percentage more than doubles for directors who have five or more years of experience.

While 41 percent of the directors who are not officers of any company where they serve on the board have considered retiring because of increased liability, 36 percent of CEOs also say they have considered doing

so. Some 36 percent of committee members, regardless of the committee(s) on which they serve, have considered retiring, while only 16 percent of non-committee members of the board have considered doing so. Thus, directors who have the least experience as measured by length of time served, and those who are not involved with board committees are the least concerned about increased liabilities.

Given the pace of change affecting the business community and the responsibilities of corporate directors, 35 percent feel only "somewhat confident" in exercising their responsibilities as a director and 4 percent feel "unsure." Overall, 62 percent of board members feel "confident." CEOs feel more confident than any other board members, with 66 percent saying so. Fifty-nine percent of CFOs express confidence in today's board environment, as do 60 percent of the other officers who serve on boards and 60 percent of those directors who are not officers of any companies where they serve on the board. The least confident in exercising their responsibilities are board members who serve on no board committees and who have, perhaps, the least "hands-on" experience.

Although the less-experienced directors worry the least about increased liabilities, it is not really a contradiction that they are the least confident in dealing with board matters. The survey results imply that, while they are aware that they lack knowledge of areas which are brought before the board, they may not be aware—precisely because they know less—of the extent to which increased directors' liabilities can affect them.

An overwhelming 93 percent of the directors surveyed believe that increased liability will make it more difficult to recruit talented, experienced people in the future. This percentage holds for all directors, regardless of length of board service, their involvement in committee work, and whether they are officers of any company on whose board they serve. Do the findings imply that increased liability will create boards whose members will be less qualified or less effective than current board members?

A great majority of the directors surveyed (83 percent) believe that today's directors are more effective than those of twenty years ago. Eighty-five percent of the directors serving on boards for twenty or more years (and who can, therefore, compare their earlier experience to their present experience), and 86 percent of the directors serving on three or more boards, find today's directors more effective than do those serving on fewer boards and with fewer years of experience.

Directors' Influence on Their Board(s)

When asked how much influence they have on their board(s), 39 percent of the respondents say their influence is great. Sixty percent claim moderate influence, and only 6 percent believe their influence is small. These responses and percentages hold true for both internal and outside directors.

Directors with less than five years of board experience and directors who sit on only one board feel they have the least influence. The more boards that directors serve on, the greater they believe their influence to be: 54 percent of directors serving on more than five boards say their influence is great, the largest percentage of all directors surveyed to say so. Directors who have served on a board(s) for twenty years or more are also likely (44 percent) to think they have great influence.

The directors' responses also reflect the particular board committees on which they serve. Fifty-two percent of directors serving on the budget committee believe their influence on the board is great, as do 47 percent of those who sit on the compensation committee, 43 percent of those on the executive committee, 38 percent of audit committee members, and 36 percent who serve on other committees. Nearly 20 percent of directors who do not serve on any committees say their influence is small.

Directors' Influence on the Chief Executive Officer

While 90 percent of the directors who are not officers of any company on whose board they serve were recruited by CEOs, only 28 percent believe they have great influence on the CEO(s). Directors serving on more than five boards feel they have the greatest influence (35 percent), followed by or including those who sit on board committees. Twenty-nine percent of the directors serving on compensation committees feel they have great influence on the CEO, followed by those serving on the audit committee (28 percent), the budget committee (27 percent), and the executive committee (24 percent).

Interestingly, 90 percent of the outside directors surveyed who are not officers of any company where they serve on the board were recruited by the chief executive officer—yet only 28 percent believe they have great influence on the chief executive officer.

NOVEMBER 11, 1987

MEMO

TO: CHUCK BUNDRANT
BART EATON

FROM: JOE PLESHA

RE: LIMITATION OF DIRECTOR LIABILITY UNDER DELAWARE LAW

INTRODUCTION

On July 1, 1986, a new law became effective in Delaware which permits a Delaware corporation to include in its certificate of incorporation a provision which limits or eliminates a director's personal monetary liability to the corporation or its stockholders for breach of his or her fiduciary duty of care to the corporation.¹

BACKGROUND

Delaware law has generally permitted a Delaware corporation to purchase insurance on behalf of its directors and officers against liability incurred in their corporate capacity, regardless of whether the corporation would have the power to indemnify the director against such liability under Delaware law.² The market for directors' and officers' liability insurance has, however, changed dramatically over the past several years. Despite the statutory authorization of Delaware corporations to purchase and maintain directors' liability insurance, many corporations have reportedly experienced difficulties in obtaining or maintaining sufficient coverage at a reasonable cost. As a result, many corporations have been forced to accept insurance with lower dollar limits of coverage, higher deductible amounts, and broader policy exclusions at a significantly higher cost.³

The insurance crisis for directors may be exacerbated by the courts increasing tendency to scrutinize the decisions of a director, even when the director acted in good faith and not out

¹ Indemnification of directors and officers, and limitation or elimination of director liability as authorized by the new Delaware law, are separate and distinct concepts. Alaska law already provides that directors can be indemnified for actions under certain circumstances. Alaska Stat. § 10.05.101.

² Del. Code Ann. tit. 8, § 145(g) (Supp. 1986) (amended 1986) provides:

A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent to the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him incurred by him in any such capacity, or arising out of his status as such, *whether or not the corporation would have the power to indemnify him against such liability under this section.*

³ See Hilder, *Liability insurance is Difficult to Find Now for Directors, Officers*. Wall St. J., July 10, 1985, at 1, col. 6.

of self interest. For example, the court in the case of *Smith v. Van Gorkom*⁴ found that the board of directors of Trans Union Corporation breached their fiduciary duty of due care in approving a proposed cash merger and the court held members of the board personally liable for the resulting damages.

The expense of defending these lawsuits and the inevitable uncertainties with respect to application of the business judgment rule (the rule by which corporate directors actions are judged) may impact upon an individual's willingness to serve as director of a corporation. In addition, such uncertainty could cause directors to act defensively out of concern over costly litigation and potential personal liability, rather than acting to manage the business in the best interest of the corporation. For these reasons, Delaware adopted legislation in 1986 which would permit a corporation to limit or eliminate the director's personal monetary liability to the corporation or its stockholders for breach of his or her fiduciary duty of care to the corporation.

ANALYSIS OF NEW DELAWARE LAW

Title 8, §102(b)(7) of the Delaware General Corporation Law enables a Delaware corporation to include in its articles of incorporation a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of their fiduciary duty as a director. In addition, § 102(b)(7) states that no such provision can eliminate or limit a director's liability (i) for breach of the director's *duty of loyalty* to the corporation or its stockholders; (ii) for acts of omissions *not in good faith or involving intentional misconduct or a knowing violation of law*; (iii) for willful or negligent conduct *paying dividends or repurchasing stock out of other than lawfully available funds*; or, (iv) for any transaction from which the director derives an *improper personal benefit*.

Section 102(b)(7) is an enabling provision only. Amendment of the corporate articles of incorporation, therefore, is required to include the provision authorized by this section before it is an effective limitation of personal liability for a corporation's directors. The ultimate determination as to the propriety of limiting the opportunity of a corporation or its stockholders to seek monetary damages from the directors rest with the stockholders of the corporation who vote on any amendments to the articles of incorporation. As a practical note, it can be argued that a board which proposes an amendment pursuant to this law is an "interested party," since the individual directors of the board will benefit from the elimination of monetary liability which they otherwise may be required to pay. Obtaining the required stockholder approval after full disclosure of all material facts, however, eliminates any conflict of interest which might otherwise arise.

Section 102(b)(7) does not preclude or limit damages in actions instituted by third parties. In addition, it can be argued that §102(b)(7) permits limitation or elimination of monetary liability only for directors acting as directors. Actions taken by a majority stockholder in his capacity as such cannot be exempted from liability. Finally, §102(b)(7) does not permit limitation or elimination of liability arising under other laws or regulations. A director's potential liability under state and federal securities laws, for example, is unaffected by this section

⁴ 488 A.2d 858 (Del. 1985). The court found the board grossly negligent in that the directors had failed to fully inform themselves of "all material information reasonably available to them," and had acted hastily in approving the proposed merger, after two hours' consideration. *id.* at 872.

Fiduciary Duty

Directors are charged with the fiduciary duty of *due care* and *loyalty* to the corporation. Loyalty basically requires that a director, in making a business decision, act in good faith and in the honest belief that the action taken is in the best interest of the corporation. Under the new Delaware law, a director can still be found to be personally liable for monetary damages where they violate the fiduciary duty of loyalty by acting in their own "self-interest," and not in the best interest of the corporation.⁵ (For example, by usurping a corporate opportunity for their own personal benefit or competing with the corporation.)

The official legislative synopsis of §102(b)(7) notes that this provision permits a corporation to protect its directors from monetary liability only from liability for breach of the *fiduciary duty of due care*.⁶ It is clear that if a director negligently or with gross negligence (want of even scant care, or failure to exercise even that care which a careless person would use) disregarded his fiduciary duty of due care, they could be protected from monetary liability under the new Delaware law.

It is not clear, however, whether §102(b)(7) exempts directors from liability for reckless (actions that fall somewhere between gross negligence and intentional wrongdoing) disregard for the fiduciary duty of due care. It could be argued that to the extent that the recklessness involves conscious disregard for a known risk, such conduct is not taken in good faith and therefore, would not be a liability subject to limitation under §102(b)(7)(ii). To the extent recklessness encompasses merely inattention to duty by the directors, however, I believe that such conduct should be labeled "gross negligence" and therefore any liability resulting from it would be subject to limitation.

§102(b)(7), however, does not *eliminate* a director's fiduciary duty to act with due care, it merely insulates directors from personal *monetary* liability for failure to satisfy that duty. A director's conduct would, therefore, still be subject to injunctive or rescissory relief. A stockholder can institute an action to enjoin completion of a board's action or to rescind a completed action if such action involves violations of the duty of care. This may be relevant in proxy contest, elections, resignations, etc.

In conclusion, Delaware's new law only allows for a corporation to limit or eliminate the monetary damages a corporation or its shareholders can receive from its directors for a breach of the director's fiduciary duty of due care. It does not limit damages that can be awarded for a directors breach of their fiduciary duty of loyalty, or violations of law, or any transaction from which a director derives an improper personal benefit. In addition, the corporation or shareholder can still seek equitable remedies, such as recession or injunctive relief for a directors breach of their fiduciary duty of due care.

WASHINGTON & ALASKA LAW

Like Delaware, Washington State and Alaska law provide that a corporation may purchase insurance on behalf of its directors and officers to protect against personal liability incurred

⁵ Del. Code Ann. tit. 8, § 102(b)(7)(i).

⁶ The synopsis notes: "[t]his provision enables a corporation in its original certificate of incorporation or an amendment thereto validly approved by stockholders to eliminate or limit personal liability of members of its board of directors or governing body for violations of a director's fiduciary duty of care."

in their corporate capacity, regardless of whether the corporation would have the power to indemnify against such liability under the relevant state law.⁷

On Washington recently enacted legislation similar to Delaware's which would allow for a Washington corporation limit the monetary liability of directors for a breach of their fiduciary duty of due care to the corporation.⁸ I am having a copy of the new provision sent to me. Alaska has not yet enacted such legislation.

I have attached the relevant portions of the Delaware, Alaska and Washington State law.

⁷ Nearly identically to Delaware law, Wash. Rev. Code § 23A.08.025(11) (1980) provides:

A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent to the corporation, or is or was serving at the request of the corporation as a officer, employee or agent of another corporation, partnership, joint venture, trust or other employee benefit plan against any liability asserted against him incurred by him in any such capacity, or arising out of his status as such, *whether or not the corporation would have the power to indemnify him against such liability under this section.*

The Alaska Statutes §10.05.015(g) (1970) provide that:

A corporation may purchase and maintain insurance on behalf of a person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership joint venture, trust or other enterprise against any liability asserted against hem and incurred by the person in such a capacity, or arising out of the person's status as such, *whether or not the corporation would have the power to indemnify the person against the liability under the provisions of this section.*

⁸ S.B. 6048, effective July 26, 1987.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 343
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Econ. Dev.
 Title: Relating to the liability BRU: Banking, Securities & Corporations
of directors of corporations
 Sponsor: Sturqulewski, Uehling,
 Requester: Fahrenkamp and Kelly Components: _____

EXPENDITURES / REVENUES : (Thousands of Dollars)

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

FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Willis F. Kirkpatrick, Director Phone: 465-2521
 Division: Banking, Securities and Corporations Date: January 21, 1988
 Approved by Commissioner: D. Anthony Smith, Commissioner Date: January 21, 1988
 Agency: Department of Commerce and Economic Development

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

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5-1534B
Bannister
4/8/88

Original sponsor: Duncan

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 344 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to general contractors and to cer-
7 tain contracts of state agencies."

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

9 * Section 1. AS 08.18.011(b) is amended to read:

10 (b) A general contractor may not use a bid or proposal from,
11 award a bid or proposal to, contract with, or allow a person required
12 to be registered under this chapter to work for the general contractor
13 as a specialty contractor unless the person is registered under this
14 chapter.

15 * Sec. 2. AS 36.30.115(a) is amended to read:

16 (a) Within five working days after the identification of the
17 apparent low bidder, the apparent low bidder shall submit a list of
18 the subcontractors the bidder proposes to use in the performance of
19 the contract. The list must include the name and location of the place
20 of business for each subcontractor and evidence of the subcontractor's
21 valid Alaska business license. A bidder for a construction contract
22 shall also submit evidence of each subcontractor's registration under
23 AS 08.18. If a subcontractor on the list does not have a valid Alaska
24 business license and a valid certificate of registration under
25 AS 08.18, the purchasing officer shall reject the bid and proceed to
26 the next lowest bidder.

*Original Passed out
of State Affairs 1:05 p.m. 4/1/88*

1 IN THE SENATE

BY DUNCAN

2

SENATE BILL NO. 344

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to general contractors, and to
7 certain contracts of state agencies and political
8 subdivisions."

9

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

10

* Section 1. AS 08.18.011(b) is amended to read:

11

(b) A general contractor may not solicit a bid or proposal from,
12 award a bid or proposal to, contract with, or allow a person required
13 to be registered under this chapter to work for the general contractor
14 as a specialty contractor unless the person is registered under this
15 chapter.

16

Sec. 2 AS 36.30.115(a) is amended to read:

17

(a) Within five working days after the identification of the

18

apparent low bidder, the apparent low bidder shall submit a list of
19 subcontractors the bidder proposes to use in the performance of the contract.

20

The list must include the name and location of the place of business for
21 each subcontractor and evidence of the subcontractor's valid Alaska business
22 license. A bidder for a construction contract shall also submit evidence

23

of each subcontractor's registration under AS 08.18. If a subcontractor on the
24 list does not have a valid Alaska business license and registered under AS 08.18

25

the bid is to be rejected and the contracting agency shall proceed to the next

26

lowest bidder.

27

*4:10 p.m. 3/31/88 Signed off
Pres. of Execut. Dir.*

Alaska State Legislature

SENATOR JIM DUNCAN

P. O. Box V JUNEAU, ALASKA 99811

(907) 465-4766

COMMITTEES:
FINANCE
RESOURCES
BUDGET AND AUDIT

M E M O R A N D U M

February 17, 1988

To: Senator Mitchell Abood
 Chairman Senate State Affairs

From: Senator Jim Duncan

Subject: SB 344 Relating to general contractors

I would appreciate your scheduling SB 344, a bill concerning contracting procedures, for a hearing before the Senate State Affairs Committee at your earliest convenience.

Current statutes have not prevented the loss of business and jobs to contractors from outside Alaska. It is my hope that with some minor changes in the contracting law we will save some Alaskan businesses and many Alaskan jobs.

I have attached some supporting material that could be used in the Committee's bill files.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION : SB 344
PUBLISH DATE : _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
 Title: " An Act relating to general
contractors and...contracts of state agencies..." BRU: Labor Standards & Safety
 Sponsor: Duncan Components: Wage & Hour
 Requestor: Senate State Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Tom Stuart, Director Phone: 264-2452
 Division: Labor Standards & Safety Date: 3/22/88

Approved by Commissioner: Jim Sampson Date: 3/22/88
 Agency: Department of Labor

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

SB 344: An Act relating to general contractors, and to certain contracts of state agencies and political subdivisions.

Section 1 of the bill amends AS 08.18.011(b) to prohibit a general contractor from contracting with, soliciting a bid or proposal from, or awarding a bid or proposal to an unlicensed individual. Current statute prohibits a general contractor from allowing a person to work without proper licensure. The amendment to this section goes one step further by disallowing solicitation of a bid or proposal from an unlicensed individual, and prohibits an award, bid or proposal to be made to an unlicensed individual. This will ensure that only properly licensed contractors will be eligible to perform the construction work for which licensure is required under AS 08.18 and help to assist in the enforcement of unlicensed activity in the State.

The department supports passage of this legislation which clarifies the need to have properly licensed contractors working in Alaska and encourages the Legislature's support in passing the bill.

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

3/10/88
Date

JS/dg10051o
031188a

De

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to general contractors...
Sponsor: Senator Duncan
Requestor: _____

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

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	0	0	0	0	0

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)

Prepared by: Jennifer Strickler, Management Analyst Phone: 465-2144
Division: Occupational Licensing Date: March 10, 1988

Approved by Commissioner: J. Anthony Smith Date: 3/10/88
Agency: Commerce and Economic Development

Distribution (by preparer):

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

STATE OF ALASKA
THE LEGISLATURE

FOUCHY STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3801

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

January 8, 1988

SUBJECT: Coverage of bill on the use and registration
of subcontractors (Work Order No. 5-1534)

TO: Senator Jim Duncan

FROM: Theresa L. Bannister ⁷⁰
Legislative Counsel

This memo accompanies the draft of the bill that you requested to require contractors to use registered subcontractors.

The business license requirement in the draft is carried over from the present language of AS 36.30 (state procurement code). To obtain an Alaska business license, a contractor must also have satisfied the registration requirements of AS 08.18 (AS 43.70.020(d)). That is why there is no specific registration requirement in section 2, 5 and 6 of the draft.

This draft applies subcontractor registration requirements to the sections of the procurement code (AS 36.30) that deal with procurement by sealed bids and sealed proposals. You may wish to consider whether you want to apply the new provisions to the other types of procurement, which are sole source procurements (AS 36.30.300), limited competition procurements (AS 36.30.310), emergency procurements (AS 36.30.320), and small procurements (AS 36.30.320). All of these could be used for contracts with construction contractors, but there may be policy reasons against imposing the same requirements on them.

If I can be of further assistance, please advise.

Attachment

TLB:bb
E010/WKE1

BY SENATOR DUNCAN

Senate Bill 344

"An Act relating to general contractor, and to certain contracts of state agencies and political subdivisions."

Section 1.

Strengthens current language under AS 08.18 (Construction Contractors) by requiring that a general contractor may NOT:

1. Solicit a bid or proposal from,
2. Award a bid or proposal to,
3. Contract with,

a person required to be registered under AS 08.18 unless the person is registered.

Current law only requires that the general contractor may not allow a person to work for the general as a speciality contractor unless the person is registered under AS 08.18.

Section 2.

Requires that a state agency soliciting bids for work SHALL require that a bid include a list of the subcontractors that the bidder will be using and include:

1. The name and location of the place of business of each subcontractor; and
2. Evidence of each subcontractor's valid Alaska business license.

In addition, A per on soliciting subcontractor bids in response to a state agency's invitation SHALL serve notice that a bid will not be considered unless it includes evidence of the bidders contractor registration.

Section 3.

AS 36.30.115 (Subcontractors) is amended to exempt construction contractors from the requirement to submit "the name, location and place of business, and evidence of valid Alaska business license five working days after identification of the apparent low bidder", because they are required to report that information at the time they submit their bid.

Section 4.

AS 36.30.210 (Request for Proposals) is also amended to exempt construction contractors from the requirement to submit "the name, location and place of business, and evidence of valid Alaska business license five working days after identification of the apparent low proposer", because they are required to report that information at the time they submit their proposal.

Section 5.

Requires that a state agency requesting proposals for work SHALL require that the proposal include a list of the subcontractors that the offeror will be using and include:

1. The name and location of the place of business of each subcontractor; and
2. Evidence of each subcontractor's valid Alaska business license.

In addition, A person soliciting subcontractor proposals in response to a state agency's request for proposals SHALL insert in the solicitation that a proposal will not be considered unless it includes evidence of the offeror's registration.

Section 6.

Requires that a political subdivision of the state that solicits bids or proposals for public construction or public works SHALL require that the bid or proposal include a list of the subcontractors that the bidder or offeror will be using and include:

1. The name and location of the place of business of each subcontractor; and
2. Evidence of each subcontractor's valid Alaska business license.

In addition, A person soliciting subcontractor bids or proposals in response to a political subdivision's invitation or request SHALL serve notice that a bid or proposal will not be considered unless it includes evidence of bidder or offeror registration.

Also, in this section definitions for "public construction" and "public works" as well as "political subdivision of the state" are provided.

MEMORANDUM

State of Alaska

TO: - Tom Stuart
Director

DATE: December 4, 1987

THRU: Randy Carr
Statewide Supervisor

FILE NO:

TELEPHONE NO: 465-4842

FROM: James A. Sanwick
Regional Supervising Investigator

SUBJECT: Unlicensed Contractors
on Southeast Public
Construction

This memo is to inform you of the final resolution of the complaints originally raised by Senator Duncan's office concerning unlicensed out of State contractors bidding on construction projects at the Sitka Elementary School project and the University of Alaska Southeast.

On November 17, 1987 (after researching the companies in question and coordinating with Commerce) I traveled to Sitka and met with Harry Chartier, job superintendent, about problems with National Glass Company having been unlicensed when it submitted its bid. We met with Dawson's superintendent and explained the problem and that my office had discussed the problem and Dawson's current probation for violation in May with Lonny in Seattle. He said that the company had recently pulled National Glass off the subcontractor list (only preliminary excavation has been done at this point on the project) and he didn't know when or how the company would replace them. Harry said he understood the provision of the law and would call us if he had questions about any subs appearing on the lists.

On November 24, 1987 I met with Jim Kytola of Dawson on the UAS Library project. I explained to him that we had a report about Sound Glass company having been awarded the bid and the ramifications of having an unlicensed contractor awarded the bid. He said that his most recent subcontractor list had removed that name and his list showed no contract award for glazing.

I explained Dawson's current probation status and suspended fine. He said he was well aware (Jim was the site superintendent when I cited Glazzco and Dawson for violation last May which resulted in Dawson's probation) of Dawson situation and believed Lonny (in Seattle office) now understood Dawson's responsibility and liability.

It is important to note that if not for the probation stipulated in the May judgement Dawson would not have been in violation of the current Statutes. Under normal conditions a General can only be cited if he allows an unlicensed sub to work on the project. In both of these cases the sub was unlicensed when they bid but became licensed after the bid was awarded but before work began. In the judgement's stipulation Dawson was prohibited from doing business with unlicensed sub. In discussion with Dawson I maintained that to award the contract was indeed to do business with the firm and thus would violate the stipulation.

Tom Stuart
December 4, 1987
Page 2

This loophole could be fixed, I believe, by changing the language in 8.18.011(b) to read:

"A general contractor may not consider or award a bid to a person required to be registered under this chapter to work for the general contractor as a specialty contractor unless the person is registered under this chapter at the time the bid is submitted."

We might also tighten up this problem by placing a requirement in AS 36.05.035 that would read:

36.05.035

(b) the state, political subdivision of the State or General Contractor awarded a contract by either the State or Political subdivision of State, shall place in all of its request for bids a clause stating that no bid will be considered unless proof of proper registration with Commerce and Economic Development, Division of Occupational Licensing is submitted with the bid.

I believe the real key to making this law work is making the entity responsible for awarding the bids accountable. Otherwise we continue to have the problem of out of State contracts outbidding local firms because of they don't bear the cost of bonding and licensing until the bid is awarded to them.

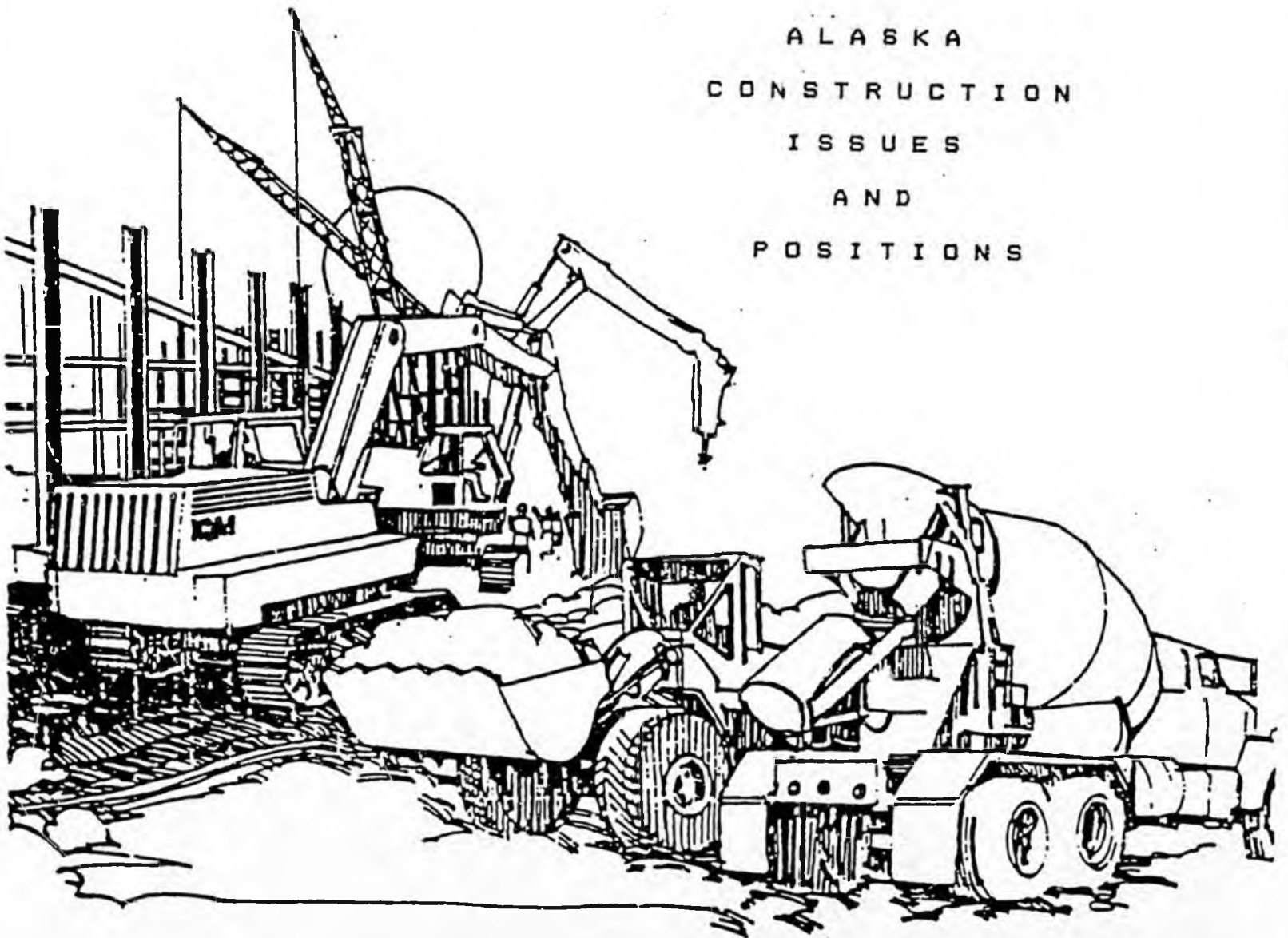
cc: Jim Sampson, Commissioner
Senator Jim Duncan

Rec. 100

ASSOCIATED GENERAL
CONTRACTORS
ALASKA CHAPTER



ALASKA
CONSTRUCTION
ISSUES
AND
POSITIONS



J., concurring), Quoting Lynden Transport, Inc. v. State, 532 P.2d 700, 710 (Alaska 1975)".

From a philosophical perspective, A.G.C. opposes government regulations of the construction industry. A.G.C. supports the free market, competitive bidding system for awarding construction contracts. This system has stood the test of time as the most economical system for the owner and a fair system for the contractors. Consistency dictates that A.G.C. not seek special regulatory favor for Alaska contractors. Further, a local preference is not consistent with the competitive free market system.

NAMING SUBCONTRACTORS AT BID

Requiring subcontractors to be named in the bid and requiring inclusion of evidence of each subcontractor's valid Alaska business license demonstrates a clear lack of understanding of the construction bid process. The inclusion of such a provision will lead to increased costs and increased litigation. A.G.C.-Alaska has and will continue to oppose any legislation requiring the naming of subcontractors at bid.

Prior to selection of a subcontractor a primary contra-

ctor must evaluate a bid and the scope of work quoted in the sub-bid. The prime must then check on insurance; bonding capability and qualifications of the subcontractor; and finally the prime must insure that the labor policy is compatible with any labor agreements to which the prime contractor may be signatory. Additionally, on most publicly funded projects there are requirements for subcontracting a certain percentage of work to certified Disadvantaged Business Enterprises (DBE) and Women Business Enterprises (WBE). The prime must be assured that the lowest DBE and WBE bids are from firms that have current certifications from the awarding agency. It is very common that a DBE or a WBE firm may be certified by one branch of the government, but not another. This certification information must be obtained and verified by the prime, otherwise the prime may be held in noncompliance with the contract DBE/WBE requirements.

Requiring the prime contractor to list subs prior to investigation and evaluation of the sub could create contractual obligations between a prime and a sub where later investigation or evaluation by the prime contractor would result in selection of a different subcontractor.

LITTLE MILLER ACT

Under existing law on public construction contracts, a

S B

3 5 7



NORGASCO, INC.

8740 Hartzell Rd. Anchorage, Alaska 99507 (907)344-6742

FYT

FEB 26 1988

February 24, 1988

Senator Bettye Fahrenkamp
P. O. Box V
Juneau, AK 99811

Dear Senator Fahrenkamp,

I would like to express my strong support of SSSB 357. Under the current statutes the APUC has jurisdiction over all utilities with ten or more customers. This legislation will exclude only natural gas utilities with fewer than 100 subscribers all of whom are commercial customers from their jurisdiction.

The APUC is a fine organization for larger utilities and obviously the legislature had this in mind when they exempted those utilities with less than ten customers. We believe in the check and balance system of government and industry, and SSSB 357 allows for the re-regulation of a utility under this category by a simple petition (AS 42.05.712) of the customers. This will prevent the utility from taking unfair advantage of its' customers.

As you can tell, the bill was drafted so that it would not concern any of the Bush areas, only Deadhorse.

The problem boils down to project financing. This is not a bankable project because there are only 40-50 customers, they are all in the same business, and they are all suffering financially, so the banks see the project as high risk. This leaves us looking for venture capital. After the venture capitalist has reviewed the project they all come to the same conclusion, if the project fails they lose everything and if the project succeeds, you have the APUC there to limit your return on investment. Needless to say they don't spend much time seriously reviewing the project after they understand how the APUC works.

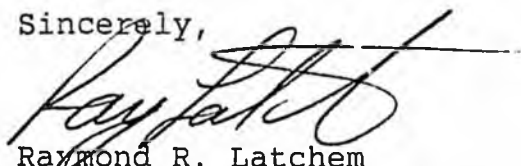
We hear a lot of talk about less government, creating jobs, finding new sources of revenue for the State, cutting down on air pollution, and stimulating the economy, this legislation accomplishes all of these by creating construction and permanent jobs, State royalties collected on the gas sold, reduced NOx emissions from the numerous diesel generators, a. will substantially reduce the overhead of the Companies operating at Deadhorse.

The State will receive in excess of \$20,000,000.00 from royalties alone over the life of the project. It will take over 40 construction workers to build the system and will employ 6-8 people full time once it is in operation. The State will also receive severance taxes from the producer and added corporate income taxes from ARCO Alaska and Norgasco.

The Department of Natural Resources, in issuing our land use permit, has reserved the for the State the right to use the pipeline to transport the States royalty gas to the State facilities that we intend to serve. This will also allow the State to market their gas to customers in Deadhorse, in this case Norgasco will act as a common carrier. But first the pipeline has to be built.

Myself and several other Board Members of The Alliance are planning a trip to Juneau on March 21, 1988. I look forward to visiting with you then. If you have any questions please feel free to call.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ray Latchem", written in dark ink over a light background.

Raymond R. Latchem
Vice President, Operations

STATE OF ALASKA

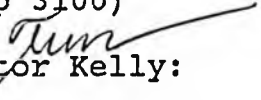
ALASKA PUBLIC UTILITIES COMMISSION
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT


STEVE COWPER, GOVERNOR

420 "L" STREET
SUITE 100
ANCHORAGE, ALASKA 99501
(907) 276-6222

February 26, 1988


Senator Tim Kelly
Chairman Labor & Commerce
P.O. Box V
Juneau, AK 99811
(Mail Stop 3100)


Dear Senator Kelly:

The attached comments on SS for SB357 were telecopied to you on February 25, 1988. If you have any questions, please do not hesitate to contact me.

Sincerely,

ALASKA PUBLIC UTILITIES COMMISSION



Susan M. Knowles
Chairman

Enclosure

Alaska Public Utilities Commission

Comments on SS for SB357

February 22, 1988

Under SS for SB357, gas distribution utilities serving fewer than 100 commercial customers would be exempt from certification and economic regulation by the Commission unless the subscribers elected to be regulated. The Commission is not aware of any compelling reasons for exempting a special class of gas distribution utilities from regulation while fully regulating all other gas distribution utilities. The Commission also believes that commercial customers in groups of less than 100 are entitled to the same level of public protection as residential customers and as commercial customers in groups of more than 100. In addition, there are some unique safety considerations associated with natural gas service, which would not be monitored under the proposed exemption scheme. (See 3 AAC 52.010 - .080.)

The Legislature should also be aware that SS for SB357 directly affects a proceeding currently pending before the Commission. One company (Norgasco, Inc.) has filed an application to provide gas distribution service to commercial customers in the Prudhoe Bay/Deadhorse area and has requested that it be exempt from economic regulation. Three other companies (Arctic Utilities, Inc.; D.J. Moore Corp.; and North Slope Gas Cooperative, Inc.) have indicated that they intend to file applications to provide the same service in the same area. The initial applicant and potential competing applicants are currently in the process of completing or filing their certification documents, so the Commission can proceed to decide the case.

In addition, the Commission has received a letter (copy attached) from the North Slope Borough, one of the prospective customers of the proposed gas distribution utility, stating that:

There is a legitimate public interest concerning the rates, quality of service, management practices, and customer complaints associated with the operation of a natural gas utility in Deadhorse. For this reason the Borough feels that Norgasco, Incorporated should be subject to all appropriate regulations governing the certification and operation of a natural gas utility.

Thus, if this legislation is passed, the established Commission procedure of evaluating competitive applications to determine which company is the most fit and able to serve an area would be interrupted. Instead, any or all of the potential gas distribution utilities would be free to enter the market under terms, conditions, and rates that would not be subject to regulatory oversight unless the subscribers petitioned for a regulation election. The Commission does not believe that this approach is in the public interest; specifically, it cannot assure that the best company is necessarily the one which serves the area; it allows for potentially uneconomic duplication of facilities by two or more providers; and it gives commercial customers a second-class level of protection from monopoly or oligopoly pricing practices.

If, however, this bill is endorsed by the Legislature as good public policy, the Commission suggests that the reference to "subscriber petitions" be modified for clarification and for conformance with other exemptions in AS 42.05.711. Thus, the exemption would state "unless 25 percent of the subscribers petition the commission for regulation under the procedure described in AS 42.05.712."

RECEIVED
A.P.U.C.

1987 DEC 22 PM 12: 21

NORTH SLOPE BOROUGH

Service Area #10
Pouch 340044
Prudhoe Bay, AK 99734
Telephone: (907) 659-2645

December 16, 1987

T.S. Moninski II, Executive Director
ALASKA PUBLIC UTILITIES COMMISSION
420 L Street, Suite 100
Anchorage, Alaska 99501-1987

SUBJECT: NOTICE OF UTILITIES APPLICATION BY NORGASCO, INC.

Dear Mr. Moninski:

The North Slope Borough's Service Area Ten is encouraged to see Norgasco, Inc. continue their development of a natural gas utility for Deadhorse. All businesses operating in Deadhorse and especially our solid waste disposal, sewage treatment and water treatment operations could benefit significantly if a dependable source of competitively priced natural gas were made available to us over the long term. We appreciate the opportunity to provide comments on the Norgasco, Incorporated application for exemption from APUC regulations regarding rates, quality of service, management practices, and customer complaints.

Since the North Slope Borough's Solid Waste Facility is a public owned operation, the Borough has an obligation to its residents to operate their Deadhorse solid waste facility in a cost effective manner which includes purchasing of natural gas from a utility which is required to follow the regulatory laws established to protect the public. There is a legitimate public interest concerning the rates, quality of service, management practices, and customer complaints associated with the operation of a natural gas utility in Deadhorse. For this reason the Borough feels that Norgasco, Incorporated should be subject to all appropriate regulations governing the certification and operation of a natural gas utility.

Our Service Area Ten Plant Engineer calculates that the prices of the natural gas quoted in the Notice will provide Service Area Ten with a 20% to 25% savings over the present fuel costs for our incinerator and boilers. Since the Application suggests the rates would not be controlled by the APUC, the NSB may have little control over future rate increases. A 10% rate increase each year for two years would eliminate any cost benefit of natural gas assuming a stable price for heating oil.

December 16, 1987

Page 2

The quantity and quality of the gas provided to us can have some significant effects on our operation. If the distribution system is under designed or if the quality of gas varies significantly we may experience problems of inadequate delivery. Normal operation of our incinerator requires us to be able to immediately add heat in a specified quantity when needed. Failure to do so could result in Service Area Ten violating the Air Quality Regulations established by the State of Alaska, Department of Environmental Conservation resulting in a fine being assessed on Service Area Ten. If Norgasco was exempt from regulation by the APUC, SA #10 would have little recourse if Norgasco's service did not meet our requirements.

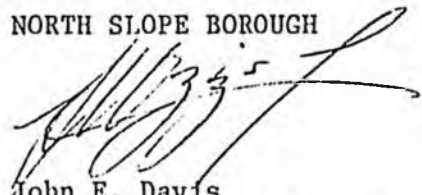
Norgasco is requesting that the APUC keep confidential for five years technical documents and other pertinent information about their design, construction and maintenance of their project. Such a request could affect SA #10's planning efforts for future energy usages and costs.

Documents relating to the gas contract with ARCO and tariffs should be made public so that the stability of the utility and its pricing structure can be evaluated. These items can directly affect our decision to become a consumer.

The North Slope Borough requests that we be kept informed on the progress of this application and the Norgasco, Incorporated project. We feel a natural gas utility will greatly enhance the Deadhorse area and all the businesses operating there.

Sincerely,

NORTH SLOPE BOROUGH


John E. Davis
Manager, Service Area Ten

JED/JET/el

cc: Norgasco, Incorporated
Dennis Roper, Coord., Ind. Dev.
Files



Alaska State Legislature

SENATE

Office of the President

P.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

February 27, 1988

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

FROM: Senator Jan Faiks
President of the Senate *Jan Faiks*

SUBJECT: SSSB 357 "An Act exempting certain utilities with no more than 100 subscribers from regulation by the Alaska Public Utilities Commission or a municipality and providing that the most extensive exemption from regulation applies when more than one exemption is applicable to a utility."

As you know, most utilities operating in the State of Alaska are subject to regulation by the Alaska Public Utilities Commission (APUC). However, AS 42.05.711 provides for various types and sizes of utilities to be exempted from regulation.

SSSB 357 extends this exemption to certain gas distribution utilities. It provides that a gas distribution utility that has no more than 100 subscribers, all of whom are commercial subscribers, is exempted from regulation by the APUC. However, a majority of the subscribers may petition the APUC for regulation if they so desire.

The purpose of this legislation is to facilitate the construction of a gas distribution system in Deadhorse. The construction of a gas distribution utility in that town has substantial public benefit. Over 40 construction workers will be required to build the system, and six to eight to operate it once it is completed. The state will receive in excess of \$20,000,000 from royalties alone over the life of the project. Pollution from the many diesel generators which currently supply power in Deadhorse will be reduced.

A problem with requiring APUC regulation of this project is financing. The project would only serve 40 to 50 customers, all of whom are in an economically distressed industry. Banks view this as a high risk project, which requires the system builders to seek venture capital. These investors do not consider the potential return on a utility regulated by the APUC to outweigh the downside risk of project failure.

In this case, as in the other situations where APUC regulation does not occur except by petition of the utility customers, the public benefits of regulation are outweighed by the benefits which would result only if regulation is waived.

Please contact my office if you have any questions or comments.

STATE OF ALASKA

ALASKA PUBLIC UTILITIES COMMISSION
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

100 E STREET
SUITE 100
ANCHORAGE, ALASKA 99501
(907) 262-1155

Telecopier (Automatic)
(907) 276-0160

TELECOPIER TRANSMITTAL SHEET

DELIVER TO: John Ringstad (Senator Tim Kelly's office)

FROM: Susan Knowles - APLUC

NUMBER OF PAGES INCL. TRANSMITTAL SHEET: 9

DATE: 3/25/88 TIME: 10:45

OPERATOR: CAROL

If telecopy is not properly received, please call (907) 262-2155

Attached are the Commission's
comments on SS for SB357.

Alaska Public Utilities CommissionComments on SS for SB357

February 22, 1988

Under SS for SB357, gas distribution utilities serving fewer than 100 commercial customers would be exempt from certification and economic regulation by the Commission unless the subscribers elected to be regulated. The Commission is not aware of any compelling reasons for exempting a special class of gas distribution utilities from regulation while fully regulating all other gas distribution utilities. The Commission also believes that commercial customers in groups of less than 100 are entitled to the same level of public protection as residential customers and as commercial customers in groups of more than 100. In addition, there are some unique safety considerations associated with natural gas service, which would not be monitored under the proposed exemption scheme. (See 3 AAC 52.010 - .030.)

The Legislature should also be aware that SS for SB357 directly affects a proceeding currently pending before the Commission. One company (Norgasco, Inc.) has filed an application to provide gas distribution service to commercial customers in the Prudhoe Bay/Deadhorse area and has requested that it be exempt from economic regulation. Three other companies (Arctic

Utilities, Inc.; D.J. Moore Corp., and North Slope Gas Cooperative, Inc.) have indicated that they intend to file applications to provide the same service in the same area. The initial applicant and potential competing applicants are currently in the process of completing or filing their certification documents, so the Commission can proceed to decide the case.

In addition, the Commission has received a letter (copy attached) from the North Slope Borough, one of the prospective customers of the proposed gas distribution utility, stating that:

There is a legitimate public interest concerning the rates, quality of service, management practices, and customer complaints associated with the operation of a natural gas utility in Deadhorse. For this reason the Borough feels that Norgasco, Incorporated should be subject to all appropriate regulations governing the certification and operation of a natural gas utility.

Thus, if this legislation is passed, the established Commission procedure of evaluating competitive applications to determine which company is the most fit and able to serve an area would be interrupted. Instead, any or all of the potential gas distribution utilities would be free to enter the market under terms, conditions, and rates that would not be subject to regulatory oversight unless the subscribers petitioned for a regulation election. The Commission does not believe that this approach is in the public interest; specifically, it cannot assure that the best company is necessarily the one which serves the area; it allows for potentially uneconomic duplication of facilities by two or more providers; and it gives commercial customers a

second-class level of protection from conspiracy or illegally pricing practices.

If, however, this bill is endorsed by the Legislature as good public policy, the Commission suggests that the reference to "subscriber petitions" be modified for clarification and for conformance with other exemptions in AS 42.05.711. Thus, the exemption would state "unless 25 percent of the subscribers petition the commission for regulation under the procedure described in AS 42.05.712."

CHAPTER 52.
OPERATION OF PUBLIC UTILITIES

3 AAC 52.010-3 AAC 52.080
3 AAC 52.110-3 AAC 52.150
3 AAC 52.200-3 AAC 52.340
3 AAC 52.400-3 AAC 52.500

Article

- 1. Gas Utilities
(3 AAC 52.010-3 AAC 52.080)
- 2. Allocation of Facilities and Services
Between Competing Electric Utilities
(3 AAC 52.110-3 AAC 52.150)
- 3. Telephone Utilities
(3 AAC 52.200-3 AAC 52.340)
- 4. Electric Utilities
(3 AAC 52.400-3 AAC 52.500)

3 AAC 52.010 COMPLIANCE WITH
MINIMUM FEDERAL SAFETY STANDARDS
FOR GAS LINES. Each utility shall construct

ARTICLE 1.
GAS UTILITIES

Section

- 10. Application
- 20. Compliance with Minimum Federal
Safety Standards for Gas Lines
- 30. Records, reports and inspection for
compliance
- 40. Pipeline locating service
- 50. (Repeated)
- 60. Record of nonscheduled interruptions
- 70. Accidents or incidents
- 80. Definitions

3 AAC 52.010. APPLICATION. (a) 3 AAC 52.010 - 3 AAC 52.080 of this chapter apply to all utilities either now or hereafter subject to the regulatory jurisdiction of the Alaska Public Utilities Commission.

(b) Upon acceptable showing by a utility, the commission may waive, as to that utility, the provisions of any regulation in 3 AAC 52.010 - 3 AAC 52.080 or any provision of the Minimum Federal Safety Standards for Gas Lines with approval of the Secretary of Transportation.

(c) No utility may deviate from the regulations in 3 AAC 52.010 - 3 AAC 52.080 or the standards cited in (b) of this section without the commission's prior written approval.

(d) If nonjurisdictional entities at their discretion elect to conform to 3 AAC 52.010 - 3 AAC 52.080, the commission will cooperate with them in maintaining records and developing

and maintain gas transmission and distribution facilities in accordance with the Minimum Federal Safety Standards for Gas Lines, as defined in 3 AAC 52.080(c). (Eff. 2/21/69, Reg. 30; am 1/13/73, Reg. 44)
Authority: AS 42.05.291

3 AAC 52.030. RECORDS, REPORTS, AND INSPECTION FOR COMPLIANCE. (a) Each utility shall establish and maintain records, make reports and provide information required by the commission to enable it to determine whether the utility has acted or is acting in compliance with the Natural Gas Pipeline Safety Act of 1968 and the standards adopted in 3 AAC 52.020. The records, reports and information shall be kept in accordance with AS 42.05.491.

(b) Each utility shall file with the commission a plan for inspection and maintenance of each pipeline facility owned or operated by the utility, and any changes in the plan. If the commission finds that the plan is inadequate to achieve safe operation, the commission shall, after notice and opportunity for a hearing, require the plan to be revised. (Eff. 2/21/69, Reg. 30; am 1/13/73, Reg. 44)

Authority: AS 42.05.141
AS 42.05.361
AS 42.05.501

3 AAC 52.040. PIPELINE LOCATING SERVICE. Each utility shall offer "line locating" service to any individual or utility requiring such service. The utility shall make a reasonable effort to assure that the availability of this service is made known throughout its area of operation. If a charge is made for this service, it shall be based on the cost to the utility of the personnel required to operate the equipment and shall not afford the utility any allowance for the utilization of equipment. (Eff. 2/21/69, Reg. 30; am 1/13/73, Reg. 44)

Authority: AS 42.05.291

3 AAC 52.050. DISTRIBUTION PIPELINE MAINTENANCE. Repealed 1/13/73.

3 AAC 52.060. RECORD OF NON-SCHEDULED INTERRUPTIONS. Each gas utility shall keep a record of each nonscheduled interruption to service, showing the location, date, time, duration and cause of each interruption. This record shall be maintained by the utility

for three years and may be accessed by any person after meeting the requirements of AS 42.05.440 (Eff. 2/21/69, Reg. 30; am 1/13/73, Reg. 44)
Authority: AS 42.05.141

3 AAC 52.070. ACCIDENTS OR INCIDENTS. (a) Each utility shall cooperate with the commission to promote a reduction in hazard within the industry and to the public.

(b) Each utility shall report each accident immediately by the most expeditious means available, preferably by telephone or in person, to the commission at the commission's office in Anchorage, Alaska, or to a person designated by the commission. The notification shall include the location and time of the accident, a brief description of what occurred, and names of the individual(s) in charge of the repair operation and the individual(s) to be contacted by the commission for additional information.

(c) A written report of each accident shall be filed with the commission within 30 days after each accident. The report shall be made on the commission's "Accident or Incident Report" form or the United States Department of Transportation's Form DOT-F-1100.1 for transmission and gathering systems. If the accident investigation is not completed within the 30-day period, the utility shall file an additional written report with the commission upon the completion of the investigation and a written report of the progress of the investigation every 90 days until the investigation is complete. (Eff. 2/21/69, Reg. 30; am 1/13/73, Reg. 44)

Authority: AS 42.05.141
AS 42.05.291

3 AAC 52.080. DEFINITIONS. Unless the context indicates otherwise, in 3 AAC 52.010 - 3 AAC 52.070

(1) "accident" means an accident or incident occurring in the state involving escape of gas from gas gathering, transmission or distribution facilities resulting in personal injury requiring hospitalization, fatality, or property damage exceeding \$1,000;

(2) "commission" means the Alaska Public Utilities Commission.

(3) "Minimum Federal Safety Standards for Gas Lines" or "standards" means the Minimum Federal Safety Standards for Transportation of Natural Gas and other gas by pipeline, 49 C.F.R. Part 192, revised as of January 1, 1972. A copy of these standards may be obtained from or reviewed at the commission office located in Anchorage, Alaska; and

(4) "utility" means a public utility that owns, operates, manages or controls a plant or system of facilities used for the transmission or distribution of natural or manufactured gas or other inflammable gas, to the extent such system plant or facilities are included in the term "public utility" as defined by AS 42.05.701. (Eff. 2/21/69, Reg. 30; am 1/13/75, Reg. 44)

Authority: AS 42.05.141
AS 42.05.291
AS 42.05.701

ARTICLE 2. ALLOCATION OF FACILITIES AND SERVICES BETWEEN COMPETING ELECTRIC UTILITIES

Section

- 110. Purpose
- 120. Authority to construct facilities or serve customers
- 130. Hearing
- 140. Appeals
- 150. Definitions

3 AAC 52.110. PURPOSE. The purpose of 3 AAC 52.110 - 3 AAC 52.150 is to prevent duplication of electric facilities and services in those geographical areas of the state in which two or more electric utilities compete. (Eff. 5/11/76, Reg. 59; am 5/19/74, Reg. 50)

Authority: AS 42.05.141
AS 42.05.151
AS 42.05.221

3 AAC 52.120. AUTHORITY TO CONSTRUCT FACILITIES OR SERVE CUSTOMERS. (a) No electric utility operating in direct competition with one or more electric utilities within the same geographical area may construct or install electric facilities or provide a service connection for a customer located within a disputed service area without the approval of the commission.

(b) The utility may not be required to provide service to a customer located in a disputed service area.

(1) The utility, upon receiving notice of the commencement of the competing utility, may submit to the commission a signed "Waiver of Objection" on a form provided by the commission; or

(2) a determination is made by the commission, after hearing, that one of the utilities is the appropriate one to provide the service. (Eff. 8/11/78, Reg. 25)

Authority: AS 42.05.151(a)
AS 42.05.221(c)

3 AAC 52.130. HEARING. (a) If an applicant utility is unable to obtain concurrence from a competing utility, the commission will appoint a member of its staff as an examiner to conduct a hearing.

(b) The staff examiner shall

(1) notice the hearing to all interested parties;

(2) receive all relevant evidence;

(3) record the testimony presented;

(4) within 24 hours after the close of the hearing, issue a decision as to which utility is the most appropriate one to serve the customers;

(5) stay the decision of within 24 hours after the decision is announced, a party appeals the decision.

(c) The criteria to be studied by the staff examiner in making a decision include

(1) the cost to the utility to provide the service connection;

(2) the cost to be assessed to the customer by the applicant utility;

(3) the proximity of the service connection point to each of the competing utilities' electric distribution facilities; and

RECEIVED
APUC

NORTH SLOPE BOROUGH

Service Area #10
P.O. Box 310046
Prudhoe Bay, AK 99701
Telephone: (907) 455-1500

NOV 27 1987

December 16, 1987

T.S. Moninski II, Executive Director
ALASKA PUBLIC UTILITIES COMMISSION
420 L Street, Suite 100
Anchorage, Alaska 99501-1987

SUBJECT: NOTICE OF UTILITIES APPLICATION BY NORGASCO, INC.

Dear Mr. Moninski:

The North Slope Borough's Service Area Ten is encouraged to see Norgasco, Inc. continue their development of a natural gas utility for Deadhorse. All businesses operating in Deadhorse and especially our solid waste disposal, sewage treatment and water treatment operations could benefit significantly if a dependable source of competitively priced natural gas were made available to us over the long term. We anticipate the opportunity to provide comments on the Norgasco, Incorporated application for exemption from APUC regulations regarding rates, quality of service, management practices, and customer complaints.

Since the North Slope Borough's Solid Waste Facility is a public owned operation, the Borough has an obligation to its residents to operate their Deadhorse solid waste facility in a cost effective manner which includes purchasing of natural gas from a utility which is required to follow the regulatory laws established to protect the public. There is a legitimate public interest concerning the rates, quality of service, management practices, and customer complaints associated with the operation of a natural gas utility in Deadhorse. For this reason the Borough feels that Norgasco, Incorporated should be subject to all appropriate regulations governing the certification and operation of a natural gas utility.

Our Service Area Ten Plant Engineer calculates that the prices of the natural gas quoted in the Notice will provide Service Area Ten with a 20% to 25% savings over the present fuel costs for our incinerator and boilers. Since the Application suggests the rates would not be controlled by the APUC, the NSB may have little control over future rate increases. A 10% rate increase each year for two years would eliminate any cost benefit of natural gas assuming a stable price for heating oil.

December 16, 1987

Page 2

The quantity and quality of the gas provided to us can have some significant effects on our operation. If the distribution system is under designed or if the quality of gas varies significantly we may experience problems of inadequate delivery. Normal operation of our incinerator requires us to be able to immediately add heat in a specified quantity when needed. Failure to do so could result in Service Area Ten violating the Air Quality Regulations established by the State of Alaska, Department of Environmental Conservation resulting in a fine being assessed on Service Area Ten. If Norgasco was exempt from regulation by the APDC, SA #10 would have little recourse if Norgasco's service did not meet our requirements.

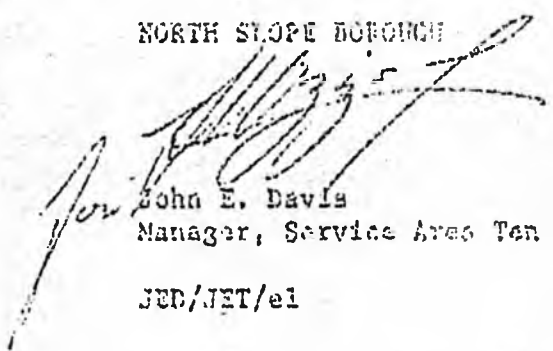
Norgasco is requesting that the APDC keep confidential for five years technical documents and other pertinent information about their design, construction and maintenance of their project. Such a request could affect SA #10's planning efforts for future energy usage and costs.

Documents relating to the gas contract with NGL and similar should be made public so that the stability of the utility and the pricing structure can be evaluated. These items can directly affect our decisions to become a consumer.

The North Slope Borough requests that we be kept informed on the progress of this application and the Norgasco, Incorporated project. We feel a natural gas utility will greatly enhance the Deadhorn area and all the businesses operating there.

Sincerely,

NORTH SLOPE BOROUGH


John E. Davis
Manager, Service Area Ten

JED/JET/el

cc: Norgasco, Incorporated
Dennis Roper, Coord., Ind. Dev.
Files

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.



NORGASCO, INC.

8740 Hartzell Rd. Anchorage, Alaska 99507 (907)344-6742

February 24, 1988

Senator Arliss Sturgulewski
P. O. Box V
Juneau, AK 99811

Dear Senator Sturgulewski,

I would like to express my strong support of SSSB 357. Under the current statutes the APUC has jurisdiction over all utilities with ten or more customers. This legislation will exclude only natural gas utilities serving less than 100 commercial customers from their jurisdiction.

The APUC is a fine organization for larger utilities and obviously the legislature had this in mind when they exempted those utilities with less than ten customers. We believe in the check and balance system of government and industry, and SSSB 357 allows for the re-regulation of a utility under this category by a simple petition (AS 42.05.712) of the customers. This will prevent the utility from taking unfair advantage of its' customers.

As you can tell, the bill was drafted so that it would not concern any of the Bush areas, only Deadhorse.

The problem boils down to project financing. This is not a bankable project because there are only 40-50 customers, they are all in the same business, and they are all suffering financially, so the banks see the project as high risk. This leaves us looking for venture capital. After the venture capitalist has reviewed the project they all come to the same conclusion, if the project fails they lose everything and if the project succeeds, you have the APUC there to limit your return on investment. Needless to say they don't spend much time seriously reviewing the project after they understand how the APUC works.

We hear a lot of talk about less government, creating jobs, finding new sources of revenue for the State, cutting down on air pollution, and stimulating the economy, this legislation accomplishes all of these by creating construction and permanent jobs, state royalties collected on the gas sold, reduced NOx emissions from the numerous diesel generators, and will substantially reduce the overhead of the Companies operating at Deadhorse.

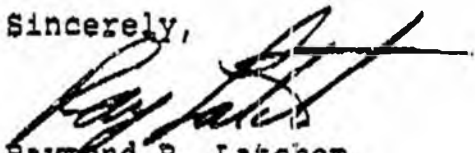
The State will receive in excess of \$20,000,000.00 from royalties alone over the life of the project. It will take over 40 construction workers to build the system and will employ 6-8 people full time once it is in operation. The State will also receive severance taxes from the producer and added corporate income taxes from ARCO Alaska and Norgasco.

The Department of Natural Resources, in issuing our land use permit, has reserved the for the State the right to use the pipeline to transport the States royalty gas to the State facilities that we intend to serve. This will also allow the State to market their gas to customers in Deadhorse, in this case Norgasco will act as a common carrier. But first the pipeline has to be built.

Recently I learned that you had requested a referral of the bill to your Committee. I am a novice at politics in Juneau, however, I understand there is a time limit on the session and we've got a long way to go with this bill and a short time to get there. With this in mind we ask that you waive referral so the bill may be voted on in the Senate and sent to the House.

Myself and several other Board Members of The Alliance are planning a trip to Juneau on March 21, 1988. I look forward to visiting with you then. If you have any questions please feel free to call.

Sincerely,



Raymond R. Latchem
Vice President, Operations