

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988

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SB 424 - SB 455

984

Marty Rutherford, Director
Municipal & Regional Asst. Div.
Dept. of Community & Regional Affairs

April 7, 1987
Page #4
663-87-0189

ed. 1986) (emphasis added, footnotes omitted). But that competition is limited by what the legislature allows.

A municipal corporation is invested with full power to do everything necessarily incident to a proper discharge of its public functions, but no right to do more can be implied, and in the absence of express legislative sanction, it has no authority to engage in any independent business enterprise or occupation such as is usually pursued by private individuals.

Ravettino v. City of San Diego, 160 P.2d 52, 56 (Cal. 1945) (emphasis added). Accord Ace Ambulance Service, Inc. v. City of Augusta, 337 A.2d 661 (Me. 1975); Keeter v. Town of Lake Lure, 141 S.E.2d 634, 643 (N.C. 1965). See Stanley v. Dept. of Conservation & Dev., 199 S.E.2d 641, 652 (N.C. 1973) ("A municipal corporation ... even with legislative sanction, cannot engage in a private enterprise or assume any function which is not in a legal sense public in nature.").

We hope this answers your question. If we can be of further assistance, please feel free to call.

BW/pjg

cc: Michael Cushing, Planner
DCRA/MARAD - Juneau

Michael Tavoliero, City Manager
Hoonah

Robert M. Maynard, Esq.
Assistant Attorney General
Dept. of Law - Juneau

REQUEST: FISCAL NOTE

Revision Date:
Title: An Act relating to procurement by state agencies from certain entities.
Sponsor: Jones and Fischer
Requestor: Sturgulewski

Agency Affected: DOT&PF
BRU:
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
CONTRACTURAL	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)

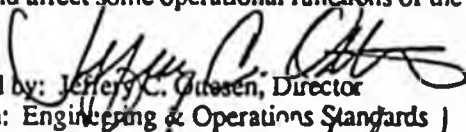
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

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)

Because of the relatively few examples the department can refer to where a municipality or state agency actively competed for a bid or professional service solicitation, this bill would appear to have minimal or no impact on staffing or cost. It could affect some operational functions of the department, which are further described on the next page.

Prepared by:  Jeffrey C. Grotzen, Director
Division: Engineering & Operations Standards

Phone: 465-2951
Date: Feb. 29, 1988

Approved by Commissioner: 
Agency: Department of Transportation and Public Facilities

Date: 3/1/88

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

Currently, the department has a number of relatively small operational-type contracts with other governmental agencies for a variety of purposes. These include contracts with local communities for docking of Marine Highway Vessels, terminal operations and ticketing for the Marine Highway system and contracts for maintenance and operations of airports and road systems. Other examples of disallowed inter-governmental contracting may occur depending on how the bill is interpreted. For example, if the department procures shipyard services at locations such as Ketchikan or Seward we may be viewed as being in violation of this proposed law. As each city controls a major shipyard, though leased to a shipyard service firm, legal questions may be raised as to an implied partnership or joint venture on the part of the city which owns or leases the shipyard facilities. A further potential conflict is with the anticipated selection of a southern terminus for the Alaska Marine Highway System. Many of the likely candidate sites involve a governmental entity, including the Alaska community of Hyder.

We believe the principal intent of this bill – to prevent governmental entities from competing in the construction arena – could be served while avoiding the types of conflicts described above with a simple language change. We suggest that the sentence on line 11 be amended as shown:

11 ...a state agency solicits bids for a construction contract over \$150,000 by issuing ...

With the change described above, the operational contracts described herein could continue while construction contracts would be subject to the limitations of public entity contracting as intended by this bill.



SKILL
RESPONSIBILITY
INTEGRITY

THE ALASKA CHAPTER
**ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, INC.**

BOX 82500 • ANCHORAGE ALASKA 99509
TELEPHONE (907) 561-5354



3201 SPENARD ROAD
ANCHORAGE
WILLIAM E. SCHNEIDER
EXECUTIVE DIRECTOR

January 27, 1988

Mark Hickey, Commissioner
Department of Transportation &
Public Facilities
3132 Channel Drive
P.O. Box 2
Juneau, Alaska 99811

Re: Kotzebue Airport Project

Dear Commissioner Hickey,

On behalf of the contracting community in Alaska, AGC requests your response to un-resolved issues surrounding the award of a \$1.8 million Kotzebue Airport improvement project to a joint venture comprised in part by a political subdivision of the State.

This circumstance continues to warrant our attention because we believe a system which allows non-profit tax exempt political subdivisions of the State to bid on a competitive basis against private business undermines the free enterprise system on which this country and this State are founded.

In November 1987, at the AGC annual convention, you indicated that the award to the joint venture KIC Corporation /R. & S. Stores/City of Kotzebue (herein after referred to as the City of Kotzebue) was based on an attorney general's opinion. I am not certain you indicated a written opinion, but the audience assumed that to be the case.

I now understand the facts to be different. First, there was no written attorney general's opinion recommending project award to the City of Kotzebue. Second, a written attorney general's opinion was issued in a memorandum dated April 7, 1987 succinctly stating that a municipality may not act as a general contractor on a competitively bid public works project.

Commissioner Hickey
Page 2

The October 12, 1987 Intent to Award letter by DOT/PF Regional Director Lynn Harnish directly contradicts this April 7, 1987 attorney general's opinion. Harnish states in part:

There is no law which prohibits a municipality from bidding on a public works project as a joint venture with other contractors. Article X, paragraph 1 provides that "a liberal construction shall be given to the powers of local government units." A.S. 29.35.010(B) allows a municipality to enter into agreement. Considering the broad construction of powers by municipalities required by the constitution and by statute (A.S. 29.35.400 and A.S. 29.35.410), I am unable to conclude that it is illegal for the City of Kotzebue to enter into a joint venture agreement for the purpose of bidding on State construction contract, and the DOT/PF is obligated by A.S. 35.15.050 to award to the lowest responsible bidder regardless of considerations of policy.

The April 7, 1987 attorney general memorandum states in part:

- You have asked whether a municipality may act as a general contractor on a competitively bid public works project. The short answer is no. Finally as we noted earlier, powers given local governments are liberally construed. (Citations omitted) In this instance, municipalities are not given the authority to compete as a general contractor for public works projects. Thus, if a municipality were to adopt such a power, it would have to be implied. "[I]nsofar as municipal corporations do possess implied powers, such powers are to be strictly construed against the entity claiming them." (Citations omitted) Given this rule, a municipality would be barred from asserting implied powers so as to involve itself as a general contractor on a competitively bid public works project.

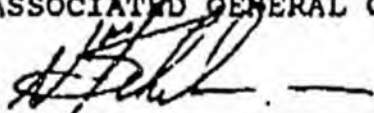
Commissioner Hickey
Page 3

As you might guess, we find these revelations to be quite disturbing. Our concern is for the future. Are tax exempt political subdivisions going to be allowed to compete against the private sector? Will DOT/PF ignore the April 7, 1987 attorney general opinion if a similar situation occurs in the future?

I am sure you understand our concerns. Can you please indicate what if anything, DOT/PF plans on doing to address these concerns.

Sincerely,

ALASKA CHAPTER
ASSOCIATED GENERAL CONTRACTORS



William E. Schneider
Executive Director

WES/mjc

\\WES\\HICKEY.LTR

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
NORTHERN REGION, DESIGN AND CONSTRUCTION

STEVE COWPER, GOVERNOR

2301 Peyer Road
Fairbanks, Alaska 99709-6394
(907) 451-2200

October 22, 1987

Re: Project No. AIP 3-02-0160-04/60434
Kotzebue Airport Improvements

NOTICE TO PROCEED

EXPRESS MAIL NO. B26617136
RETURN RECEIPT REQUESTED

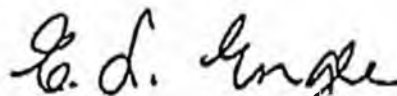
Kotzebue/K.I.C./R & S Store, Inc. J.V.
P.O. Box 46
Kotzebue, Alaska 99752

Gentlemen:

The Federal Aviation Administration has reviewed and approved the contract documents for the referenced project. You are hereby directed to proceed with the work called for under this contract. The effective date of this Notice to Proceed is October 22, 1987. Contract completion date is October 31, 1988.

Please address future correspondence to Ron Davena, Western District Engineering Manager, Department of Transportation & Public Facilities, P.O. Box 1048, Nome, Alaska 99762 or his designee.

Sincerely,



Elizabeth L. Engle, P.E.
Director, Design and Construction
Northern Region
Contracting Officer

SPL/dv

RECEIVED
OCT 26 1987
Associated General Contractors

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

NORTHERN REGION, REGIONAL DIRECTOR

STEVE COWPER, GOVERNOR

2301 FEDERAL ROAD
FAIRBANKS, ALASKA 99700-6218
PHONE: (907) 481-9210

October 12, 1987

Re: Kotzebue Airport Improvements
Project No. 60434

Brown Construction
P.O. Box 1313
Kenai, Alaska 99611

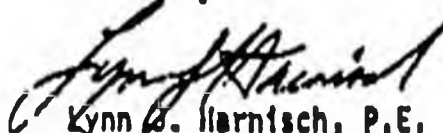
Kotzebue/KIC/R & S Stores, Inc., J.V.
P.O. Box 46
Kotzebue, Alaska 99762

Gentlemen:

Having considered the bid protest of Brown Construction, and reviewing the materials submitted by Brown Construction and Kotzebue/KIC/R & S Stores, JV, it is my decision to deny the bid protest. There is no law which prohibits a municipality from bidding on a public works project as a joint venture with other contractors. Article X, paragraph 1 provides that "a liberal construction shall be given to the powers of local government units." A.S. 29.35.010(B) allows a municipality to enter into agreements. Considering the broad construction of powers by municipalities required by the constitution and by statute (A.S. 29.35.400 and A.S. 29.35.410), I am unable to conclude that it is illegal for the City of Kotzebue to enter into a joint venture agreement for the purpose of bidding on a state construction contract, and the DOT&PF is obligated by A.S. 35.15.050 to award to the lowest responsible bidder regardless of considerations of policy. It is for the legislature to determine whether, as a matter of policy, governmental entities should be permitted to compete for public contracts.

The contract for Project No. 60434 will be awarded to Kotzebue/KIC/R&S Stores, JV. It is expected that the contract award will be made on October 14, 1987.

Sincerely


Lynn G. Harnisch, P.E.
Regional Director
Northern Region

hm

**BROWN CONSTRUCTION COMPANY, INC**

GENERAL CONTRACTOR
BOX 1313 - KENAI, ALASKA 99611
(907) 283-9408

September 18, 1987

Mr. Robert Venusti
Department of Transportation/PF
Technical Services Bldg.
2301 Peger Road
Fairbanks, Alaska 99709-6364

Re: Notice of Bid Protest
Ralph Wien Memorial Airport
AIP NO.-3-02-0160-04
Project No.: 60434

Dear Robert Venusti:

This letter is a formal bid protest for the Kotzebue Airport Project which was tentatively awarded to the City of Kotzebue/ K.I.C./K&S Stone, Inc., a Joint Venture. As of September 17, 1987, no notice of "intent to award" had been issued.

I feel that the inclusion of the "City of Kotzebue" as a Joint Venture partner for a construction project may; (1) be a conflict of interest, (2) give "unfair competitive advantage" to K.I.C./R&S Stone, Inc. in obtaining the contract, (3) undercut the competitive bid process, (4) possibly misuse public funds for private gain, and (5) make the bid "unresponsive."

The apparent ability of K.I.C./R&S. Stone, Inc. to use city owned equipment and rely on city funds for bonding clearly seems inappropriate, to say the least. The bid bond for the project was posted by the City of Kotzebue. See Exhibit B. It usually takes a licensed General Contractor with a proven track record to obtain the proper bonds to perform contracts such as the Kotzebue Airport Project. The use of "city funds" to provide bonding undercuts other contractors' abilities to compete on a fair basis. Brown maintains that the low bid submitted by the Joint Venture reflects the advantage gained by including a municipal entity in the partnership. (Brown's Bid \$2,262,911.00 - Joint Venture's Bid \$1,791,501.00.) The municipality's participation creates the definite appearance of a "conflict of interest."

Mr. Robert Venusti
September 18, 1987
Page Two

If Brown Construction Inc. had known that the City of Kotzebue was going to be a participant in the bidding process, Brown would never have gone to the expense of preparing a bid in the first place. The participation of the "City of Kotzebue" cannot be found on the planholders list. See Exhibit C. The use of "city funds" seemingly allows a private individual, i.e., Joint Venture partners, to profit with the use of funds which are derived from the citizens of Kotzebue (Public Funds). The use of such funds could provide the basis for an injunction to prohibit the City of Kotzebue from using any funds on the project.

In addition, any proposed use of city owned equipment by the Joint Venture adds to the "unfair advantage" gained at the expense of other bidders. The DOT/PF should also note that all Joint Venture partners have agreed to sign for bonding on the project. See Proposal submitted to DOT/PF by Joint Venture (Exhibit A). The DOT/PF should determine whether or not a surety will even bond an unlicensed municipality involved in a joint venture. The unfair advantage which the Joint Venture has over other contractors becomes even more apparent if the City of Kotzebue intends to furnish a cash bond for the Joint Venture. All other contractors that cannot rely on municipal funds are put at a disadvantage since commercial sureties or private cash bonds must be relied upon by non-municipal entities. The DOT/PF could end up using the municipal funds, i.e. cash bond, to complete the project, in the event of incomplete performance on behalf of the contractor.

The DOT/PF may find it useful to review the Joint Venture agreement between the parties in order to clarify some of the issues mentioned above. A Joint Venture similar to the Kotzebue/K.I.C/ R & S Stone Inc. is required to keep a copy of the agreement on file at each parties main place of business. See 12 AAC 21.010, Joint Venture Agreement, A.S. 08.18.011. Also see Exhibit D.

If a precedent is set which allows "municipalities" to compete against private enterprise in the construction business, the competitive bid process will ultimately suffer as will the individual contractor. Brown requests that DOT/PF reject the Joint Venture's bid and accept the next lowest bid which was prepared in accordance with recognized standards for bidding on public projects. Please contact me concerning DOT/PF's position on this matter immediately.

Very truly yours,

Don Brown



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THE ALASKA CHAPTER
**ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, INC.**

BOX 92500 • ANCHORAGE, ALASKA 99508
TELEPHONE (907) 561-5354



3201 SPENARD ROAD
ANCHORAGE
WILLIAM E. SCHNEIDER
EXECUTIVE DIRECTOR

September 23, 1987

Mark Hickey, Commissioner
Department of Transportation
and Public Facilities
P.O. Box 2
Juneau, Alaska 99811

Dear Commissioner Hickey:

I am writing to register concern over the facts surrounding the bids for the improvements to Kotzebue's Ralph Wien Memorial Airport, DOT/PF Project No. 60434 AIP No. 3-02-0160-04.

The apparent low bidder on this \$1.8 million project includes the City of Kotzebue as a joint venture partner. To my knowledge this is the first time a political subdivision of the State has bid on a DOT/PF project.

The concept of a non-profit public corporation competing against private construction companies is contrary to principles of free enterprise. Quite simply, a private company cannot compete with a non-profit, non-taxable public entity which utilizes publicly owned and non-taxable equipment.

AGC Alaska requests a through investigation by DOT/PF into the responsiveness and appropriateness of this bid. Additionally, the capability of the joint venture to bond this project should be reviewed.

DEC-22-87 TUE 17:20

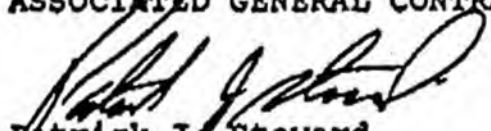
P.03

Mark Hickey, Commissioner
Page 2

Please keep me advised of your actions in this matter.

Sincerely,

ALASKA CHAPTER OF
ASSOCIATED GENERAL CONTRACTORS



Patrick J. Steward
President

cc: Lynn Harnisch, Regional Director
DOT/PF - Northern Region
AGC Board of Directors
Senator Jan Faiks
Representative Ben F. Grussendorf

WFR/mjc

MEMORANDUM

State of Alaska

TO: Marty Rutherford, Director
Municipal & Regional Asst. Div.
Dept. of Community & Regional
Affairs

DATE: April 7, 1987

FILE NO: 663-87-0189

TELEPHONE NO: 465-3600

FROM: Grace Berg Schnaible
Attorney General

SUBJECT: Municipality as general contractor for public works project

Marty Rutherford
Thru: Marjorie L. Odland
Assistant Attorney General
Governmental Affairs-Juneau

By: Bruce Weyhrauch *Bruce Weyhrauch*
Legal Assistant
Governmental Affairs-Juneau

You have asked whether a municipality may act as a general contractor on a competitively bid public works project. The short answer is no.

We have previously opined that municipalities performing work on public works projects, a practice commonly referred to as "forced accounting," are not required to pay prevailing wages under AS 36.05.010 -- 36.05.110 (Little Davis Bacon Act). 1983 Inf. Op. Att'y Gen. (Apr. 19; 663-83-0554). See 1983 Inf. Op. Att'y Gen. (Mar. 11; 663-83-0267). We have also approved of situations where municipalities carry out their public construction projects by hiring private contractors to perform project management and supervision while using municipal employees to do the construction work. 1978 Inf. Op. Att'y Gen. (Oct. 11; 663-79-0195). However, none of these opinions address the question posed. Based upon our analysis, we find that a municipality may not act as a general contractor on competitively bid public works projects.

Generally, the policy of the Department of Transportation and Public Facilities (DOT/PF) is "to require the construction of all public works under bid contracts." AS 35.15.010. Public work contracts are required to comply with Title 35, AS 36.30 (the State Procurement Code), and regulations adopted under those laws. AS 35.15.040. ^{1/} Contractor is defined as "the contractor including subcontractors performing work necessary to

^{1/} The effective date of AS 35.15.040 and AS 36.30 is July 1, 1987.

Marty Rutherford, Director
Municipal & Regional Asst. Div.
Dept. of Community & Regional Affairs

April 7, 1987
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663-87-0189

facilitate public construction." AS 36.95.010(1). 2/ DOT/PF is given the authority to "enter into contracts or agreements relating to public works with ... political subdivisions...." AS 35.-05.040(7).

Basically, the legislature has provided three ways for the construction of public works projects. First, if a project is estimated to cost less than \$100,000, or if it is in the best interests of the state, DOT/PF may perform the work. AS 35.15.-010. Second, when the estimated construction costs exceed \$100,000, DOT/PF must advertise, request bids, and award contracts competitively. See AS 35.15.020 -- 35.15.050. Third, a municipality can request DOT/PF to give the municipality all the authority to plan and construct "public works projects of the state which [are] to be located within the boundaries or the operating area of the municipality...." AS 35.15.080(a). See 1981 Inf. Op. Att'y Gen. (May 29; 663-81-0044).

Nothing in Alaska law specifically prohibits municipalities from acting as a general contractor on competitively bid contracts. And, the powers given local government units are to be liberally construed. See Alaska Const. art. X, § 1; AS 29.-35.400. Yet, if an affirmative response is given to your question, ostensibly, a municipality could bid on all kinds of public works projects in all areas of the state, just like any other general contractor. We believe the legislature did not intend to give municipalities this authority. By specifically bestowing upon a municipality the authority to "adopt" the planning and construction of public works projects located within the boundaries of the municipality under AS 35.15.080 the legislature intended to give municipalities the authority to carry out public works projects without competition. Similarly, the legislature constrained municipalities to assume the construction of relevant public works projects only within the boundary or operating area of the municipality. AS 35.15.080(a). By implication, a munic-

2/ AS 39.95.010(3) defines public works as "the on-site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecoration of buildings, highways or other improvements to real property under contract for the state, a political subdivision of the state, or a regional school board...." AS 35.25.020(7) defines public work as "a structure or project constructed or maintained by [DOT/PF] except airports and highways and includes public buildings, boat harbors, port facilities, dikes, jetties, and breakwaters." A political subdivision of the state includes boroughs, cities, and villages. AS 36.95.010(6).

Marty Rutherford, Director
Municipal & Regional Asst. Div.
Dept. of Community & Regional Affairs

April 7, 1987
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663-87-0189

pality venturing outside its boundaries to compete with the private sector for public works projects would be engaging in an ultra vires act, because this action is neither allowed by statute nor by municipal charter. Cochran v. City of Nome, 10 Alaska 425, 435 (D.C. Alaska 1944). See 10 E. McQuillin, The Law of Municipal Corporations § 29.104c (3d ed. 1981); 3A C. Antieau, Independent Local Government Entities § 30B.08 (1987) ("Ultra vires contracts are agreements beyond the borough's power under all circumstances."). See generally 72 C.J.S. Supp. Public Contracts § 4 (1975). On a practical level a municipality competitively bidding against private sector contractors would, in all probability, cause quite a political fuss and raise numerous logistic, ethical, and practical problems for the municipality.

Finally, as we noted earlier, powers given local governments are liberally construed. E.g., Liberati v. Bristol Bay Borough, 584 P.2d 1115, 1120 (Alaska 1979). In this instance, municipalities are not given the authority to compete as a general contractor for public works projects. Thus, if a municipality were to adopt such a power, it would have to be implied. "[I]nsofar as municipal corporations do possess implied powers, such powers are to be strictly construed against the entity claiming them." Girves v. Kenai Peninsula Borough, 536 P.2d 1221, 1224 (Alaska 1975) (footnote omitted). Given this rule, a municipality would be barred from asserting implied powers so as to involve itself as a general contractor on a competitively bid public works project.

Notwithstanding this conclusion, municipalities are not completely barred from competing with members of the private sector, such as general contractors.

Engaging in enterprises usually owned and operated by private individuals has also been sanctioned provided the public interest so requires. The opinion has been given that as long as the city refrains from extending its activity into active competition with private enterprise in dealing with others, it should be allowed considerable latitude in providing for itself those things necessary to carry on a legitimate municipal function if there are valid reasons for becoming a self-supplier. The word "private," as used in the opinions discussing the powers of a municipality, is used to designate proprietary as distinguished from governmental functions.

12 E. McQuillin, The Law of Municipal Corporations § 36.02 (3d

Marty Rutherford, Director
Municipal & Regional Asst. Div.
Dept. of Community & Regional Affairs

April 7, 1987
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663-87-0189

ed. 1986) (emphasis added, footnotes omitted). But that competition is limited by what the legislature allows.

A municipal corporation is invested with full power to do everything necessarily incident to a proper discharge of its public functions, but no right to do more can be implied, and in the absence of express legislative sanction, it has no authority to engage in any independent business enterprise or occupation such as is usually pursued by private individuals.

Ravettino v. City of San Diego, 160 P.2d 52, 56 (Cal. 1945) (emphasis added). Accord Ace Ambulance Service, Inc. v. City of Augusta, 337 A.2d 661 (Me. 1975); Keeter v. Town of Lake Lure, 141 S.E.2d 634, 643 (N.C. 1965). See Stanley v. Dept. of Conservation & Dev., 199 S.E.2d 641, 652 (N.C. 1973) ("A municipal corporation ... even with legislative sanction, cannot engage in a private enterprise or assume any function which is not in a legal sense public in nature.").

We hope this answers your question. If we can be of further assistance, please feel free to call.

BW/pjg

cc: Michael Cushing, Planner
DCRA/MARAD - Juneau

Michael Tavoliero, City Manager
Hoonah

Robert M. Maynard, Esq.
Assistant Attorney General
Dept. of Law - Juneau



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THE ALASKA CHAPTER
**ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, INC.**

BOX 92500 • ANCHORAGE, ALASKA 99509
TELEPHONE (907) 561-5354



3201 SPENARD ROAD
ANCHORAGE
WILLIAM E. SCHNEIDER
EXECUTIVE DIRECTOR

March 9, 1988

Testimony

Senate Labor and Commerce Committee

SB 424: Procurement by the Department of Transportation and Public Facilities from certain entities.

Thank you Mr. Chairman. For the record my name is Resa Jerrel, and I am the Director of Governmental Relations for the Associated General Contractors of Alaska. We appreciated the opportunity to testify in favor of this legislation. I would like to give you the background on the need for this legislation.

Early last fall we encountered a situation that quite frankly we had not encountered before and it disturbed a lot of people in the construction industry.

The Department of Transportation and Public Facilities put out to competitive bid an airport improvement project, the bid opening was September 15th, and to a lot of people's surprise, the apparent low bidder of \$1.8 million was a Joint Venture consisting of a community, a village corporation and a Liquor Store.

On September 23rd we wrote the Department of Transportation registering our concern over the potential of them awarding the contract to such a Joint Venture. We were concerned over the concept of a community competing against private construction companies and believed that it was contrary to the principles of free enterprise. A community receives municipal assistance, revenue sharing, grants to purchase equipment, etc, from the state and quite simply a private company cannot compete with any community that is underwritten by state funds - it is indeed very, very unfair competition.

On October 22nd, the Fairbanks office of the Department of Transportation sent the Joint Venture a notice to proceed.

In November, at the annual convention of AGC, Commissioner Hickey indicated that the award to the Joint Venture was

based on an Attorney General opinion which in essence said that there was nothing in law to prevent the Department of Transportation from awarding the contract to the Joint Venture.

In December I called the Department of Transportation to obtain a copy of the Attorney General's opinion. Staff experienced difficulty in locating it. I called the Attorney General's office and requested that they look through their law opinion index for an Opinion issued in September or October under the subject of contracts, bids, contractors, communities or municipalities that would fit the situation. The only opinion they could find that addressed the issue of a community bidding on projects was dated April 7, 1987 and to my surprise it stated in part:

"You have asked whether a municipality may act as a general contractor on a competitively bid public works project. The short answer is no."

DOT/PF subsequently informed us that the Attorney General opinion, that their Fairbanks office had received was not in writing but was a verbal opinion.

As you might guess, we found these revelations and the potential of other communities bidding against private industry quite disturbing.

The question before you today, as policy makers is: As a matter of public policy are political subdivisions going to be allowed to competitively bid against the private sector?

If you have any questions I would be happy to answer them.

S B

4 2 7



Alaska State Legislature

SENATE

Office of the President

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

MEMORANDUM

March 11, 1988

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

FROM: Senator Jan Faiks
President of the Senate

SUBJECT: SB 427 "An Act establishing the crime of abuse of animals."

Senate Bill 427 is currently before the Senate Labor and Commerce Committee. This bill establishes the crime of abuse of animals.

SB 427 was introduced at the request of the Alaska Kennel Club. The club is concerned with certain activities relating to the public sale and display of animals, and they submitted draft language to my office which has resulted in this bill.

The Kennel Club felt that three specific situations needed to be addressed:

First, it believes that entirely too many animals are being sold or given away to impulse pet owners, who really would not want the responsibility of pet ownership if they had the time to reflect on the decision. It is difficult to resist the box of kittens or puppies displayed outside the local supermarket, but many of the people who take one home later abandon the animal or mistreat it when the novelty wears off.

Second, the club believes that animals should not be given away to advertise a business, and that animals should not be used as contest prizes.

Third, the club believes that animals should not be displayed to advertise a business.

In order to accomplish these objectives, the bill does the following:

AS 11.61.143 (a)(1) Makes it a violation if a person displays an animal in a public place for the purpose of selling or giving

away the animal, and the person does sell, give away or offer to sell or give away the animal. The bill makes six exceptions to this rule:

(A) if the person is in the business of selling animals at that location, such as a pet store;

(B) if the person is in the business of providing veterinary medical care at that location;

(C) if the person is an employee of a humane society or animal shelter in business at that location;

(D) if the person is a participant in an event at that location sponsored by an animal organization, such as a horse show sponsored by a horse club;

(E) if the person is selling or giving away the animal for slaughter, agricultural or conservation purposes; or

(F) if the person is an auctioneer and is conducting an auction solely of animals and animal related items.

AS 11.61.143 (a)(2) Makes it a violation for a person to sell, give away or offer to sell or give away an animal in order to advertise a business other than a business which sells animals, or as the prize in raffle, lottery or contest of skill or chance.

AS 11.61.143 (a)(3) Makes it a violation for a person to display an animal in a public place in order to advertise a business, other than a business engaged in the sale, display or use of animals.

AS 11.61.143 (b) Defines "animal" as a domestic or wild living bird or mammal.

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

S B

4 3 7

Alaska State Senate

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



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

P.O. Box 1069
Kotzebue, Alaska 99752
(907) 442-2494

William L. Hensley

SPONSOR'S EXPLANATION

OF PROPOSED CS FOR SENATE BILL 437

This bill would authorize corporations with five to eight directors and using cumulative voting to stagger the terms of directors. Such a classification is not open to corporations having fewer than nine directors under current law.

The terms could be established by a corporation as either two or three year terms under my proposed substitute. My original bill would have allowed only two year terms.

Corporations deciding upon staggered terms would divide the board membership into two classes, nearly equal in size as possible. At the initial election, half of the directors would be elected for one year terms and the other half for two-year terms. After that election, all would either serve two or three year terms, whichever had been established by the board.

This bill does not require staggered terms; it simply authorizes corporations to establish (through amendment of their by-laws) such terms if their membership so desires.

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 437 ()

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 staggered terms for corporate
7 directors."

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

9 * Section 1. AS 10.05.186 is amended to read:

10 Sec. 10.05.186. CLASSIFICATION OF DIRECTORS. (a) When the
11 board of directors consists of nine or more members, instead of having
12 [ELECTING] all of the directors elected annually, the bylaws may
13 provide that the directors be divided into either two or three classes
14 that are [, EACH CLASS TO BE] as nearly equal in number as possible,
15 with the term of office of directors of the first class to expire at
16 the first annual meeting of shareholders after the directors' [THEIR]
17 election, the term [THAT] of the second class to expire at the second
18 annual meeting after the directors' [THEIR] election, and the term
19 [THAT] of the third class, if any, to expire at the third annual
20 meeting after the directors' [THEIR] election. At each annual meeting
21 after the classification the number of directors equal to the number
22 in [OF] the class whose term expires at the time of the meeting shall
23 be elected to hold office until the second succeeding annual meeting
24 if there are two classes, or until the third succeeding annual meeting
25 if there are three classes.

26 (b) When the board of directors of a corporation that uses cumu-
27 lative voting consists of five to eight members, instead of having all
28 of the directors elected annually, the bylaws may provide that all of
29 the directors have two-year terms or that all of the directors have

1 three-year terms, and that the directors are to be divided into two
2 classes that are as nearly equal in number as possible, with the term
3 of office of the directors of the first class to expire at the first
4 annual meeting of shareholders after the directors' election and the
5 term of the second class to expire at the second annual meeting after
6 the directors' election. At each annual meeting after the classifica-
7 tion, the number of directors equal to the number in the class whose
8 term expires at the time of the meeting shall be elected to hold
9 office until the second succeeding annual meeting if the directors
10 have two-year terms, or until the third succeeding annual meeting if
11 the directors have three-year terms.

12 (c) Classification of directors is not effective before the
13 first annual meeting of shareholders.
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ATTORNEYS AT LAW

RECEIVED JAN 27 1988

BAXTER & MARKS

PROFESSIONAL CORPORATION

P O BOX 2819
JUNEAU, ALASKA 99803
(907) 789-3166

FRED J BAXTER
STEVEN G MARKS
DANIEL G BRUCE
CRYSTAL SOMMERS BRAND

January 21, 1988

Senator Jim Duncan
P. O. Box V
Juneau, Alaska 99811

Re: Staggered Terms for Board of Directors with
Less than Nine Directors

Dear Jim:

As I have previously indicated to you, Huna Totem Corporation would like to consider reducing the size of their Board of Directors to less than nine members while being able to provide for the election of officers on staggered terms. Currently there are nine directors on Huna Totem's Board.

A review of AS 10.05.183 reads as follows:

At the first annual meeting of shareholders and at each annual meeting thereafter, the shareholders shall elect director to hold office until the next annual meeting, except in case of the classification of directors as permitted by this chapter. Each director holds office for the term which elected and until a successor is elected and qualified.
(Emphasis added.)

AS 10.05.186 read as follows:

Classification of directors. When the board of directors consists of nine or more members, instead of electing all directors annually, the bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, with the term of

Senator Jim Duncan
January 21, 1988
Page Two

office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election and that of the third class if any to expire at the third annual meeting after their election. At each annual meeting after the classification the number of directors equal to the number of the class whose term expires at the time of the meeting shall be elected to hold office until the second succeeding annual meeting if there are two classes, or until the third succeeding annual meeting, if there are three classes. Classification of directors is not effective before the first annual meeting of shareholders. (§35 ch 126 SLA 1957). (Emphasis added).

A reading of the above statutory provisions seems to indicate that a board of directors of less than nine in size is not entitled to have staggered terms. Willis Kirkpatrick, Director of the Division of Banking, Securities and Corporations concurs with my interpretation that board of directors less than nine in number are unable to provide for the election of directors through staggered terms and all directors would be required to stand for reelection at the same time.

Now that Huna Totem Corporation has completed its logging operation and is consolidating its business holdings, serious consideration is being given to reducing the size of the board of directors. However, the board wishes to be able to provide for staggered terms should they elect to have a board of seven or five directors. The staggering term proposed would have five directors with one three year term elected every year, one two year term elected the first and second years. Starting with the third year of this plan there would be two directors elected every year, i.e. one three year position and one two year position.

I have discussed the classification problem with Willis Kirkpatrick. It appears that at approximately the same time that I was in contact with Willis Kirkpatrick concerning the classification problem Governor Cowper received a similar request from Nelson N. Angapak. Mr.

Senator Jim Duncan
January 21, 1988
Page Three

Angapak was requesting classification for five or more directors because he felt it was not uncommon to have all five directors fail to be reelected at an annual meeting. Such action naturally disrupts the function of village corporations and brings the added expense to the villages of educating new directors and holding additional elections.

Mr. Kirkpatrick is of the opinion that classification of directors (staggered terms as opposed to annual election of all directors) can have both positive and negative effects. On the one hand, classification has been criticized on the grounds that it reduces shareholder control over the board because two or more annual elections may be required before shareholders will be able to effect a change in the majority of the board and because of its impairment of the effectiveness of cumulative voting. On the other hand, Mr. Kirkpatrick believes that classification provides some assurance of continuity of management as well as affording new directors an opportunity to become familiar with corporate affairs during a longer term in office and to benefit from the experience of codirectors who have served for longer than a one year term.

In an attempt to maintain some sort of equilibrium between the benefit of maintaining continuity of management and at the same time leaving minority shareholders with sufficient power to have their views taken seriously by management, Mr. Kirkpatrick has proposed that AS 10.05.186 be amended by adding section (b) which would read as follows:

(b) When the board of directors of a corporation which has cumulative voting consists of five to eight members, instead of electing all the directors annually, the bylaws may provide that the directors be divided into two classes, each class to be as nearly equal in number as possible, with the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election. At each annual meeting after the classification the number of directors equal to the number of the

Senator Jim Duncan
January 21, 1988
Page Four

class whose term expires at the time of the meeting shall be elected to hold office until the second succeeding annual meeting. Classification of directors is not effective before the first annual meeting of shareholders.

I believe that Mr. Kirkpatrick's proposed statutory change is a reasonable approach to solving the problem and would protect minority shareholders as well as allowing corporations to reduce the size of the board of directors for efficiency and economy reasons.

If you find that the proposed statutory amendment meets with your approval I would appreciate your giving consideration to proposing legislation in this regard.

I would be more than happy to meet with you to discuss the particulars of this legislation and/or to provide whatever assistance might be possible in the way of testimony, etc.

Thank you for your consideration of this matter.

Very truly yours,

BAXTER & MARKS



Fred J. Baxter

FJB/cah
cc: George D. Cooper

Alaska State Senate

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



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

P.O. Box 1069
Kotzebue, Alaska 99752
(907) 442-2494

William L. Hensley

MEMORANDUM

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

FROM: Senator Willie Hensley *WH*

SUBJ: Request for scheduling of Senate Bill 437

DATE: February 29, 1988

I would appreciate it if you would schedule a hearing on Senate Bill 437, relating to staggered terms for corporate directors.

This bill would allow corporations having fewer than nine directors to have staggered terms.

Thank you.

WLH/BA/mjt

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 437
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to staggered
terms for corporate directors
Sponsor: Hensley
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-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of dollars)

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

POSITIONS:

FULLTIME	-0-	-0-	-0-	-0-	-0-	-0-
PARTTIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Willis F. Kirkpatrick, Director *Willis* Phone: 465-2521
Division: Banking, Securities and Corporations Date: _____

Approved by Commissioner: J. Anthony Smith *Kathy Newsham* Date: 2/27/88
Agency: Department of Commerce and Economic Development

Distribution (by preparer):

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

page ____ of ____

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3/11/88

Original sponsor: Faiks

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 438 ()

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 common interest community man-
7 agers."

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

9 * Section 1. AS 08.01.010 is amended by adding a new paragraph to read:

10 (28) common interest community managers.

11 * Sec. 2. AS 08.01.050(a) is amended to read:

12 (a) The department shall perform the following administrative
13 and budgetary services when appropriate:

14 (1) collect and record fees;

15 (2) maintain records and files;

16 (3) issue and receive application forms;

17 (4) notify applicants of acceptance or rejection as deter-
18 mined by the board or as determined by the department under AS 08.11
19 for audiologists, under AS 08.15 for common interest community man-
20 agers, under AS 08.40 for electrical administrators, under AS 08.45
21 for naturopaths, or under AS 08.55 for hearing aid dealers;

22 (5) designate dates examinations are to be held and notify
23 applicants;

24 (6) publish notice of examinations and proceedings;

25 (7) arrange space for holding examinations and proceedings;

26 (8) notify applicants of results of examinations;

27 (9) issue licenses or temporary licenses as authorized by
28 the board or as authorized by the department under AS 08.11 for audi-
29 ologists, under AS 08.15 for common interest community managers, under

1 AS 08.40 for electrical administrators, under AS 08.45 for naturo-
2 paths, or under AS 08.55 for hearing aid dealers;

3 (10) issue duplicate licenses upon submission of a written
4 request by the licensee attesting to loss of or the failure to receive
5 the original and payment by the licensee of a fee established by
6 regulation adopted by the department;

7 (11) notify licensees of renewal dates at least 30 days
8 before the expiration date of their licenses;

9 (12) compile and maintain a current register of licensees;

10 (13) answer routine inquiries;

11 (14) maintain files relating to individual licensees;

12 (15) arrange for printing and advertising;

13 (16) purchase supplies;

14 (17) employ additional help when needed;

15 (18) perform other services that may be requested by the
16 board;

17 (19) provide inspection, enforcement, and investigative
18 services to the boards and for the occupations listed in AS 08.01.010,
19 regarding all licenses issued by or through the department;

20 (20) retain and safeguard the official seal of a board and
21 prepare, sign, and affix a board seal, as appropriate, for licenses
22 approved by a board.

23 * Sec. 3. AS 08 is amended by adding a new chapter to read:

24 CHAPTER 15. COMMON INTEREST COMMUNITY MANAGERS.

25 Sec. 08.15.010. QUALIFICATIONS FOR A COMMON INTEREST COMMUNITY
26 MANAGER LICENSE. (a) The commissioner shall license as a common
27 interest community manager an individual who

28 (1) is managing a common interest community established
29 under AS 34.07 or AS 34.08;

1 (2) is 18 years of age or older;
2 (3) applies on a form provided by the department;
3 (4) pays the fee required under AS 08.15.030; and
4 (5) furnishes evidence satisfactory to the department that
5 the person has not engaged in conduct that is a ground for imposing
6 disciplinary sanctions under AS 08.15.040.

7 (b) An individual licensed under (a) of this section may renew
8 the license upon evidence satisfactory to the commissioner that the
9 individual has completed continuing education of not less than 24
10 hours per year in courses approved by the commissioner in the law of
11 common interest communities or in business or accounting.

12 Sec. 08.15.020. EXEMPTIONS FROM REQUIREMENT OF LICENSURE. (a)
13 An officer or employee of the Alaska Housing Finance Corporation or of
14 a bank or other financial institution, or a common interest
15 interest community manager, is not required to be licensed under AS 08.-
16 15.010.

17 (b) An individual who is licensed under AS 08.08, when acting as
18 a common interest community manager, is not required to be licensed
19 under AS 08.15.010.

20 (c) An individual who is an officer or a member of the executive
21 board of a common interest community established under AS 34.08 or an
22 officer or a member of the board of directors of a horizontal property
23 regime established under AS 34.07 is not required to be licensed under
24 AS 08.15.010 to manage that common interest community or horizontal
25 property regime.

26 (d) Except for the manager of a common interest community estab-
27 lished under AS 34.07 or AS 34.08, an employee of a common interest
28 community is not required to be licensed under AS 08.15.010.

29 Sec. 08.15.030. FEES. The department shall set fees under

CORRECTION

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

1 AS 08.01.065 for each of the following:

- 2 (1) application and license;
3 (2) application for renewal of license;
4 (3) delinquency;
5 (4) application for reinstatement;
6 (5) duplicate license.

7 Sec. 08.15.040. GROUNDS FOR IMPOSITION OF DISCIPLINARY SANCTIONS
8 ON A COMMON INTEREST COMMUNITY MANAGER. After a hearing, the depart-
9 ment may impose a disciplinary sanction on a common interest community
10 manager when the department finds that the licensee

11 (1) secured a license through deceit, fraud, or intentional
12 misrepresentation;

13 (2) engaged in deceit, fraud, or intentional misrepresenta-
14 tion as a common interest community manager;

15 (3) has been convicted of a felony or other crime that
16 affects the person's ability to continue to act as a common interest
17 community manager;

18 (4) failed to comply with a provision of this chapter or a
19 regulation adopted under this chapter, or an order of the department.

20 Sec. 08.15.050. DISCIPLINARY SANCTIONS. (a) When it finds that
21 a common interest community manager has committed an act listed in
22 AS 08.15.040, the department may impose the following sanctions singly
23 or in combination:

- 24 (1) permanently revoke a license;
25 (2) suspend a license for a determinate period of time;
26 (3) censure a licensee;
27 (4) issue a letter of reprimand; or
28 (5) impose limitations or conditions on the work of a li-

29 censee.

1 (b) The department may withdraw a revocation, suspension, limi-
 2 tation, condition, or probationary status if it finds that the defi-
 3 ciency that required the sanction has been remedied.

4 Sec. 08.15.060. PROCEDURES. The Administrative Procedure Act
 5 (AS 44.62) applies to regulations and proceedings under this chapter.

6 * Sec. 4. AS 34.08.490(b) is amended to read:

7 (b) A manager licensed under AS 08.15 or [PROFESSIONAL MANAGER,
 8 MANAGING AGENT,] accountant, or other person with whom the association
 9 has contracted for services shall return all association records
 10 within five days of the termination of the contract. If the associa-
 11 tion records are not returned within five days, the association may
 12 sue for their return and for damages.

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Alaska State Legislature

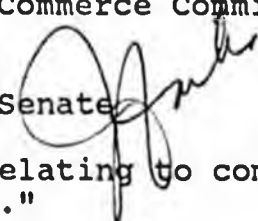
SENATE
Office of the President

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

MEMORANDUM

March 7, 1988

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

FROM: Senator Jan Faiks
President of the Senate 

SUBJECT: SB 438 "An Act relating to common interest community managers."

Senate Bill 438 is currently before the Senate Labor and Commerce Committee. This bill adds a new chapter to Title 8 of the Alaska Statutes, requiring the licensing of common interest community managers.

Common interest communities are regulated in AS 34.07 (horizontal property regimes) and 34.08 (common interest communities). These communities include properties in which the owners of individual units in a building or other real property jointly own the common areas. The most common example is the condominium.

Common interest communities frequently employ a professional manager to handle the affairs of the community association. As you know, AS 34.07 and 34.08 are complex, and impose many legal requirements on the operation of common interest communities. Most larger community associations hire professional managers, and various businesses bid to obtain these contracts. Unfortunately, at the present time only a small percentage of persons working as professional managers are really qualified to do so.

Moreover, managers frequently have sole-signature authority over the reserve accounts of community associations. In Alaska, these accounts can total several hundred thousand dollars. There have already been cases of managers embezzling significant sums from local community associations.

For these reasons, I believe that those who act as the professional managers of community associations should be licensed by the state. SB 438 does the following:

CORRECTION

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



Alaska State Legislature

SENATE

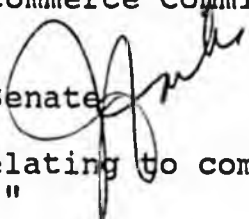
Office of the President

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

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Common interest communities frequently employ a professional manager to handle the affairs of the community association. As you know, AS 34.07 and 34.08 are complex, and impose many legal requirements on the operation of common interest communities. Most larger community associations hire professional managers, and various businesses bid to obtain these contracts. Unfortunately, at the present time only a small percentage of persons working as professional managers are really qualified to do so.

Moreover, managers frequently have sole-signature authority over the reserve accounts of community associations. In Alaska, these accounts can total several hundred thousand dollars. There have already been cases of managers embezzling significant sums from local community associations.

For these reasons, I believe that those who act as the professional managers of community associations should be licensed by the state. SB 438 does the following:

Section 1 Makes AS 08.01, relating to centralized licensing, applicable to common interest community managers.

Section 2 Gives the Department of Commerce and Economic Development the authority to perform all necessary administrative duties with respect to the licensing of managers. No independent board is created to perform this function.

Section 3 Adds a new chapter to AS 08:

Sec. 08.15.010 (a) An individual, 18 years of age or older, who is managing a common interest community, shall be licensed by the department on payment of a fee and proof that the individual has not engaged in conduct that is grounds for imposing disciplinary sanctions under AS 08.15.040.

(b) An individual licensed under (a) may renew the license if the person takes 24 hours per year of approved classes in the law of common interest communities or in business or accounting.

Sec. 08.15.020 Exempts certain persons from licensing requirements, including (a) officers or employees of AHFC or of a bank or other financial institution; (b) a certified public accountant or an attorney licensed in the state; or (c) an employee of a common interest community other than the manager.

Sec. 08.15.030 Authorizes the department to set licensing fees.

Sec. 08.15.040 Specifies grounds for imposing disciplinary sanctions on a manager.

Sec. 08.15.050 Specifies the types of sanctions which may be imposed for committing an act under .040.

Sec. 08.15.060 Makes the Administrative Procedure Act applicable to regulations and proceedings under this chapter.

Section 4 Makes a technical change to AS 34.08.490(b).

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

FISCAL NOTE

REQUEST:

Revision Date: _____
Tide: An Act relating to common interest
community managers.
Sponsor: Senator Faiks
Requestor: _____

Agency Affected: Commerce & Econ. 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						
TRAVEL						
CONTRACTUAL		1.5	1.5	1.5	1.5	1.5
SUPPLIES		1.0	1.0	1.0	1.0	1.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		2.5	2.5	2.5	2.5	2.5

CAPITAL						
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REVENUE		5.0	.5	6.0	.5	7.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER		2.5	2.5	2.5	2.5	2.5
TOTAL		2.5	2.5	2.5	2.5	2.5

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This fiscal note is based on the assumption that 50 individuals will be licensed initially, with a growth rate of at least 5 new applicants each year. The revenues to be generated are assuming licensees will pay \$50 per year and renew on a biennial cycle. If expenditures are authorized by program receipts, program costs will be covered by the revenue generated.

Prepared by: Jennifer Strickler, Management Analyst Phone: 465-2144
Division: Occupational Licensing Date: March 9, 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)

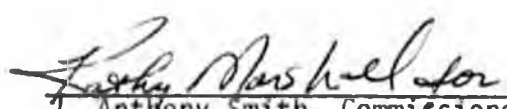
SB 438: An Act relating to common interest community managers.

SB 438 proposes to establish a new category of licensure for common interest community managers and provides that this new licensing program be administered by the Department of Commerce and Economic Development.

Although a relatively simple licensing procedure is established in the bill, we question the rationale behind one section of the bill. Specifically, Section 08.15.020 exempts from licensing as managers certain individuals, including public accountants and attorneys. However, the exemption does not address realtors who act as common interest community managers and who often, like public accountants, serve in that capacity. The practical aspects of daily property management involves much more than accounting skills (as referenced by the continuing education requirements, i.e., law of common interest communities, business, accounting). The department therefore questions the reason for exempting public accountants and attorneys and not realtors, and further suggests that realtors either be included in the exemption or that the exemptions be dropped as inappropriate.

A further concern involves the number of persons who would be required to be licensed by this bill. It has been indicated to the department that this bill will affect only forty or fifty people statewide, because the bill would license only "professional" common interest community managers ("professional managers" are persons apparently employed full-time in the business of property management). However, we are uncomfortable with this information because, in our view, the scope of this bill is considerably more broad. Section 08.15.010 states that the department shall license as a manager any individual who is managing a common interest community established under AS 34.07 or AS 34.08. The language in .010 does not limit the requirement to "professional managers," or to persons whose major source of income comes from property management. The Corporations Section of the department has indicated that a substantial portion of the approximately 4,000 registered nonprofits in this State are homeowner-type associations. We are not opposed to the current language, but wish to draw this matter to the Legislature's attention. We have based our fiscal note on the suggestion that this bill affects only a small number of persons. If that representation is incorrect, it would affect the amount of our fiscal note on this bill.

In summary, the department does not oppose the licensing of common interest community managers, so long as the licensing of common interest community managers can be supported through licensing fees, but we do have the concerns identified above.


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

Date: 3/10/88

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ADMITTED
ONLY SEC 5?6

M/ 1 YR 21.0 FX

5-1961L
Dierdorff
4/27/88

Original sponsors: Zharoff and Szymanski

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 455 ()

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 safety equipment for commercial
7 fishing vessels; and providing for an effective
8 date."

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

10 * Section 1. AS 16.05 is amended by adding new sections to read:

11 Sec. 16.05.497. IMMERSION SUITS. (a) A vessel subject to
12 AS 16.05.497 - 16.05.509 must be equipped with a United States Coast
13 Guard approved immersion suit for each person on board the vessel. An
14 exposure suit that is Coast Guard approved and is in use on a vessel
15 before January 1, 1989, meets the requirements of this subsection.

16 (b) An immersion suit required under (a) of this section must

17 (1) include an inflatable auxiliary means of buoyancy that
18 is equipped with an inflation tube that meets the United States Coast
19 Guard construction requirements for inflation tubes when used as an
20 integral part of an exposure suit;

21 (2) have a T-handle zipper pull; and

22 (3) be equipped with a United States Coast Guard approved
23 personal flotation device strobe light.

24 Sec. 16.05.499. LIFE RAFTS. (a) A vessel subject to AS 16.05.-
25 497 - 16.05.509 that is 36 feet or longer in overall length on deck is
26 required to be equipped with a life raft capable of accommodating
27 every person on board the vessel.

28 (b) A life raft required under (a) of this section must be

29 (1) equipped with a Class B EPIRB;

1 (2) provided with the minimum equipment that is required by
2 the United States Coast Guard for use in all inflatable life rafts;
3 except as provided in (3) of this subsection, this paragraph does not
4 require the additional equipment that is required by the Coast Guard
5 for life rafts that are intended for use on ocean service or limited
6 service vessels; and

7 (3) equipped with signal devices required under the United
8 States Coast Guard equipment requirements for inflatable life rafts
9 intended for use on limited service vessels.

10 (c) In this section "life raft" means an inflatable life raft
11 that meets the type and size, design, and inspections and tests re-
12 quirements of the United States Coast Guard. A life raft required
13 under this section does not need to meet the Coast Guard requirements
14 for containment, rigid or fabric containers, or launching reinforce-
15 ment.

16 * Sec. 2. AS 16.05 is amended by adding new sections to read:

17 Sec. 16.05.501. CLASS A EPIRBS. (a) A vessel subject to
18 AS 16.05.497 - 16.05.509 that is 36 feet or longer in overall length
19 on deck is required to be equipped with a Class A EPIRB.

20 (b) A Class A EPIRB required under (a) of this section must be
21 stowed in a readily accessible location in a manner that allows it to
22 float free if the vessel sinks.

23 Sec. 16.05.503. REQUIRED MAINTENANCE. Equipment required under
24 AS 16.05.497 - 16.05.509 shall be operative and maintained in good and
25 serviceable condition.

26 Sec. 16.05.505. APPLICABILITY OF AS 16.05.497 - 16.05.509.
27 AS 16.05.497 - 16.05.509 apply to vessels required to be licensed
28 under AS 16.05.490 except for a vessel used in charter service for the
29 recreational taking of fish and shellfish.

1 Sec. 16.05.507. ADMINISTRATION AND ENFORCEMENT. The department
2 may adopt regulations under the Administrative Procedure Act (AS 44.-
3 62) to implement AS 16.05.497 - 16.05.509. The Department of Public
4 Safety and the department shall cooperatively enforce AS 16.05.497 -
5 16.05.509 and the regulations adopted under those sections. The
6 departments may enter into agreements with the United States Coast
7 Guard, the National Marine Fisheries Service, or the United States
8 Fish and Wildlife Service to assist in the enforcement of AS 16.05.-
9 497 - 16.05.509.

10 Sec. 16.05.509. DEFINITION OF EPIRB. In AS 16.05.497 - 16.05.-
11 509 "EPIRB" means an emergency position indicating radio beacon that
12 has been type accepted by the Federal Communications Commission.

13 * Sec. 3. AS 16.05.720(a) is amended to read:

14 (a) Except as modified by (c) of this section, and except as
15 provided in (d) of this section, a person who violates AS 16.05.480 -
16 16.05.690 or the regulations of the department pertaining to commer-
17 cial fisheries is guilty of a misdemeanor and upon conviction is
18 punishable by a fine of not more than \$5,000, or by imprisonment for
19 not more than one year, or by both.

20 * Sec. 4. AS 16.05.720 is amended by adding a new subsection to read:

21 (d) A person who, with criminal negligence, violates AS 16.05.-
22 497 - 16.05.509 or a regulation adopted under those sections is guilty
23 of a class B misdemeanor.

24 * Sec. 5. INTERIM COMMISSION ESTABLISHED; REPORT. (a) There is estab-
25 lished in the Office of the Governor the Fishing Vessel Safety Interim
26 Commission. The commission consists of at least seven members appointed by
27 the governor. Members must be knowledgeable and experienced in the areas
28 of commercial fishing vessels or vessel safety and life-saving methods and
29 systems. At least one member shall represent each of the following:

1 (1) the commercial fishing industry;

2 (2) fishermen's associations;

3 (3) the safety equipment industry, which includes businesses
4 manufacturing, supplying, or servicing marine safety and life-saving equip-
5 ment;

6 (4) the marine insurance industry;

7 (5) education; and

8 (6) the United States Coast Guard.

9 (b) Commission members are entitled to per diem and travel expenses
10 authorized for boards and commissions under AS 39.20.180.

11 (c) The purpose of the commission is to suggest, review, and recom-
12 mend legislation, regulations, guidelines, and standards that address
13 safety equipment requirements and educational programs that contribute to
14 the successful application of safety and life-saving equipment on commer-
15 cial fishing vessels.

16 (d) The commission shall consider and review proposals relating to
17 the development and implementation of educational programs at the high
18 school and community college level to increase the level of awareness among
19 participants and potential participants in the commercial fishing industry
20 with respect to the necessity, application, and use of safety and life-sav-
21 ing equipment on commercial fishing vessels. The commission shall encour-
22 age the involvement of fishermen's associations, processor associations, or
23 other trade associations or industry groups in the implementation of pro-
24 posed educational programs. The commission shall also consider guidelines,
25 requirements, and standards relating to the maintenance, servicing, and
26 upgrading of safety and life-saving equipment and recommend a permanent
27 method for the state to evaluate current and future needs relating to
28 legislation, regulations, guidelines, and standards for commercial fishing
29 vessel safety.

1 (e) The commission shall report its recommendations to the governor
2 and the legislature by January 15, 1989.

3 (f) The commission is terminated January 16, 1989.

4 (g) In this section "commission" means the Fishing Vessel Safety
5 Interim Commission established under (a) of this section.

6 * Sec. 6. Section 5 of this Act takes effect immediately under AS 01.-
7 10.070(c).

8 * Sec. 7. AS 16.05.497(b)(3) and 16.05.499, added by sec. 1 of this
9 Act, and AS 16.05.501, added by sec. 2 of this Act, take effect January 1,
10 1990.

11 * Sec. 8. Except as provided in secs. 6 and 7 of this Act, this Act
12 takes effect January 1, 1989.

SAFETY EQUIPMENT COSTS

Survival Suits

(Prices quoted by Alaska Ship Chandlers, Juneau)

Baily survival suit	\$ 349.98
Imperial survival suit	359.98

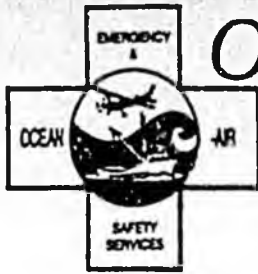
Liferafts

(Prices quoted by Ocean-Air Emergency & Safety Service Co., Kodiak)

4-man raft with valise	\$ 1,965
4-man raft with fiberglass container and cradle	2,205
6-man raft with valise	2,045
6-man raft with fiberglass container and cradle	2,280

4-man rafts actually range in price from \$1,710 to \$2,670 (Seattle prices). The cost in Kodiak of repacking, inspecting, and recertifying a liferaft is \$240.

Note about costs - Mr. Ed Jack, the owner of Ocean-Air Emergency & Safety Service Co. in Kodiak, said the requirement for minimum safety equipment will eventually save money for commercial fishermen. Insurance rates are largely based on statistics. If all vessels of a certain size were required to have safety equipment, it would result in less loss of life and property, less litigation and less costly judgements. Over time, commercial fishermen would realize a savings -- from the requirement that they have safety equipment -- in their insurance rates.



OCEAN-AIR

EMERGENCY & SAFETY SERVICE CO.

P. O. Box 1212, Kodiak, Alaska 99615

Telephone (907) 486-3860 WHG 591-SSB 4125.0

PRICES ACR PRODUCTS

CLASS A EPIRBS			
ACR/RLB-14	LIST-495.00	USCGA	337.00 300.00
CLASS B EPIRBS			(Bulk order)
ACR/RLB-20	LIST 350.00		235.00
ACR/RLB-21	LIST 299.00	Mini-13	202.50 165.00
CLASS C EPIRBS			
ACR/RLB-17	LIST 350.00		235.00
			(Bulk order)
STROBE LIGHTS			
ACR/SM-2	LIST 99.95	USCGA	72.50
ACR/556	LIST 89.95		65.00
ACR/4F	LIST 69.95	USCGA	49.95
ACR/4G	LIST 74.95	USCGA	60.00
ACR/2700	LIST 29.95		29.95
ACR/633	LIST 39.95		35.00
LIGHTS			
ACR/L-15A	LIST 69.95	USCGA	52.50
ACR/L8-2A	LIST 19.95		14.25
ACR/L8-1A			
ACR/631	LIST 7.95		7.95

BATTERIES- ASK FOR QUOTE

QUANTITY DISCOUNTS- ASK FOR A QUOTE !!!!!!!!!!!!!!!

5-1961B

Dierdorff
4/22/88

Original sponsors: Zharoff and Szymanski

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 455 (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 safety equipment for commercial
7 fishing vessels; and providing for an effective
8 date."

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

10 * Section 1. AS 30 is amended by adding a new chapter to read:

11 CHAPTER 35. SAFETY STANDARDS FOR COMMERCIAL FISHING VESSELS.

12 Sec. 30.35.010. EXPOSURE SUITS. (a) A vessel subject to this
13 chapter must be equipped with a United States Coast Guard approved
14 exposure suit for each person on board the vessel. An exposure suit
15 that is not Coast Guard approved, but is in use on a vessel before
16 January 1, 1989, meets the requirements of this subsection if the
17 exposure suit is similar or identical in design, construction, and
18 function to an approved suit.

19 (b) An exposure suit required under (a) of this section must

20 (1) include an inflatable auxiliary means of buoyancy that
21 is equipped with an inflation tube that meets the United States Coast
22 Guard construction requirements for inflation tubes when used as an
23 integral part of an exposure suit;

24 (2) have a T-handle zipper pull; and

25 (3) be equipped with a United States Coast Guard approved
26 personal flotation device strobe light.

27 Sec. 30.35.020. LIFE RAFTS. (a) A vessel subject to this
28 chapter that is 36 feet or longer in overall length on deck is re-
29 quired to be equipped with a life raft capable of accommodating every

1 person on board the vessel.

2 (b) A life raft required under (a) of this section must be

3 (1) equipped with a Class A or Class B EPIRB that is ap-
4 proved by the United States Coast Guard for use in an inflatable life
5 raft;

6 (2) provided with the minimum equipment that is required by
7 the United States Coast Guard for use in all inflatable life rafts;
8 except as provided in (3) of this subsection, this paragraph does not
9 require the additional equipment that is required by the Coast Guard
10 for life rafts that are intended for use on ocean service or limited
11 service vessels; and

12 (3) equipped with signal devices required under the United
13 States Coast Guard equipment requirements for inflatable life rafts
14 intended for use on limited service vessels.

15 (c) In this section "life raft" means an inflatable life raft
16 that meets the type and size, design, and inspections and tests re-
17 quirements of the United States Coast Guard. A life raft required
18 under this section does not need to meet the Coast Guard requirements
19 for containment, rigid or fabric containers, or launching reinforce-
20 ment.

21 Sec. 30.35.030. CLASS A EPIRBS. (a) A vessel subject to this
22 chapter that is 36 feet or longer in overall length on deck is re-
23 quired to be equipped with a Class A EPIRB.

24 (b) A Class A EPIRB required under (a) of this section must be
25 stowed in a readily accessible location in a manner that allows it to
26 float free if the vessel sinks.

27 Sec. 30.35.040. REQUIRED MAINTENANCE. Equipment required under
28 this chapter shall be operative and maintained in good and serviceable
29 condition.

1 Sec. 30.35.050. APPLICABILITY. This chapter applies to vessels
2 required to be licensed under AS 16.05.490 except for a vessel used in
3 charter service for the recreational taking of fish and shellfish.

4 Sec. 30.35.060. ADMINISTRATION AND ENFORCEMENT. The Department
5 of Fish and Game may adopt regulations under the Administrative
6 Procedure Act (AS 44.62) to implement this chapter. The Department of
7 Public Safety and the Department of Fish and Game shall cooperatively
8 enforce this chapter and the regulations adopted under it. The
9 departments may enter into agreements with the United States Coast
10 Guard, the National Marine Fisheries Service, or the United States
11 Fish and Wildlife Service to assist in the enforcement of this
12 chapter.

13 Sec. 30.35.090. PENALTY. A person who, with criminal negli-
14 gence, violates this chapter is guilty of a class B misdemeanor.

15 Sec. 30.35.095. DEFINITION OF EPIRB. In this chapter "EPIRB"
16 means an emergency position indicating radio beacon that has been type
17 accepted or type approved by the Federal Communications Commission and
18 that is also approved by the United States Coast Guard.

19 * Sec. 2. INTERIM COMMISSION ESTABLISHED; REPORT. (a) There is estab-
20 lished in the Office of the Governor the Fishing Vessel Safety Interim
21 Commission. The commission consists of at least seven members appointed by
22 the governor. Members must be knowledgeable and experienced in the areas
23 of commercial fishing vessels or vessel safety and life-saving methods and
24 systems. At least one member shall represent each of the following:

- 25 (1) the commercial fishing industry;
26 (2) fishermen's associations;
27 (3) the safety equipment industry, which includes businesses
28 manufacturing, supplying, or servicing marine safety and life-saving equip-
29 ment;

1 (4) the marine insurance industry;

2 (5) education; and

3 (6) the United States Coast Guard.

4 (b) Commission members are entitled to per diem and travel expenses
5 authorized for boards and commissions under AS 39.20.180.

6 (c) The purpose of the commission is to suggest, review, and recom-
7 mend legislation, regulations, guidelines, and standards that address
8 safety equipment requirements and educational programs that contribute to
9 the successful application of safety and life-saving equipment on commer-
10 cial fishing vessels.

11 (d) The commission shall consider and review proposals relating to
12 the development and implementation of educational programs at the high
13 school and community college level to increase the level of awareness among
14 participants and potential participants in the commercial fishing industry
15 with respect to the necessity, application, and use of safety and life-sav-
16 ing equipment on commercial fishing vessels. The commission shall encour-
17 age the involvement of fishermen's associations, processor associations, or
18 other trade associations or industry groups in the implementation of pro-
19 posed educational programs. The commission shall also consider guidelines,
20 requirements, and standards relating to the maintenance, servicing, and
21 upgrading of safety and life-saving equipment and recommend a permanent
22 method for the state to evaluate current and future needs relating to
23 legislation, regulations, guidelines, and standards for commercial fishing
24 vessel safety.

25 (e) The commission shall report its recommendations to the governor
26 and the legislature by January 15, 1989.

27 (f) The commission is terminated January 16, 1989.

28 (g) In this section "commission" means the Fishing Vessel Safety
29 Interim Commission established under (a) of this section.

1 * Sec. 3. Section 2 of this Act takes effect immediately under AS 01.-
2 10.070(c).

3 * Sec. 4. AS 30.35.010(b)(3), 30.35.020, and 30.35.030, added by sec. 1
4 of this Act, take effect January 1, 1990.

5 * Sec. 5. Except as provided in secs. 3 and 4 of this Act, this Act
6 takes effect January 1, 1989.

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5-1961B
Dierdorff
4/21/88

Original sponsors: Zharoff and Szymanski

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 455 (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 safety equipment for commercial
7 fishing vessels; and providing for an effective
8 date."

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

10 * Section 1. AS 30 is amended by adding a new chapter to read:

11 CHAPTER 35. SAFETY STANDARDS FOR COMMERCIAL FISHING VESSELS.

12 Sec. 30.35.010. EXPOSURE SUITS. (a) A vessel subject to this
13 chapter must be equipped with a United States Coast Guard approved
14 exposure suit for each person on board the vessel. An exposure suit
15 that is not Coast Guard approved, but is in use on a vessel before
16 January 1, 1989, meets the requirements of this subsection if the
17 exposure suit is similar or identical in design, construction, and
18 function to an approved suit.

19 (b) An exposure suit required under (a) of this section must

20 (1) include an inflatable auxiliary means of buoyancy that
21 is equipped with an inflation tube that meets the United States Coast
22 Guard construction requirements for inflation tubes when used as an
23 integral part of an exposure suit;

24 (2) have a T-handle zipper pull; and

25 (3) be equipped with a United States Coast Guard approved
26 personal flotation device strobe light.

27 Sec. 30.35.020. LIFE RAFTS. (a) A vessel subject to this
28 chapter that is 32 feet or longer in overall length on deck is re-
29 quired to be equipped with a life raft capable of accommodating every

1 person on board the vessel.

2 (b) A life raft required under (a) of this section must be

3 (1) equipped with a Class A or Class B EPIRB that is ap-
4 proved by the United States Coast Guard for use in an inflatable life
5 raft;

6 (2) provided with the minimum equipment that is required by
7 the United States Coast Guard for use in all inflatable life rafts;
8 except as provided in (3) of this subsection, this paragraph does not
9 require the additional equipment that is required by the Coast Guard
10 for life rafts that are intended for use on ocean service or limited
11 service vessels; and

12 (3) equipped with signal devices required under the United
13 States Coast Guard equipment requirements for inflatable life rafts
14 intended for use on limited service vessels.

15 (c) In this section "life raft" means an inflatable life raft
16 that meets the type and size, design, and inspections and tests re-
17 quirements of the United States Coast Guard. A life raft required
18 under this section does not need to meet the Coast Guard requirements
19 for containment, rigid or fabric containers, or launching reinforce-
20 ment.

21 Sec. 30.35.030. CLASS A EPIRBs. (a) A vessel subject to this
22 chapter that is 32 feet or longer in overall length on deck is re-
23 quired to be equipped with a Class A EPIRB.

24 (b) A Class A EPIRB required under (a) of this section must be
25 stowed in a readily accessible location in a manner that allows it to
26 float free if the vessel sinks.

27 Sec. 30.35.040. REQUIRED MAINTENANCE. Equipment required under
28 this chapter shall be operative and maintained in good and serviceable
29 condition.

1 Sec. 30.35.050. APPLICABILITY. This chapter applies to vessels
2 required to be licensed under AS 16.05.490 except for a vessel used in
3 charter service for the recreational taking of fish and shellfish.

4 Sec. 30.35.060. ADMINISTRATION AND ENFORCEMENT. The Department
5 of Fish and Game may adopt regulations under the Administrative
6 Procedure Act (AS 44.62) to implement this chapter. The Department of
7 Public Safety and the Department of Fish and Game shall cooperatively
8 enforce this chapter and the regulations adopted under it. The
9 departments may enter into agreements with the United States Coast
10 Guard, the National Marine Fisheries Service, or the United States
11 Fish and Wildlife Service to assist in the enforcement of this
12 chapter.

13 Sec. 30.35.090. PENALTY. A person who, with criminal negli-
14 gence, violates this chapter is guilty of a class B misdemeanor.

15 Sec. 30.35.095. DEFINITION OF EPIRB. In this chapter "EPIRB"
16 means an emergency position indicating radio beacon that has been type
17 accepted or type approved by the Federal Communications Commission and
18 that is also approved by the United States Coast Guard.

19 * Sec. 2. INTERIM COMMISSION ESTABLISHED; REPORT. (a) There is estab-
20 lished in the Office of the Governor the Fishing Vessel Safety Interim
21 Commission. The commission consists of at least seven members appointed by
22 the governor. Members must be knowledgeable and experienced in the areas
23 of commercial fishing vessels or vessel safety and life-saving methods and
24 systems. At least one member shall represent each of the following:

- 25 (1) the commercial fishing industry;
26 (2) fishermen's associations;
27 (3) the safety equipment industry, which includes businesses
28 manufacturing, supplying, or servicing marine safety and life-saving equip-
29 ment;

- 1 (4) the marine insurance industry;
2 (5) education; and
3 (6) the United States Coast Guard.

4 (b) Commission members are entitled to per diem and travel expenses
5 authorized for boards and commissions under AS 39.20.180.

6 (c) The purpose of the commission is to suggest, review, and recom-
7 mend legislation, regulations, guidelines, and standards that address
8 safety equipment requirements and educational programs that contribute to
9 the successful application of safety and life-saving equipment on commer-
10 cial fishing vessels.

11 (d) The commission shall consider and review proposals relating to
12 the development and implementation of educational programs at the high
13 school and community college level to increase the level of awareness among
14 participants and potential participants in the commercial fishing industry
15 with respect to the necessity, application, and use of safety and life-sav-
16 ing equipment on commercial fishing vessels. The commission shall encour-
17 age the involvement of fishermen's associations, processor associations, or
18 other trade associations or industry groups in the implementation of pro-
19 posed educational programs. The commission shall also consider guidelines,
20 requirements, and standards relating to the maintenance, servicing, and
21 upgrading of safety and life-saving equipment and recommend a permanent
22 method for the state to evaluate current and future needs relating to
23 legislation, regulations, guidelines, and standards for commercial fishing
24 vessel safety.

25 (e) The commission shall report its recommendations to the governor
26 and the legislature by January 15, 1989.

27 (f) The commission is terminated January 16, 1989.

28 (g) In this section "commission" means the Fishing Vessel Safety
29 Interim Commission established under (a) of this section.

1 * Sec. 3. Section 2 of this Act takes effect immediately under AS 01.-
2 10.070(c).

3 * Sec. 4. AS 30.35.010(b)(3), 30.35.020, and 30.35.030, added by sec. 1
4 of this Act, take effect January 1, 1990.

5 * Sec. 5. Except as provided in secs. 3 and 4 of this Act, this Act
6 takes effect January 1, 1989.

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* The survival factor

There are no also-rans in the survival business

By IRVING WARNER
Special to the Mirror

Survival is a matter of staying alive. You do, or you don't. There are no also-rans in the deadly serious business of surviving.

Thousands of boats pass through Kodiak waters, and hundreds are permanently home-ported here. While sailing in the waters around the island, sometimes things go wrong. What was meant to keep water out, does not, and the captain and crew are suddenly "in the drink". Then it's a matter of survival until they are rescued.

One of the principal pieces of gear used in these situations is aptly called the survival suit.

The survival suit, in the decade and a half since it became popular, has built itself a strong "rep". Made of neoprene rubber, they have come to be thought of as portable islands of invulnerability against even the coldest waters. Often they are marketed as such.

But marine survival is much more than having a survival suit.

"I've picked up so many dead people in survival suits," says Coast Guard Search and Rescue pilot Lt. Commander Tom Walters. "And I'm not saying anything bad about survival suits. But the fact is, survival is a four part situation."

Talking to Walters about survival at sea is an education. "First," says Walters, "there is

good education before even leaving the dock. People - ALL people - must know what to do when there's trouble."

"Secondly," he continues. "Is to have a good survival suit. One that fits well, and you've gotten into before leaving port. Thirdly, a life raft that you know how to deploy and get

into - in a hurry. And lastly, an EPIRB (E mergency P osition I ndicating R adio B eacon), one that you know how to activate quickly."

Walters nods as he recites each of these four necessary survival ingredients. His last point makes it obvious how important this recipe is. "I have

never picked up anybody dead who had all four of those things going for them."

First, let's examine the subject of survival suits.

Local survival expert Dave Watkins can talk about the subject for hours. Presently the operator of Northstar Survival, Watkins is a retired Coast Guardsman and has been a survival instructor for many years. Survival in coastal Alaska is his specialty. After talking with Dave for two minutes, one realizes it's more a business with him - it's a cause. And a good



NEVER OFF DUTY. Tom Walters discusses a search and rescue operation from his home. Marine safety and survival have become a major concern with him after 16 years as a search and rescue helicopter pilot.

Tom Walters:

'Survival is
4-part situation'

one.

"The very basic design of survival suits hasn't changed a heck of a lot in the last ten years," says Watkins. "Basically, if you're going to buy a (survival) suit, you MUST try it on before buying it."

Though basic characteristics have remained constant, there are differences between brands - some of them not so good. A few makes have been approved by the Coast Guard, others have not. What are some bad points to look out for? "Well," ex-

(See "Watkins," Page 8)

Dave Watkins: 'Remember, you'll have clothes on under the suit,'

(Continued from Page 1)
 plains Watkins, "To begin with size. A good sized man, let's say around six foot or over needs a jumbo, and too often they're sold a regular sized suit. A person has to remember that they'll have clothes on under the suit." Watkins explains further that a smaller person, a woman or child, needs a smaller suit. Too large of a suit allows excessive water leakage, and this can be fatal - fast.

Some suits are simply made of thicker material than others, especially around heat loss areas - suit thickness may range anywhere from 1/4 to 5/16th of an inch. And that is a marked difference when it comes to survival in frigid waters. Of course the thicker stouter suits cost more.

Another important aspect of survival suits is the rigging. "They should have a heavy zipper with a toggle that you can work with a mittened hand," warns Watkins. "If the zipper doesn't have a toggle on it, put one on. A zipper is of no use if you can't work it with a mittened hand."

Yet, a good survival suit must have a "high rider" on it - something that keeps the user's head out of the water. Lacking

survival suits are such seams rather than seams that are ONLY glued. Also, the palms of mittens and the soles of the feet must have material that'll make it possible to grip things and walk on slippery decks. In some of the newer models, each mitten can be unzipped for better dexterity.

Lastly, a survival suit should have a whistle and strobe light attached to the outside. At night, the strobe would make it possible for potential rescuers to see the user.

But, the last ingredient is by far the most important.

"My advice is to get into the suit under timed conditions," Watkins advises suit owners that this isn't easy if you have never actually been in a survival suit. In other words, if you have a survival suit and have never gotten into it and jumped in the water, DO IT!

EPIRBs are the next essential ingredient for survival. What is a good EPIRB? Basically, one that will work when you need it, and one that allows the user to activate it easily and quickly. Recent "Wayward Wind" survivors Debra Nielsen and Jay Rasmussen had an EPIRB with them during that horrible night of January 18, 1988. But like

aster, "At that time ships began meeting SOLA (Safety of Life At Sea) regulations."

In the cold water of Alaska, rafts face problem of heat retention and special ballasting for heavy seas. "Of course, early models had no canopy or ballast, and this is a no/no," said Watkins. "The Elliot (inflatable raft) became the first conventional inflatable emergency raft. It had little bags on the bottom for ballast and a drogue chute (sea anchor), plus a canopy."

But since the Elliot, inflatable raft technology has improved, especially the ballast systems - preventing the raft from tumbling in heavy seas. But in any event, all boats should have BOTH emergency rafts and survival suits. "The survival suit just prolongs the inevitable," explains Tom Walters. "Sooner or later, death will result from hypothermia or surface drowning."

Once in the raft, the shipwreck victim increases their chances immensely - especially if they are BOTH in a survival suit and in the raft. Both Watkins and Walters advise that manners must regularly check out their raft launching systems, both manual and automatic. Take nothing for granted.

Lastly is the matter of education - though it comes last in the overall four-part recipe for survival, it must be THE FIRST.

Both Watkins and Walters urge thorough educational program for survival in marine communities. Explains Walters, "There is a strange psychological trick regarding the way people deal with the possibility of mishaps and disasters. People think, 'Well, it can't happen to me. I'm good. I know what I'm doing.' But the fact is, it does. You've got to be ready for it."

Part of being a professional fisherman and mariner is having good survival equipment and

knowing how to maintain it, then training your crew how to deploy and use it.

In Kodiak, an informal committee has been formed to deal with factors of marine safety and survival. "We aren't far enough along to be Ad Hoc as yet," says Walters. This committee has come up with four preliminary opinions.

- 1) Every fishing vessel over a certain tonnage should have a life raft with an EPIRB.
- 2) Every person to have a survival suit with a strobe, float collar and personal EPIRB.
- 3) Every vessel equipped with a Class A EPIRB.
- 4) That the Governor appoint a task force for an education program, and a marine

survival research and development program.

Because of the advocacy of local concerned citizens, bills concerning marine survival have been introduced in the State House and Senate by Senator Zharoff and Representative Davidson. These bills address matters of compulsory equipment on Alaska fishing boats.

Survival must be the responsibility of each person who goes to sea. Survival isn't an accident and it isn't something that must be eventually faced by someone else. Ships and boats are designed well, but mother nature can sometimes change that fast. Sometimes too fast.

Experience has demonstrated that you've got to be ready to survive.



FOR BETTER GRIP. The bottoms of this survival suit's feet are equipped with a heavy tread for better traction.

this, there's trouble. Even death. Rick Laws' experience in April of 1980 is a case in point for a durable and adequate high-rider. "The 27 hours I spent in the sea were a living hell. The tube that blows the flotation pillow (his suit's high-rider) came off in my hand. If I lay back my head would slip under the water."

Though Laws survived because he found a log to keep his head out of the water, too of his shipmates did not. One had a survival suit on, the other did not.

"The inflation valve for the high-rider," continued Watkins, "Absolutely must be manageable with a mittened hand. That's literally a life-saver."

Drowning in a survival suit is common. "The term for drowning in a survival suit is called surface drowning," said Tom Walters. "In heavy seas, mortality results from the person being tossed about inside the wave, much like being in a washing machine." Clearly, the high-rider device will help the user survive this tossing about in heavy seas.

Equally important is the high rider in the flap that covers the face. "When this flap is secured properly, it stops wind and there's water leakage," warns Dave Watkins.

Others point to work for in

others before them. Debra found that switching on the EPIRB with a hand enclosed in a bulky survival suit an agonizing, time-consuming problem. The account of that night should serve as a clear warning.

"Once in the water, Debra grabbed a line. She had water coming into her suit. As Jay held her, she tried desperately to find the switch on the locator device, but her hand would get numb and she would have to pull it back into her suit. After... an hour, she finally was able to find the switch and turn it on."

A recent controversy concerning personal and ship EPIRBs is now being investigated by Watkins and other interested members of the fishing community. Simply put, it's a matter of terminology. Some EPIRBs are being sold as WATERPROOF, but are really SPLASHPROOF. In other words, when submerged they leak and are rendered useless.

So, anyone buying an EPIRB should check it out clearly!

Now for emergency suits ahead brass and dogs.

"Many people are completely unfamiliar with the correct system on their emergency suits," said Watkins. He further explained that raft technology is made back to the "Titanic" dis-

5-1961B
Dierdorff
3/11/88

Original sponsors: Zharoff and Szymanski

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 455 (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 safety equipment for commercial
7 fishing vessels; and providing for an effective
8 date."

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

10 * Section 1. AS 30 is amended by adding a new chapter to read:

11 CHAPTER 35. SAFETY STANDARDS FOR COMMERCIAL FISHING VESSELS.

12 Sec. 30.35.010. EXPOSURE SUITS. (a) A vessel subject to this
13 chapter must be equipped with a United States Coast Guard approved
14 exposure suit for each person on board the vessel. An exposure suit
15 that is not Coast Guard approved, but is in use on a vessel before
16 January 1, 1989, meets the requirements of this subsection if the
17 exposure suit is similar ^{OR IDENTICAL} in design, construction, and function to an
18 approved suit.

19 (b) An exposure suit required under (a) of this section must

20 (1) include an inflatable auxiliary means of buoyancy that
21 ^{MUST BE} is equipped with an inflation tube that meets the United States Coast
22 Guard construction requirements for inflation tubes when used as an
23 integral part of an exposure suit;

24 (2) have a T-handle zipper pull; and

25 (3) be equipped with a United States Coast Guard approved
26 flashing personal flotation device ^{STROBE} light.

27 Sec. 30.35.020. LIFE RAFTS. (a) A vessel subject to this
28 chapter that is larger than five net tons is required to be equipped
29 with a life raft capable of accommodating every person on board the

MUST BE GOOD STABILITY -
HYDRA ORIBAL LIGHT

CS SB 455 (L&C)

1 vessel.

2 (b) A life raft required under (a) of this section must be

3 (1) equipped with a Class A or Class B EPIRB that is ap-
4 proved by the United States Coast Guard for use in an inflatable life
5 raft;

6 (2) provided with the minimum equipment that is required by
7 the United States Coast Guard for use in all inflatable life rafts;
8 except as provided in (3) of this subsection, this paragraph does not
9 require the additional equipment that is required by the Coast Guard
10 for life rafts that are intended for use on ocean service or limited
11 service vessels; and

12 (3) equipped with signal devices required under the United
13 States Coast Guard equipment requirements for inflatable life rafts
14 intended for use on limited service vessels.

15 (c) In this section "life raft" means an inflatable life raft
16 that meets the type and size, design, and inspections and tests re-
17 quirements of the United States Coast Guard. A life raft required
18 under this section does not need to meet the Coast Guard requirements
19 for containment, rigid or fabric containers, or launching reinforce-
20 ment.

21 Sec. 30.35.030. CLASS A EPIRBS. (a) A vessel subject to this
22 chapter that is larger than five net tons is required to be equipped
23 with a Class A EPIRB.

24 (b) A Class A EPIRB required under (a) of this section must be
25 stowed in a readily accessible location in a manner that allows it to
26 float free if the vessel sinks.

27 Sec. 30.35.040. REQUIRED MAINTENANCE. Equipment required under
28 this chapter shall be operative and maintained in good and serviceable
29 condition.

1 Sec. 30.35.050. APPLICABILITY. This chapter applies to vessels
2 required to be licensed under AS 16.05.490 except for a vessel used in
3 charter service for the recreational taking of fish and shellfish.

4 Sec. 30.35.060. ENFORCEMENT. The Department of Public Safety
5 and the Department of Fish and Game shall cooperatively enforce this
6 chapter and may adopt regulations under the Administrative Procedure
7 Act (AS 44.62) for that purpose. The departments may enter into
8 agreements with the United States Coast Guard, the National Marine
9 Fisheries Service, or the United States Fish and Wildlife Service to
10 assist in the enforcement of this chapter.

11 Sec. 30.35.090. PENALTY. A person who violates this chapter is
12 guilty of a class B misdemeanor.

13 Sec. 30.35.095. DEFINITION OF EPIRB. In this chapter "EPIRB"
14 means an emergency position indicating radiobeacon that has been type
15 accepted or type approved by the Federal Communications Commission and
16 that is also approved by the United States Coast Guard.

17 * Sec. 2. ^{INVESTIGATION COMMISSION} ~~ADVISORY COUNCIL~~ ESTABLISHED; REPORT. (a) There is estab-
18 lished in the Office of the Governor the Fishing Vessel Safety ^{INVESTIGATION} ~~Advisory~~
19 ^{COMMISSION} Council. The council consists of at least seven members appointed by the
20 governor. Members must be knowledgeable and experienced in the areas of
21 commercial fishing vessels or vessel safety and life-saving ^{METHODS} methods and
22 systems. At least one member shall represent each of the following:

- 23 (1) the commercial fishing industry;
- 24 (2) fishermen's associations;
- 25 (3) the safety equipment industry, which includes businesses
26 manufacturing, supplying, or servicing marine safety and life-saving equip-
27 ment;
- 28 (4) the marine insurance industry;
- 29 (5) education; and

1 (6) the United States Coast Guard.

2 (b) Council members are entitled to per diem and travel expenses
3 authorized for boards and commissions under AS 39.20.180.

4 (c) The purpose of the council is to suggest, review, and recommend
5 legislation, regulations, and guidelines that address safety equipment
6 requirements and educational programs that contribute to the successful
7 application of safety and life-saving equipment on commercial fishing
8 vessels.

9 (d) The council shall consider and review proposals relating to the
10 development and implementation of educational programs at the high school
11 and community college level to increase the level of awareness among par-
12 ticipants and potential participants in the commercial fishing industry
13 with respect to the necessity, application, and use of safety and life-sav-
14 ing equipment on commercial fishing vessels. The council shall evaluate
15 *ENCOURAGE THE INVOLVEMENT OF* the utility of involving fishermen's associations, processor associations,
16 or other trade associations or industry groups in the implementation of
17 proposed educational programs. The council shall also consider guidelines
18 and requirements relating to the maintenance, servicing, and upgrading of
19 safety and life-saving equipment and recommend a permanent method for the
20 state to evaluate current and future needs relating to legislation, regula-
21 tions, and guidelines for commercial fishing vessel safety.

22 (e) The council shall report its recommendations to the governor and
23 the legislature by January 15, ¹⁹⁸⁹ 1991.

24 (f) The council is terminated January 16, ¹⁹⁸⁹ 1991.

25 (g) In this section "council" means the Fishing Vessel Safety Advi-
26 sory Council established under (a) of this section.

27 * Sec. 3. AS 30.35.010(b)(3), 30.35.020, and 30.35.030, added by sec. 1
28 of this Act, take effect January 1, 1990.

29 * Sec. 4. Except as provided in sec. 3 of this Act, this Act takes

LANGUAGE FOR

① COMMISSION TO
ESTABLISH
WORK AT A SAFETY

EQUIPMENT STANDARDS

② COMMISSION TO LOOK AT
WORKING ADVISORY GROUP
ON VESSEL SAFETY

1 effect January 1, 1989.

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STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 15, 1988

SUBJECT: Federal Preemption (CSSB 455 (L&C))
TO: Senator Fred Zharoff
FROM: David R. Dierdorff 
Revisor of Statutes

You have asked whether enactment by Congress of the latest version of H.R. 1841 would preempt the state's safety standards for fishing vessels, assuming that CSHB 455 (L&C) became law.

Because the enactment of CSSB 455 (L&C) is a proper exercise of the state's police power, to the extent that it neither conflicts with or interferes with the enforcement of the federal law, it is not preempted by the federal enactment. The state's power to protect and promote safety on matters properly within its jurisdiction can not be taken away by federal legislation. See generally, 81A C.J.S. States sec. 25. Both federal and state law relating to safety on fishing vessels should be given effect, and only where they conflict would the federal law supersede the state's.

I have reviewed the February 24, 1988, mark-up of H.R. 1841. In the first instance, the federal law would not apply to certain vessels, depending upon their usage, their size, the crew size, the area of operation, and future regulations adopted by the Secretary of the Treasury. To the extent that federal law does not apply to those vessels, state law applicable to the vessels is not preempted. Even assuming that the federal law could preempt a valid exercise of the state's police power, it is my opinion that preemption with respect to those vessels would require an express statement in the federal law that the state may not impose safety requirements on vessels exempted under the federal law. Recall the situation in Baranof, in which the federal law gave authority for federal regulation, but the federal regulatory agency had not exercised that authority. Because the court

Senator Fred Zharoff

Page 2

March 15, 1988

ruled that the FCMA scenario did not amount to preemption, it should be clear that the proposed safety standards would not be preempted with respect to vessels exempt from the federal safety law as currently proposed.

With respect to vessels that would be subject to the federal law, the federal law imposes fewer (and quite different) requirements on certain vessels, and more stringent requirements on others. There is no language expressly declaring that a state may not impose identical (or more stringent) requirements on vessels under its jurisdiction. However, as discussed in my memo to Representative Davidson, it is not necessary for preemption to be express - it may be inferred from the enactment of a comprehensive regulatory scheme that demonstrates an intent to occupy the field. The question then is whether H.R. 1841 is such a comprehensive scheme.

It appears that the minimum requirements set out in sec. 4502(a) merely reenact existing federal law (see 46 U.S.C. 4102) that applies to uninspected vessels, relating to fire extinguishers, p.f.d.'s, distress signals, etc. There are no conflicts between the requirements of CSSB 455 (L&C) and this part of the federal law, although the state law imposes additional requirements. The additional state requirements reflect the state's legitimate interest in safety requirements suited to the state's unique conditions. I believe a court would most likely hold that a fishing vessel covered by sec. 4502(a) and CSSB 455 (L&C) would have to comply with both laws.

The additional federal requirements set out in sec. 4502(b) and (c) for certain vessels are more comprehensive than those under CSSB 455 (L&C). To the extent that federal and state laws require the same equipment, there are some differences in specifics (for example, the federal law requires only EPIRBS, while state law requires Class A's for certain vessels and Class A or B's for life rafts; state law exempts life rafts from certain Coast Guard standards that may well be incorporated under federal law). It is clear that a vessel complying with the federal law would also comply with the state law (with the possible exception of EPIRBS), but a vessel complying with state law would not meet all of the federal requirements. In any event, where both federal and state law address the same subject, federal law prevails. Thus, the state's laws would be preempted by the federal law as to those vessels subject to sec. 4502(b)

Senator Fred Zharoff
Page 3
March 15, 1988

and (c) to the extent that they acquire the same equipment, or conflict.

You have also asked for my general comments on the interaction between state and federal law and the potential for problems for the commercial fishing fleet. The only potential problem is one that the preemption doctrine solves. That is, with respect to a category of equipment required by both state and federal law for the same vessel, but for which equipment different specifications are required under the respective laws, the federal law would govern. That may create some confusion for vessel operators. The confusion could be minimized by providing in CSSB 455 (L&C) that compliance with applicable federal law requiring the same equipment on a vessel exempts the vessel from the requirements of state law as to that equipment.

One final comment. I noted when reviewing the federal legislation that we may have overlooked a necessary ingredient in CSSB 455 (L&C). Although we do impose a duty, and provide for a penalty, we don't address the question of responsibility. Perhaps you should consider an amendment that would make the vessel operator and/or owner responsible for compliance. Compare secs. 4504 and 4507(a) of H.R. 1841.

If I can be of further assistance, please advise.

DRD:bb
b4/015

BILL NO: CSSB 455 (L&C)
(3/11/88 Work Draft)

DATE: 3/18/88

TITLE: Safety equipment for
commercial fishing
vessels

CONTACT: Lt. Bill Valentine
Fish & Wildlife Protection
789-2161

DEPARTMENT OF
PUBLIC SAFETY

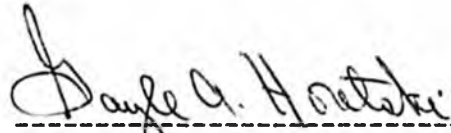
This bill adds a new chapter to AS 30 to require certain safety equipment on some commercial fishing vessels. The Department supports this bill, because the increased availability of safety equipment on these vessels should help to save lives in an emergency.

The Department recommends that the following amendments be made to the 3/11/88 work draft of CSSB 455 (L&C):

- Page 1, line 28. Delete "larger than five net tons" and substitute "32 feet or more in overall length".
- Page 2, line 21. Add a new subsection to read:
 "(d) For the purposes of this section "overall length" means the straight-line measurement between the extremities of the vessel, but does not include rollers used in the deployment or retrieval of nets or anchors."
- Page 2, line 22. Delete "larger than five net tons" and substitute "32 feet or more in overall length".
- Page 2, line 27. Add a new subsection to read:
 "(c) For the purposes of this section "overall length" means the straight-line measurement between the extremities of the vessel, but does not include rollers used in the deployment or retrieval of nets or anchors."
- Page 3, lines 2 & 3. Place a period after "AS 16.05.490" and delete the rest of the sentence.
- Page 3, lines 4-7. Delete first sentence of section and insert:
 "The Department of Fish and Game may adopt regulations under the Administrative Procedure Act (AS 44.62) to implement this chapter. The Department of Fish and Game and the Department of Public Safety shall cooperatively enforce this chapter and the regulations adopted under it."
- Page 3, line 11. Change language to read: "A person who, with criminal negligence, violates this chapter is".
- The bill as presently drafted places the new safety equipment requirements in AS 30. The Department suggests that they instead be placed in AS 16, where other provisions relating to commercial fishing vessels are located.

Position Paper, CSSB 455 (L&C)
Department of Public Safety

The changes suggested above will strengthen the Department's ability to enforce the safety requirements included in the bill.



for Arthur English
Commissioner

FISCAL NOTE

REQUEST: _____

Revision Date: _____ Agency Affected: Public Safety
 Title: "An act relating to safety equipment for commercial fishing vessels..." BRU: Fish & Wildlife Protection
 Sponsor: Zharoff and Symanski Components: Marine Enforcement
 Requestor: Senate Labor & Commerce Enforcement

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						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Captain Conrad G. Seibel Phone: 269-5509
 Division: Fish & Wildlife Protection Date: 2/24/88
 Approved by Commissioner: S. Hoetski, Dep. Comm. Date: 3-14-88
 Agency: Department of Public Safety

Distribution (by preparer):

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

FISCAL NOTE

REQUEST: -

Revision Date: _____ Agency Affected: Public Safety
Title: "An act relating to safety equipment for commercial fishing vessels..." BRU: Fish & Wildlife Protection
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EXPENDITURES/REVENUES: (Thousands of Dollars)

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EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Captain Conrad G. Seibel Phone: 269-5509
Division: Fish & Wildlife Protection Date: 2/24/88
Approved by Commissioner: S. Hoelski, Dep. Comm. Date: 3-14-88
Agency: Department of Public Safety

Distribution (by preparer):

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



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99615 (907) 486-6259

DURING SESSION:

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

DISTRICT N

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

MEMORANDUM

TO: Senator Tim Kelly
Chairman
Senate Labor and Commerce Committee

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

DATE: March 2, 1988

RE: Bills in committee

I respectfully request that the following bills, now pending in the Senate Labor and Commerce Committee, be scheduled for hearings at your earliest convenience.

Senate Bill 433 - "An Act relating to fisheries business tax credits; and providing for an effective date."

Senate Bill 454 - "An Act relating to the allocation of fisheries business taxes to municipalities by the Department of Community and Regional Affairs; and providing for an effective date."
Not in committee

Senate Bill 455 - "An Act relating to safety equipment for commercial fishing vessels; and providing for an effective date."

For background information on the above bills, please contact Mr. Karl Ohls in my office, 465-4972.

I wish to specifically request that SB 454 be scheduled, if possible, for a hearing on March 18. A delegation from the City of Dillingham will be in Juneau March 17-18, and they would like to attend and testify at the hearing on SB 454. The bill has a direct impact on the city.

In addition, I wish to request that my staff be allowed to work with your staff to prepare a committee substitute for SB 455. The bill was prepared at the request of a grass roots movement in Kodiak that is concerned about safety standards in the commercial fishing industry. Since SB 455 was introduced, the people involved have held more meetings and have discussed the proposed standards with equipment manufacturers and the Coast Guard. They have provided me with proposed language for a series of amendments that would enable the bill to better meet the actual needs of the fishing industry. A committee substitute would be the cleanest way to incorporate this new information.

Thank you for your consideration.



Alaska State Legislature

Senator Mike Szymanski

While in Session:
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165 E. Parks Hwy.
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(907) 376-MIKE

MEMORANDUM

To: George Utermohle; Drafter, SB 487
Legislative Legal Services

Via: Senator Tim Kelly
Senate Labor & Commerce Committee

From: Senator Mike Szymanski *MS*

Date: March 18, 1988

Subject: Proposed new Senate L & C CS for SB 487

I would like to request a draft CS drawn up for Senate L & C Committee, with the approval of Senate L & C. In the interests of time (since SB 487 will be heard in Senate L&C Committee at 3:30 on Monday, March 21), I am submitting this memo directly to you with the approval of Senate Labor and Commerce. The proposed changes are based on the 3/17 version of the House L&C CS for HB 472 which passed out of House Labor and Commerce Committee on 3/18. If you have any further questions, please contact my aide, Roger Poppe.

PROPOSED CS SB 487

A) Please delete all language in the proposed Senate L&C CS for SB 487 that exists in the 3/18 version, and replace it with the language of the current House L&C CS for HB 472 (3/17 version)

B) page 5, line 22. Insert after 'revoked or suspended, may be renewed,' the following language: "on a date set by the department" 'upon proof of continued competency.'

(NOTE: I understand that the actual period of time the license is valid for is covered in generic language at the beginning of this part of the statutes, but it does make it clear that the Department has the authority to specify the period of time the licensing covers. Phrase was taken directly from the statutes covering electrical administrators, see AS 08.40.135).

C) page 9, lines 10-24 through page 10 lines 1-8. Delete and replace with the following:

Section 08.40.390. Exclusions. (a) AS 108.40.210-.0840.490 do not apply to a utility or municipality whose employees are