ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
5439 SLAB HJR 22 - HJR 25

HJR

22

Alaska State Legislature

REPRESENTATIVE
MARK BOYER

HOUSE FINANCE COMMITTEE

FAIRBANKS

1098 LAKEVIEW TERRACE
FAIRBANKS, ALASKA 99701
(907) 456-6473

JUNEAU

P.O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3466

House of Representatives

MEMORANDUM

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

FROM: Representative Mark Boyer

SUBJECT: House Joint Resolution 22 am, relating to resident hire on defense projects

DATE: April 2, 1987

Attached is information on House Joint Resolution 22 am, relating to an agreement between the Department of Defense and the Alaska Department of Labor for enforcement of the Alaskan hire requirements of sec. 8078 of the 1986 Defense Appropriations Act, and subsequent acts; and urging the Congress to extend the resident hire provision through fiscal year 1988.

HJR 22 passed the House unanimously on March 30. Timely consideration by your committee would be greatly appreciated. If you or your staff should have any questions regarding the resolution, please contact me or my aide, Ed Flanagan. I look forward to presenting the resolution to the Senate Labor and Commerce Committee.

Alaska State Legislature

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House of Representatives

MEMORANDUM

TO: Senator Tim Kelly, Chair
Senate Labor and Commerce Committee
Committee Members

FROM: Representative Mark Boyer

SUBJECT: House Joint Resolution 22

DATE: April 2, 1987

Military construction has played a major role in the Alaskan economy for decades, and the anticipated Department of Defense construction schedule for the next two years will rival that of any other time in the state's history. The economic downturn caused by the dramatic drop in oil prices and the resultant decline in state revenues will increase the significance of military construction activity in the economy, giving it a prominence it has not had since the construction of the DEW Line in the Fifties.

Preparations for deployment of the 6th Light Infantry Division at Fort Wainwright and Fort Richardson will involve contracts for construction, maintenance and repair estimated at $134 million in FY 87 alone. The FY 88 plan for military construction in Alaska includes $80 million for the naval facility at Adak, $38 million for Shemya Air Force Base, and $100 million for Fort Wainwright. A major upgrade of the DEW Line, including construction of two new sites, and the construction of the Backscatter over-the-horizon radar system in the Tok and Glenallen areas will require hundreds of millions of dollars in additional military expenditure in the next few years. The millions which are paid in wages on these projects can give our sagging economy a much needed boost, if the workers employed are Alaskans.

Recent figures released by the Department of Labor would indicate that this might not be the case. In 1985, 77,000 non-resident workers earned $691 million in Alaska, at a time when many of our own workers were losing their homes and leaving the state to find work. Fortunately, recent federal

legislation may offer a solution to the problem of non-resident workers displacing Alaskans from construction jobs on military projects.

Section 8078 of the 1986 Defense Appropriations Act, enacted on December 23, 1985, requires that whenever the unemployment rate in Alaska or Hawaii exceeds the national average as determined by the Secretary of Labor, employment on service and construction contracts awarded in FY 86 will be restricted to residents of the state. Subpart 22.72 of the Defense Federal Acquisition Regulation Supplement was approved for publication in the Federal Register on January 24, 1986. It details the preferential hire provision of Section 8078, and adds a new clause for inclusion in bid documents and contracts (52.222-7002 "Restrictions on Employment of Personnel").

Our congressional delegation was able to have the resident hire provisions included in the FY 87 Appropriations Act (Section 9069) and will attempt to extend it through FY 88 as well. The 8078 and 9069 resident hire restrictions remain in effect with an appropriation for the life of the project. Given the large amount of defense spending in Alaska during the affected fiscal years, the resident preference provisions could have a lasting positive impact on employment in the state, at a time when it is most needed, due to severely reduced state capital expenditure.

Any resident hire law is only as good as the means provided for its enforcement. Without additional compliance personnel the Corps of Engineers can not be expected to enforce the resident hire provisions, and even if additional personnel were provided, it is probable that compliance with 8078 and 9069 would be minimal at best. Unlike our state government, which divides the duties of building facilities and enforcing labor laws associated with their construction between the Department of Transportation/ Public Facilities and the Department of Labor, the federal government leaves labor law enforcement to the contracting agency overseeing the construction of a project. This creates a built-in conflict of interest, and the primary mission of the construction entity will invariably prevail. Bacon-Davis compliance monitoring on Fort Wainwright and Eielson has been woefully inadequate since the start of the Eielson build-up in 1982, and Corps of Engineers personnel have no experience with the concept of resident hire. It is likely that the term "resident" will be interpreted as broadly as possible by the Corps inspectors to avoid friction with contractors and interference with the progress of the project.

The Alaska Department of Labor, on the other hand, has experience in the field of resident hire enforcement under the Title 36 preferential hire requirements which were in effect until the Francis vs. Robison decision. That case, which

involved a worker from Montana who was laid off by a subcontractor on the North Pole High School construction, is telling evidence of the department's effective administration of the resident hire statute. Even with a thirty day definition of residency, which lends itself to fraud virtually impossible to prove, Wage and Hour cited many employers for violation of the state 95% resident hire requirement before the Francis decision declared the law unconstitutional. The federal government, as the embodiment of the several states, has broader constitutional authority to enact legislation favoring one of those states, and the resident preference provisions of sections 8078 and 9069 are an exercise of that prerogative. It also represents an opportunity for the state Department of Labor to utilize its expertise in the field of resident hire enforcement to improve employment opportunities for Alaskan workers.

Governor Cowper has asked the Secretary of Defense to enter into a cooperative agreement with the Alaska Department of Labor whereby state Wage and Hour personnel would monitor compliance with the 8078 and 9069 resident preference requirements on military construction projects in Alaska. Commissioner Sampson sent Deputy Commissioner Rick Erickson to Washington to confer with John Katz and officials of the Department of Defense last month. With hundreds of millions of dollars in construction projects scheduled for Alaska in the fiscal years covered by resident hire provisions, it is incumbent upon this body to ensure compliance with those requirements to the fullest extent possible. House Joint Resolution 22 puts us on record in support of a cooperative agreement between the Department of Defense and the Alaska Department of Labor and urges Congress to extend the resident hire preferences on military appropriations through Fiscal Year 88. The administration and the congressional delegation will be working toward this end, and an expeditious statement of support by the legislature is appropriate and timely.

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 6, 1987

Mr. John Katz, Special Counsel
State/Federal Relations
444 North Capitol, N.W.
Suite 518
Washington, D.C. 20001-1512

Dear John:

The enclosed letters to the Secretary of Defense and our Congressional Delegation are self-explanatory.

I would like your office to work with Commissioner of Labor Jim Sampson and with the appropriate people in Washington, D.C., to see if the state can assume enforcement of this employment preference for our resident workers in time for this year's construction season. The state would like to enter into an agreement with the Department of Defense instead of each individual branch of military service so that the enforcement of this important federal legislation is consistent.

Additionally, efforts need to be pursued to ensure that adequate federal funding be obtained for the State of Alaska to implement the program.

Should you have any questions on this matter, please contact Jim Sampson, Commissioner of Labor, at (907) 465-2700.

Sincerely,

Steve Cowper
Governor

Enclosures

cc: Jim Sampson
Commissioner of Labor
State of Alaska

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 6, 1987

The Honorable Donald E. Young
House of Representatives
2331 Rayburn House Office Building
Washington, D.C. 20515

Dear Don:

Enclosed is a letter recently sent to Secretary of Defense Caspar Weinberger inquiring into the possibility of the State of Alaska assuming enforcement responsibilities for the hiring of residents on military construction projects in Alaska.

I have been informed by Commissioner of Labor Jim Sampson that your office may be willing to assist the State of Alaska in pursuing such a federal/state cooperative agreement and that an appropriation from Congress to help offset the costs associated with such a program would be supported.

Federal spending for military construction projects is very important to the economic well-being of Alaska and is equally important to our country's national defense.

Currently, our Alaskan workers skilled and trained in the building and construction trades are suffering high unemployment. Any assistance your office can render to ensure that these qualified residents are employed on projects covered by this federal legislation would be sincerely appreciated.

Sincerely,

Steve Cowper
Governor

Enclosure

cc: John Katz, Special Counsel
State/Federal Relations
Office of the Governor
Washington, D.C.

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 6, 1987

The Honorable Ted Stevens
United States Senate
522 Hart Building
Washington, D.C. 20510

Dear Ted:

Enclosed is a letter recently sent to Secretary of Defense Caspar Weinberger inquiring into the possibility of the State of Alaska assuming enforcement responsibilities for the hiring of residents on military construction projects in Alaska.

I have been informed by Commissioner of Labor Jim Sampson that your office may be willing to assist the State of Alaska in pursuing such a federal/state cooperative agreement and that an appropriation from Congress to help offset the costs associated with such a program would be supported.

Federal spending for military construction projects is very important to the economic well-being of Alaska and is equally important to our country's national defense.

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Sincerely,

Steve Cowper
Governor

Enclosure

cc: John Katz, Special Counsel
State/Federal Relations
Office of the Governor
Washington, D.C.

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 6, 1987

The Honorable Frank Murkowski
United States Senate
720 Hart Building
Washington, D.C. 20510

Dear Frank:

Enclosed is a letter recently sent to Secretary of Defense Caspar Weinberger inquiring into the possibility of the State of Alaska assuming enforcement responsibilities for the hiring of residents on military construction projects in Alaska.

I have been informed by Commissioner of Labor Jim Sampson that your office may be willing to assist the State of Alaska in pursuing such a federal/state cooperative agreement and that an appropriation from Congress to help offset the costs associated with such a program would be supported.

Federal spending for military construction projects is very important to the economic well-being of Alaska and is equally important to our country's national defense.

Currently, our Alaskan workers skilled and trained in the building and construction trades are suffering high unemployment. Any assistance your office can render to ensure that these qualified residents are employed on projects covered by this federal legislation would be sincerely appreciated.

Sincerely,

Steve Cowper
Governor

Enclosure

cc: John Katz, Special Counsel
State/Federal Relations
Office of the Governor
Washington, D.C.

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 6, 1987

The Honorable Caspar W. Weinberger
Secretary of Defense
The Pentagon
Washington, D.C. 20301

Dear Mr. Secretary:

The 1986 Defense Appropriations Act passed by Congress requires contractors performing work on projects covered by the Act to hire individuals who are residents of our state should they possess or would be able to acquire promptly the necessary skills to perform the contract. The specific language of the law is cited below:

> ". . . every contract awarded during FY 1986 calling for construction or services to be performed in whole or in part within the State of Alaska or the State of Hawaii shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract work within the particular state, individuals who are residents of that state, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract."

Section 8078 of the Act also states that this employment preference for residents of Alaska and Hawaii shall not apply when the state's unemployment rate is not in excess of the national average rate of unemployment as determined by the Secretary of Labor.

The State of Alaska has been informed that this employment preference is still applicable in FY 1987 and that, due to Alaska's and Hawaii's severe unemployment problems, may be extended into FY 1988. It is the State of Alaska's desire to enter into a federal/state cooperative agreement with the Department of Defense granting the state the authority to

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 6, 1987

The Honorable Caspar W. Weinberger
Secretary of Defense
The Pentagon
Washington, D.C. 20301

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Section 8078 of the Act also states that this employment preference for residents of Alaska and Hawaii shall not apply when the state's unemployment rate is not in excess of the national average rate of unemployment as determined by the Secretary of Labor.

The State of Alaska has been informed that this employment preference is still applicable in FY 1987 and that, due to Alaska's and Hawaii's severe unemployment problems, may be extended into FY 1988. It is the State of Alaska's desire to enter into a federal/state cooperative agreement with the Department of Defense granting the state the authority to

enforce this important preference of employment for residents of our state. The State of Alaska has the experience in the area of employment preference programs and, additionally, has a highly trained workforce available to assist all branches of the military services in the construction and servicing of their facilities in Alaska.

Your assistance in helping to arrange a meeting between appropriate Department of Defense personnel and representatives of my office to explore the possibilities of such a cooperative federal and state effort would be sincerely appreciated.

Sincerely,

Steve Cowper
Governor

cc: John Katz, Special Counsel
State/Federal Relations
Office of the Governor
Washington, D.C.

THE OFFICE OF THE ASSISTANT SECRETARY OF DEFEN E

WASHINGTON, D.C. 20301-8000

ACQUISITION AND
LOGISTICS
DASD(P)DARS

29 JAN 1986

In reply refer to:
DAR Case 86-3

697.9125

SUBJECT: Section 8078, 1986 Defense Appropriations Act - Restrictions on the Employment of Personnel for Work on Construction/Service Contracts in Alaska and Hawaii

The attached Departmental Implementation Letter was issued by the Military Departments and by this office to the Defense Agencies under our cognizance.

Otto J. Guenther

OTTO J. GUENTHER, COL, USA
Director
Defense Acquisition
Regulatory Council

Attachment

THE OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-8000

ACQUISITION AND LOGISTICS
DASD(P)DARS

29 JAN 1986

In reply refer to:
DAR Case 86-3

MEMORANDUM FOR THE DIRECTOR, NATIONAL SECURITY AGENCY
THE DIRECTOR, DEFENSE COMMUNICATIONS AGENCY
THE DIRECTOR, DEFENSE INTELLIGENCE AGENCY
THE DIRECTOR, DEFENSE NUCLEAR AGENCY
THE DIRECTOR, DEFENSE MAPPING AGENCY

SUBJECT: Section 8078, 1986 Defense Appropriations Act - Restrictions on the Employment of Personnel for Work on Construction/Service Contracts

On 24 January 1986, the DAR Council approved the attached new Subpart 22.72 of the DFARS for publication in the Federal Register as an interim rule and for immediate Departmental implementation. This action is necessary because Section 8078 of the FY 1986 Defense Appropriations Act, enacted on 23 December 1985, requires that whenever the unemployment rate in Alaska or Hawaii exceeds the national average as determined by the Secretary of Labor, service and construction contracts awarded in FY 1986 and calling for performance in whole or in part within those states must contain a restriction on who can be employed to perform work on that contract. This requirement is implemented by a new clause at DFARS 52-222-7002. Contracting officers shall include the clause in all new solicitations, as well as modify existing solicitations to incorporate the clause when to do so will not unduly delay the procurement. For contracts already awarded in FY 1986, contracting officers should attempt to modify them to include the clause on a no cost basis, provided the Government's interests are adequately protected.

This Departmental is effective immediately.

Otto J. Guenther

OTTO J. GUENTHER, COL, USA
Director
Defense Acquisition
Regulatory Council

Attachments
DFARS 22.72 and 52.222-7002

Add a new Subpart 22.72 as follows:

SUBPART 22.72--SECTION 8078, 1986 DEFENSE APPROPRIATIONS ACT - RESTRICTIONS ON THE EMPLOYMENT OF PERSONNEL FOR WORK ON CONSTRUCTION/SERVICE CONTRACTS IN ALASKA AND HAWAII

22.7200 Policy.

(a) Except as provided in (b) and (c) below, Section 8078 of the 1986 Defense Appropriations Act requires that notwithstanding any other provision of law, every contract awarded during FY 1986 calling for construction or services to be performed in whole or in part within the State of Alaska or the State of Hawaii shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract work within the particular state, individuals who are residents of that state, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) This section shall not apply at any time during FY 1986 when the unemployment rate in Alaska is not in excess of the national average rate of unemployment as determined by the Secretary of Labor.

(c) This section shall not apply to contracts to be performed in whole or in part within the State of Hawaii unless in FY 1986 the unemployment rate in Hawaii is in excess of the national average rate of unemployment as determined by the Secretary of Labor.

22.7201 Waivers. This section may be waived by the Secretary of Defense, the Deputy Secretary of Defense, the Assistant Secretary of Defense for Acquisition and Logistics, and any Secretary, Undersecretary, or Assistant Secretary of the Army, Navy, and Air Force, in the interest of national security. Requests for waiver shall be processed in accordance with Departmental or agency procedures.

22.7202 Contract Clause. The contracting officer shall insert the clause at 52.222-7002, Restrictions on Employment of Personnel, in all solicitations and contracts in accordance with 22.7200.

Add a new clause as follows:

52.222-7002 Restrictions on Employment of Personnel. As prescribed in 22.7202, insert the following clause.

RESTRICTIONS ON EMPLOYMENT OF PERSONNEL (JAN 1986)

(a) The Contractor shall employ, for the purposes of performing that portion of the contract work in the State of (insert appropriate state), individuals who are residents of the state, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in each subcontract.

(End of clause)

DEPARTMENT OF DEFENSE

48 CFR Parts 222 and 252

Department of Defense Federal Acquisition Regulation Supplement

Restrictions on Employment of Personnel

AGENCY: Department of Defense (DoD)

ACTION: Interim rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council has issued a change to the coverage in the DoD FAR Supplement regarding Restrictions on Employment of Personnel in DoD contracts. The purpose of the change is to implement Section 8078 of the Fiscal Year 1986 Defense Appropriations Act.

DATES: Effective January 28, 1986. Comments on the change must be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before (30 days from publication), to be considered in the formulation of the final rule. Please cite DAR Case 86-3 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DASD(P)DARS, c/o OASD(A&L), Room 3E791, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202)697-7268.

SUPPLEMENTARY INFORMATION:

A. Background.

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1985 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1984 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 84-1 through 84-10.

Interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

B. Interim Changes to 48 CFR Parts 222 and 252.

Section 8078 of the FY 1986 Defense Appropriations Act, enacted on December 23, 1985, requires that whenever the unemployment rate in Alaska or Hawaii exceeds the national average as determined by the Secretary of Labor, service and construction contracts awarded in FY 1986 and calling for performance in whole or in part within those states must contain a restriction on who can be employed to perform work on that contract.

C. Determination to Issue an Interim Rule.

A determination has been made under the authority of the Secretary of Defense that the regulation in DoD FAR Supplement Parts 222 and 252 must be issued as an interim rule in compliance with Section 22 of the Office of Federal Procurement Policy Act, as amended, in order to put in place, as soon as possible, the requirements of Section 8078 of the FY 1986 DoD Appropriations Act.

D. Regulatory Flexibility Act.

This change does nothing more than implement Section 8078 of the

FY 1986 DoD Appropriations Act. If this change impacts on small entities, it will impact only those small entities that have been awarded, in FY 1986, construction and services contracts calling for performance in whole or in part within the States of Alaska or Hawaii and then only if the unemployment rate for those states exceeds the national average. The number of small entities that meet this condition are considered to be insignificant in relation to the total number of small entities that do business with the Department of Defense. Therefore, the Department of Defense certifies that the change will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

E. Paperwork Reduction Act Information.

The interim rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 222 and 252

Government procurement.

CHARLES W. LLOYD
Executive Secretary
Defense Acquisition
Regulatory Council

Adoption of Amendments

Therefore, the DoD FAR Supplement contained in 48 CFR Parts 222 and 252 is amended as set forth below:

FY 1988 MILITARY CONSTRUCTION TOTAL OBLIGATIONAL AUTHORITY AS REQUESTED

ACTIVE, GUARD AND RESERVE FORCES INSIDE THE UNITED STATES ($ THOUSANDS)

DATA AS OF 05 JAN 1987

STATE/COMP./INSTALLATION PROJECT NAME	PROJ COST	TOTAL
ALABAMA		
AIR FORCE RESERVE		
MAXWELL AFB		
RESERVE FORCES OPERATIONAL TRAINING	1,990	
MAXWELL AFB		1,990
FAMILY HOUSING		
ARMY		
FORT RUCKER		
NEW CONSTRUCTION (7)	[110]	
FORT RUCKER		
FAMILY HOUSING		[110]
		88,892
**ALABAMA		(1,900)
AUTHORIZED IN PRIOR YEAR		[110]
FAMILY HOUSING		
ALASKA		
FORT GREELY		
TEST SUPPORT COMPLEX	6,400	
FORT GREELY		6,400
FT J M WAINWRIGHT		
BARRACKS MODERNIZATION	15,000	
BATTALION HEADQUARTERS	2,200	
COMMUNICATIONS FACILITY	2,250	
DINING FACILITY	4,000	
FLIGHT SIMULATOR BUILDING	3,850	
MAINTENANCE COMPLEX	42,000	
MILITARY CLOTHING SALES STORE	670	
FT J M WAINWRIGHT		69,970
		76,370
NAVY		
NAVAL AIR STATION ADAK		
BACHELOR ENLISTED QUARTERS ADDITION	12,000	
RADAR SUPPORT FACILITIES (PHASE II)	64,200	
NAVAL AIR STATION ADAK		76,200
NAVAL HOSPITAL BRANCH ADAK		
EMERGENCY VEHICLE GARAGE	700	
NAVAL HOSPITAL BRANCH ADAK		700
NAVAL SECURITY GROUP ACTIVITY ADAK		
TRANSPORTATION BUILDING	2,860	
NAVAL SECURITY GROUP ACTIVITY ADAK		2,860
NAVY		79,760
AIR FORCE		
CLEAR		
SOLID STATE UNINTERRUPT POWER SPT	4,000	
CLEAR		4,000
EIELSON AFB		
AIRCRAFT MAINTENANCE COMPLEX	4,700	
DINING HALL	5,465	
EIELSON AFB		10,165
ELMENDORF AFB		
ALTER UNACCOMP ENLISTED PERSONNEL HOUSING	6,700	
TELECOMMUNICATIONS FACILITY	4,300	
ELMENDORF AFB		11,000

FY 1988 MILITARY CONSTRUCTION TOTAL OBLIGATIONAL AUTHORITY AS REQUESTED

ACTIVE, GUARD AND RESERVE FORCES INSIDE THE UNITED STATES
($ THOUSANDS)

DATA AS OF 05 JAN 1987

STATE/COMP./INSTALLATION ----------PROJECT NAME----------	PROJ COST	TOTAL
ALASKA		
AIR FORCE		
KING SALMON AFB		
COMMUNICATIONS FACILITY	3,350	
KING SALMON AFB		3,350
SHEMYA AFB		
ADD-ALTER MECHANICAL/ELECTRICAL SUPPLY SYS	3,400	
AIRCRAFT MAINTENANCE HANGAR	15,000	
FIRE PROTECTION SYSTEMS	1,350	
UNACCOMPANIED ENLISTED PERSONNEL HOUSING	18,900	
SHEMYA AFB		38,350
VARIOUS LOCATIONS-ALASKA		
ALASKAN OTH-B REAL ESTATE ACQ SYSTEM	5,800	
ALASKAN OTH-B TECH SUPPORT FACILITIES	10,000	
VARIOUS LOCATIONS-ALASKA		15,800
**AIR FORCE		82,665
DEFENSE MEDICAL SUPPORT ACTIVITY		
FORT WAINWRIGHT		
TROOP MEDICAL & DENTAL CLINIC	9,100	
FORT WAINWRIGHT		9,100
ARMY NATIONAL GUARD		
ELI		
SCOUT ARMORY	246	
ELI		246
JUNEAU		
ARMY AVIATION OPERATING FACILITY	3,522	
BOAT DOCK	265	
JUNEAU		3,787
NOME		
ARMY AVIATION OPERATING FACILITY	4,152	
NOME		4,152
NUNAPITCHUK		
SCOUT ARMORY	246	
NUNAPITCHUK		246
TOGIAK		
SCOUT ARMORY	246	
TOGIAK		246
**ARMY NATIONAL GUARD		8,677
AIR NATIONAL GUARD		
EIELSON AFB		
COMPOSITE MAINT AND SITE PREP COMPLEX	15,400	
EIELSON AFB		15,400
KULIS ANGB		
ALTER HANGAR/AERIAL PORT	950	
KULIS ANGB		950
**AIR NATIONAL GUARD		16,350
FAMILY HOUSING		
ARMY		
FORT WAINWRIGHT		
NEW CONSTRUCTION (150)	[29,000]	
FORT WAINWRIGHT		
FAMILY HOUSING		[29,000]
**ALASKA		272,922
FAMILY HOUSING		[29,000]

US Army Corps of Engineers
Alaska District

Construction Program

Fiscal Year 1987

November 1986

	A Under 1 Million	B 1 - 5 Million	C 5 - 10 Million	D Over 10 Million	Advertise Fiscal Qtr
MILITARY CONSTRUCTION					
Fort Greely					
Rehab Dining Facility, 7 bldgs.		X			4th Qtr
Remove & Replace Asbestos, 1 Hngr	X				1st Qtr
Add Baths & Garages			X		3rd Qtr
Fort Wainwright					
Utility Expansion				X	2nd Qtr
Dining Facility, 2 bldgs.				X	1st Qtr
Barracks Modernization				X	2nd Qtr
TAC Equipment Shop, 2 bldgs.			X		2nd Qtr
Child Care Center			X		2nd Qtr
Install Mega Door	X				3rd Qtr
Rehab Division Headquarters		X			4th Qtr
Repave 3400 Area		X			3rd Qtr
Replace Bridge		X			3rd Qtr
Fort Richarson					
Replace Heating System, 4 bldgs.	X				2nd Qtr
Replace Heating System, bldgs. 640	X				3rd Qtr
Replace Heating System, bldgs. 650	X				4th Qtr
Replace Controls Boiler Plant		X			4th Qtr
AK Various					
Replace Tank Gauges	X				1st Qtr
Hose Hand Derrick	X				1st Qtr
Elelson Air Force Base					
Alter UEPH 2204		X			1st Qtr
Fire Protection Flightline		X			2nd Qtr
Hazardous Material Storage		X			1st Qtr
Library		X			3rd Qtr
Loop Access Road		X			1st Qtr
Security Fence	X				Adv
Elmendorf Air Force Base					
Battery Shop		X			2nd Qtr
Alter Elect Distribution System		X			1st Qtr
Security Police Facility			X		3rd Qtr
M/R HVAC		X			4th Qtr
Clear					
SATCOM Ground Terminal		X			3rd Qtr
Galena					
ADAL Power Plant		X			2nd Qtr
UEPH			X		2nd Qtr
King Salmon					
UPH		X			2nd Qtr
ADAL Comp OPS Facility		X			2nd Qtr
Replace Boilers, Stacks, Htng Sys		X			4th Qtr
Shemya					
DIESEL Storage				X	2nd Qtr
ADAL Water System		X			2nd Qtr
Solid State Uninterruptible Power	X				2nd Qtr
Repair OMP Hangar		X			1st Qtr
CIVIL WORKS SNETTISHAM PROJECT					
Supervisory Control	X				2nd Qtr
OHNA RIVER LAKES PROJECT					
Visitors Facility	X				1st Qtr
DERA					
Driftwood Bay (Unalaska)		X			4th Qtr
Fort Malden/Fort Mellec		X			4th Qtr
Cape Thompson/Krusenstern		X			4th Qtr

MEMORANDUM State of Alaska

TO: Tom Stuart
Director
Labor Standard & Safety Division

DATE: March 24, 1987

FILE NO:

TELEPHONE NO: 465-4842

FROM: James A. Sanwick
Regional Supervising Investigator
Wage and Hour Administrator

SUBJECT: FY Synopsis of Title 36 Enforcement

Title 36	Enforcement Actions Taken		Projects Monitored	Payrolls Auditied	Wages Recovered
	Prevailing Wage	Resident Hire			
FY '84	565	239	4,311	27,365	$1,231,992.40
FY '85	623	751	1,562	29,968	1,001,596.48
FY '86	1,239	No Law	2,643	23,014	1,259,989.98
FY '87 Year to Date	686	No Law	2,615	18,150	925,191.10

Enforcement actions taken only reflect formal actions. As with any competent enforcement effort the most substantial portion of enforcement is done informally through direct and phone contacts of the investigators and technicians to gain voluntary compliance before any formal action is taken to obtain compliance.

4. The window period for filing applications will open on March 11, 1986, and close on April 11, 1986.

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-2499 Filed 2-4-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 222 and 252

Department of Defense Federal Acquisition Regulation Supplement; Restrictions on Employment of Personnel

AGENCY: Department of Defense (DoD).

ACTION: Interim rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council has issued a change to the coverage in the DoD FAR Supplement regarding Restrictions on Employment of Personnel in DoD contracts. The purpose of the change is to implement Section 8078 of the Fiscal Year 1986 Defense Appropriations Act.

DATES: Effective January 28, 1986. Comments on the change must be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before March 7, 1986, to be considered in the formulation of the final rule. Please cite DAR Case 86-3 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DASD(P)DARS, c/o OASD(A&L), Room 3E791, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7268.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1985 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1984 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 84-1 through 84-10.

Interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

B. Interim Changes to 48 CFR Parts 222 and 252

Section 8078 of the FY 1986 Defense Appropriations Act, enacted on December 23, 1985, requires that whenever the unemployment rate in Alaska or Hawaii exceeds the national average as determined by the Secretary of Labor, service and construction contracts awarded in FY 1986 and calling for performance in whole or in part within those states must contain a restriction on who can be employed to perform work on that contract.

C. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that the regulation in DoD FAR Supplement Parts 222 and 252 must be issued as an interim rule in compliance with section 22 of the Office of Federal Procurement Policy Act, as amended, in order to put in place, as soon as possible, the requirements of section 8078 of the FY 1986 DoD Appropriations Act.

D. Regulatory Flexibility Act

This change does nothing more than implement section 8078 of the FY 1986 DoD Appropriations Act. If this change impacts on small entities, it will impact only those small entities that have been awarded, in FY 1986, construction and services contracts calling for performance in whole or in part within the States of Alaska or Hawaii and then only if the unemployment rate for those states exceeds the national average. The number of small entities that meet this condition are considered to be insignificant in relation to the total number of small entities that do business with the Department of Defense. Therefore, the Department of Defense certifies that the change will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

E. Paperwork Reduction Act Information

The interim rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 222 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Adoption of Amendments

Therefore, the DoD FAR Supplement contained in 48 CFR Parts 222 and 252 is amended as set forth below:

1. The authority for 48 CFR Parts 222 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2. Subpart 222.72, consisting of sections 222.7200 through 222.7202, is added to read as follows:

Subpart 222.72—Section 8078, 1986 Defense Appropriations Act—Restrictions on the Employment of Personnel for Work on Construction/Service Contracts in Alaska and Hawaii

222.7200 Policy.

(a) Except as provided in (b) and (c) below, Section 8078 of the 1986 Defense Appropriations Act requires that notwithstanding any other provision of law, every contract awarded during FY 1986 calling for construction or services to be performed in whole or in part within the State of Alaska or the State of Hawaii shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract work within the particular state, individuals who are residents of that state, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) This section shall not apply at any time during FY 1986 when the unemployment rate in Alaska is not in excess of the national average rate of unemployment as determined by the Secretary of Labor.

(c) This section shall not apply to contracts to be performed in whole or in part within the State of Hawaii unless in FY 1986 the unemployment rate in Hawaii is in excess of the national average rate of unemployment as determined by the Secretary of Labor.

222.7201 Waivers.

This section may be waived by the Secretary of Defense, the Deputy Secretary of Defense, the Assistant Secretary of Defense for Acquisition and

Logistics, and any Secretary, Undersecretary, or Assistant Secretary of the Army, Navy, and Air Force, in the interest of national security. Requests for waiver shall be processed in accordance with Departmental or agency procedures.

222.7202 Contract Clause.

The contracting officer shall insert the clause at 252.222-7002, Restrictions on Employment of Personnel, in all solicitations and contracts in accordance with 222.7200.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.222-7002, is added to read as follows:

252.222-7002 Restrictions on Employment of Personnel.

As prescribed in 222.7202, insert the following clause.

Restrictions on Employment of Personnel (Jan. 1986)

(a) The Contractor shall employ, for the purpose of performing that portion of the contract work in the State of (*insert appropriate state*), individuals who are residents of the state, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in each subcontract.

(End of clause)

[FR Doc. 86-2494 Filed 2-4-86; 8:45 am]

BILLING CODE 3810-01-M

NATIONAL AERONAUTICS AND SPACE ADMINSTRATION

48 CFR Parts 1822 and 1852

Interim Changes to the NASA FAR Supplement on Overtime Compensation

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Interim rule and request for comment.

SUMMARY: This notice establishes interim amendments to the NASA Federal Acquisition Regulations System concerning overtime compensation and invites written comments on these interim amendments. This rule implements changes to the Contract Work Hours and Safety Standards Act (CWHSSA) made by Pub. L. 99-145.

Comment Date: Comments are due not later than March 7, 1986.

ADDRESS: Comments shall be addressed to NASA, Procurement Policy Division (Code HP), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: W. A. Greene, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: 202-453-2119.

SUPPLEMENTARY INFORMATION:

Background

NASA is issuing this interim change to the NASA FAR Supplement to assure agency compliance with Pub. L. 99-145 which became effective on January 1, 1986. Time allowed for lead agency and subsequent action from enactment of Pub. L. 99-145 and its effective date was relatively short. Due to these urgent and compelling circumstances the instant changes are being issued as interim rules without public comment prior to their effectivity.

Impact

The Director, Office of Management and Budget (OMB), by memorandum, dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The changes concern wages falling within the exception of the Regulatory Flexibility Act (5 U.S.C. 601(2)). This rule does not contain requirements subject to the Paperwork Reduction Act (44 U.S.C. 301 et seq.).

List of Subjects in 48 CFR Parts 1822 and 1852

Government procurement.

S.J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Parts 1822 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

2. Subparts 1822.3 and 1822.4 are added to read as follows:

Subpart 1822.3--Contract Work Hours and Safety Standards Act

§ 1822.305 Contract clauses.

(a) The clause at 1852.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation—General, shall be used in lieu of the clause at FAR 52.222-4, same title.

(b) The clause at FAR 52.222-5, Contract Work Hours and Safety Compensation—Firefighters and Fireguards, shall not be used.

Subpart 1822.4—Labor Standards for Contracts Involving Construction

1822.403-1 Clauses for general use.

Except as provided in 1822.403-4, every construction contract in excess of $2,000 for work within the United States shall include the clause at 1852.222-7, Contract Work Hours and Safety Standards Act—Overtime Compensation—Construction.

1822.403-4 Contracts with a State or political subdivision.

In the case of construction contracts with a State or political subdivision thereof, the contract clause required by 1822.403-1 shall be inserted therein but shall be prefaced by the following:

The Contractor agrees to comply with the requirements of the Contract Work Hours and Safety Standards Act and to insert the following clauses in all subcontracts hereunder with private persons or firms.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1852.2—Texts of Provisions and Clauses

3. Section 1852.222-4 is added to read as follows:

1852.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation—General (Jan. 1986).

As prescribed in 1822.305(a), insert the following clause:

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) *Violation; Liability for unpaid wages; Liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In

Nonresidents Working in Alaska in 1985

State of Alaska Department of Labor	Steve Cowper, Governor Jim Sampson, Commissioner
Administrative Services Division	Nico Bus, Acting Director
Research and Analysis Section	Chuck Caldwell, Chief Sally Saddler, Research Supervisor

Published January 1987

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PREFACE

In May 1986, the Fourteenth Alaska Legislature amended Title 36 to establish a new system of resident hiring preference on public funded construction projects. The law stipulates that a resident hiring preference will trigger on whenever specific conditions are shown to exist. Consequently, the Commissioner of Labor has been instructed to collect and compile the necessary information and to report annually on the status of employment in Alaska, the effect of nonresident employment on the employment of residents in Alaska, and alternat ethods of increasing resident hire.

Last year, under a special appropriation from the legislature, the Department of Labor analyzed the economic impact of nonresident employment in Alaska in 1984. This year's publication, the first annual resident hire report prepared in compliance with Alaska Statute 36.10.130, updates the data contained in that report and provides additional information about the reasons employers hire nonresidents, alternative ways of promoting resident hire, and progress toward determining which geographic areas of the state qualify for preference under existing law.

This report is composed of five chapters and a series of appendixes that contain the best estimates currently available of the impact of nonresidents on Alaska's economy.

Chapter 1 compares employment and unemployment in Alaska to the rest of the United States.

Chapter 2 provides 1985 ata about resident and nonresident employment and unemployment in Alaska, and the economic impact of nonresidents on Alaska's economy.

Chapter 3 provides a comparison of how the data contained in Chapter 2 changed from 1984 to 1985.

Chapter 4 describes the process of determining which geographic zones quality for preference under current law. This chapter explains why no determinations are actually made in this year's report and documents the efforts underway to provide information upon which determinations can be made.

Chapter 5 summarizes the results of several employer surveys in an effort to explain the reasons why employers hire nonresidents and reviews some of the alternative methods available for promoting resident hire.

Readers are urged to read the Sources and Limitations section for an explanation of the limitations of the data provided in this report and to check the Glossary for specific definitions of terms used in this report.

EXECUTIVE SUMMARY

Highlights of the Data

-In 1985, $691 million were paid to 77,000 nonresident workers in Alaska. This represents an increase of $14 million and 6,000 employees over 1984. The percentages, however, remained constant from 1984 to 1985 with 12 percent of all wages paid to nonresidents who constituted 23 percent of all employees. See pages 20 and 45.

-The average annual earnings of nonresidents was only 43 percent as much as the average annual earnings of residents of Alaska (down from 48% in 1984). Nonresidents did not spend as much time working in Alaska as residents did. Fifty-eight percent of all residents worked during all four calendar quarters, while only 11 percent of nonresidents worked in Alaska in all four quarters. See page 20.

-1984 and 1985 data are strikingly similar. Although nonresident employees and wages increased in 1985 their overall impact, industry impact, and area impact changed only slightly. See page 45.

-The food processing industry (of which 94% of the firms are in seafood processing) had the highest number of nonresident employees (13,512), the highest percent of wages paid to nonresidents (55%), and the highest percentage of nonresident employees (68%). The oil and gas industry paid the highest amount of wages to nonresidents ($106 million), although the construction industry as a whole paid more ($149 million). Of all the wages paid to nonresidents in Alaska in 1985, over 21 percent went to nonresidents who worked in construction (building construction, heavy construction, or special trades construction) and over 15 percent went to nonresidents who worked in oil and gas. See page 23.

- The Anchorage-MatSu Region had the lowest percentage of nonresident wages and employees (10% and 21% respectively); the Southwest Region had the highest (24% and 38%). The Southwest Region also contained both the best and worst (mostly the worst) census areas in the state in terms of the percent of wages paid to nonresidents and the percentage of employees who were nonresidents. Wade Hampton had the lowest nonresident wages and employees (7% and 12% respectively); while the Aleutian Islands had the highest (41% and 61%) with the Bristol Bay Borough close behind (39% and 59%). See page 28.

-In 1985, the number of unemployed never fell below 20,500 individuals in any month (19,000 in 1984). The number of employed nonresidents was always greater than 17,000 individuals in any month (16,000 in 1984). See page 11.

-Alaska has unique economic conditions compared to other states. In 1985, Alaska had the fifth highest overall unemployment rate in the nation, the third highest for all nonagricultural industries, the highest in manufacturing and government, and the sixth highest in construction. Alaska also had one of the highest unemployment rates in the nation for many major occupational categories. See page 15.

-Nearly 22 percent of all regular unemployment insurance benefits paid by Alaska in 1985 were interstate payments. This is the highest interstate rate in the nation; approximately 4.5 times the national average. Seventy-four percent of those interstate payments went to nonresidents. See pages 15 and 41.

-Alaska paid almost $32 million in unemployment insurance benefits to nonresidents in 1985, of which over $21 million was paid out of state. This represents a significant increase over 1984 in which Alaska paid nonresidents $20 million in unemployment insurance benefits, including $17 million in out of state payments. See page 41.

Resident Hire Preference Determinations

In 1986, the Fourteenth Alaska Legislature passed a resident hire statute which is complex and substantially different from previous versions. The legislature emphasized the need to pass a law which would withstand a test of constitutionality. Consequently, the new statute uses a very targeted approach based on detailed statistical information.

Before preferences can be implemented, determinations must be made as to which zones qualify for preference based on the specific criteria outlined in chapter 4. Before any determinations can be made, regulations must be approved and data compiled. As of early January 1987, regulations have been drafted and reviewed through the public hearing process but not finalized. Data have been compiled which illustrate the overall economic condition of each zone (see Tables 4-1 and 4-2, pages 60 and 61); however, data about occupational supply and demand are not currently available in enough detail to demonstrate that nonresident workers have displaced qualified, available resident workers in specific occupations in specific areas of the state. Consequently, the Department of Labor has designed a system to collect the necessary detail, and has begun implementation of those procedures. The department expects to have the detailed information needed to evaluate possible determinations for most construction-related occupations by January 1988. Data about the social and economic impact of unemployment are available through a variety of sources which will be analyzed in depth during 1987.

For additional information see chapter 4, beginning on page 57.

Reasons Employers Hire Nonresidents

Sixty percent of employers contacted in a Department of Labor survey said their industries hire nonresidents because available Alaskans lack required training or experience.

Thirty-five percent of employers contacted stated that their industries hire nonresidents because there are no Alaskans available. This reason was most commonly cited by employers in food processing.

Fifty percent of employers contacted stated that their industries hire nonresidents because it is company policy to transfer people within the company. This reason was most commonly cited by employers in mining industries.

For additional information see chapter 5, beginning on page 62.

Promoting Resident Hire

Employers commonly promote the hiring of residents by having a company resident hire policy; advertising openings locally; or using local unions, Job Service offices, local private employment agencies or universities to find workers.

Employers felt the State could increase resident hire by promoting the issue, and working actively to train and place resident workers.

In a survey concerning vocational education, 40 percent of respondents from the manufacturing and wholesale trade industries felt there was not a trained Alaska labor force available.

More than 95 percent of employers who responded to the vocational education survey said they would prefer to hire Alaskans. Nearly 76 percent of survey respondents indicated that they would be willing to hire an underqualified Alaskan if the Alaskan could be trained.

The 1986 Alaska Hire Task Force Report presented 36 alternatives for promoting resident hire in Alaska. The report was intended primarily for policy makers to use as a reference of new ideas and initiatives on resident hire.

The Department of Labor is now collecting additional data from employers relating to the occupation and work location of their employees. This will allow the department to evaluate the impact of nonresident employment by individual occupation and specific work location. Then Alaska's policy makers can use those facts to adjust laws, regulations, administrative procedures, and programs to comprehensively encourage higher levels of resident employment throughout Alaska.

For additional information see chapter 5, beginning on page 52.

Position Title	No. of Positions	Range/Step	Barg. Unit		Approv.	Disapp.
Wage & Hour Investigator I	1	16B	GGU			
Time Status	**Staff Months**	**RP Number**	**Location**	**Election District**	**Leg.**	
PFT	12	HJR 22	Anchorage			

Type of Expenditure		Amount
1	2	3
Salary 2804	33,648	
Benefits	10,765	
Premium Pay		
Other		
Total Personal Services		44,413
Travel		21,187
Contractual		9,000
Commodities		400
Equipment		
Other		
Total Cost		75,000

Receipt Code	Funding Source		
	Federal Receipts	1002	75,000
	G. F. Match	1003	
	General Funds	1004	
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

A wage and hour investigator position would be required to assist in monitoring and enforcing the resident hire provisions of the Defense Appropriations Act on the Defense projects covered by the cooperative agreement.

Request For New Position

Agency: Labor
BRU: Labor Standards & Safety
Component: Wage & Hour

Page of
Revised Date

FY 87

DATE: 3/24/87

le Labor & Commerce Committee has considered HJR 22

elating to an agreement between the Department of Defense and the Alaska epartment of Labor for enforcement of the Alaskan hire requirements of sec. 078 of the 1986 Defense Appropriations Act, and subsequent acts; and urging he Congress to extend the resident hire provision through fiscal year 1988.

COMMENDS:

[ ] replace with _____ [ ] the same title
[ ] a new title

[ ] attached amendment(s)

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

OPTS: [ ] _____letter of intent

TACHES NEW FISCAL NOTE(s):

[ ] fiscal impact
[✓] zero fiscal note
[ ] zero with analysis
[ ] same as previous fiscal note published _____
[ ] same as previous zero fiscal note published _____

IGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

W/Furnace no rec.

Chairman's signature

available employment of the state; and

WHEREAS the federal government, in recognition of these facts, has provided for the preferential hire of Alaskan residents on Department of Defense contracts in the state in sec. 3073 of the 1986 Defense

TESTIMONY NOTES 4/10/87
HB 36

The proposed legislation mandates an appropriate premium reduction of not less than 5% for a driver over age 55 who requests the reduction and has within the previous three years completed a motor vehicle accident prevention course approved by the Department of Public Safety.

The principal issue of concern with this legislation is not whether persons meeting the conditions in the bill should receive a credit in their automobile insurance for that condition, but whether the amount of credit should be established in legislation. While such an action would be appropriate where the state is the insurer, it is subject to question in those cases where that insurance is provided by private insurers.

The State of Alaska has not previously mandated specific rates, rate levels or rate values for insurance written in this state. To do so conflicts with the insurance rate law (AS 21.39.010 et seq.) which requires that a rate shall be neither excessive, inadequate, nor unfairly discriminatory. If rate reductions or changes occur due to particular conditions, the law now requires that the credit should actually reflect the experience of the insurer or a group of insurers or persons who meet the conditions for the particular credit.

To the degree that a particular level of mandated credit is incorrect, a subsidy is created. When that occurs, the subsidized business finds it difficult to find a standard market. Alaska expends a considerable effort in maintaining a marketplace for a vast variety of kinds of insurance. This is complicated by the fact that Alaska represents about 1/2% of the premium in the United States. To the degree that insurers perceive that Alaska provides a favorable climate and the opportunity for profit (real or imagined), insurers are willing to participate in the Alaska marketplace. When that perception changes due to conditions wrought by regulation or legislation, insurers tend to migrate to more profitable jurisdictions.

A rate reduction may or may not be warranted for the conditions in the bill depending on a number of other factors that a statutorily mandated rate would be unable to consider. An extreme example for sake of illustration would be where an insurer writes only drivers over 55 who meet the conditions set forth in the bill, and whose rates are adequate for that selection of business. In such a case, this proposal would force the insurer to charge a rate that would be inadequate to cover this class of insured. Further, the selection of age 55 may be unfairly discriminatory if other age groups have a similar experience when meeting similar conditions.

We are concerned that the very group this legislation intends to assist, may be hurt by its presence.

An alternative approach that would likely to be less disruptive in terms of our efforts to promote Alaska as a good place for insurers to do business would be to mandate the rule but not the value of the rule.

AMENDMENTS

On page 1, line 11 and 12, remove the words "of not less than 5 percent"

On page 1, line 13, delete the word "casualty" and insert the words "bodily injury liability, property damage liability, and collision"

Proposed Amendments to HJR 22 am:

Page 2, line 27 after "FURTHER RESOLVED that" DELETE through page 3, line 7 and replace with:

should a cooperative agreement be consummated, the Alaska State Legislature directs the state Department of Labor to

(a) assist employers and labor organizations in verifying the residency of applicants and eligibility for preference under sec. 8078 and subsequent acts; and

(b) certify to the Department of Defense and its contractors the availablility or nonavailability of qualified workers eligible for the resident hire provisions of sec. 8078 and subsequent acts.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HJR 22
Publish Date:

REQUEST:

Revision Date:
Title: "Relating to an agreement . . . for enforcement of Alaskan hire . . ."
Sponsor: Bover, Donley, et al
Requestor: House Labor & Commerce

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		44.4	44.4	44.4	44.4	44.4
TRAVEL		21.2	21.8	22.5	23.2	23.9
CONTRACTUAL		9.0	9.3	9.6	9.9	10.2
SUPPLIES		.4	.4	.4	.5	.5
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		75.0	75.9	76.9	78.0	79.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS		75.0	75.9	76.9	78.0	79.0
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Tom Stuart, Director
Division: Labor Standards & Safety
Phone: 465-4870
Date: 3/24/87

Approved by Commissioner: Jim Sampson
Agency: Labor
Date: 3/24/87

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

New fed. $ / as per agreement

page ___ of ___

HJR

23

Added sections highlighted

5-0843B
Hein
4/21/87

Original sponsors: Sund and Herrmann

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

SENATE CS FOR HOUSE JOINT RESOLUTION NO. 23 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

Relating to tributyltin.

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

WHEREAS tributyltin is one of the most toxic substances ever deliberately introduced into the marine environment; and

WHEREAS tributyltin is used widely in marine bottom paints as an antifoulant and on the nets of marine fish pens to prevent the growth of plants, algae, and other substances on the pen mesh; and

WHEREAS an ever-increasing body of evidence indicates that tributyltin-based antifouling paints, and pens treated with tributyltin, cause substantial harm to the environment, cause deformities in oysters and other shellfish, and are lethal to juvenile chinook salmon; and

WHEREAS tributyltin is known to be harmful in amounts exceeding five parts per trillion; and

WHEREAS high concentrations of tributyltin have been found in the water of west coast marinas, ranging from 100 to 1,000 parts per trillion; and

WHEREAS recent studies by the National Marine Fisheries Service have found that salmon reared in sea pens treated with tributyltin absorb tributyltin in their flesh, resulting in concentrations in the fish exceeding five parts per trillion; and

WHEREAS pen-reared salmon contaminated with tributyltin and imported into the United States or produced domestically enter the fresh, frozen, and smoked fish markets along with wild salmon; and

WHEREAS studies have shown that exposure to tributyltin can be dangerous to the health of people and, therefore, human consumption of fish

contaminated with tributyltin should be avoided;

WHEREAS cooking was found to be ineffective in destroying or removing tributyltin from the contaminated fish; and

WHEREAS the United States Navy is considering a conversion to the use of tributyltin-additive bottom paints for its fleet; and

WHEREAS tributyltin-based bottom paints have been banned or restricted in France and Great Britain at the insistence of the fishing industry; and

WHEREAS the Environmental Protection Agency is the agency responsible for the protection of the coastal environment in the United States; and

WHEREAS the Environmental Protection Agency has the expert staff necessary to prepare and distribute appropriate informative materials on the use of tributyltin and its potential adverse effects on the marine environment; and

WHEREAS alternative antifoulant bottom paints exist and are available to military, commercial, and recreational fleets;

BE IT RESOLVED by the Alaska State Legislature that the Food and Drug Administration is respectfully requested to impose an immediate ban on the importation and sale in the United States of salmon reared in tributyltin-treated aquaculture pens; and be it

FURTHER RESOLVED that the Congress of the United States is respectfully requested to

(1) ban the use of tributyltin-based bottom paints on all military, commercial, and recreational vessels, unless a method is developed for the safe use of tributyltin-based bottom paint or paints containing derivatives of organotin;

(2) require the Environmental Protection Agency to expedite its special review of tributyltin and to expand the review to include all 20 tributyltin compounds;

(3) ban the importation and sale in the United States of salmon

reared in tributyltin-treated aquaculture pens;

(4) immediately direct the Environmental Protection Agency to create and distribute to every boat owner in the United States a brochure regarding tributyltin;

(5) establish national standards for concentrations of tributyltin in salt water and fresh water;

(6) impose a levy on tributyltin producers, based on the number of pounds of active tributyltin produced, and use the proceeds of the levy to provide each state with money to monitor, review, and evaluate the effects of tributyltin on the marine environment.

COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States; to the Honorable John C. Stennis, President pro tempore of the United States Senate; to the Honorable Jim Wright, Speaker of the United States House of Representatives; to the Honorable Ernest F. Hollings, chairman, Senate Committee on Commerce, Science, and Transportation; to the Honorable Patrick J. Leahy, chairman, Senate Committee on Agriculture, Nutrition, and Forestry; to the Honorable Walter B. Jones, chairman, House Committee on Merchant Marine and Fisheries; to each member of the California, Oregon, and Washington Congressional delegations; to Lee M. Thomas, Administrator, U.S. Environmental Protection Agency; to Dr. Frank E. Young, Commissioner, Food and Drug Administration; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

HJR

25

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : HJR 25
Publish Date : HOUSE 5/6/87

REQUEST:

Revision Date: _____
Title : Relating to federal regulation of the insurance industry.
Sponsor : Zawacki
Requestor : House Labor & Commerce

Agency Affected : _____
BRU : _____
Components : _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Dave Donley, Chairman

Prepared by : House Labor & Commerce
Division : _____
Phone : 465-3892
Date : 5/5/87

Approved by Commissioner : _____
Agency : _____
Date : _____

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

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ALL OTHERS ADMITTED IN ALASKA

June 2, 1987

MARC

Senator Tim Kelly
Chairman, Labor and Commerce Committee
P. O. Box 21-0001
Anchorage, Alaska 99521

Re: HJR25 - Repeal of the McCarran-Ferguson Act

Dear Senator Kelly:

HJR25 was under consideration by your committee at the end of this recent legislative session. I am writing about this resolution, on behalf of the American Insurance Association, which represents 171 property/casualty insurance companies in the United States. The AIA opposes passage of HJR25. I am enclosing a background paper which explains the McCarran-Ferguson Act. I am also enclosing a letter from the President of the American Insurance Association to Senator Metzenbaum explaining our position.

The McCarran-Ferguson Act was enacted in 1945, but the roots of state regulation of the insuance industry go back to at least 1869. The Act has a two prong effect: (1) it keeps the regulation and taxation of the insurance industry under state control (premium tax generates over Twenty-three Million Dollars annually for the State of Alaska), and (2) it allows the insurance industry certain limited anti-trust exemptions, especially in rate making activity.

The proponents of HJR25 argue that elimination of the anti-trust exemption will increase competition, thus, decrease premium rates. We believe this premise is simply wrong. The function of rate making is to take as much actuarial information as possible to establish an adequate premium (or rate) in order to cover future losses. Elimination of rate making would most profoundly affect small insurance companies who do not have in-house actuarial departments. It would also affect larger companies who plan on entering into a new line of insurance business, and must rely on established rates. Finally, it would affect joint underwriting activities to insure large projects. Without the rating function from independent rating bureaus, the smaller companies simply would not be able to compete. There would be an increased concentration in the industry and competition would likely decrease. Testimony during the House Judiciary hearing overwhelmingly indicates that the insurance industry is very competitive in Alaska.

State regulators also rely upon rate making information to monitor premium changes by the insurance companies. The National Association of Insurance Commissioners oppose repeal of the McCarran-Ferguson Act. The Independent Insurance Agents and Brokers Association and The National Conference on Insurance Legislators, also oppose repeal.

Rate making is the cornerstone of the insurance industry, which has served the public well for many, many years. Repeal of the McCarran-Ferguson Act will not increase competition and, in fact, may have just the opposite effect. I would be pleased to supply additional background information on the McCarran-Ferguson Act at the request of you or your staff.

Sincerely,

Thomas J. Slagle

Thomas J. Slagle

cc: All Members of the Senate Labor and Commerce Committee

Senator Richard I. Eliason
Senator Rich Uehling
Senator Bettye M. Fahrenkamp
Senator Mike Szymankski

TJS#3:mb:3

ANTITRUST.

AMERICAN INSURANCE ASSOCIATION

1025 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 293-3010

January 23, 1987

The Honorable Howard M. Metzenbaum
140 Senate Russell Office Building
Washington, D.C. 20510-3502

Dear Senator Metzenbaum,

I am writing you because I am deeply concerned about some of the reasons you have advanced for repealing the McCarran-Ferguson Act. I have read your statement introducing legislation (S 80) to repeal the Act, and believe it contains many inaccuracies about the insurance market. Chief among them is the contention in the statement that repeal will promote "healthy and vigorous competition" and "improve the availability and affordability of insurance." I believe that neither contention is supportable, and I hope you will spare me a minute of your time to explain why.

The insurance industry is one of the most competitive industries in America. There are nearly 3500 companies that sell property and casualty insurance. Nine hundred companies operate nationwide, and none of them has dominant market share. The highly competitive nature of this business was recently reconfirmed by the U.S. Department of Justice, which concluded last April that "property and casualty insurance (companies) are in effective competition with each other...."

Moreover, much of this competition stems from small insurers who are able to compete effectively only because McCarran-Ferguson allows for state regulatory mechanisms through which industrywide loss data can be gathered and made available to them. Without this sharing of data, the ability of smaller companies to compete would be greatly diminished. And even the largest companies would have difficulty gathering sufficient data to appropriately price certain of their insurance products. Concentration in the industry, therefore, would undoubtedly increase.

In addition, repeal of McCarran-Ferguson would not solve insurance availability problems. More than likely, it would exacerbate them by placing in jeopardy actions to protect the public which we take for granted today. Such actions include

Market Assistance Plans, which help find insurance in the private market for those who are having difficulty finding it on their own. Statistical collection mechanisms and state authorized cooperative ratemaking systems also would be at risk.

Many also forget that even under McCarran-Ferguson, the insurance industry is fully accountable for improper anti-competitive activity. Boycotts, intimidation and coercion are all illegal. Moreover, all historical antitrust requirements apply to the insurance industry--the Sherman Act, the Clayton Act, the Robinson-Patman Act, and the Federal Trade Commission Act--to the extent that individual state laws do not already regulate the insurance business. Additionally, the courts have narrowly construed McCarran-Ferguson, further limiting the types of activities that are not subject to federal antitrust examination.

Repeal, therefore, would result in severe marketplace turmoil, without improving either the availability or the affordability of insurance, and without gaining anything of value for antitrust enforcement.

All Americans have a great stake in the vitality of the insurance industry. As the debate over McCarran-Ferguson progresses in the Senate, we at AIA would be pleased to provide you with whatever information you would find helpful in furthering the discussion about the way insurance markets work.

Sincerely,

Robert E. Vagley

Robert E. Vagley
President

REV/jlh
cc: Committee on the Judiciary

The McCarran-Ferguson Act

Proposals have been submitted in Congress to repeal or modify the McCarran-Ferguson Act. This Act gives the insurance industry certain limited exemption from federal antitrust laws.

However, state and federal authorities who investigated the causes of the recent problems in insurance liability markets generally agree that the factors that precipitated these problems had nothing to do with antitrust law violations. Few insurance industry observers believe that repeal or modification of the McCarran-Ferguson Act would lead to reductions in the price of liability insurance or to an expansion of the market where coverage has been difficult to obtain. Repeal of the Act would, however, change the way the insurance industry is regulated because it would create the need for a federal regulatory system. This system would either exist side-by-side with the current state system, producing a dual system of regulation similar to banking regulation, or supersede the state regulatory system and eventually replace it. To make any judgment as to whether this change would benefit consumers, it is important to understand the provisions of the McCarran-Ferguson Act and how it came to be enacted.

Key Provisions of the McCarran-Ferguson Act

Public Law 79:15, known as the McCarran-Ferguson Act

after its sponsors Sens. Patrick Anthony McCarran of Nevada and Homer Ferguson of Michigan, was signed into law on March 9, 1945.

The McCarran-Ferguson Act was designed not to free insurance companies from federal antitrust laws but to ensure the preeminence of state regulation. The Act speaks of continued state regulation and taxation of the industry as being in "the public interest." Thus, no act of Congress should be "construed to invalidate, impair, and supersede any law enacted by any state for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business." Federal antitrust laws only would apply "to the extent that such business is not regulated by state law." The Sherman Act of 1890, the cornerstone of U.S. antitrust law, would always apply to cases involving boycott, coercion or intimidation.

Early Ruling Affirms Preeminence of State Regulation

State governments historically have regulated the insurance business. Although state regulation evolved slowly, the primacy of state, as opposed to federal, regulation was confirmed by a Supreme Court ruling in 1869, early in the insurance industry's development. The precedent-setting case, Paul vs. Virginia 75 U.S. (8 Wall.) 168 (1869) involved a Virginia statute that required

out-of-state insurance companies doing business in the state to be licensed. Some insurers at this time preferred the uniformity of federal regulation to the growing diversity of state regulation and, to promote their cause, they argued that their agents, specifically a Mr. Paul, should not have to obtain a license to do business in the state of Virginia. Only Congress had the power to regulate interstate commerce, they said.

The pivotal issue was whether insurance could be considered "commerce" within the definition of the Commerce Clause of the U.S. Constitution. The Court ruled that the Virginia statute was not unconstitutional because insurance "policies are simply contracts ... not articles of commerce in any proper meaning of the word."

The Paul vs. Virginia ruling, which placed insurance outside the realm of federal regulation on the basis that the sale of insurance was not commerce, remained intact for 75 years.

Reversal of Decision Leads to McCarran-Ferguson Act

Then, in 1944, in U.S. vs. South-Eastern Underwriters Association, 322 U.S. 533 (1944), the Supreme Court overturned Paul vs. Virginia. The case involved an indictment of South-Eastern Underwriters Association and its member companies for alleged violations of the Sherman Antitrust Act. Explaining that the size and importance of the insurance industry had grown immensely since 1869 when

Paul vs. Virginia was decided, the Court held that an insurer conducting a substantial portion of its business across state lines was indeed engaged in interstate commerce. Congress had not intended to exempt insurers from antitrust laws, the court said.

The South-Eastern Underwriters decision alarmed the insurance industry as well as state governments. Since the early days of insurance, both insurers and state regulators had come to realize that some cooperation in ratemaking was essential to preserve the industry's financial health. Small companies need to participate in data-sharing programs because they lack the resources and the broad data base needed to predict losses and establish adequate rates. So by 1944, setting prices in concert, within a framework of state regulation to prevent abuses, had become an accepted practice.

Insurers now faced the prospect of antitrust prosecution for ratemaking activities. State governments also would be affected by the South-Eastern Underwriters decision. They stood to lose both their developing system of state regulation and funds generated by taxes on the insurance industry. These fears were not unfounded. Following the South-Eastern underwriters ruling, some insurers did challenge state tax laws in court. Thus, both the states and insurance companies were seeking a federal remedy to deal with the situation. Within a year after the South-Eastern Underwriters Supreme Court ruling, Congress passed the McCarran-Ferguson Act.

Requirements For Antitrust Exemption

The McCarran-Ferguson Act established three requirements for antitrust exemption to apply: (1) the activity in question must fall within the business of insurance; (2) the activity must be regulated by state law; and (3) the activity must not involve boycott, coercion or intimidation. These broad requirements, especially the first one, have been the subject of much litigation. Several cases reached the Supreme Court. The decisions in these and other cases clarify and define the areas in which the insurance industry has immunity from federal antitrust laws.

1) The Business of Insurance: The meaning of the term "business of insurance" is crucial in determining what specific activities are within the scope of the McCarran exemption. In an often-cited case, SEC vs. National Securities, Inc. 393 U.S. 453 (1969), the Supreme Court declared that the "business of insurance" does not encompass every activity that insurers engage in but revolves around the relationship between insurance companies and their policyholders.

The case involved an Arizona law which gave the state's Insurance Director the authority to approve mergers between insurance companies. The SEC wanted a particular merger undone, claiming one of the companies had fraudulently

obtained stockholders' votes. The company argued the SEC had no jurisdiction. The Supreme Court ruled state regulation of the relationship between an insurance company and its stockholders was not included in the "business of insurance."

More recent U.S. Supreme Court cases have set forth a three-prong test for determining what constitutes the "business of insurance" for purposes of the McCarran Act exemption. In Group Life & Health Insurance Company vs. Royal Drug, 440 U.S. 205 (1979), the Court focused on two elements in determining what constitutes the "business of insurance": (1) the spreading and underwriting of risk; and (2) a direct connection with the contractual relationship between the insurer and insured.

The Royal Drug action was brought by 18 independent pharmacies against Blue Shield of Texas and three pharmacies that had entered into agreements to keep down the price of drugs. The Supreme Court ruled that Blue Cross's agreements to fix drug prices did not involve underwriting or spreading of risk and, therefore, did not come within the business of insurance.

In Union Life Insurance Company vs. Pireno, 458 U.S. 119 (1982), which involved the use of a peer review committee to assess the necessity of treatment and the reasonableness of medical fees submitted by claimants, the Supreme Court added the third prong, namely, that the anticompetitive practice must be limited to entities within the insurance industry, thus narrowing the McCarran-Ferguson

exemption and opening the door for any agreement between an insurance company and a third party outside the industry to be scrutinized for violation of antitrust laws.

2) Regulated by State Law: While courts have tended to narrow the scope of what is meant by the "business of insurance" under McCarran-Ferguson, court interpretations have been more liberal in deciding what kind of state regulation provides immunity from federal laws. In general, courts will not inquire into the actual effectiveness of state laws and regulations governing the insurance industry.

The Supreme Court, in FTC vs. National Casualty Co., 357 U.S. 560 (1958), decided that if a state had any appropriate legislation and authorized administrative enforcement, it was regulating within the meaning of McCarran-Ferguson. At issue was whether the FTC could order insurance companies licensed in a state to stop certain advertising practices even though the state had enacted legislation pertaining to unfair advertising by insurers. The court ruled the existing regulation sufficient to trigger immunity from federal action without regard to the effectiveness of the regulation.

The court did draw a line, however, in FTC vs. Travelers Health Association 362 U.S. 293 (1960) when called upon to determine whether a state's regulation of its domiciled companies' advertising activities in other states was sufficient regulation to invoke McCarran immunity from the FTC. In the Travelers case the FTC issued a cease and

desist order to prohibit a company licensed only in Nebraska and Virginia from making deceptive statements in circulars soliciting mail-order insurance business from customers in other states.

The Supreme Court stated that regulation meant regulation by the state in which the activity is practiced and has its impact. The Court was not willing to allow the regulatory activities of a few states to invoke McCarran immunity for the activity in all other states.

3) Boycott, Coercion or Intimidation: As mentioned earlier, one of the more important areas of antitrust immunity pertains to the industry's practice of pooling and sharing information on losses associated with various types of insurance coverages. This sharing of data enables companies to make statistically valid predictions of future losses, charge adequate rates and maintain realistic reserves. The use of industry-wide data to develop advisory rates, shared loss experience, standardized contract forms and shared underwriting are essential elements of the business of insurance which could run afoul of antitrust statutes without McCarran-Ferguson immunity.

Generally the courts have applied the boycott, coercion or intimidation provision to three types of activities: the exclusion of nonconforming competitors from the market, tie-in sales, and concerted refusals to deal.

A landmark case in this area was St. Paul Fire and Marine Insurance Co. vs. Barry 438 U.S. 541 (1978) where the

Supreme Court found certain types of risk selection practices could constitute concerted refusals to deal. The Court also stated that victims of such practices need not be limited to insurance entities, substantially broadening the boycott exception. St. Paul had announced that it would not renew medical malpractice policies covering claims occurring during the term of a policy but reported after the policy expired. Other companies were alleged to have refused to write the business and Barry claimed that his allegations of a collective effort or refusal to deal should be outside of McCarran immunity. The Supreme Court held that the alleged conduct of the malpractice insurers would, if proven, constitute a boycott and the McCarran-Ferguson exemption, therefore, did not apply.

A lower court, in Fry vs. John Hancock Mutual Life Ins. Co., 355 F. Supp. 1151 (D.C. Tex. 1973) declined to give tie-ins antitrust immunity. The company had been requiring those who applied for loans to also purchase life insurance from the insurer. The court ruled that federal regulation is applicable to the sale of insurance tied in to farm loans.

These court cases exemplify the most prevalent types of disputes. Other cases have tended to refine these three areas.

MEMORANDUM

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

FROM: American Insurance Association, Thomas J. Slagle
(907) 586-3340

RE: HJR25-Resolution to Repeal the McCarran/Ferguson Act

DATE: February 5, 1988

The American Insurance Association, represents over 180 property casualty insurance companies in the United States. Last year we joined with the Alaska Independent Insurance Agents and Brokers in opposition to HJR25. On a national level the repeal of the McCarran/Ferguson Act is opposed by the National Association of Insurance Commissioners, as well as virtually every major insurance trade group. To assist the committee in the consideration of this resolution, enclosed is a background paper on the McCarran/Ferguson Act, a letter from the President of the American Insurance Association to Senator Metzenbaum, and some information from the Insurance Services Office, the major rating association in the United States.

The McCarran/Ferguson Act was enacted in 1945 and has a two-prong effect:

1. It keeps the regulation and taxation of the insurance industry under state control.

2. It allows the insurance industry certain limited anti-trust exemptions.

The exemptions are narrowly defined and apply only to activities regulated by the state, and must involve the business of insurance. The anti-trust exemption does not apply to any activity involving boycott, coercion, or intimidation.

The function of rate making is to take as much actuarial information as possible to establish an adequate premium (or rate) in order to cover future losses. Arguably without the anti-trust exemption, the rating organizations could not give this type of advisory rate. Repeal of the McCarran/Ferguson Act would most profoundly effect small companies who do not have in-house actuarial departments and must rely on advisory rates. State regulators' also rely on this information to monitor rate changes.

Repeal of the McCarran/Ferguson Act would not increase either affordability or availability of insurance. In fact, without the use of advisory rates, many small companies would be unable to compete and there would likely be increased concentration. I would be pleased to supply the committee with additional background information. The American Insurance Association urges your vote against this resolution.

TJS/7.75
cc: Members of the Senate Labor and Commerce Committee

Enclosures:
1. Background - McCarran/Ferguson Act
2. Letter from AIA President Vagley - 1/21/88
3. Testimony from the Insurance Services Offices, Inc.

TESTIMONY OF MAVIS A. WALTERS

SENIOR VICE PRESIDENT

INSURANCE SERVICES OFFICE, INC.

United States House of Representatives

Committee on the Judiciary

Subcommitte on Monopolies & Commercial Law

December 1, 1987

I am Mavis A. Walters, Senior Vice President of Insurance Services Office, Inc. I am a Fellow of the Casualty Actuarial Society and a M ber of the American Academy of Acturies. I am currently a Vice President of the AAA and serve as an elected member of the Board of the Directors of the CAS.

Insurance Services Office, Inc. (ISO) is a non-profit corporation that gathers, stores and disseminates aggregate statistical information to insurance regulators - as required by law-and to insurers for their use. In addition, ISO develops and assists in implementing insurance policy coverage programs that help to define and cover the risks faced by policyholders. ISO also distributes industrywide advisory insurance rate information and, where appropriate, files that information with state insurance regulators.

No property/casualty insurer can be excluded from participating in ISO. Neither can an insurer be required to join ISO. Those insurers that are ISO participants may choose the ISO products or services they wish to purchase and do not have to adhere to the advisory insurance rates or standardized coverage parts developed by ISO.

From its inception, ISO has encouraged individual insurers to make their own decisions about what insurance coverages they will provide and what insurance rates they will use.

It is important to look at the role that ISO plays in the property/casualty insurance industry today, as contrasted with insurance rating bureaus which, in most instances, existed as cartels many years ago. Those bureaus were organized along local, regional and national lines. They specialized in either property or casualty insurance for one or more lines of coverage. In most states, insurers were required by law to belong to the bureau and use the insurance premium rates and policy forms published by the bureau. An insurer had no choice. If an insurance company was affiliated for one service offered by the bureau, it was affiliated for all of them. Effectively those bureaus came to be regarded as insurance cartels.

Those days are long gone. Indeed, the cartels had died well before Insurance Services Office was formed in 1971. Today ISO's rates, rules and standardized coverage parts are all advisory; that is, ISO's participating insurers have no obligation to ISO or to each other to use them. Indeed, ISO's non-adherence policy is explicitly stated in its certificate of incorporation and by-laws. ISO's essential task is the development and dissemination of information that will assist participating insurers in making informed,

intelligent and independent decisions regarding the coverages they provide and the pricing decisions they make.

Because everything about insurance is prospective - the promise to pay in the future should in some event occur - the cost of the insurance product is not known when the policy is sold, but rather must be predicted based, in part, upon past loss experience. Their estimates of future losses are based on historical data gathered from insurance policies written in the past and from the claims paid or incurred on those policies.

Central to the process of insurance ratemaking is the availability of a reliable data base which provides information about losses paid or incurred on similar types of insurance coverages. As with all forms of statistical analysis, the larger and more consistent the statistical samples, the greater the probability that the predictions based on it are accurate. This "law of large numbers" means that, with a broad aggregate data base of loss experience, the analysis and prediction of expected losses should be - and usually are - more reliable.

The more data collected and pooled to develop benchmark statistics, the more accurate the prediction by insurers of

their future losses. This reduces the size of the contingency margin needed in insurers' rates to account for a possible error in predicting future losses and other costs.

In summary, the unique nature of the insurance product requires the pooling of data. ISO maintains such a data base. The actuarial analysis of such a data base and the development of standardized coverage parts which allow the creation of that data base are also critical elements in enhancing competition.

ISO standardized coverage parts provide benchmarks without which it would be very difficult for insurance consumers and government to make meaningful price and coverage comparisons among insurers. Standardized coverage parts provide a base from which insurers and producers can depart, tailoring endorsements to insure unique risks or target markets.

If standardized coverages did not exist, consumers would be confronted with an unintelligible array of different insurance forms. Standard coverage parts permit comparison shopping by consumers without the added confusion of incomparable coverage provisions.

Insureds benefit from the clarity that the standard benchmark coverage language achieves. Standardized, readable language helps the parties to the insurance contract have a similar understanding of the coverage purchased. The purchaser can shop for the best buy with confidence, knowing that a standard minimum level of coverage is offered by almost all insurers.

Standard" coverage parts do not mean identical coverages that cannot be customized to meet the individual policyholder's needs. For example, ISO maintains five basic coverage parts, 73 countrywide endorsements, and 118 state-specific endorsements for the Homeowners line alone. With this variety of standard coverage parts, insurers can write Homeowners insurance for an apartment renter in Brooklyn who owns a large collection of art, a condo owner in Duluth who has installed a sauna and burglar alarm and wants high levels of liability coverage, or a homeowner in Palo Alto who has a swimming pool and tennis courts - all using ISO coverage parts.

In the commercial lines of insurance, the availability of such standardized coverage parts is even more critical than in the personal lines. Commercial insureds are far more heterogeneous, requiring coverage flexibility to allow an insurer to write a policy reflecting the individual

insured's risks. Given this need to package various commercial property and liability coverages in a variety of ways, the need for a selection of standardized coverage parts becomes critical. As a result, for the Commercial General Liability line of insurance ISO maintains 11 basic standardized coverage parts, 147 countrywide endorsements and more than 100 additional endorsements geared to specific states.

Unless data - particularly loss experience data - is collected and arrayed in some reasonably common format based on comparable provisions of coverage, it cannot be pooled or aggregated in any meaningful way.

Mountains of unrelated data are meaningless. Standardized coverage parts permit the collection of comparable statistics. This provides for a more stable and reliable data base and facilitates analysis, including the more accurate forecasting of future costs for ratemaking.

Forecasting credible insurance rates requires that actuaries develop meaningful classifications, gather reliable data for each of those classes (groupings of risks with similar loss characteristics), and monitor the relationship of loss experience from class to class to determine that the relationship is fair and reasonable. Standardized coverage parts greatly assist in the collection of an accurate data

base for risk classes and therefore assist in the actuarial forecasting of insurer loss experience.

Data quality work performed by ISO and its participating insurers is not an academic exercise. It is in the insurer's own best interests to make certain that the data reported to ISO is accurate, because this data serves as the basis on which insurers can make informed pricing decisions.

For most insurers, raw data for most lines of business and most states isn't enough. If no advisory benchmark rate or prospective loss cost projections/reflecting both industry experience and the actuarial forecasting of that experience were available, the result would be less competition and higher prices in the marketplace. Many small and medium-sized insurers would ultimately be forced out of markets where they do not have a significant market share of the business. Even large well established insurance companies would be inhibited from entry into new geographic areas or lines or insurance.

Historical data can provide a good picture of past costs but give little information about future costs without additional analysis, including the use of professional judgement.

Developing meaningful pricing information from an aggregate data base involves not only actuarial formulas, but also the research skills and expertise to apply proper judgment. Data in the fine detail necessary for pricing a policy for a particular type of risk within a specific geographic territory can fluctuate greatly for even the largest insurer. Actuarial analysis-loss development, trending, etc. of a pooled data base permits the estimation of underlying costs in spite of the random fluctuations that can appear in actual insurance losses. The more credible loss costs can then be projected into the future.

Only a few insurers enjoy a market share large enough to permit them to develop rates based solely on their own loss experience and actuarial analysis.

In addition to a fragmented market, the type of risks insured by commercial insurers are not homogeneous, for there is an extraordinary variety of disparate risks in commercial insurance. An insurer with 5% of the overall market will likely be writing policies for many different kinds of businesses. Commercial general liability insurance, for example, can be provided for more than 1,000 distinct classes. These classes range from hardware stores to schools to hotels to coal mines.

Competition is so significant, market share so fragmented among the companies writing commercial insurance, and commercial risks so disparate that probably no insurer in business today could price its product credibly without access to aggregate industry experience. Small market shares do not give individual companies enough statistical experience to generate credible statistical samples for specific risk classifications or the resources to employ large actuarial staffs. Therefore, the need for a large data base of experience for actuarial forecasting of industrywide loss costs is even more critical.

ISO promotes price competition among insurers and focuses on developing information to assist participating insurers in making their own informed, intelligent and independent decisions about the insurance rates they use. Insurers regularly depart from ISO's advisory rates in keeping with their individual corporate objectives and strategies.

By improving insurer's ability to forecast the true costs of their products more accurately, and by introducing economies of scale in the development of coverage parts and actuarial forecasting, ISO confers benefits to the insurance-buying public through lower costs, greater competition and more product innovation.

Alaska State Legislature
House of Representatives

P.O. BOX 783
GIRDWOOD, ALASKA 99587
(907) 783-2905

WHILE IN JUNEAU
POUCH V
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REPRESENTATIVE
JIM ZAWACKI
DISTRICT 7

MEMBER
COMMUNITY & REGIONAL AFFAIRS COMMITTEE
LEGISLATIVE BUDGET & AUDIT COMMITTEE
FINANCE SUBCOMMITTEE

M E M O R A N D U M February 5, 1988

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

FROM: Representative Jim Zawacki

SUBJ: HJR 25

The intent of HJR 25 is to support efforts in Congress to amend the McCarran-Ferguson Act enacted in 1945 which exempts the insurance industry from federal antitrust laws.

The broad antitrust immunity enjoyed by the insurance industry under the McCarran-Ferguson Act is both undesirable and unnecessary. The exemption is undesirable because, by blunting some forms of competitive behavior, it denies consumers the best array of insurance services at the lowest possible cost. The exemption is unnecessary because application of the antitrust laws is in no way inconsistent with either desirable industry cooperation or effective state regulation.

There have been two objections raised by the insurance industry to this resolution. One, it is argued that support of HJR 25 would remove or subordinate the primacy of states' regulatory role as regulator of the industry. This is not so. HJR 25 was drafted to address this concern. Senator Howard Metzenbaum, the original sponsor of the federal legislation, has testified that his intent was not to alter state regulatory primacy. The Senate Antitrust Committee in Washington, D.C. has made it clear that there is no intent to

alter the primacy of state regulatory authority over the industry. Two, is the assertion that the repeal of the antitrust exemption will restrict information pooling that assists the industry in accurately estimating how much they are likely to pay out in the future. Again, this is not so. HJR 25 specifically recognizes the need for the industry to pool and analyze the past claims they have paid; the more claims they can analyze, the more accurate their estimates of future payouts will be.

I was asked by the Citizens Coalition for Tort Reform to introduce this resolution. The Coalition has reviewed this issue closely and determined that it is in the consumers' best interests to repeal this special privilege to the insurance industry. The Coalition has found that there is strong bipartisan support to amend the McCarran-Ferguson Act and that the position of the insurance industry to retain this exemption is not logical or in the best interests of the consumer.

Thank you.

Jim

Representative Jim Zawacki
February 5, 1988

The following is SUPPORT for amending the McCarran-Ferguson Act. The documentation is in your file. The pertinent information is highlighted from each report for your review.

Citizens Coalition for Tort Reform

Discussion Draft - McCarran-Ferguson Act Amendment, Senator Howard Metzenbaum

S.80, Congressional Record, Senator Metzenbaum, January 6, 1987

Federal Trade Commission, Daniel Oliver, Chairman
February 18, 1987

National Association of Attorney Generals

National Conference of State Legislatures

National Insurance Consumer Organization

U.S. Presidents:

-the Ford Administration exhaustively studied the insurance industry and concluded that price competition in the insurance industry, without McCarran Act antitrust protection, would be in the public interest.

-similarly, President Carter's National Commission for the Reform of Antitrust Laws and Procedures, composed of the nation's leading antitrust experts, concluded 18-2 that McCarran-Ferguson's broad antitrust immunity should be repealed.

-the Reagan Administration supports repeal of the broad McCarran-Ferguson antitrust exemption, as Federal Trade Commission Chairman Dan Oliver recently testified before the Senate Commerce Committee in February 1987.

Introduced: 5/15/87
Referred: Rules

5-0861B

Original sponsors: Zawacki, Navarre,
Gruenberg, et al.

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 25 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

Relating to federal regulation of the insurance industry.

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

WHEREAS the McCarran-Ferguson Act, enacted in 1945, exempts the insurance industry from federal antitrust laws and allows insurance companies to fix prices; and

WHEREAS this antitrust exemption results in fixed rates for many types of insurance; and

WHEREAS repeal of the exemption from antitrust regulation would still allow the insurance industry to exchange past cost data and allow accurate forecasting of future claims; and

WHEREAS, even if the exemption were repealed, the individual states would continue to be able to regulate insurance rates and competition and could continue to allow anticompetitive activity by insurance companies as an expressed state policy; and

WHEREAS both the National Conference of State Legislatures and the National Association of Attorneys General have passed resolutions calling for repeal of the insurance industry exemption from antitrust laws; and

WHEREAS a significant portion of the insurance industry has indicated support for changes in the immunity granted by the McCarran-Ferguson Act;

BE IT RESOLVED by the Alaska State Legislature that the United States Congress is respectfully requested to amend the McCarran-Ferguson Act in order to subject the insurance industry to antitrust regulation.

COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States; the Honorable George Bush, Vice-

President of the United States and President of the U.S. Senate; the Honorable Joseph R. Biden, Jr., chairman of the U.S. Senate Committee on the Judiciary; the Honorable Jim Wright, Speaker of the U.S. House of Representatives; the Honorable Peter W. Rodino, Jr., chairman of the U.S. House of Representatives Committee on the Judiciary and the Subcommittee of the Judiciary on Monopolies and Commercial Law; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

HJR 25

CITIZENS COALITION FOR TORT REFORM

907-561-6250

March 24, 1987

Representative Jim Zawacki
PO Box V
Juneau, Alaska 99811

Representative Zawacki,

This is to confirm our request that you cause to have introduced a House Joint Resolution in support of efforts by Congress to amend the McCarran-Ferguson Act, which exempts the insurance industry from federal antitrust laws.

As we have discussed not only have the past three Presidents of the United States supported such amendments, but a host of national organizations have recently passed resolutions supporting this action. The National Conference of State legislatures and the National Association of Attorneys General are just two examples of national groups that support amendment of the law.

Two concerns have been raised by the insurance industry that must be addressed in the body of a resolution.

1. Individual states must be able to continue their regulatory role of the industry.

2. The insurance industry must still be allowed to exchange past cost data and allow accurate forecasting of future claims.

Additional information on the efforts in Washington, D.C. will be forwarded to you upon receipt, including a new Senate bill that specifies the amendments, that is now in final draft.

We believe the insurance industry, except for the two exceptions we have noted, should be subject to the same laws as other businesses. We believe the insurance consumer and all consumers will benefit from this action and that there will be greater competition in the industry.

We appreciate your efforts in this area of reform.

Al Tamagni, Sr.
Chairman of the Board

P.O. Box 201668 • Anchorage, Alaska 99520

The Informer

Citizens Coalition for Tort Reform

Weekly Update

April 10, 1987

RESOLUTION CALLS FOR AMENDMENTS TO FEDERAL ANTITRUST LAW

HOUSE JOINT RESOLUTION 25

Bipartisan group sponsors reform of federal regulation of insurance industry

HJR 25 was introduced by a bipartisan group of House members concerned with insurance reform. Representatives Zawacki, Navarre, Gruenberg, Martin, Shultz and Taylor introduced HJR 25 at the request of the Coalition.

The intent of HJR 25 is to support efforts in Congress to amend the McCarran-Ferguson Act (1945) which exempts the insurance industry from federal antitrust laws.

Two objections have been raised by the insurance industry to this Joint Resolution, they are:

1. Support of HJR 25 to repeal or amend the McCarran-Ferguson Act would remove or subordinate the primacy of states regulatory roll over the insurance industry.

Not so. HJR 25 has been specifically drafted to address this concern. Already the Senate Antitrust Committee in Washington, D.C. has made it clear that there is no intent to alter the primacy of state regulatory authority over the industry. Senator Howard Metzenbaum, the original sponsor of the federal legislation has testified that his intent was not to alter state regulatory primacy and has asked the committee to adjust the original bill to ensure that this is clear. Support for HJR 25 does not alter the primacy of state regulatory authority.

2. Repeal of the antitrust exemption will restrict information pooling that assists the industry in accurately estimating how much they are likely to pay out in the future.

Again, Not so. HJR 25 specifically recognizes the need for the industry to pool and analyze the past claims they have paid - the more claims they can analyze the more accurate their estimates of future payouts will be.

Why is the Coalition calling for repeal of the antitrust exemption and support of House Joint Resolution 25?

Last year, during debate on tort reform legislation, the issue of the McCarran-Ferguson exemption from antitrust was raised by the opposition. The Coalition has reviewed this issue closely and determined that it is in the consumers best interest to repeal this special privilege to the insurance industry. The Coalition found strong bipartisan support for amendment to the McCarran-Ferguson act and that the position of the insurance industry to retain this exemption was not logical or in the best interests of the consumer.

The Coalition has extensive materials in support of and in opposition to the proposed amendment of the McCarran-Ferguson Act. This information, including copies of resolutions by the NFIB, The National Conference of State Legislatures, The National Association of Attorneys General and statements by the Chairman of the Federal Trade Commission, is available upon request. Just call the Executive Director at 561-6250.

907-561-6250
P.O. Box 201668 • Anchorage, Alaska 99520

THE CITIZENS COALITION FOR TORT REFORM

represents a broad cross-section of Alaskan businesses, professions and local governments. They include:

Alaska Air Carriers
Alaska Association of Manufacturers
Alaska Broadcasters Association
Alaska Chapter, American Institute of Architects (AIA)
Alaska Dental Society
Alaska General Contractors
Alaska Chapter, American Optometric Association
Alaska Movers Association
Alaska Oil Marketers Association
Alaska Rental Association
Alaska Section, American Society of Civil Engineers
Alaska Society of Professional Engineers
Alaska State Health Associaiton (Hospitals)
Alaska State Medical Association
Alaska Support Industry Alliance
Alaska Truckers Association
Alaska Visitors Association
Anchorage Board of Realtors
Anchorage Restaurant and Beverage Association
Cabaret Hotel and Restaurant Retailers
Childbirth Educators
Daycare Operators Association
Fairbanks North Star Borough
Financial Managers
Kijik Native Corporation
Hotel and Motel Association
Insurance Brokers and Agents Association
Nurse Midwives Association
Pension Consultants
Professional Physical Therapists Association
Risk Management Association
Southern Association of Life Underwriters
Providence Hospital

NOW IT'S YOUR TURN TO HELP

CRISIS

THE CITIZENS COALITION FOR TORT REFORM

P.O. Box 201668
Anchorage, Alaska 99520
(907) 561-6250

INSURANCE CRISIS Affects Every Alaskan!

DISCUSSION DRAFT

100th CONGRESS

1st Session S.____

IN THE SENATE OF THE UNITED STATES

Mr. Metzenbaum introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend the McCarran-Ferguson Act to limit the federal antitrust exemption of the business of insurance, to reaffirm the continued state regulation of the business of insurance, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Insurance Competition Improvement Act of 1987".

FINDINGS AND DECLARATION OF PURPOSE

Sec. 2.(a). The Congress finds and declares that--

(1) the continued regulation and taxation by the several States of the business of insurance is in the public interest; and

(2) the Federal antitrust laws comprise an essential component of congressional policy in favor of competition and consumer protection, and the current broad exemption from the antitrust laws afforded the insurance industry has weakened competition and adversely affected consumers of insurance.

(b). It is the purpose of this Act to promote price competition among insurers by modifying the current antitrust exemption of the business of insurance.

AMENDMENTS TO THE MCCARRAN-FERGUSON ACT

Sec. 3 (a) Section 1 of the Act entitled "An Act to express the intent of the Congress with reference to the regulation of the business of insurance", approved March 9, 1945 (15 U.S.C. 1011; known as the McCarran-Ferguson Act), is amended by striking out the period and inserting in lieu thereof the following: "; but that a continued broad exemption of the business of insurance from the federal antitrust laws is not in the public interest.".

(b) Section 2 of that Act (15 U.S.C.1012 (b)), is amended by striking out all after "insurance" the second place it appears and inserting in lieu thereof a period.

(c) Section 3 of that Act (15 U.S.C. 1013) is repealed and amended to read as follows:

"Section 3. (a) Except as provided in subsections (b) and (c), the antitrust laws shall apply to the business of insurance or to acts in the conduct of such business. "

"(b)(1)The antitrust laws shall not be construed to prohibit any agreement, understanding, or concert of action between or among insurers, any insurance advisory organizations or their members, any individual insurers or any other persons that is limited to:

"(A) Collecting, compiling and disseminating statistical data on past losses incurred by insureds from insurers or any other source, provided that such information is made available to an appropriate state regulatory agency;

"(E) Preparing and filing policy forms and endorsements, provided that no individual insurer shall agree with any other insurer or with an insurance advisory organization to refrain from using any other forms, and provided further that no forms or endorsements that contain rate-related terms or conditions may be subject to an agreement or understanding between or among individual insurers or the members of an insurance advisory organization unless such forms are approved by and subject to the active supervision of an appropriate state regulatory agency.

"(C) Conducting research and on-the-site inspections in order to prepare classifications of public fire defenses.

"(D) Collecting, compiling and distributing information relating to fraudulent claims and other fraudulent practices, provided that the dissemination of such information is subject to the approval and active supervision of an appropriate state regulatory agency.

"(2) The antitrust laws shall be construed to prohibit any association or other combination of insurers or any insurance advisory organization from recommending, preparing, establishing or distributing any material that contains recommended premium or final rates, or procedures, formulae, guidelines, or schedules for the calculation of premium or final rates, including without limitation loss development factors, claim trending factors, claim adjustment expense factors, profit allowances, or other actuarial components (excepting reported losses and units of exposure to risk) used in the calculation of insurance rates;

"(c) Nothing in this Act or any state law shall render the antitrust laws inapplicable to any agreement to boycott, coerce, or intimidate, or to any act of boycott, coercion, or intimidation.

"(d) Insurers and other persons participating in joint underwriting, pools, or residual market mechanisms may, in

connection with such activity, act in cooperation with each other in the making of rates, rating systems, policy forms, underwriting rules, surveys, inspections, and investigations, if the joint underwriting, pools, or residual market mechanism is required by law or is approved by and subject to the active supervision of an appropriate state regulatory agency.

"(e) Nothing in this Act shall be construed to prohibit any State from establishing or approving a residual market mechanism.

"(f) As used in this section, the terms--

(1) 'advisory organization' means any organization which is comprised of, or is controlled by, one or more insurers and which prepares policy forms and endorsements for use by its members or subscribers, compiles and promulgates insurance-related statistical data, prepares and revises insurance rating plans and classification systems, and provides assistance in the preparation of insurance rates;

(2) 'antitrust laws' means the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12 et seq.), and the Federal Trade Commission Act (15 U.S.C.41 et seq.);

(3) 'loss development' means an adjustment to reflect the amount an insurer will eventually pay out on policies in effect for a given year derived by multiplying the amount that has actually been paid out over a certain period of time for claims covered by a class of policies by a factor based on the pattern of payouts over time for settlements on prior years' policies;

(4) 'claim trending' means any procedure for adjusting the claims rate to reflect changes in the rate of claims per unit of exposure or per unit of insurance;

(5) 'claims adjustment expense' means the amount of any rate attributable to (i) acquisition, field supervision, and collection expenses, (ii) general expenses, and (iii) taxes, licenses and fees;

(6) 'residual market mechanism' means an arrangement, either voluntary or mandated by law, involving participation by insurers in the equitable apportionment among them of insurance which may be afforded applicants who are unable to obtain insurance through ordinary methods.

(7) 'joint underwriting' means a voluntary arrangement established on an ad hoc basis to provide insurance coverage for a commercial individually rated risk under which

two or more insurers contract with the insured at a price and under policy terms agreed upon between the insurers, or negotiated between the underwriter and the insured;

(8) 'pool' means a voluntary arrangement, other than a residual market mechanism, established on an ongoing basis, under which two or more insurers participate in the sharing of risks on a predetermined basis by means of an association, syndicate, or other pooling agreement

(9) 'final rate'

means_____.

Sec. 4. (a) This Act and the amendments made by this Act shall become effective one year after the date of enactment.

(b) In any action brought under the provisions of the antitrust laws alleging a violation of those laws for conduct that would have otherwise been lawful pursuant to the provisions of the McCarran-Ferguson Act, no award of treble damages or criminal penalties shall be awarded against any such person for conduct by such person occuring within two years after the date of enactment of this Act.

(c) During the two year period referred to in subsection (b), no relief shall be granted against any person in an action