

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5934 HOUSE LABOR & COMMERCE

338

Chapter 79

* Sec. 44. AS 23.30.210 and 23.30.265(28) are repealed.

* Sec. 45. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b), as amended by sec. 8 of this Act, and AS 23.30.155(m), as amended by sec. 28 of this Act, on or before March 1, 1989, each employer that is subject to those sections shall file a report and make the appropriate contribution for all claims existing as of December 31, 1988. The period covered in the report shall be from the date of the termination report or the last anniversary report filed, if one has been filed, through December 31, 1988.

* Sec. 46. TEMPORARY RATE REDUCTION; FUTURE FILINGS. (a) Notwithstanding AS 21.39.030, workers' compensation rates filed by rating organizations for use in the state may not be increased before January 1, 1990.

(b) Rate filings made after December 31, 1988, must fully reflect the legal effect of changes made to the workers' compensation system by this Act.

* Sec. 47. TRANSITIONAL PROVISION. Notwithstanding AS 23.30.041(p), as enacted by sec. 10 of this Act, for the period from July 1, 1988, until June 30, 1989, the term "rehabilitation specialist" as used in AS 23.30.041 includes a person who was actively employed for at least one year before June 30, 1988, in providing rehabilitation services to an injured worker receiving benefits under AS 23.30.

* Sec. 48. APPLICABILITY. Except for secs. 8, 24, 28, 29, 42, and 46 of this Act, this Act applies only to injuries sustained on or after July 1, 1988.

* Sec. 49. Section 2 of this Act applies to assigned risk pool insurance policies that are entered into or renewed on or after July 1, 1988.

* Sec. 50. Section 42 of this Act applies to injuries sustained on or after the effective date of sec. 42 of this Act.

Chapter 79

* Sec. 51. Sections 42 and 50 of this Act take effect immediately under AS 01.10.070(c).

* Sec. 52. Sections 1 - 41, and 43 - 49 of this Act take effect July 1, 1988.

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Alaska State Legislature

Chairman
(907) 465-4523



Jan Faiks
Post Office Box V
Juneau, Alaska 99811

Senate Judiciary Committee

April 9, 1989

MEMORANDUM

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

FROM: Senator Jan Faiks, Chairman
Senate Judiciary Committee *Jan Faiks*

SUBJECT: CSSB 58 (L&C) "An Act relating to the definition of 'Alaska bidder' for purposes of the Alaska bidder preference in the awarding of state contracts."

CSSB 58 (L&C) has been referred to the House Labor and Commerce Committee. This bill amends the definition of 'Alaska bidder' for purposes of the Alaska bidder preference in the awarding of state contracts under AS 36.30, the State Procurement Code. It passed the Senate on March 30 by a vote of 19 - 0.

AS 36.30.170 provides that the state must award contracts based upon solicited bids to the lowest responsible and responsive bidder, after an Alaska bidder preference of five percent has been applied. An Alaska bidder is defined under current law as a person who

- (1) holds a current Alaska business license;
- (2) submits a bid for goods, services, or construction under the name as appearing on the person's current Alaska business license;
- (3) has maintained a place of business within the state staffed by the bidder or an employee of the bidder for a period of six months immediately preceding the date of the bid;

Members
Mike Szymanski, Vice-Chairman • Rick Halford • Drue Pearce • Pat Rodey

Out of Session
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(4) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship, and the proprietor is a resident of the state or is a partnership, and all partners are residents of the state; and

(5) if a joint venture, is composed entirely of ventures that qualify under (1) - (4) of this subsection.

The original version of SB 58 was introduced at the recommendation of the Ombudsman, Mr. Duncan Fowler. In a letter dated October 8, 1988, Mr. Fowler discussed the apparent unfairness of AS 36.30.170, which provides that a corporation qualified to do business in Alaska is entitled to an Alaska bidder preference, regardless of where the business is incorporated and whether the stockholders are Alaskans. On the other hand, a partnership is entitled to an Alaska bidder preference only if all the partners are residents of Alaska.

Mr. Fowler stated that this was inequitable, in that it gives corporations an unfair advantage which partnerships are denied. He said that it seems to penalize long time Alaska partnerships when a single member retains partnership status but moves out of state, which does not lessen the partnership's Alaskan commitment as a whole. It penalizes the partnership in which one partner "bails out" on the other without the Alaska partner's permission, leaving the survivor without Alaska bidder preference status while he extricates himself from the partnership.

To correct these inequities, Mr. Fowler recommended a redefinition of "Alaska bidder" to include partnerships in which 50 percent or more of the partners are residents of Alaska. He chose this figure because the cases that were brought to his attention involved partnerships in which a majority of the partners were still Alaska residents.

This recommendation was incorporated into the original version of SB 58. However, since that bill was drafted, two additional problems with AS 36.30.170 were brought to the attention of the Senate Labor and Commerce Committee. First, it became apparent that there are partnerships operating in Alaska in which fewer than 50% of the partners are residents. One example is Dames & Moore, a firm with 70 limited partners around the world, including one in Alaska. This company's Alaska office has been open for 18 years. The limited partner who manages Dames & Moore's local office has been an Alaska resident for 28 years, and he currently employs eight Alaskans. However, AS 36.30.170 acts to prevent this business from getting a bidder preference, even though it might allow a foreign corporation doing business in the state for only six months to get a preference.

The second problem was a drafting error in the current law, which could give rise to a claim for a bidder preference by any partnership or person "qualified to do business under the laws of the state," whether or not any partner or the sole proprietor was an Alaska resident.

In order to correct these additional problems, CSSB 58 (L&C) was drafted. This version of the bill makes two major changes to current law. First, on page 1, lines 24 and 25, it makes it clear that the phrase "qualified to do business" only applies to corporations, and not to partnerships or sole proprietorships.

Second, on page 1, line 27, it provides that a partnership must have at least one Alaska resident partner to qualify for a bidder preference.

The Procurement Code is a new area of state law, taking effect only last year. As such, we are still at the stage of discovering which sections work as intended and which sections are in need of modification. CSSB 58 (L&C) makes two simple yet necessary modifications to the code; one makes it more equitable, while the other makes it do what the drafters actually intended. I would be appreciative if the committee would hear this legislation at its earliest convenience.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
Title: * _____ BRU: General Services and Supply
Sponsor: Falks Components: Purchasing
Requestor: Labor and Commerce

* An act relating to the definition of "Alaska Bidder"

for purposes of the Alaska Bidder Preference

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

This bill would have an impact to partnerships' qualifications for the Alaska Bidders Preference. For a partnership to qualify under this bill for the Alaska Bidders Preference, only one of the partners must be a resident rather than the present requirement for all partners to be a resident. The Division of General Services and Supply does not anticipate significant impacts when applying the Alaska Bidders Preference if this bill is enacted.

Prepared By: Robert J. Link, Director *RL* Phone: 465-2250
Division: General Services and Supply Date: _____

Approved by Commissioner: John M. Andrews *JMA* Date: 3/28/89
Agency: Department of Administration

Distribution (by preparer):

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State of Alaska
Ombudsman

Duncan C. Fowler

October 20, 1988

Senator Jan Faiks
6060 Yukon Drive
Anchorage, Alaska 99516

Dear Senator Faiks:

There have been lots of changes, high volume complaints and some great issues at the Ombudsman's office since my last legislative newsletter in May.

- The Fairbanks Ombudsman's office opened for business on July 18, 1988 at the Courthouse Square, 250 Cushman St., 452-4001.
- The Anchorage and Juneau offices relocated this summer: in Anchorage to the Post Office Mall, Room 305, with telephone service at 277-8848 and in Juneau to the Court Plaza, 240 Main St., Room 700, with the same phone number, 465-4970.
- Business has been brisk the first quarter of FY89. So far, this may be the busiest year for our office since 1985.
 - 1364 complaints have been filed.
 - 1281 cases closed of which 28 were fully investigated.
 - 540 requests for information or referral services.
 - 245 complaints are pending action by my staff.
- The City of Wrangell entered a contract for us to provide Ombudsman services effective July 1, 1988.
- I also entered into a one-time contract with the City of Fairbanks for investigation of an allegation of harassment by a city policeman.
- I have been working with the City of Ketchikan regarding its request for information about contracting for ombudsman services under AS 24.55.320 beginning in 1989.

Reply to:

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Fairbanks, AK 99707
(907) 452-4001
(800) 478-3257

The recent requests by local communities for ombudsman services has not only surprised me but has proved interesting. These requests have been initiated by conservative taxpayers in those communities. Those citizens are wanting assurance their government is operating efficiently, effectively and being responsive to the needs of the citizens. This local role was envisioned by the drafters of The Alaska Ombudsman Act. They included a provision requiring communities choosing such services to pay their fair share of the costs of our operation.

RURAL ISSUES

Alaska citizens who live outside Juneau, Anchorage and Fairbanks continue to have free access to the Ombudsman through one of the three toll free telephone numbers (Southcentral residents call 800-478-2624, our Anchorage office; Interior residents call 800-478-3257, our Fairbanks office; and Southeastern residents call 800-478-4970, our Juneau office).

Among the diverse issues brought to my attention in the past few months are (1) allegation of inefficient administration of alcohol programs and staffing in Dillingham; (2) an arbitrary termination of a Kenny Lake School employee by an REAA superintendent, (3) a poorly located DEC hearing about spraying herbicides along a railroad right of way, and (4) a fish molestation charge by a game warden against a man on a Sunday outing.

In A88-0253, a Dillingham resident complained that the Commissioner of Health and Social Services and her staff had not adequately monitored an alcohol treatment program in his town. He complained about the credentials of the program staff and stated that one of them was using and selling illegal drugs. Assistant Ombudsman Ruth DeCamp's investigation coincided with an on-site program review by the State Office of Alcohol and Drug Addiction (SOADA), which revealed that the department had maintained a close overview of the program and there was no substance to the allegations. However, I recommended and the agency agreed to immediately conduct a confidential investigation into the drug abuse charges, despite the anonymous nature of that complaint. The agency's review into the "hearsay" allegations, by an independent investigator, exonerated the staff member.

My Anchorage office received a number of complaints about the Copper River School District. Although the Ombudsman theoretically has jurisdiction over Rural Education Attendance Areas (REAA's), in fact most complaints are either technically premature because they have not been heard by the school board, or they are out of our statutorily defined jurisdiction because they have been heard and decided by elected officials (the school board). There are few decisions made by superintendents or others without review of the school boards.

In A88-0454, a janitor at the Kenny Lake School attempted to complain, as a parent, about the principal and two teachers at a school board meeting. He stated he was threatened with a law suit and told to complain through the superintendent. The next day he did so and was placed on suspension and then fired, after working for the district for 12 years. He appealed to the same school board who referred him to the superintendent.

Although this matter is outside my jurisdiction, it appears that several fairness issues deserve to be addressed. One involves the janitor's termination and lack of real appeal rights. Another involves citizen complaints that the superintendent is using state money to fight an investigation against him by the Professional Teaching Practices Commission (PTPC). Complainants stated that the school board had assured the superintendent his salary and position even if the PTPC ultimately decertified him. It appears that there may be room for some legislative checks and balances in the REAA system.

In J88-0236, a Seward man, and later the city clerk, believed the people of Seward were promised a public hearing in Seward regarding the spraying of herbicides along the railroad right of way. Ombudsman investigator Odette Foster talked with the Department of Environmental Conservation (DEC) director of Environmental Health, who did not remember making such a promise. Instead, he selected Moose Pass for a hearing, having encouraged members of that community to send in petitions requesting the hearing. He insisted he had been misunderstood but agreed to hold an additional hearing in Seward. Assistant Ombudsman Foster facilitated the meetings between DEC and the Seward community.

Ms. Foster received her first fish molestation complaint in July. The complainant had taken his family on a Sunday outing, having just received a subsistence permit. Not knowing the rules of the game, he got tired of waiting for the fish net to do its work and jumped in the creek and swam after the fish. That failing, he started throwing rocks at the fish. All this was observed by a game warden hiding out in the bushes, who cited the man for fish molestation. This matter was closed as a matter before the courts but the gentleman was referred to a copy of the fish and game rules so that he could avoid this sort of difficulty in the future.

WRANGELL

Our contract with Wrangell began on July 1, 1988 and we have received 16 complaints from that community since then. Assistant Ombudsman Kim Elton visited the community to provide information and gather impressions from folks in Wrangell on September 29 and 30. The contract is for a yearly cost of \$12,000 plus travel expenses. Because of the distance involved, we are dependent on Wrangell officials to deal openly

and honestly with our office over the telephone and I have been given assurances that will to happen.

J88-0499 was a short investigation which explored the appropriateness of the City of Wrangell denying a connection to city electricity because of the location of the citizen's meter box, which was eleven feet above ground. The Ombudsman confirmed that the city was correct in denying hook up because of the inaccessibility of the box. The agency based its decision on a reference manual not included in city ordinance. My office recommended and the city agreed to two recommendations: (1) that the city write and adopt clear written standards for what is required to pass an electrical inspection (to specifically include references to manuals and other written standards); (2) that the city reimburse the complainant for half of his out of pocket expenses for moving the box to an attainable height.

DELAYS

The bane of government, the dreaded delay, continues to strike. For dozens of Fairbanks public assistance applicants, a delay of 10 minutes in meeting an agency appointment was the cause of grievous inconvenience. For others, a delay of two years was the norm for citizens awaiting a decision by the Commissioner of Natural Resources.

In July and August the Anchorage Ombudsman's office reviewed a complaint (A87-1344) that the Northern Regional Office of Public Assistance was arbitrary in requiring clients who were ten minutes or more late to reschedule appointments. Some clients were required to wait for several weeks for new appointments, although they claimed to have arrived on time for appointments. They claimed the paperwork they were asked to fill out took so much time that the time slot for their meetings with caseworkers passed and they were told they would have to be rescheduled, usually days and sometimes weeks later.

Assistant Ombudsman Robyn Williams learned different public assistance offices throughout the state have different ways of handling clients who do not arrive on time for scheduled appointments. My finding was that the Fairbanks office has a valid reason for employing a late policy, which is applied consistently and with advance notice to clients. However, I recommended that the division provide prior notice of late policies to clients throughout the state; that it allow clients as much flexibility as possible; that clients should have several options for rescheduling a cancelled appointment; that priority should be given clients whose applications are about to expire; and that the division have more uniformity statewide in its tardiness policy. The division agreed to all of these and has drafted an administrative procedure on rescheduling late clients.

Assistant Ombudsman Dave Plaskett investigated an allegation that the Department of Natural Resources (DNR) delayed a citizen's appeal to the commissioner for two years (A87-1284/A87-1344). Investigation revealed a large agency backlog of appeals to the commissioner; unresolved problems with developing a system for timely answering appeals to the commissioner; problems with the commissioner's staff responding to political and administrative pressures by answering appeals out of chronological sequence; and insufficient staff assigned to appeals work.

I recommended: (1) that the agency set out an appeals process, including a deadline for commissioner's response, in regulation; (2) that the number of staff needed to process backlogged and ongoing appeals be enhanced; (3) that staff be trained to use the available computer system for obtaining information needed in reviewing appeals; (4) and that staff discontinue working appeals out of order. An appeals process should be fair to all appellants.

The department committed itself to examining the appeals process and to streamlining it. The Commissioner stated that appeals backlogs would be cleaned up and new procedures implemented to prevent further backlog. She also committed to examining staff training needs and have the appeal procedure promulgated into state regulations.

I am pleased to report a recent letter from the Commissioner indicates the backlog has been entirely eliminated. Future appeals will be handled in a timely manner. This represented a significant commitment of time and effort on the part of Commissioner Brady, Deputy Commissioner Boston-Gorsuch and their staff in response to an ombudsman investigation.

BOTCHED

My Anchorage office received the most botched state complaint of the year, when a woman notified us that her husband was ordered by the Child Support Enforcement Division to provide medical support for his three children, two of whom were adults and one of whom died in 1985. CSED confirmed the administrative error and promised to write a letter of apology to the complainant, who replied, "It's about time!" (A88-0590)

KIDS' ISSUES

The mother of a girl who was called as a grand jury witness in a sexual abuse case protested the girl's interviews by the District Attorney outside the mother's presence (A88-0825). Assistant Ombudsman Gwen Byington investigated and found that Assistant DA Marsha Bissell interviewed the witness alone, attempting to establish rapport with her and to prepare her for her appearance before the grand jury. No abuse of

discretionary authority was found in the procedures used. In fact, Ms. Bissell's contact with the girl was sensitively performed and conducted in accordance with the guidelines of the 1987 Interagency Child Sexual Abuse Agreement.

A88-0482, -0483 and -0514 brought to my attention a problem which affected a number of long term handicapped children. The mother of a severely handicapped child learned that the Division of Medical Assistance would no longer pay for diapers for incontinent children. Her supplier had received a notice of discontinuation of coverage and the mother was informed that previous coverage had been an error and that federal guidelines prohibited diaper coverage. This mother, herself handicapped, had no means of paying for diaper supplies if she kept her daughter at home. Ironically, the child's medical needs would be covered in full if the mother chose to place her in a residential care facility.

The mother, acting for herself and other parents of handicapped children, contacted Advocacy Services of Alaska, several elected officials and researched Medicaid coverage in six other states, where diapers are provided by Medicaid. She could not get a satisfactory explanation for the noncoverage from Alaska's Division of Medical Assistance.

Assistant Ombudsman Steve Atkinson requested from the Division a copy of the federal Medicaid regulations which prohibited payment for diapers for the incontinent. He also requested a copy of the Division's poll of insurance companies and other states' Medicaid programs, on which the division based its denial of coverage.

The persistence of the mother and the Ombudsman's office had a positive outcome. The division received verbal permission from the federal regional office to provide restricted coverage for diapers for such handicapped children. There was some delay in return of coverage, due to problems with the federally mandated computer payment system. Sometimes finding the right solution takes remarkable tenacity and patience.

The grandmother of a hearing-impaired child filed a complaint that the Educational Support Office of the Department of Education was violating federal law by inadequately supervising the education of children enrolled at the Alaska State School for the Deaf (ASSD) (A88-0814). When Assistant Ombudsman Atkinson investigated the matter, he discovered that the staff failed to get approval from the boy's mother of their initial plan before his placement at ASSD. There appeared to be a conflict between the personal parenting style and expectations of the boy's family and the recommendations of the staff at ASSD concerning his educational needs. However, there was no indication that P.L. 94-142, which requires Individualized Education Programs for all special needs

students before placement, was being routinely overlooked by staff. ASSD staff and the child's family were able to continue working together for the education of the hearing impaired child.

PIONEERS

In A88-0739, Older Alaskans Ombudsman William O'Connor contacted our office on behalf of the family of a Palmer Pioneer Home resident who was involuntarily being transferred out of that facility. The resident was suffering from Alzheimers and had other mental health problems. Recent modification of his medication had caused dramatic behavior changes and the staff considered him dangerous and beyond their control. The family needed time to locate a more appropriate facility, but the transfer was scheduled at the end of June.

By the time the complaint came to Assistant Ombudsman Robyn Williams, she discovered the parties involved were working out a plan for a more orderly transfer. The resident's doctor was developing a medication regime which better controlled his behavior and met his medical needs. The family was arranging placement in Michigan and was getting financial affairs in order for Medicare coverage.

It appears that the intervention of the Ombudsman's office helped moderate high emotions and critical needs so that all parties could work out a just and reasonable solution.

PHONES

The state is providing an increasingly better level of telephone service to its citizens, if the results of recent Ombudsman activity are indicative of this general area of communication.

In J88-0422, a job applicant was unhappy because the Anchorage job service called him collect in Wasilla to tell him about a job opportunity. As you know, many job applicants are without income and having a difficult financial time. As a result of ombudsman involvement, Job Service has now changed the collect-call policy and calls out of region applicants at state expense. The agency also accepts collect calls.

A88-0270 and A88-0274 dealt with telephone overloads at Postsecondary Education Commission (PSEC). The Commission had no 800 lines, did not accept collect calls, had no recorded messages and some staff accepted and returned calls during restricted hours. As a result of the agency's awareness of the problem and our recommendations, PSEC will be modifying its telephone system to provide better access to its callers by late October. The new system will allow automated call answering, recorded messages based on touch tone input from the caller. If more information is needed, the call will

automatically be routed to "human" or it will allow the caller to leave a message for a staff member.

GENDER

Assistant Ombudsman Penelope Horter received a complaint from a woman who was attempting to gain title to land under a patent and objected to the requirement by the Department of Natural Resources, Division of Land and Water Management that she specify her sex and marital status on the transfer form. She'd been informed by the division that if she did not specify "single woman" or "married woman" as directed on the questionnaire that she might not receive title to her property.

This particular form had not been updated in 1984 when other forms were changed to reflect gender neutral language of "single person" and "married person." The division quickly agreed to accommodate the complainant and to change the form at the next printing.

However, the division, following legal requirements, will continue to require marital status for a land patent.

Even archaic legal language is subject, somewhat, to influence from our changing times.

In J88-0223, the Commissioner of Labor set legal precedent for unemployment law in Alaska when he decided that leaving a job to establish a household with a spouse is a fundamental right. This change was in large part due to the persistence of a complainant in appealing denial of her benefits. She was denied unemployment insurance benefits because leaving work to join her spouse was not considered "good cause" by the labor appeal tribunal. She quit her job in Juneau to join her husband in Freshwater Bay. She actively sought and found work but continued to appeal the adverse unemployment insurance decision, with encouragement from the ombudsman's office.

The Commissioner's precedent-setting decision will favorably affect benefits for spouses who join each other in the future. This is a good example of what a citizen can accomplish by pursuing a just solution to a personal predicament. It also is an example of how the ombudsman educates and helps citizens use agency appeal procedures.

PAYROLL AND PERSONNEL

We reviewed several problems in this area which involved timing. In June, Anchorage Assistant Ombudsman Steve Atkinson completed an investigation that the Department of Corrections had contacted a job applicant's current employer against the complainant's specific instructions. The current employer (private sector) demoted the employee when they learned he was actively seeking other employment. Investigation revealed that

Corrections was not considering the applicant as a finalist but simply notified current employers as a standard procedure. In this case, the application reviewer did not note the complainant's request not to contact the current employer unless he was a finalist. I found that the state has an obligation to thoroughly review information submitted in applications to avoid unnecessarily harming applicants. The department agreed to add language to its background investigation packet (application material), asking applicants to check a box on the personal history form if they do not want their current employer contacted.

Another state employer, the Anchorage International Airport (Department of Transportation and Public Facilities), directed an employee to terminate his outside employment. The employee felt his outside employment caused no conflict with his state employment. The designated supervisor, who normally would have heard an appeal, was out of town. Because of the immediacy of the threatened termination, the Commissioner instead heard this case and determined that the outside employment did not violate provisions of the Executive Ethics Act. The employee was allowed to retain both jobs.

DITCHES TO BE DUG

In one case the State said a ditch couldn't be dug; in another, it required digging in an unsafe area, claimed two citizens from different parts of Alaska.

In J88-0359, a Juneau property owner believed it was unreasonable to be denied a permit from the Habitat Protection division of Fish and Game for digging a trench across a small stream. He claimed the creek was on his property and the division had no right to tell him what to do there. Assistant Ombudsman Dave Plaskett's review indicated that the Department of Fish and Game has authority under AS 16.05.870 to require the Commissioner's approval and a fish habitat permit to excavate in a stream bed, no matter who owns the land. Additionally, the Attorney General advised the property owner he did not have the right to pollute a water column and affect fish spawning.

On the Kenai Peninsula a man was awarded a timber sale bid in the Cooper Creek Sale by the Division of Forestry. The logger found the division nonresponsive when he asked for guidance about logging in an area with two unmarked electrical cables running along the ground. Assistant Ombudsman Gwen Byington helped facilitate a meeting between the division and the complainant so that logging would be conducted outside a newly established corridor, to protect the electrical cables and the logger.

ENFORCEMENT

A small claims court plaintiff found a major glitch in her case against a military man who failed to pay his rent (A88-0922). She found that she was required to provide legal counsel for any military defendant. She told Assistant Ombudsman Robyn Williams this was totally unreasonable. Additionally, the complainant alleged that she received no specific notice of this requirement when she initially filed her claim.

Ms. Williams talked with court personnel and learned that legal representation was required by the Federal Soldiers and Sailors Relief Act. Apparently this act was passed to protect service personnel from being sued without notice or representation while they are "in service for their country."

Ms. Williams suggested that the Forms Committee for the Court System consider developing a way to notify the public about this requirement for military defendants. However, the investigation was discontinued due to lack of jurisdiction over this federal legislation.

A complaint of police brutality during an enforcement procedure (A88-0600) was brought by a complainant who sought treatment for a migraine headache at a Palmer hospital, who later refused treatment when a blood-alcohol test was required, and who was forcibly removed by the Palmer police and the Alaska State Troopers following a request for help from the hospital.

The complainant alleged that the Troopers used excessive force making an arrest for disorderly conduct, brutalizing him in the process. The investigation by Assistant Ombudsman Ruth DeCamp revealed that the police followed correct procedure in the arrest and made some effort to respond to the complainant's needs during incarceration. Hospital and police staff described his strong resistance and refusal to accept their reasons for denying him medical treatment and for involving the police. This resistance seems to have aggravated the incident. Valley Hospital, a private agency, the Palmer Police, a local government agency, the Alaska State Troopers, and the staff at Mat-Su Pretrial Facility were all cooperative in the investigation.

The complainant, who did not feel vindicated by the Ombudsman's investigation, continues his search for justice.

ART SCHOLARSHIP

My Juneau office received a complaint alleging that the University of Alaska's student activities office in Juneau had inefficiently managed an art scholarship fund (J87-0762). The fund accumulated money through nine student art shows from 1982

through 1988. The students kept 90 percent of the receipts as commission; the remaining 10 percent went to the fund to be used for scholarships. Investigation by Assistant Ombudsman Odette Foster revealed that no scholarships had been awarded, that the scholarship's purpose and guidelines were never written, and record keeping of the funds contained numerous errors.

As a result of investigation, University staff reconstructed the books and identified \$526.92 which should be applied to scholarships. The University of Alaska Southeast agreed with my recommendation to award one or more scholarships with this fund and to reconsider whether this type of small scholarship is practical. It is now focusing its fund raising efforts on larger scholarships.

ALASKA BIDDERS' PREFERENCE

AS 36.30, the State Procurement Code, took effect January 1, 1988. The Ombudsman's Office is subject to that code and we have amended our procurement practices to conform, including the promulgation of regulations.

Following the new procedures, the Ombudsman's office issued an invitation to bid in May for competitive sealed bidding when seeking lease space in Anchorage. Bids were opened on June 2 and an intent to award a contract was issued to the apparent low bidder on June 28. I received a protest from two competing bidders on June 30 and on July 13.

In addition to other matters, both bidders specifically protested an apparent unfairness inherent in AS 36.30.170, which defines "Alaska bidder." Both protesting bidders believed they should have received any Alaska bidders' preference because they met all reasonable definitions of "Alaska bidder." Upon review, it was evident that neither met the criteria of AS 36.30.170(b)(4) which states an Alaska bidder "is incorporated or qualified to do business under the laws of the state, is a sole proprietorship, and the proprietor is a resident of the state or is a partnership, and all partners are residents of the state." [Emphasis added.]

Specifically, both protesters were members of partnerships in which all partners were not Alaska residents. In the one instance, there are a number of partners, most of whom are long time Alaska residents; at least one now lives out of the state. In the other instance, a partnership is in the process of dissolving, since one partner left the state and the partnership, leaving the other partner to lease business space, pay all debtors, and actively dissolve the partnership. The remaining partner is a long time Alaska resident who meets the statutes' other definitions. This latter protestor would have been low responsive bidder had he received the 5 percent bidders' preference. Following the mandate of the statute, I

could not define him as an Alaska bidder for purposes of the preference, and I awarded the contract to the next bidder, who in fact did qualify for the Alaska bidders' preference.

There are several inequities in the statute. One is that an incorporated entity is not required to have its members residents of Alaska to be entitled to the Alaska bidders' preference. This seems to grant corporations an unfair advantage which partnerships are denied. It seems to penalize long time Alaska partnerships when a single member retains partnership status but moves out of state, which does not lessen the partnership's Alaskan commitment as a whole. It certainly penalizes the partnership in which one partner "bails out" on another without the Alaska partner's permission, leaving the survivor without Alaska bidders' preference status while he extricates himself from the partnership.

The State Procurement Code is to be reviewed by the legislature in late 1989. The Commissioner of Administration and the Commissioner of Transportation and Public Facilities are required to report to you concerning procurement by state agencies during fiscal year 1988, which is now complete. That report is due you on December 1, 1989 and is to include recommendations for changes in AS 36.30. Please accept as my recommendation for change a redefinition of Alaska bidder to include partnerships in which 50 percent or more of the partners are full time residents of Alaska.

If you would like more information about this recommendation, or if you desire a report in another format, please feel free to contact me at any time.

* * *

I have included copies of new brochures and posters. They are aimed at increasing citizen awareness not only of this office but also giving them "how to" tips on solving their own problems with government. Call any of my offices if you would like additional copies for your offices or constituents.

Please let me know if you have questions or comments about this report, or if you wish more detailed information about these case summaries or other work of the office.

Sincerely,



Duncan C. Fowler
Ombudsman



DAMES & MOORE

A PROFESSIONAL LIMITED PARTNERSHIP

5761 SILVERADO WAY, SUITE P, ANCHORAGE, ALASKA 99518-1657 (907) 562-3300

December 20, 1988

Senator Jan Faiks
6060 Yukon Drive
Anchorage, Alaska 99516

Dear Senator Faiks:

I am writing you this letter because I support hiring Alaskans. I am sure that you do, too.

My name is Jim Hemming and I have been an Alaska resident for 28 years. For the past 11 years, I have managed the Anchorage office of Dames & Moore, Consulting Engineers. Dames & Moore has been in business in Alaska for 18 years. We are committed to Alaska and have worked hard to keep our office in Anchorage open through the economic downturn while other companies have closed their offices and moved out.

Now, however, our ability to do business in Alaska is being threatened. When the regulations for AS 36.30.170 (B) (Alaska Bidders Preference) were finalized this year, we were told that we no longer qualified as an Alaskan business because Dames & Moore is a limited partnership rather than a corporation. We would be penalized at least 15 points on any state contract that we bid on in the future.

The statute states that for a partnership to be qualified as an Alaskan business, all of the partners must be residents of Alaska. The same is not true for corporations. A corporation could qualify after being in the state for 6 months even if none of the managers, board of directors or major stockholders are Alaskan residents. The intent of the legislation, I believe, was to prevent large outside companies rather than partnerships, from setting up joint ventures with small companies in Alaska as a "front" with most of the work being done outside the state. This, however, is not what the law says.

The longterm picture is that Dames & Moore may no longer be able to compete on state projects. As you can see from the attached list, state projects have been a significant part of our business in the past. We have used Alaskan residents on virtually all of our projects in the state. I may have to lay off Alaskan residents if State of Alaska projects are no longer open to my company.

A good example is the Bradley Lake Hydroelectric project. Dames & Moore has conducted the salmon monitoring program on the Bradley River for the past 3 years. Our project manager is David Erikson, a resident of Homer. David was born and reared on his parents' homestead in Homer and



Senator Jan Faiks
December 20, 1988
Page 2

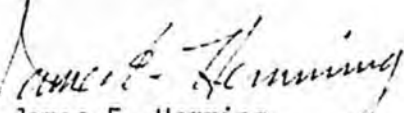
after college, returned to Alaska to pursue his professional career. Dave's assistants are Mary Pearsall of Homer and Anne Detoni of Ninilchik, long time Alaska residents who are two of the hardest working field biologists that I have ever met. We were originally chosen to continue this project for the next 7 years, assuring employment for at least 3 Alaska residents until 1995. Now, we have been told that, with the 15 point cut, our firm may have a very hard time retaining the project.

I am seeking your help as an Alaskan lawmaker to correct this inequitable situation so that the very people the law was supposed to help, like Dave, Mary, and Anne, are not hurt. The attached letter from Atkinson, Conway, and Gagnon suggests a simple legislative solution to the problem. This word change would remove the aspects of the existing law which create the discrimination.

Please let us know what you can do to remedy the situation. If you have any questions or need more information, please let me know.

Sincerely,

DAMES & MOORE


James E. Hemming
Manager, Alaska Operations

JEH/lms

P.S. I'd very much like to meet with you to discuss this matter at your convenience

KENNETH R. ATKINSON
JOHN M. CONWAY
BRUCE E. GAGNON
ROBERT J. DICKSON
W. MICHAEL MOODY
GEORGE M. KAPOLCHOK
JOHN A. TREPTOW
PATRICK D. GILMORE
SUSAN WRIGHT MASON
RICHARD E. VOLLERTSEN
GARY M. GUARINO
NEIL T. O'DONNELL
JEROME H. JUDAY
PAUL F. LYNCH
CATHLEEN NELSON McLAUGHLIN
CRAIG F. STOWERS

LAW OFFICES OF
ATKINSON, CONWAY & GAGNON, INC.
A PROFESSIONAL CORPORATION
420 L STREET
SUITE 500
ANCHORAGE, ALASKA 99501

CABLE ADDRESS:
DOVER

TELEPHONE 276-1700
AREA CODE 907

TELECOPIER/FACSIMILE:
(907) 272-2082

November 10, 1988

Dames & Moore
5761 Silverado Way, Suite P
Anchorage, Alaska 99516-1657

Mr. James E. Hemming

Re: Alaska Preference Statutes

Dear Mr. Hemming:

You have asked us to determine what statutes or regulations may preclude Dames & Moore, a limited partnership, from qualifying as an Alaskan bidder. That statute is AS 36.30.170(b)(4) which provides that a partnership may not qualify as an Alaskan bidder unless "all partners are residents of the state". As a result of being denied an Alaskan bidders preference, Dames & Moore would not qualify for either the 5% preference found in AS 36.30.170(b) or the newly imposed 10% evaluation preference found in 2 AAC 12.260(e). The latter regulation incorporates the definition of "Alaskan bidder" found in AS 36.30.170(b).

You have asked us to evaluate the constitutionality of the foregoing definition of "Alaskan bidder" in light of Dames & Moore's long term presence in the state. It is my understanding that Dames & Moore is a limited partnership comprised of Dames & Moore Inc., the general partner, and approximately 70 individual limited partners located around the world. Dames & Moore has maintained an office in Alaska for eighteen (18) years and is qualified to do business in the state. Dames & Moore has had an office in Anchorage continuously since 1970, and maintained a second office in Homer from 1976 to 1987. Dames & Moore currently has eight Alaska employees, although it has employed up to 52 Alaskans in better economic times. The manager of Alaska operations for Dames & Moore is Mr. James E. Hemming. Mr. Hemming is a limited partner in the Dames & Moore limited partnership and has lived in Alaska since 1961.

Dames & Moore
November 11, 1988
Page 2

In our view, a strong argument can be made that the denial of an Alaskan bidders preference to a partnership in the position of Dames & Moore is unconstitutional. First, the goal of the statute, to favor Alaska residents, appears constitutionally impermissible. Second, assuming a permissible goal, the means chosen appear unreasonable as applied to partnerships.

Article I, section 1, of the Alaska Constitution provides, in part, that " all persons are equal and entitled to equal rights, opportunities and protection under the law." A similar equal protection provision is contained in the United States Constitution. The Fourteenth Amendment to the United States Constitution also prohibits the states from making or enforcing "any law which shall abridge the privileges or immunities of citizens of the United States." The opportunity for equal employment, including employment in the construction industry, is a fundamental right. Robinson v. Francis, 713 P.2d 259, 265 (Alaska 1986).

In Lynden Transport, Inc. v. State, 532 P.2d 700 (Alaska 1975), the Alaska Supreme Court struck down a statute which created certain preferences for Alaskan owned motor carriers. The court stated:

Handicapping nonresidents admitted to do business in the state, however, has never in itself been considered a valid reason for a classification A discrimination between residents and nonresidents based solely on the object of assisting one class over the other economically cannot be upheld under either the privileges and immunities or equal protection clauses.

(emphasis added; id. at 709-710). See also Robinson v. Frances, 713 P.2d 259 (Alaska 1986). Thus a strong argument can be made that present preference scheme is prohibited by both the state and federal constitutions.

Second, assuming that the goal of favoring Alaska residents is constitutionally permissible, the means chosen appear unreasonable thus rendering the statute unconstitutional on this alternative ground. As stated in Isakson v. Rickey, 550 P.2d 359, 362 (Alaska 1976), a classification must "be reasonable, not arbitrary, and must rest upon some difference having a fair and

Dames & Moore
November 11, 1988
Page 3

substantial relationship to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." The present statute arguably fails this test as it unreasonably and arbitrarily penalizes businesses which operate in the form of a partnership.

The means chosen here do not ensure that Alaska businesses receive a preference and in fact can actually frustrate Alaska businesses. For example, an Alaskan based engineering firm with the majority of its partners in Alaska and one partner in a Seattle branch office would be considered a nonresident as all its partners do not reside in the state. AS 36.30.170(b)(4). A foreign corporation, however, can qualify as an Alaskan resident simply by applying to do business in the state and by staffing an office here with one employee for six months. AS 36.30.170(b)(4). Thus a Texas corporation with thousands of employees in Texas and one file clerk stationed in Anchorage for six months would be entitled to an Alaskan bidders preference whereas the foregoing Alaskan engineering firm, which may have been located here for twenty years, would not. Where an Alaskan business operates in the form of a partnership and has one or more partners located outside the state, the preference statute may actually operate as a preference for out-of-state corporations.

The means chosen by the legislature are further unreasonable as they do not prohibit an "Alaskan bidder" from subcontracting the work to a nonresident firm. Thus a partnership which has operated a large office in Anchorage for nearly two decades, like Dames & Moore, can be deemed a nonresident while a single six-month Alaskan resident, who intends to subcontract all or most of the work to an outside firm, will receive an "Alaskan bidder's" preference. As the means chosen by the legislature do not bear "a fair and substantial relationship" to the legislative goal of favoring Alaska residents, a strong argument can be made that the statute is unconstitutional as applied to partnerships.

There are two possible avenues for remedying Dames & Moore's exclusion from the Alaskan bidders preference: (1) a lawsuit and (2) legislative amendment to the definition of an Alaskan bidder contained in A.S 36.30.170(b)(4). A lawsuit may well prove successful. Depending on the effort put into defense of the statute by the state, however, such a lawsuit could potentially require a substantial expenditure of time and money. For this reason, I would recommend an initial attempt to obtain an amendment to the statute.

Dames & Moore
November 11, 1988
Page 4

The legislature may be amenable to amendment given the dissatisfaction expressed to you by state contracting officers with the present definition of an "Alaskan bidder". In addition, such an amendment would discourage a broad based legal challenge to the concept of Alaskan bidders preferences. The final argument is that an amendment would remove the disability presently imposed on Alaskan partnerships and further the purpose of the statute.

In terms of specific language, I would suggest that you seek to amend AS 36.30.170(b)(4) to read:

is incorporated or qualified to do business under the laws of the state, is a sole proprietorship, and the proprietor is a resident of the state, or is a partnership, and one or more of the partners is a resident of the state.

This language will result in partnerships being treated on a equal basis with corporations and proprietorships. If you wish to pursue a judicial resolution of this issue, please contact me so that we can further discuss the merits of the specific legal challenges and the means by which to pursue the same.

Please advise if I may be of further assistance.

Very truly yours,

ATKINSON, CONWAY & GAGNON-

By


Neil T. O'Donnell

NTO:jmm

List of Projects Conducted for the
State of Alaska
by
Dames & Moore Professional Limited Partnership*
Anchorage, Alaska
1970-1989

*Each of the projects on the attached list utilized Alaska residents.

- 1970 Alaska Department of Transportation and Public Facilities (ADOT&PF) Geologic and geophysical studies, proposed Ketchikan airport, Gravina Island, Alaska.
- 1970 ADOT&PF - Soils engineering studies, offshore rock fill area, Ketchikan, Gravina Island, Alaska.
- 1970 ADOT&PF - Soils investigation, proposed state capitol building, Juneau, Alaska.
- 1970 ADOT&PF - Soils investigation, tidelands ADDN, proposed maintenance building, Juneau, Alaska.
- 1971 ADOT&PF - Geologic and oceanographic studies, proposed airport runway extension, Sitka, Alaska.
- 1971 ADOT&PF - Inspection of rock excavation, proposed state office building, Juneau, Alaska.
- 1971 ADOT&PF - Review of pile driving and socket inspection, state office building, Juneau, Alaska.
- 1971 ADOT&PF - Design consultation, proposed runway extension, Sitka, Alaska.
- 1971 ADOT&PF - Consultation for dredged fill, small boat harbor, Whittier, Alaska.
- 1972 ADOT&PF - Geophysical and soils investigation, airport ferry terminal, Gravina Island, Alaska.
- 1972 ADOT&PF - Subsurface investigation and ocean engineering, mobilization and demobilization, ferry terminals, southeast Alaska.
- 1973 ADOT&PF - Subsurface investigation and ocean engineering, ferry terminals, Hoonah, Alaska.
- 1973 ADOT&PF - Subsurface investigation and ocean engineering, ferry terminal, Kake, Alaska
- 1973 ADOT&PF - Consultation, proposed dock facility, Cold Bay, Alaska.

- 1973 ADOT&PF - Consultation quarry development, airport runway extension, Sitka, Alaska.
- 1973 ADOT&PF - Wind monitoring system installation, Anchorage International Airport, Anchorage, Alaska.
- 1974 ADOT&PF - Microclimate evaluation, parking garage, Fairbanks, Alaska.
- 1974 ADOT&PF - Environmental impact report, airport runway, Anchorage, Alaska.
- 1974 ADOT&PF - Preliminary foundation investigation, school buildings, Tanana-Fort Yukon, Alaska.
- 1974 ADOT&PF - Characterization of wastewater effluent, International Airport, Fairbanks, Alaska.
- 1974 ADOT&PF - Site selection, ferry terminal, Anchorage, Alaska.
- 1974 ADOT&PF - Foundation investigation, vocational education building, Fort Yukon, Alaska.
- 1974-75 ADOT&PF - Meteorological analysis, International Airport, Anchorage, Alaska.
- 1974-78 Alaska Department of Fish & Game (ADF&G) - Baseline marine ecology studies, marine plant communities, Kachemak Bay, Alaska.
- 1975 ADOT&PF - Underwater inspection, airport runway extension, Sitka, Alaska.
- 1975 ADOT&PF - Consultation, testing, wastewater treatment facilities, Deadhorse, Alaska.
- 1975 ADOT&PF - Foundation investigation, vocational education building, Tanana, Alaska.
- 1975 ADOT&PF - Site selection, state Capitol, Alaska.
- 1975 ADOT&PF - Inspection and recommendations, water & wastewater treatment facilities, Nulato, Alaska.

- 1975 ADOT&PF - Environmental report, airport runway, Anchorage, Alaska.
- 1975-78 ADF&G - Baseline marine ecology studies, Kachemak Bay, Alaska.
- 1975-78 ADF&G - Management data study, kelp herring egg fishery, Prince William Sound, Alaska.
- 1975-78 ADF&G - Benthic crab survey, marine environment, Kachemak Bay, Alaska.
- 1976 ADOT&PF - Laboratory services, sewage treatment plant, Fairbanks, Alaska.
- 1976 ADOT&PF - Foundation investigation, village schools, northern Alaska.
- 1976-77 ADF&G - Geophysical and benthic investigation, Lower Cook Inlet, Alaska.
- 1976-78 ADOT&PF - Laboratory testing, Fairbanks International Airport, Fairbanks, Alaska.
- 1977 ADF&G - Site investigation, fish hatchery, Prince William Sound, Alaska.
- 1977 ADOT&PF - Consultation, bush schools, Alaska.
- 1977-78 ADF&G - Site evaluation, fish hatchery with geothermal heat source, Bell Island, Alaska.
- 1978 ADOT&PF - Geotechnical Investigation, proposed state office building, Juneau, Alaska.
- 1978-79 ADF&G - Water quality analyses, coastal waters, Ketchikan, Alaska.
- 1978-79 ADOT&PF - Meteorology & air quality investigations, proposed state capital site, Willow, Alaska.
- 1979 ADOT&PF - Soils and hydrology, Fish hatchery, Prince William Sound Main Bay, Alaska.
- 1979 ADOT&PF - Expert weather testimony, Anchorage International Airport, Anchorage, Alaska.

- 1979-80 ADOT&PF - Foundation investigation, fish hatchery, Snettisham, Alaska.
- 1980 ADOT&PF - Consultation preliminary planning, proposed bridge, Naknek, Alaska.
- 1980-81 ADOT&PF - Feasibility study, runway extension, Dutch Harbor, Alaska.
- 1980-81 ADOT&PF - Soils logging, Fish dock, Dutch Harbor, Alaska.
- 1980-81 ADOT&PF - Bathymetric survey, dock and facilities, Dutch Harbor, Alaska.
- 1980-81 Alaska Power Authority (APA) - Environmental assessment, hydroelectric plant, Dillingham, Alaska.
- 1980-81 APA - Environmental Assessment, hydroelectric power plant, Haines, Alaska.
- 1980-81 APA - Potential coal supply for village fuel in Northwest Alaska.
- 1981 ADOT&PF - Economic consultation
- 1981 ADOT&PF - Consultation, foundation bedrock, Main Bay salmon hatchery, Prince William Sound, Alaska.
- 1981-82 APA - Hydro power plan feasibility analysis, Bristol Bay region, Alaska.
- 1981-82 ADOT&PF - Engineering feasibility, economics & development plan, Chernofsky Harbor port facility, Unalaska Island, Alaska.
- 1981-82 ADOT&PF - Harbor feasibility study, St. Paul, St. George Island, Alaska.
- 1981-82 State of Alaska, Department of Policy & Development planning - Economic consultation.
- 1981-82 ADOT&PF - Geotechnical services, St. Paul Harbor, Alaska.
- 1981-83 ADOT&PF - Environmental Assessment, Wasilla bypass, Wasilla, Alaska.
- 1981-83 ADOT&PF - Socio-economics, New Parks Highway, Alaska.

- 1981-83 ADOT&PF - Geotechnical services, St. George Harbor, Alaska.
- 1981-83 ADOT&PF - Noise impact analysis, New Parks Highway, Alaska.
- 1981-83 ADOT&PF - Air quality impact assessment, New Parks Highway, Alaska.
- 1982 State of Alaska, Office of the Governor - Develop/analyze Alaska fisheries research alternatives.
- 1982 State of Alaska, Petroleum Revenue Division - Petroleum forecast.
- 1982 ADOT&PF - Transportation study, St. George Island, Alaska.
- 1982 ADOT&PF - Transportation study, St Paul Island, Alaska.
- 1982 ADOT&PF - Biological & field investigation, boat harbor , Pribilof Islands, Alaska.
- 1982 ADOT&PF - Geotechnical offshore and onshore boat harbor, Pribilof Islands, Alaska.
- 1982 Alaska Power Authority (APA) - Assess feasibility of coal & gas energy for Bethel, Alaska.
- 1982-83 ADOT&PF - Environmental analyses & report preparation, St. George Harbor design, St. George Island, Alaska.
- 1982-83 Alaska Power Authority (APA) - Geothermal well, Unalaska, Alaska.
- 1982-83 APA - Hydro power plan feasibility analysis, Newhalen River, Alaska.
- 1982-84 ADOT&PF - Environmental studies, Knik Arm Crossing, Anchorage, Alaska.
- 1983 ADOT&PF - Consultation compliance seafood quality assurance program, Juneau, Alaska.
- 1983 ADOT&PF - Determine demand for marine services, Pribilof Islands, Alaska.
- 1983 State of Alaska, Department of Community Regional Affairs - Biological & Commercial Consulting, Bristol Bay, Alaska.

- 1983 ADOT&PF - Draft EIS revision, Limited access highway, Wasilla, Alaska.
- 1983 APA - Hydro power plan feasibility analysis, Iliamna, Alaska.
- 1984 ADOT&PF - Highway air quality assessment, Anchorage, Alaska.
- 1984 State of Alaska, Department of Natural Resources (DNR) - Geotechnical services, coal mining, Anchorage, Alaska.
- 1984-85 ADOT&PF - Marine seismic survey/geology, Turnagain Arm, Alaska.
- 1984-85 DNR - Dam safety inspections, Vortag Lake & Isatkoak Dams, Barrow & Kotzebue, Alaska.
- 1984-85 DNR - Cost guidelines for reclamation of coal mines. Anchorage, Alaska.
- 1984-85 APA - Susitna alternative economic studies, Susitna Hydroelectric Project, Susitna, Alaska.
- 1984-85 APA - Environmental permitting, exploratory geothermal well, Unalaska, Alaska.
- 1984-85 APA - Sockeye salmon smolt survey, hydro power feasibility analysis, Iliamna, Alaska.
- 1984-85 State of Alaska, Court System - Seismic & earthquake engineering analysis, courthouse addition, Anchorage, Alaska.
- 1985 DNR - Dam safety inspection, Slate Creek, Kodiak, Alaska.
- APA - Wildlife users survey, Susitna hydroelectric project, Susitna, Alaska.
- 1985-86 State of Alaska, Department of Environmental Conservation (DEC) - Stream use inventory.
- 1986 ADOT&PF - Monitor gravel extraction, Elmendorf AFB, Alaska.
- 1986 State of Alaska, Department of Community and Regional Affairs (DCRA) - Bristol Bay underutilized fisheries potential.

- 1986 DEC - Fishery, mining and recreational use survey of Tolovana River.
- 1986 APA - Consulting services, hydroelectric project, Bradley Lake, Alaska.
- 1986-87 APA - Engineering & economic feasibility study, geothermal power plant, Aleutian Islands, Unalaska, Alaska.
- 1987 DEC - Crown Point tank car incident, environmental assessment.
- 1988-89 APA - Railbelt Intertie, environmental assessment.
- 1985 - APA - Bradley Lake hydro salmon monitoring project.
present

6-0200H ✓
Cook
5/6/89

Original sponsors: Faiks and Coghill

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 58 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the definition of 'Alaska bidder'
7 for purposes of the Alaska bidder preference in the
8 awarding of state contracts."

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

0 * Section 1. AS 36.30.170(b) is amended to read:

1 (b) The procurement officer shall award a contract based on
2 solicited bids to the lowest responsive and responsible bidder after
3 an Alaska bidder preference of five percent and an Alaska products
4 preference as described in AS 36.30.322 - 36.30.338 have been applied.

5 In this subsection, "Alaska bidder" means a person who

6 (1) holds a current Alaska business license;

7 (2) submits a bid for goods, services, or construction
8 under the name as appearing on the person's current Alaska business
9 license;

10 (3) has maintained a place of business within the state
11 staffed by the bidder or an employee of the bidder for a period of six
12 months immediately preceding the date of the bid;

13 (4) is

14 (A) incorporated or qualified to do business under the
15 laws of the state and at least

16 (i) 51 percent of the corporation is owned by
17 residents of the state;

18 (ii) 50 percent of the total value of business of
19 the corporation is conducted in the state, excluding goods

1 produced in the state and exported outside the state and
2 services provided by employees who are state residents; or
3 (iii) \$500,000 worth of annual business is conduct-
4 ed by the corporation in the state; [,]

5 (B) [IS] a sole proprietorship [,] and the proprietor
6 is a resident of the state; or

7 (C) [IS] a partnership, at least 51 percent of which
8 is owned by [AND ALL PARTNERS ARE] residents of the state; and

9 (5) if a joint venture, is composed entirely of venturers
10 [VENTURES] that qualify under (1) - (4) of this subsection.

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HOUSE COMMITTEE REPORT

(7)

Date Referred: March 3, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 5/7/89

The LABOR & COMMERCE Committee considered:

CSSB 66(R1s)

CS FOR SENATE BILL NO. 66 (Rules)

[IMMUNITY/TREATMENT OF INTOXICATED PERSONS]

"An Act relating to immunity for treatment of intoxicated or incapacitated persons; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with HCS CSSB 66 (L+C) the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

McAteer

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>Mark Boyer</u>		X	
<u>Carl ...</u>		X	
<u>Yvonne ...</u>		X	
<u>Debra ...</u>		X	
<u>David ...</u>		X	
<u>D.G. ...</u>		X	

David ...

Chairman's signature

CS FOR HOUSE BILL NO. 116 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to immunity for treatment of intoxicated or incapacitated persons; and providing for an effective date."

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

* Section 1. AS 47.37.170(g) is repealed and reenacted to read:

(g) A person may not bring an action for damages ~~against the state, a municipality, officers, agents, or employees of the state or a municipality, a peace officer, or members of the emergency service patrol,~~ based on the performance of or failure to perform a duty imposed under this section. This subsection does not apply to an action against (1) the state or a municipality based on gross negligence, or reckless or intentional misconduct; or (2) ^{INDIVIDUAL} an ~~officer,~~ ^{PERSON} agent, ~~or employee of the state or a municipality, a peace officer, or member of the emergency service patrol~~ based on gross negligence or reckless or intentional misconduct arising from protective custody, or based on reckless or intentional misconduct arising from a failure to perform a duty imposed under this section. In this subsection "municipality" has the meaning given in AS 01.10.060 and includes a public corporation established by a municipality.

* Sec. 2. This Act applies to causes of action that accrue on or after the effective date of this Act.

* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

Original sponsors: Halford, Kelly,
Faiks, and Jones

1 IN THE SENATE BY THE RULES COMMITTEE

2 CS FOR SENATE BILL NO. 66 (Rules)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to immunity for treatment of intoxi-
7 cated or incapacitated persons; and providing for an
8 effective date."

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

10 * Section 1. AS 47.37.170(g) is repealed and reenacted to read:

11 (g) A person may not bring an action for damages based on the
12 decision under this section to take or not to take an intoxicated or
13 incapacitated person into protective custody, or to release a person
14 from protective custody. This subsection does not apply to an action
15 for damages caused by intentional misconduct. ^{OR GROSS NEGLIGENCE}

16 * Sec. 2. This Act applies to causes of action that accrue on or after
17 the effective date of this Act.

18 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

Introduced: 1/25/89
Referred: Community & Regional
Affairs, Labor & Commerce and
Judiciary

6-0624A

1 IN THE HOUSE

BY MACLEAN AND SWACKHAMMER

2

HOUSE BILL NO. 116

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to immunity for treatment of intoxi-
7 cated persons; and providing for an effective date."

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

9 * Section 1. AS 47.37.170(g) is repealed and reenacted to read:

10 (g) A person may not bring an action for damages against the
11 state, a municipality, officers, agents, or employees of the state or
12 a municipality, a peace officer, or members of the emergency service
13 patrol, based on the performance or failure to perform a duty imposed
14 under this section. In this subsection "municipality" has the meaning
15 given in AS 01.10.060 and includes a public corporation established by
16 a municipality.

17 * Sec. 2. This Act applies to causes of action that accrue on or after
18 the effective date of this Act.

19 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

RECEIVED

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 66 (Rates) 1989
PUBLISH DATE: 2/3/89 OFFICE OF

FISCAL NOTE

SENATOR RICK HALFORD

REQUEST:

Revision Date: _____
Title: "An Act relating to immunity for
treatment of intoxicated persons..."
Sponsor: Senator Halford
Requestor: Senator Halford

Agency Affected: Public Safety
BRU: Law Enforcement
Component: AST. FWP. CAP. VPSO.
FP

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

SB 66 would prevent lawsuits against the State, Department, and its officers, employees, and agents for discretionary decisions regarding incapacitated (intoxicated) persons. Passage of this bill may eliminate future liability, and would have no fiscal impact on the Department's present budget.

Prepared by: Captain C. Roger McCoy, Special Assistant
Division: Office of the Commissioner

Phone: 465-4322
Date: 2/28/89

Approved by Commissioner: Arthur English
Agency: Department of Public Safety

Date: 2-28-89

NEGLIGENCE

"are never understood to signify positive will or intention, unless when joined with other words which show that they are to receive an artificial or unusual, if not an unnatural, interpretation. *Lexington v. Lewis*, 10 Bush, Ky., 677.

"Negligence" is not synonymous with "incompetency." Hence the competent may be negligent. *Alabama City, G. & A. Ry. Co. v. Bessiere*, 190 Ala. 59, 66 So. 805, 806; *Barclay v. Wetmore & Morse Granite Co.*, 92 Vt. 195, 102 A. 493, 495.

See *Care*.

Actionable Negligence. See *Actionable Negligence*.

Collateral Negligence. In the law relating to the responsibility of an employer or principal for the negligent acts or omissions of his employee, the term "collateral" negligence is sometimes used to describe negligence attributable to a contractor employed by the principal and for which the latter is not responsible, though he would be responsible for the same thing if done by his servant. *Weber v. Railway Co.*, 20 App.Div. 292, 47 N.Y.S. 11.

Comparative Negligence. See *Comparative Negligence*.

Concurrent Negligence. Arises where the injury is approximately caused by the concurrent wrongful acts or omissions of two or more persons acting independently. *Carr v. St. Louis Auto Supply Co.*, 293 Mo. 562, 239 S.W. 827, 828.

Contributory Negligence. The act or omission amounting to want of ordinary care on part of complaining party, which, concurring with defendant's negligence, is proximate cause of injury. *Honaker v. Crutchfield*, 247 Ky. 495, 57 S.W.2d 502.

Any want of ordinary care on the part of the person injured, (or on the part of another whose negligence is imputable to him,) which combined and concurred with the defendant's negligence, and contributed to the injury as a proximate cause thereof, and as an element without which the injury would not have occurred. *Railroad Co. v. Young*, 153 Ind. 163, 54 N.E. 791; *Barton v. Railroad Co.*, 52 Mo. 253, 14 Am.Rep. 418; *McLaughlin v. Electric Light Co.*, 100 Ky. 173, 37 S.W. 851, 34 L.R.A. 812; 25 C.J. § Damages; *Townsend v. Missouri Pac. R. Co.*, 163 La. 877, 113 So. 130, 132, 54 A.L.R. 538.

The negligent act of plaintiff which, concurring and cooperating with negligent act of defendant, becomes real, efficient, and proximate cause of injury, or cause without which the injury would not have occurred. *Elder v. Plaza Ry.*, 194 N.C. 617, 140 S.E. 298, 299; *James v. Delaware, L. & W. R. Co.*, 92 N.J.L. 149, 104 A. 328, 333.

"Assumption of risk" and "contributory negligence" are not synonymous. *Chicago, R. I. & P. R. Co. v. Rogers*, 60 Okl. 249, 159 P. 1132, 1136.

Concurrent Contributory Negligence. Knowledge of specific danger and negligent failure to avoid it. *Sprinkle v. St. Louis & S. F. R. Co.*, 215 Ala. 191, 110 So. 137, 140.

Mutual Contributory Negligence. Exists when injury would not have happened but for negligence of both parties. *Alexander v. Missouri, K. & T. R. Co. of Texas*, *Tax.Civ.App.*, 287 S.W. 153, 155.

Criminal Negligence. Criminal negligence which will render killing a person manslaughter is the omission on the part of the person to do some act which an ordinarily careful and prudent man would do under like circumstances, or the doing of some act which an ordinarily careful, prudent man under like circumstances would not do by reason of which another person is endangered in life or

bodily safety; the word "ordinary" being synonymous with "reasonable" in this connection. *State v. Coulter*, Mo.Sup., 204 S.W. 5.

Negligence of such a character, or occurring under such circumstances, as to be punishable as a crime by statute; or (at common law) such a flagrant and reckless disregard of the safety of others, or willful indifference to the injury liable to follow, as to convert an act otherwise lawful into a crime when it results in personal injury or death. 4 Bl. Comm. 192, note; *Cook v. Railroad Co.*, 72 Ga. 48; *Rankin v. Transportation Co.*, 73 Ga. 229, 54 Am.Rep. 874; *Railroad Co. v. Chollette*, 33 Neb. 143, 49 N.W. 1114.

Culpable Negligence. Failure to exercise that degree of care rendered appropriate by the particular circumstances, and which a man of ordinary prudence in the same situation and with equal experience would not have omitted. *Carter v. Lumber Co.*, 129 N.C. 203, 39 S.E. 828; *Woodman v. Nottingham*, 49 N.H. 387, 6 Am.Rep. 526; *Kimball v. Palmer*, C.C.A.Va., 25 C.C.A. 394, 80 F. 240.

Degrees of Negligence. There are degrees of care, and failure to exercise proper degree of care is "negligence," but there are no degrees of negligence. *Murray v. De Luxe Motor Stages of Illinois*, Mo.App., 133 S.W.2d 1074, 1078.

Classification of "negligence" as "gross," "ordinary," and "slight" indicates only that under special circumstances great care and caution, or ordinary care, or slight care are required, but failure to exercise care demanded is "negligence." 38 Del.Laws, c. 26. *Gallegher v. Davis*, 7 W.W.Harr. 380, 183 A. 620.

Gross Negligence. The intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness. *Seelig v. First Nat. Bank*, D.C.Ill., 20 F.Supp. 61, 68.

The failure to exercise slight care. *Jones v. Atchison, T. & S. F. Ry. Co.*, 98 Kan. 133, 157 P. 399, 400; *Burton Const. Co. v. Metcalfe*, 162 Ky. 366, 172 S.W. 698, 701.

The want of slight diligence. The want of that care which every man of common sense, how inattentive soever, takes of his own property. The omission of that care which even inattentive and thoughtless men never fail to take of their own property. *Litchfield v. White*, 7 N.Y. 412, 57 Am.Dec. 534; *Seybel v. National Currency Bank*, 54 N.Y. 299, 13 Am.Rep. 583; *Briggs v. Spaulding*, 141 U.S. 132, 11 S.Ct. 925, 35 L.Ed. 662; The want of ordinary diligence and care which usually prudent man takes of his own property of like description. *Dalton v. Hamilton Hotel Operating Co.*, 242 N.Y. 481, 152 N.E. 268, 270. In the law of torts (and especially with reference to personal injury cases), the term means such negligence as evidences a reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or that entire want of care which would raise the presumption of a conscious indifference to the rights of others which is equivalent to an intentional violation of them. *McDonald v. Railroad Co.*, *Tex.Civ.App.*, 21 S.W. 775; *Railroad Co. v. Bode-mer*, 139 Ill. 596, 29 N.E. 692, 32 Am.St.Rep. 218; *Colt v. Western Union Tel. Co.*, 130 Cal. 657, 63 P. 83, 53 L.R.A. 678; *Bremer v. Lake Erie & W. R. Co.*, 318 Ill. 11, 148 N.E. 862, 866, 41 A.L.R. 1345.

Indifference to present legal duty and utter forgetfulness of legal obligations, so far as other persons may be affected, and a manifestly smaller amount of watchfulness and circumspection than the circumstances require of a person of ordinary prudence. *Burke v. Cook*, 246 Mass. 518, 141 N.E. 585, 586. Negligence bordering on recklessness. *People v. Adams*, 289 Ill. 339, 124 N.E. 575, 577.

"Gross negligence" is substantially higher in magnitude than simple inadvertence, but falls short of intentional wrong. *Young v. City of Worcester*, 253 Mass. 481.

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7 2

STATE OF ALASKA
THE LEGISLATURE

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JUNEAU, ALASKA 99811
907-465-3800

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

SB 72

Senate RRC 3/31/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act..registration and
endorsements for contractors...."
Sponsor: Senator Szymanski
Requestor: _____

Agency Affected: Community & Regional Affairs
BRU: _____

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

There is no fiscal effect for FY 90.

Prepared by: Carol Carroll, Deputy Director
Division: Municipal & Regional Assistance

Phone: 465-4750
Date: _____

Approved by Commissioner: *David C. Hoffman*
Agency: Community & Regional Affairs

Date: 3-16-91

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to registration and licensing of contractors: . . .
Sponsor: Senator Szymanski
Requestor: House Labor & Commerce

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	21.0	21.0	21.0	21.0	21.0	21.0
TRAVEL	7.0	7.0	7.0	7.0	7.0	7.0
CONTRACTUAL	15.0	15.0	15.0	15.0	15.0	15.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	43.0	43.0	43.0	43.0	43.0	43.0
CAPITAL						
REVENUE	0	75.0	75.0	0	75.0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER GF/PR	43.0	43.0	43.0	43.0	43.0	43.0
TOTAL	43.0	43.0	43.0	43.0	43.0	43.0

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary) No fiscal impact for FY 90.

SEE ATTACHED

Prepared by: Jennifer Strickler Phone: 465-2144
Division: Occupational Licensing Date: March 19, 1990

Approved by Commissioner: Larry Merculieff Date: 3-20-90
Agency: Department of Commerce & Economic Development

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

ANALYSIS
CSSSSB 72 (Fin) am

The bill establishes an endorsement to the registration of a general contractor who oversees the construction of or who performs alterations to residential structures. This fiscal note represents the anticipated costs associated with the establishment of the registration endorsement for residential contractors.

The division has no way of knowing the number of residential contractors who will be affected by the bill; therefore, calculations in this fiscal note are based on an estimate of 500 of the approximately 1,500 licensed general contractors seeking registration endorsement as a residential contractor. Based on 500, the new category can be expected to cover 1.86% of the administrative costs (500 divided by 26,945 total licensees).

Personal Services: \$21.0

Consists of:

- o 13.00% of a licensing examiner \$ 5.1
- o 2.00% of an investigator 1.8
- o 1.86% of administrative overhead 14.1

Travel: \$ 7.0

This will provide travel funds for the licensing examiner to assist with exam development and administer the examinations at least two times a year in each judicial district.

Contractual Services: \$15.0

This will provide funding for examination development; communication expenses; printing of applications, examinations, etc.; public notices; exam facility rentals; seminars; and other informational publications necessary.

TOTAL \$43.0

REVENUES:

The revenues identified are based on an endorsement fee for residential contractors, assuming that residential contractors will pay a biennial fee of \$150 (\$75 per year) in addition to their general contractor registration.

FY 90: No anticipated impact.

FY 91: No revenue impact, although exam development will commence in preparation for the effective date of the bill.

FY 92: The effective date of the bill is July 1, 1991 and, therefore, revenues are based on an initial 500 contractors seeking a residential endorsement. The initial endorsement would be valid to December 31, 1992 so that residential endorsements will coincide with the general contractor's certificate of registration renewal date of December 31, 1992. 500 x \$150 license fee = \$75.0.

- FY 93: Residential contractor endorsements will be due for renewal on December 31, 1992. The renewed endorsement will be valid for two years and will expire on the same date as the general contractor's certificate of registration. $500 \times \$150 = \75.0 .
- FY 94: This will be a nonrenewal year and no revenues other than fees from new registrants (not estimated) will be generated. Although no revenues will be received in this year, like all other licensing programs, the program will be covered by program receipts of other occupations renewing during that year.

CS SSSB72, Contractor Registration/Endorsement

Testified in favor of CS SSSB72 before senate Labor and
Commerce Committee:

Larry Taylor
President
Alaska State Homebuilders Association

Gregory L. Jones
Alaska State Homebuilders Association

William E. Schneider
Executive Director
Associated General Contractors of Alaska

Harvey Bowers
Program Manager
Alaska Craftsman Home Program

Randall Burns
Director
Division of Occupational Licensing

Jim Plasmán
Deputy Director
Division of Municipal and Regional Assistance

Margaret Nelson
Special Assistant/Public Information Officer
Alaska Housing Finance Corporation

Jim Picard
President
Alaska Mortgage Bankers Association

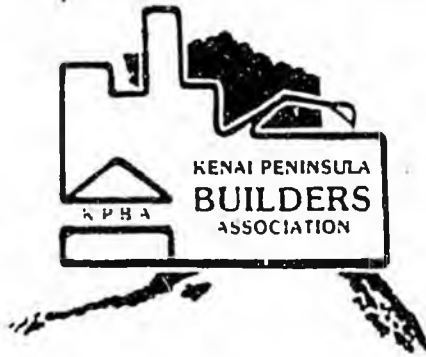
Pat Vincent
Executive Director
Kenai Builders Association

Sandy Tasler
Kenai Builders Association
Kenai Peninsula Board of Realtors

Cliff Baker
Kenai

Harold Stocker
Stocker Construction
Sitka

Steve Shows
Chief Building Inspector
City & Borough of Juneau



April 6, 1989

Senator Mike Szymanski
P.O. Box "Y"
Juneau, Alaska 99811

RE: Sponsor Substitute SENATE BILL 72

Dear Senator Szymanski:

The Kenai Peninsula Builders Association supports the Sponsor Substitute for Senate Bill 72. We would like to thank you for listening to our concerns regarding the the original bill, and appreciate your effort in working with members of our industry to create positive legislation in the rewritten bill.

Your bill addresses the serious problem of poor quality construction, an area of great concern to the competent members of the building industry, in a practical and positive way. The requirement for builder education and competency exams in Arctic and thermal construction techniques is certainly a progressive move. Our association supports the Alaska Craftsman Home Program and feels that many of the "mistakes" we've seen in the past will be eliminated through education. Requiring Alaska Housing Finance Corporation to only loan or grant state money for houses built by licensed residential contractors will help ensure compliance across the state.

The Kenai Peninsula Builders Association will continue to ask for your support of state-wide mandatory building inspections as an Underwriting Guideline for any AHFC loan. A five step inspection system would include Plans Approval; Footing, Foundation and Framing Inspection; Insulation Inspection; Electrical and Plumbing Inspection; Final inspection.

Sincerely,

KENAI PENINSULA BUILDERS ASSOCIATION

Shelby E. Johnson, President

SEJ/p3v

cc: Senator Paul Fischer
Senator Jay Korttula
Representative C. E. Swackhammer
Representative Mike Navorre
Representative Jim Zawacki
Representative Pat Pourchot

Alaska State Home Builders Association
Interior Builders Association of Fairbanks
B. I. A. of Anchorage
Home Builders Association of Juneau
Mat-Su Home Builders Association
Kenai Peninsula Board of Realtors

Box 1753 • Kenai, Alaska 99611 • (907) 776-5719



ASSOCIATED GENERAL CONTRACTORS of ALASKA

4041 B STREET • ANCHORAGE, ALASKA 99503
PO BOX 249409 • ANCHORAGE, ALASKA 99524-0409
TELEPHONE (907) 561-6334 • FAX (907) 562-6118

April 10, 1989

Senator Mike Szymanski
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Re: SB 72


Dear Senator Szymanski,

This letter is to advise you of AGC's support for CSSB 72. Following discussion with BIAA, home builder representatives, and your staff, all of our previous concerns have been rectified. We certainly appreciate your time and efforts and the time and efforts of your staff in addressing our concerns.

We urge you and your colleagues to promptly pass CSSB 72.

Sincerely,

ASSOCIATED GENERAL CONTRACTORS
OF ALASKA



William E. Schneider
Executive Director

cc: Greg Jones, BIAA

wfr\szymb72.



ALASKA STATE
HOMEBUILDERS ASSOCIATION

RECEIVED APR 15 1989

RE: Committee Substitute for Sponsor
Substitute for SB 72 specifically
for contractors' licensing

April 3, 1989

The Honorable Mike Szymanski
Senator, State of Alaska
P O Box V
Juneau, AK 99811

Dear Senator Szymanski:

The Alaska State Homebuilders Association, through its affiliated local chapters across the State, has spent many hours over several years discussing the issue of licensing for residential contractors. It is not a simple issue, it has many parts to it, and for any licensing to be effective and accomplish its goal of regulation, it must be an integrated package that addresses all of those parts. The current bill before the legislature that concerns licensing for residential contractors has received a great deal of review and input from those most affected by it - the contractors - and Committee Substitute for Sponsor Substitute for SB 72 has the full support of the Alaska State Homebuilders Association. It is our hope that this bill will be passed during the current legislative session.

Thank you for the support you have given to this issue and to this particular bill.

Sincerely,

Larry Taylor
President





520 East 34th St.
Anchorage, AK 99503
(907) 561-1900

P.O. Box 101020
Anchorage, AK 99510

March 24, 1989

The Honorable Mike Szymanski
Alaska State Senate
Alaska State Senator
P. O. Box V
Juneau, AK 99811

RE: SSSB 72

Dear Senator:

The Alaska Housing Finance Corporation supports SSSB 72 which proposes that state funds cannot be used to finance construction of homes unless the work is performed by a licensed contractor. We believe it is good policy to require that builders seeking state financing attend seminars under the Alaska Craftsman Home Program. These policies help ensure that any financing given is well-spent. Also, the additional financial burden of these requirements is minimal.

Sincerely,

A handwritten signature in cursive script that reads "Margaret Nelson".

Margaret Nelson
Special Assistant/Public Information Officer

ec



ALASKA CRAFTSMAN HOME PROGRAM

March 23, 1989

Senator Mike Szymanski
P.O. Box V
Juneau, Alaska 99811

Dear Senator Szymanski:

The Alaska Craftsman Home Program supports Senate Bill 72, licensing and establishing an education level for contractors. Many of the problems we see over and over again in Alaska are due to failure to understand basic building science, and the dynamics of energy and moisture flow through walls, roofs and foundations.

Requiring some level of education for contractors will not only assure the public but will help protect the State of Alaska to avoid continuation of the current situation in which the State owns thousands of buildings which do not meet any standard or codes.

Often the best laid plans and work of builders go foul due simply to a lack of knowledge and not necessarily reflective of a lack of integrity. The Alaska Craftsman Home Program sees itself as a vehicle in providing education to contractors.

Sincerely,

Harvey Bowers
Program Manager

Cooperative Extension Service
2221 E. Northern Lights Blvd.
Anchorage, Alaska 99508-4143
(907) 279-5582

Cooperative Extension Service
University of Alaska
Fairbanks, Alaska 99775-5200
(907) 474-7201

Energy Library
949 E. 36th Ave., Suite 403
Anchorage, Alaska 99508
(907) 563-1955 ext. 457

ALASKA MORTGAGE BANKERS ASSOCIATION

P.O. BOX 9-2691 / ANCHORAGE, ALASKA 99509-2691

RECEIVED MAR 23 1989

March 13, 1989

Senator Mike Szymanski
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear Senator Szymanski:

Re: Substitute Senate Bill Number 72

The Alaska Mortgage Banker's Association was asked by Carolyn Reitter of your office to provide input regarding the above referenced bill in general and more specifically our ideas regarding prohibiting state funding for residential structures that are not built by "residential contractors."

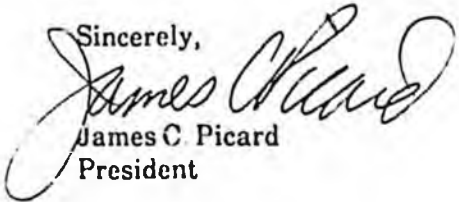
As time was of the essence, the AMBA Board of Directors and general membership did not have time to review this proposed legislation as they are not scheduled to meet until next week. The AMBA State Legislative Affairs Committee did review the proposed legislation on March 9, 1988, and voted unanimously its full support. We anticipate the general membership and board will concur with our decision.

There have been a number of cases where contractors unfamiliar with appropriate arctic building techniques have built structures which have experienced serious structural, energy or foundation problems. A licensing and education process for residential contractors will go a long way in minimizing this type of problem in the future. We believe consumers should be protected against such practices which were common in Alaska in the past. Withholding state funding will result in this restriction becoming the standard for other nonstate investors.

While the committee does not wish to slow this particular bill down with additional language, we would like to say that we believe that future licensing of the appraisal industry, with other requirements, will also assist the state.

Thank you for giving AMBA the opportunity to provide input on this bill.

Sincerely,


James C. Picard
President

PUBLIC OPINION MESSAGE

DEAR: SENATOR SZYMANSKI

NAME: MICKY E. MCLEES

TITLE:

ADDRESS: 2314 ROOSEVELT DRIVE #3

CITY: ANCHORAGE

ZIP: 99517

PHONE: 248-7443

BILL NO: SB 72

SUBJECT: REGISTRATION/LICENSING OF CONTRACTORS

MESSAGE: THE DOWNTURN IN THE ECONOMY HAS CAUSED CONTRACTORS AND INDIVIDUALS POSING AS CONTRACTORS TO ENTER INTO CONSTRUCTION PROJECTS FOR WHICH THEY ARE NOT QUALIFIED. SB 72 WILL WEED OUT THE UNQUALIFIED WHILE PROTECTING THE HOME OWNER AND THE LEGITIMATE ALASKA CONTRACTOR.

POMID: 03110753

DATE: 04/19/89

TIME: 11:07:53

LIONAME: ANCHORAGE LIO

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SHULTZ	SWACKHAMMER	UEHLING
TAYLOR	ULNER	ZHAROFF
WALLIS	ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR SZYMANSKI

NAME: O. "SWEDE" HOLMSTROM

TITLE: UNITED LUMBER COMPANY, INC.

ADDRESS: 5011 JEWEL LAKE RD.

CITY: ANCHORAGE

ZIP: 99502

PHONE: 243-4545

BILL NO: SB 72

SUBJECT: REGISTRATION/LICENSING OF CONTRACTORS

MESSAGE: IT WILL PERPETUATE AND PRESERVE PROFESSIONALISM IN THE CONSTRUCTION INDUSTRY AND PROTECT THE HOME OWNER FROM UNQUALIFIED OR UNSCRUPULOUS RESIDENTIAL CONTRACTORS. IT APPEARS SELF-SUPPORTED THROUGH LICENSING FEES, THEREFORE NO NEGATIVE EFFECT ON THE BUDGET.

POMID: 03163600

DATE: 04/24/89

TIME: 16:36:00

LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

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FINDELSTEIN	FOSTER	FAIKS
FURNACE	GOLL	FISCHER
GRUENBERG	GRUSSENDORF	FRANK
HANLEY	HOFFMAN	HALFORD
HUDSON	JACKO	JONES
KOPONEN	LARSON	KELLY
LEMAN	MACLEAN	KERTTULA
MARTIN	MENARD	PEARCE
MILLER	NAVARRE	POURCHOT
PETTYJOHN	PHILLIPS	RODEY
RIEGER	SHARP	STURGULEWSKI
SHULTZ	SWACKHAMMER	UEHLING
TAYLOR	ULNER	ZHAROFF
WALLIS	ZAWACKI	

✓ 3/09/90



Alaska State Legislature

Senator Mike Szymanski

While in Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-4978

Interim:
3111 C Street, Suite 510
Anchorage, Alaska 99503
(907) 561-7617
or
165 E. Parks Highway
Wasilla, Alaska 99687
(907) 376-6453

February 26, 1990

TO; Representative Dave Donley
Chairman, House Labor & Commerce Committee

FROM: Senator Mike Szymanski *MS*

SUBJECT: Senate Bill 72, relating to registration and endorsements
for contractors.

I would like to request that a committee hearing be held on Senate Bill 72. This is primarily consumer protection legislation and is widely supported by the Alaska Homebuilders Association, Associated General Contractors and other industry groups.

Thank you for your consideration of this request.

MS:pt

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

- P.O. BOX B
JUNEAU, ALASKA 99811-2100
PHONE: (907) 465-4700
- 949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 563-1073

March 31, 1989

POSITION PAPER

RE: Senate Bill 72

SPONSOR: Senator Szymanski

Program Effects of Bill

Senate Bill 72 proposes to set up registration and licensing requirements for contractors who undertake residential construction. The bill would not affect existing Departmental programs.

Comments

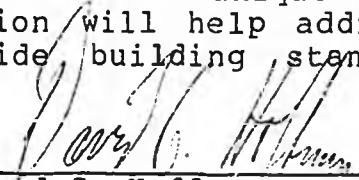
The Department of Community and Regional Affairs strongly supports the concept of licensing residential contractors combined with training in appropriate construction techniques. The state's climate and soil conditions are so different from that of the rest of the country that contractors can not simply apply their experiences in other states to Alaska.

Energy is a critical concern in housing for all Alaskans. The cost of energy is usually one of the largest costs associated with homeownership. A study by the Rural Alaska Community Action Program reported that in eight rural villages 16 to 37 percent of families' incomes were spent on energy. Sixty-eight percent of Alaskans' energy bills are spent on staying warm.

Too often in the past homes have been constructed in a manner that is not appropriate to the state's climate. While this is true statewide, it is particularly true in rural Alaska. The 1988 Alaska Rural Housing Needs Assessment reported that an appalling 28 percent of rural homes could not maintain an inside temperature of 70 degrees Fahrenheit. However, this problem is not unique to rural Alaska. During this winter's cold snap homeowners across the state experienced problems in keeping their residences warm.

Position Paper - SB 72
March 31, 1989
Page Two

Requiring competence testing in arctic structural and thermal construction techniques, coupled with required training through the Alaska Craftsman Home Program, as set out in this legislation, is one way to encourage construction of residential housing appropriate to Alaska's unique climate. While licensing under this legislation will help address the problems set out above, a statewide building standard of construction is also needed.



David G. Hoffman
Commissioner



Alaska State Legislature

Senator Mike Szymanski

While in Session
P. O. Box V
Juneau, Alaska 99801
(907) 465-4976

Interim:
311 C Street, Suite 512
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SPONSOR STATEMENT

SENATE BILL 72, relating to registration and endorsements for contractors.

Senate Bill 72 is consumer protection legislation.

Under present Alaska law, there are no standards which must be met by a general contractor in the performance of his work. Essentially, if a person obtains a contractor's bond and pays the required fees, the person may work as a general contractor.

Senate Bill 72 would require that certain standards are met for a general contractor to undertake the construction or alteration of a privately-owned residential structure of one to four units.

The Department of Commerce and Economic Development would issue a residential contractor endorsement to an individual who has met certain requirements. Key among these are that 1) the individual must pass a residential contractor examination, which may be written or practical and 2) the individual must have satisfactorily completed the Alaska Craftsman Home Program or its equivalent. The individual must apply for an endorsement within six months after passing the examination to ensure that his qualifications are current.

These registration and endorsement requirements do not apply to a person who is a general contractor for the purpose of building his own home; it relates to the contractor who builds homes for sale.

Provision is made to grandfather in those general contractors who have been active in the state for three of the five years preceding the individual's application for an endorsement. These individuals would be exempted from the examination requirement but would still be required to take the Alaska Craftsman Home Program course, or its equivalent if they apply for an endorsement by July 1, 1992.

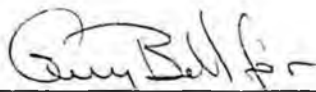
Senate Bill 72 is widely supported by the Alaska Homebuilders Association, Associated General Contractors and other industry and consumer groups.

CSSSSB 72 (Fin) am: "An Act relating to registration and endorsements for contractors; prohibiting the use of state money in relation to certain residential work unless the work is performed by a general contractor who has a residential contractor endorsement; and providing for an effective date."

CSSSSB 72 (Fin) am proposes to improve the quality of residential construction work in Alaska by creating a special licensing category, including examination and competency requirements, for residential contractors. In addition, the bill prohibits the use of state funds for construction or alteration of residential structures unless the work is performed by a residential contractor with the appropriate residential contractor endorsement.

Currently, construction contractors must register with the state and are required to post a \$10,000 bond if a general contractor or a \$5,000 bond if a specialty or mechanical contractor. CSSSSB 72 (Fin) am requires a general contractor seeking to build residential structures of up to four units to first obtain a special endorsement to their contractor license. In order to get this special endorsement, a general contractor must: (1) pass an exam; (2) complete the Alaska craftsman home program sponsored by the Department of Community and Regional Affairs (or its equivalent) or take an arctic engineering course; and (3) not be under indictment -- or in the preceding seven years not have been sentenced -- for an offense related to forgery, theft, extortion, conspiracy to defraud, or dishonesty.

The department supports CSSSSB 72 (Fin) am because the licensing requirements established in the bill will work to better ensure the competency of contractors involved in residential construction. The industry and the public will benefit through increased quality of workmanship by demonstratively competent residential contractors.



Larry Merculieff, Commissioner

Date: 3/21/90

LM/JS/dgl6552D
32090a

ALASKA STATE LEGISLATURE

Representative Eileen Panigo MacLean
P.O. Box 280
Barrow, Alaska 99723



Chairman
Community & Regional Affairs
Committee

Vice-Chairman
State Affairs Committee
Bush Caucus

Member Finance Subcommittee
Community & Regional Affairs
Education
Corrections

WHILE IN JUNEAU
Box V
Juneau, Alaska 99811
485-4525
485-4833

HOUSE OF REPRESENTATIVES

District 22
Ambler
Anaktuvik Pass
Atkasuk
Barrow
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Kaktovik
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Kivalina
Kobuk
Kotzebue
Noatak
Noorvik
North Slope
Borough
Northwest Arctic
Borough
Nulqsut
Point Hope
Point Lay
Selawic
Shungnak
Wainwright

March 27, 1990

Honorable Dave Donley, Chair
House Labor and Commerce Committee
P.O. Box V
Juneau, Alaska 99811

Re: CSSB 72 (Finance) amended

Dear Rep. Donley,

To phase in the provisions contained in CSSB 72 (Finance) amended, I respectfully request your committee to add the following language:

Sec. ____ . EXEMPTION. (a) The residential contractor endorsement requirement of AS 08.18.-024, enacted in sec. 3 of this Act, and the residential contractor endorsement requirement of AS 37.05.800(a), enacted in sec. 10 of this Act, do not apply to work performed on a residential structure located in a community with a population of 2,500 or fewer.

(b) Notwithstanding AS 08.18.013, enacted Department of Commerce and Economic Development may not adopt regulation that require a residential contractor endorsement for work exempt from the endorsement requirement under (a) of this section.

(c) This section is repealed July 1, 1992.

Thank you for your consideration,

Handwritten signature of Eileen Panigo MacLean.
Rep. Eileen Panigo MacLean

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 22, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: 3/29/90

The LABOR & COMMERCE Committee considered:

CSSSSB 72(FINANCE)am

CS SS SB NO. 72 (Fin) am

REGISTRATION/LICENSING OF CONTRACTORS

"An Act relating to registration and endorsements for contractors; prohibiting the use of state money in relation to certain residential work unless the work is performed by a general contractor who has a residential contractor endorsement; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with HCS CSSSSB 72 (LTC) the same title
- a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact Commerce +
- zero fiscal note Gen. Inv.
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check appropriate column)

Do Not Pass No Rec Amend

<u>Dave Donley</u>	<u>Collins</u>	X	
<u>Mark Boyer</u>	<u>Heron A. Armande</u>		
<u>Finkelstein</u>			
<u>Boucher</u>			
<u>Greenberg</u>			

Dave Donley

Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to registration and licensing of contractors; . . .
Sponsor: Senator Szymanski
Requestor: House Labor & Commerce

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

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	21.0	21.0	21.0	21.0	21.0	21.0
TRAVEL	7.0	7.0	7.0	7.0	7.0	7.0
CONTRACTUAL	15.0	15.0	15.0	15.0	15.0	15.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	43.0	43.0	43.0	43.0	43.0	43.0

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

REVENUE	0	75.0	75.0	0	75.0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER GF/PR	43.0	43.0	43.0	43.0	43.0	43.0
TOTAL	43.0	43.0	43.0	43.0	43.0	43.0

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary) No fiscal impact for FY 90.

SEE ATTACHED

Prepared by: Jennifer Strickler
Division: Occupational Licensing

Phone: 465-2144
Date: March 30, 1990

Approved by Commissioner: Larry Mercurieff
Agency: Department of Commerce & Economic Development

Date: 3/30/90

Distribution (by preparer):

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

6550D/33090d

**ANALYSIS
HCS CSSSSB 72 (L&C)**

The bill establishes an endorsement to the registration of a general contractor who oversees the construction of or who performs alterations to residential structures. This fiscal note represents the anticipated costs associated with the establishment of the registration endorsement for residential contractors.

The division has no way of knowing the number of residential contractors who will be affected by the bill; therefore, calculations in this fiscal note are based on an estimate of 500 of the approximately 1,500 licensed general contractors seeking registration endorsement as a residential contractor. Based on 500, the new category can be expected to cover 1.86% of the administrative costs (500 divided by 26,945 total licensees).

<u>Personal Services:</u>	\$21.0
Consists of:	
o 13.00% of a licensing examiner	\$ 5.1
o 2.00% of an investigator	1.8
o 1.86% of administrative overhead	<u>14.1</u>

<u>Travel:</u>	\$ 7.0
This will provide travel funds for the licensing examiner to assist with exam development and administer the examinations at least two times a year in each judicial district.	

<u>Contractual Services:</u>	\$15.0
This will provide funding for examination development; communication expenses; printing of applications, examinations, etc.; public notices; exam facility rentals; seminars; and other informational publications necessary.	

TOTAL	<u>\$43.0</u>
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REVENUES:

The revenues identified are based on an endorsement fee for residential contractors, assuming that residential contractors will pay a biennial fee of \$150 (\$75 per year) in addition to their general contractor registration.

FY 90: No anticipated impact.

FY 91: No revenue impact, although exam development will commence in preparation for the effective date of the bill.

FY 92: The effective date of the bill is July 1, 1991 and, therefore, revenues are based on an initial 500 contractors seeking a residential endorsement. The initial endorsement would be valid to December 31, 1992 so that residential endorsements will coincide with the general contractor's certificate of registration renewal date of December 31, 1992. 500 x \$150 license fees = \$75.0.

- FY 93: Residential contractor endorsements will be due for renewal on December 31, 1992. The renewed endorsement will be valid for two years and will expire on the same date as the general contractor's certificate of registration. $500 \times \$150 = \75.0 .
- FY 94: This will be a nonrenewal year and no revenues other than fees from new registrants (not estimated) will be generated. Although no revenues will be received in this year, like all other licensing programs, the program will be covered by program receipts of other occupations renewing during that year.

6-0388C
Lauterbach
3/29/90

Original sponsor(s): SEN. SZYMANSKI

1 IN THE SENATE BY THE LABOR & COMMERCE COMMITTEE
2 HOUSE CS FOR CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 72 (L&C)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to registration and endorsements for
7 contractors; prohibiting the use of state money in
8 relation to certain residential work unless the work
9 is performed by a general contractor who has a res-
10 idential contractor endorsement; and providing for an
11 effective date."

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

13 * Section 1. AS 08.01.050(a) is amended to read:

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

- 16 (1) collect and record fees;
17 (2) maintain records and files;
18 (3) issue and receive application forms;
19 (4) notify applicants of acceptance or rejection as de-
20 termined by the board or as determined by the department under AS 08.-
21 11 for audiologists, under AS 08.18 for contractors, under AS 08.45
22 for naturopaths, or under AS 08.55 for hearing aid dealers;
23 (5) designate dates examinations are to be held and notify
24 applicants;
25 (6) publish notice of examinations and proceedings;
26 (7) arrange space for holding examinations and proceedings;
27 (8) notify applicants of results of examinations;
28 (9) issue licenses or temporary licenses as authorized by
29 the board or as authorized by the department under AS 08.11 for

1 audiologists, under AS 08.18 for contractors, under AS 08.45 for
2 naturopaths, or under AS 08.55 for hearing aid dealers;

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

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

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

10 (13) answer routine inquiries;

11 (14) maintain files relating to individual licensees;

12 (15) arrange for printing and advertising;

13 (16) purchase supplies;

14 (17) employ additional help when needed;

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

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

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

23 (21) issue business licenses under AS 43.70.

24 * Sec. 2. AS 08.18 is amended by adding a new section to read:

25 Sec. 08.18.013. CATEGORIES OF CONTRACTORS. The department may
26 adopt regulations establishing categories of contractors and the
27 registration or endorsement requirements for persons in those categor-
28 ies.

29 * Sec. 3. AS 08.18 is amended by adding a new section to read:

1 Sec. 08.18.024. RESIDENTIAL CONTRACTORS. (a) A general con-
2 tractor may not undertake the construction or alteration, or submit a
3 bid to undertake the construction or alteration of a privately-owned
4 residential structure of one to four units or advertise or publicly
5 represent that the general contractor may undertake work of this type
6 in the state without a residential contractor endorsement issued under
7 this section. In this subsection, "alteration" means changes that
8 have a value greater than 25 percent of the value of the structure
9 being altered.

10 (b) The department shall issue a residential contractor endorse-
11 ment to a person who

12 (1) has a certificate of registration as a general contrac-
13 tor;

14 (2) passes a residential contractor examination, which
15 shall be offered by the department at least once each year in each
16 judicial district; the examination, which may be written or practical,
17 may test competence in relation to arctic structural and thermal
18 construction techniques and other matters as determined by the depart-
19 ment in consultation with representatives of the construction indus-
20 try;

21 (3) applies for an endorsement within six months after
22 passing the examination required under (2) of this subsection;

23 (4) within the two years preceding the date of application
24 for the endorsement, has satisfactorily completed either the Alaska
25 craftsman home program sponsored by the Department of Community and
26 Regional Affairs, or its equivalent, or a postsecondary course in
27 arctic engineering, or its equivalent;

28 (5) within the seven years preceding the date of
29 application, has not been under a sentence for an offense related to

1 forgery, theft in the first or second degree, extortion, or conspiracy
2 to defraud creditors or for a felony involving dishonesty; and

3 (6) pays the appropriate fees.

4 (c) The department may not renew an endorsement issued under
5 this section unless the applicant submits proof of continued compe-
6 tency relating to residential contracting that satisfies the depart-
7 ment. A lapsed endorsement may be reinstated, within two years after
8 the lapse, upon proof of continued competency, payment of a renewal
9 fee for the intervening time period, and payment of any penalty fee
10 established under AS 08.01.100(b). If the endorsement has been lapsed
11 for more than two years, the department may not reinstate it until the
12 person also passes the residential contractor examination described in
13 (b) of this section.

14 * Sec. 4. AS 08.18.041 is repealed and reenacted to read:

15 Sec. 08.18.041. FEES. (a) The department shall set fees under
16 AS 08.01.065 for

17 (1) registration and renewal of registration for all cat-
18 egories of contractors;

19 (2) examination, issuance of initial endorsement, and
20 renewal of active or inactive endorsements for residential contrac-
21 tors; and

22 (3) departmental publications and seminars related to this
23 chapter.

24 (b) A person who fails a residential contractor examination
25 shall pay the examination fee set by the department if the person
26 applies to retake an examination.

27 * Sec. 5. AS 08.18.116 is amended to read:

28 Sec. 08.18.116. INVESTIGATIONS. Either the Department of Com-
29 merce and Economic Development or the Department of Labor may

1 investigate alleged or apparent violations of this chapter. These
2 departments, upon showing proper credentials, may enter, during regu-
3 lar hours of work, a construction site where it appears that contract-
4 ing work is being done. The departments may make inquiries about the
5 identity of the contractor or the person acting in the capacity of a
6 contractor. Upon demand, a contractor or person acting in the capac-
7 ity of a contractor, or that person's representative, shall produce
8 evidence of current endorsement, if applicable, and registration.

9 * Sec. 6. AS 08.18.121 is amended by adding a new subsection to read:

10 (h) The endorsement of a residential contractor is automatically
11 suspended or revoked while the contractor's registration is suspended
12 or revoked.

13 * Sec. 7. AS 08.18 is amended by adding a new section to read:

14 Sec. 08.18.123. DENIAL, SUSPENSION, AND REVOCATION OF ENDORSE-
15 MENT. (a) The department may suspend, revoke, or refuse to grant or
16 renew a residential contractor endorsement upon a finding that

17 (1) the application is fraudulent or misleading;

18 (2) the contractor has knowingly violated this chapter or a
19 lawful order or regulation of the department;

20 (3) the contractor is incompetent or has engaged in fraudu-
21 lent practices.

22 (b) Proceedings for the denial, suspension, or revocation of
23 residential contractor endorsement are governed by the Administrative
24 Procedure Act (AS 44.62).

25 * Sec. 8. AS 08.18.141(a) is amended to read:

26 (a) A contractor or a person acting in the capacity of a con-
27 tractor who knowingly violates [IN VIOLATION OF] AS 08.18.011 or
28 08.18.024 is guilty of a class B misdemeanor. A person who violates
29 another provision of this chapter is guilty of a violation punishable

1 under AS 12.

2 * Sec. 9. AS 08.18.171 is amended by adding a new paragraph to read:

3 (10) "residential contractor" means a general contractor
4 whose business and operation involve undertaking the construction or
5 alteration of a privately-owned residential structure of one to four
6 units that is used or intended to be used as a human dwelling.

7 * Sec. 10. AS 37.05 is amended by adding a new section to read:

8 ARTICLE 6A. MISCELLANEOUS PROVISIONS.

9 Sec. 37.05.800. RESTRICTION ON USE OF STATE MONEY FOR RESI-
10 DENTIAL CONTRACTING. (a) The state may not grant or loan money or
11 purchase a loan for the construction or alteration of a privately-
12 owned residential structure of one to four units unless the grant or
13 loan requires the construction or alteration to be undertaken by a
14 residential contractor with an endorsement issued under AS 08.18. In
15 this subsection, "alteration" means changes that have a value greater
16 than 25 percent of the value of the structure being altered.

17 (b) The restriction of (a) of this section does not apply to a
18 state loan or grant or purchase of a loan made for work described in
19 AS 08.18.161 that is exempt from the requirements of AS 08.18.

20 * Sec. 11. TRANSITIONAL LICENSING. Notwithstanding AS 08.18.024(b)(2)
21 and (3), enacted by sec. 3 of this Act, the Department of Commerce and
22 Economic Development shall issue a residential contractor endorsement to a
23 person who

24 (1) applies for an endorsement under this section by July 1,
25 1992;

26 (2) meets the requirements of AS 08.18.024(b)(1) and (4) - (6);
27 and

28 (3) has been an active general contractor in the state for three
29 of the five years immediately preceding application for an endorsement

1 under this section.

2 * Sec. 12. EXEMPTION. (a) The residential contractor endorsement
3 requirement of AS 08.18.024, enacted in sec. 3 of this Act, and the resi-
4 dential contractor endorsement requirement of AS 37.05.800(a), enacted in
5 sec. 10 of this Act, do not apply to work performed on a residential struc-
6 ture located in a community with a population of 2,500 or fewer.

7 (b) Notwithstanding AS 08.18.013, enacted by sec. 2 of this Act, the
8 Department of Commerce and Economic Development may not adopt regulations
9 that require a residential contractor endorsement for work exempt from the
10 endorsement requirement under (a) of this section.

11 (c) This section is repealed July 1, 1992.

12 * Sec. 13. This Act takes effect July 1, 1991.

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What is CFAB?

Alaska Commercial Fishing and Agriculture Bank (CFAB) began operations in 1980. Its sole mission is to provide financing of all kinds to the commercial fishing industry and the agriculture industry (including timber) in Alaska.

What kinds of loans and repayment programs are available from CFAB?

CFAB can make loans for almost any fishing-related or farming-related purpose. The most common purposes are the purchase, modification, or refinancing of a vessel; purchase of a limited entry permit; gear, engine, or equipment replacement or upgrade; general operating capital; and fish processing, etc. There are no "standard" repayment terms or programs — we work with each applicant to determine a repayment schedule appropriate to that particular loan transaction.

Who may borrow from CFAB?

In order to be eligible for consideration as a CFAB borrower, an applicant must be commercially involved in one of the industries mentioned earlier. An individual applicant must be a bona fide Alaska resident. A partnership must be comprised of Alaska residents. If the applicant is a corporation, the majority ownership and control must rest with Alaskans. There are some exceptions to the latter rule for companies which are involved in shorebased fish processing.

Eligibility, however, is only a first step. To obtain a CFAB loan, an applicant must be found by CFAB to be capable and creditworthy within the context of the specific loan request. The standards used by CFAB are essentially the same as those of any responsible lender. However, CFAB's specialized purposes, and the experience we have gained, may permit us to consider a broader range of applicants than do most other lenders.

Who owns CFAB?

CFAB is a cooperative. This means that each borrower becomes an owner through a modest purchase of CFAB stock when a loan is made. The State of Alaska is also an owner. CFAB was established by a special Alaska statute, and the State made an initial investment of "seed money" — that money is expected to be returned to the State as borrowers' ownership grows.

Does that mean the State operates CFAB?

CFAB's statute provides for it to be operated as a private cooperative rather than as a State agency. Its basic policies and directions are established by a seven-person Board of Directors, which hires professional management and staff to operate the business. Five of the Directors must be borrower-owners of CFAB and are elected by the total borrower-ownership. The other two Directors are appointed by the Governor of Alaska. All Directors' terms are for three years. CFAB holds an ownership meeting each year — borrower-owners have the opportunity to vote on important matters, to receive reports from Directors and management, and to elect Directors. The State's stock is non-voting, although CFAB provides periodic reports to State officials.

Where does CFAB get its money to loan?

CFAB is not limited as to its source of funds. Since its inception, CFAB has borrowed funds for re-lending from the Federal Farm Credit System.

What is CFAB's interest rate and how is it set?

Although CFAB occasionally makes fixed rate loans, the vast majority of its loans are on a variable rate basis. That is, the rate will change — up or down — as CFAB's costs change. There is

no single initial rate — the initial rate is based on the kind of loan involved. Most important is that we have a procedure to objectively analyze the creditworthiness of each individual applicant. This permits us to offer the most favorable interest rates to the most desirable risks. CFAB's interest rates overall are set to provide sufficient income to pay its own interest costs and operating expenses and to provide a small margin. Since CFAB is a cooperative, any margin actually produced is either returned to the borrower-owners or otherwise used to their benefit.

How does one do business with CFAB?

CFAB has one office, located in Anchorage. However, there is also a network of independent Loan Correspondents throughout Alaska. If you are a loan applicant in dealing with CFAB, we are glad to tell you where there's one near you. If you believe you might be eligible, need a loan, or want to learn more, just write to CFAB — we'll be glad to help you and ask to speak with a loan officer.



Alaska Commercial Fishing & Agriculture Bank
P.O. Box 92070
Anchorage, Alaska 99509-2070
(907) 276-2007

For What Kinds Of Loans Can CFAB Accept The Pledge Of My Limited Entry Permit As Collateral?

There are essentially two kinds. One is specific - the other is broad. The first, specific, kind is a loan for the purchase of the limited entry permit itself (ordinarily, such a loan will be for an amount which is less than the actual permit purchase price). An applicant for such a loan must have been an Alaska resident for a continuous period of two years immediately preceding the application date. The applicant must also obtain a certification from the Alaska Commercial Fisheries Entry Commission that he or she is qualified under that commission's regulations to purchase the permit.

What's The Other Kind?

The other kind can best be described as, "For any fishing-related purpose." These would be cases in which the applicant is already the owner of the permit. Also, in such cases, only CFAB's basic one-year residency requirement must be met. A limited entry permit may be pledged as collateral (or part of the collateral) for a loan for the purpose of:

1. Purchase, repair, restoration, or improvement of a commercial fishing vessel or commercial fishing gear;
2. Construction of a commercial fishing vessel;
3. Purchase or improvements of set net sites and related equipment;
4. Most fishing-related working capital or seasonal operating requirements.

Can My Permit Be Used As Collateral For More Than One Loan?

Yes, if each of the loans involved is for one or more of the purposes mentioned above. For

example, if your permit is pledged as part of the collateral for a 10-year vessel purchase loan, and three years later you request an additional term loan for a major gear purchase, your permit may be considered as eligible partial collateral for the second loan as well.

Can I Use My Permit As Collateral For A Loan To Refinance Other Debts?

Yes, if all of the proceeds of the refinanced debts were used for one or more of the fishing-related purposes mentioned earlier.

I Wasn't Aware Of All This - Has CFAB Always Accepted Limited Entry Permits As Collateral For Such A Broad Range Of Loans?

No. The 1987 Alaska State Legislature changed the statute under which CFAB operates in a way which recognizes a limited entry permit as a significant business asset and greatly broadens the ways in which it may be used in the financial structuring of a commercial fisherman's business. The changes became effective in mid-1987.

So It Really Sounds Like Anybody Who Owns A Limited Entry Permit Can Borrow Money From CFAB, Doesn't It?

It may sound like that - but a more realistic way to say it is that any resident Alaska commercial fisherman is eligible to be considered for financing by CFAB. CFAB's business is to make sound and constructive loans. The granting of a loan to a fisherman is always subject to CFAB's evaluation of creditworthiness. While the existence and value of collateral are significant considerations, there are many other equally important credit factors. Because a limited entry permit is a basic and very

important element of every commercial fisherman's business, it should not be exposed to unreasonable risk in any loan transaction.

Is CFAB Telling Me That I'm Risking My Limited Entry Permit If I Use It As Collateral?

Yes. In that respect, it's no different than any other kind of collateral; and one of the purposes of collateral is to provide an ultimate source of repayment of the loan if the expected sources don't materialize. CFAB will not make a loan unless we are satisfied that there is a willingness and an ability to repay it. Nevertheless, commercial fishing involves unusual risks of all kinds, and in rare cases there are serious failures. In those cases, CFAB or any other lender will usually exercise its right to foreclose no matter what the collateral might be.

Now That I've Learned All This I'm Ready To Talk To CFAB About A Loan. How Do I Do That?

That's easy. You can write to CFAB at the mailing address below; drop in to see us at 2550 Denali St., Suite 1201, in Anchorage; or call (907) 276-2007, just ask for a loan officer.

Alaska Commercial Fishing & Agriculture Bank
P.O. Box 92070
Anchorage, Alaska 99509-2070

CFAB Toll-Free Number
1-800-544-2228

Alaska Commercial Fishing and
Agriculture Bank (CAFAB) is the only
lender with legal authority to
accept the pledge of a limited entry
permit as collateral for a loan to an
Alaska commercial fisherman. The
few few pages are to summarize for
Alaska commercial fishermen the
circumstances under which their
limited entry permits may be
effectively used for productive
business (real) purposes.

Limited Entry Permits
CAFAB
And You

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FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Commercial Fishing and Agri-
culture Bank
Sponsor: Zarhoff, Sturgulewski, et al
Requestor: Senate Resources

Agency Affected: Commerce & Econ. Dev.
BRU: Banking and Securities
Components: Securities

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact.

Prepared by: L.P. Carroll, Senior Securities Examiner Phone: 465-2521
Division: Banking and Securities Date: 01/17/89

Approved by Commissioner: Larry Mercurieff S PM Date: 1/18/1989
Agency: Dept. of Commerce and Economic Development

Distribution (by preparer):
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011789a



2550 Denali Street, Suite 1201
P. O. Box 92070
Anchorage, Alaska 99509-2070
(907) 276-2007

March 24, 1989

Dave Harrison
Office of Representative Zawacki
Post Office Box (MS 3100)
Juneau, Alaska 99811

Dear Mr. Harrison,

To follow up on our recent conversation concerning Section 2 of SB82, I thought you might be interested in the enclosed. It is an excerpt from an American Bankers Association pamphlet which discusses loan participations.

Although the pamphlet addresses the purchase of a loan participation by a bank from another bank, the basic characteristics of such a loan participation are the same as would apply to CFAB's participations as contemplated by SB82. I would call your attention to the final paragraph in particular, which summarizes the basic rights of a loan participant.

For the record, and in response to your understandable concerns, I would stress again: No, neither Section 2 nor any other part of SB82 provides or creates an opportunity for any person or entity, other than an individual resident Alaska fisherman, to become the owner of an Alaska limited entry permit.

Very truly yours,

Edward E. Crane
President

EEC:dmv
Enclosure

Introduction

Definition of Participations

At the time a bank enters into a lending arrangement with a borrower, or some time thereafter, it may wish to sell a portion of the loan to another bank. On the other hand, there may be instances where a bank may wish to purchase a portion of a loan made by another bank. Such a sale or purchase may occur in connection with short-term borrowings, term loans, acceptance financings, letters of credit or other forms of extension of credit.

For purposes of this discussion, the term "Originating Bank" is used to indicate the bank that seeks to sell a participation to another bank and the bank that purchases the participation is referred to as the "Participant."

Distinguishing from Syndications

A distinction should be made between a participation arrangement and a syndication. In the latter case, all the banks involved in the syndicate enter into a direct contractual relationship with each other and the borrower by signing one agreement. Each member of the syndicate usually receives its own promissory note and shares directly in any collateral given as security, although one bank may act as an agent for the rest of the syndicate in holding the collateral and performing administrative functions.

A syndicate member may, if the agreement does not prohibit participations, sell a participation to a Participant that may not be a party to the syndicated agreement and thereby sell all or a part of its portion of the syndication to such Participant.

Relationships Among the Parties

Originating Bank and Borrower

Even when a participation is contemplated, documentation is usually executed only by the Originating Bank and the borrower. Any promissory note or notes evidencing the obligation are payable only to the Originating Bank; any security interest in collateral is granted only to the Originating Bank; and any public recordation of such security interest shows only the Originating Bank as the secured party.

With respect to credit arrangements involving a commitment by the Originating Bank to advance one or more loans to the borrower, special considerations arise if it is contemplated that a portion of each loan will be purchased by a Participant. If the Participant defaults on its obligation to the Originating Bank by failing to purchase a previously agreed on percentage of a loan that the Originating Bank is committed to make to the borrower, the Originating Bank would still be obligated under the contract to lend the full amount of the loan to the borrower.

Nonperformance by a Participant does not relieve an Originating Bank of its contractual obligation to the borrower. *Therefore, when the bank is the Originating Bank, it must be satisfied as to the creditworthiness and reliability of the Participant as well as the borrower.*

Originating Bank and Participant

The essential transaction between the Originating Bank and the Participant is the sale by the Originating Bank to the Participant of an undivided share in a credit extended to the borrower. The Participant obtains an undivided share in any promissory note or notes or other obligations evidencing the debt and in any collateral given as security for such debt. This sale usually is evidenced by a participation certificate.

In other cases, such as the sale of a participation in loans to be made pursuant to a revolving

credit commitment or in any obligation in connection with a letter of credit, the participation certificate is supplemented by a participation agreement entered into between the Originating Bank and the Participant. *Since the terms of participation agreements vary from case to case, counsel should be consulted whenever such an agreement is required.*

Ordinarily, the Originating Bank's responsibility to a Participant is only to account for the Participant's share of all monies received from the borrower in connection with the loan (principal, interest, fees, etc.), including monies received as a result of collection and foreclosure on collateral. The Originating Bank usually does not make any representation or warranty or give any assurances to the Participant with respect to the validity or enforceability of the original obligation or any guarantee or security connected thereto.

In almost all cases, the participation agreement requires the Participant to reimburse the Originating Bank for (or indemnify the Originating Bank against) the Participant's pro rata share of expenses (including legal fees) in connection with collection of the loan or foreclosure of the collateral, to the extent those expenses are not paid by or recovered from the borrower. This provision recognizes that the Participant, which owns a proportionate share of the loan, must bear its proportionate share of the costs of collection.

Some participation agreements also provide for the sharing—sometimes on a proportionate basis and sometimes on a relative fault basis—of liability and expenses that result from the borrower's assertion of lender liability claims against the Originating Bank or the Participant. But such provisions have not become as universal as collection-cost sharing provisions.

A Participant should be satisfied as to the ability of the Originating Bank to service the loan adequately, particularly in the case of asset-based loans and other specialized kinds of lending that require specific expertise and organizational strengths.

In addition, a Participant should be satisfied

with the creditworthiness of an Originating Bank. The insolvency of an Originating Bank leads to many administrative and legal complexities, some of which have not yet been resolved.

An Originating Bank should be aware of its responsibilities to a Participant. A participation certificate and any participation agreement should require the Originating Bank to supply financial and other information to a Participant. The Originating Bank should be fully responsive to all inquiries regarding the financial condition of the borrower, particularly if there is a deteriorating credit situation.

Borrower and Participant

A Participant has no direct contractual relationship with the borrower and should not assume that it will be able to seek to enforce the underlying agreement or the promissory note or notes evidencing the obligation. Also, the Participant cannot proceed to enforce any security interest in any collateral, seek payment from a guarantor of the obligation, or exercise any right of set-off against property of the borrower which is on deposit with the Participant.

465-2718

To Ed Crane, President & CEO CFAB

From Pete Spivey, Rep. Jacko's office

Ed: The copy of Donley's letter is too poor to FAX. Here's what he asked Legislative Legal Services:

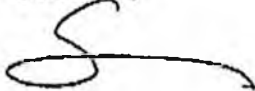
1. What can members and other individuals, corporations, partnerships and joint ventures do under SB 82 that they cannot do under current law?
2. Historically, there have been strong sanctions against any entity other than an individual person from owning or having a controlling interest in a limited entry permit. Could SB 82 dilute an individual's control over a limited entry permit by allowing members or other individuals, corporations, partnerships, and joint ventures to "carry the paper" or otherwise assume some proprietary interest in a permit?
3. Could these groups exert control over a particular permit holder or group of permit holders in a particular fishery if they established a proprietary interest in enough permits in a given area or fishery under the changes proposed in SB 82? How is this different than what could happen under current law?
4. How is the relationship between a permit owner and a bank that has provided financing for a particular permit, as is often the case under current law, different than the kind of relationship that may occur between a permit owner and a member or other individual, a corporation, a partnership or a joint venture that has provided financing for a permit? How would the relationship differ if the permit owner were also a member of the corporation, partnership or joint venture that provided financing?
5. Under Section 8 of SB 82, a bank may sell a permit to an individual commercial fisherman who has been a state resident for two years immediately preceding the date of the sale. Why may instead of shall? What is to prevent a bank from "handpicking" individuals over whom they may be able to exert some control in so far as how that permit holder may work the fishery? Again, can this

section result in a situation where some entity other than an individual may exert control over a fishery?

This letter went to Jack Chenoweth on March 27.

Ed, if you can provide us with information on each of these questions, I'd appreciate it.

Thanks,

A handwritten signature in black ink, appearing to be 'Spivey', with a stylized, flowing script.

Spivey

*** M E M O R A N D U M ***

TO: Pete Spivey - Representative Jacko's Office

FROM: Ed Crane

DATE: April 3, 1989

SUBJ: CFAB Responses to March 30, 1989, Memo/Questions

1) Under Section 2 of SB82, individuals, partnerships, corporations, and joint ventures may purchase participations in loans made by CFAB. (More accurately, SB82 provides CFAB the authority to sell participations to those persons or entities.)

2), 3) and 4) There is nothing -- absolutely nothing -- in SB 82 which in any way modifies or changes existing laws or regulations regarding limited entry permit ownership. SB82 does not touch on limited entry permit ownership in any way, and does not give any party, including CFAB, any new rights or abilities to influence or control or direct the ways in which permits -- generally or in any specific case -- are used.

CFAB is a lender and, with respect to any borrower (whether or not permit collateral is involved), has only the rights permitted under commercial law and AS44.81. Those rights are formalized in a contractual relationship (the loan documentation) between CFAB and the borrower. CFAB has only the ability to enforce, or require performance under, that contract -- and the borrower has the same rights. There is essentially no difference from the relationship between a car owner and the bank which financed the car's purchase -- the bank may demand that the loan terms be met (i.e., principal and interest payments as scheduled, and insurance coverage on the car) but it cannot somehow direct the way in which the car is driven.

There is no relationship (at least, none which arises from the transaction itself) between a borrower and the party which purchases a participation in the loan. The participant's relationship is with the lender and, again, it is a contractual relationship. It involves primarily intangible and financial rights. It does not involve the ability or authority of the participant to direct the lender's actions, nor does it provide an opportunity for the participant to step into the lender's shoes.

SB82 is the result of an effort by CFAB to find a way to address a specific problem common to Alaska permit holders, particularly in

rural communities. In discussing SB82 with legislators and others, CFAB has described its application to that specific problem and has cited a "classic" father-daughter or father-son situation as an example. In that example, the father winds up being the permit seller, the participation purchaser, and -- potentially -- the person who assumes the obligation and re-acquires the permit if the son or daughter fails. That may be confusing: Even though only one person fills those three roles, they do represent three different roles and they could just as easily be three different persons. The language of SB82 -- particularly Section 2 -- is crafted to provide the flexibility necessary to accommodate a "real world" variety of situations. There is a need for such flexibility even to address some transactions that fall within the scope of the "target" problem. It is not unusual for a fisherman to carry on his fishing operation as a corporation, even though the permit must be owned by him personally, and he may for tax purposes want the participation investment to be owned by that corporation. Or the transaction may be part of a partnership dissolution. Or he may wish the participation investment to be owned by his Keogh plan. Or he may want or need to use it as settlement of an obligation to an ex-wife or another creditor. Or he may be selling his permit on a favorable basis to an oldest son and, as part of his own self-determined effort to treat his children equitably, want his younger son to receive the portion of the proceeds represented by the loan participation.

There are other potential applications which have absolutely nothing to do with permits. CFAB is often asked to re-finance a fisherman's debt to a processor and in many cases is unwilling to do so, for credit-related reasons. There may be certain of those requests which CFAB can satisfy if the processor involved is willing to share in the risk by purchasing a participation.

It cannot be stressed too much that Section 2 addresses only the purchase of loan participations. It does not create co-lenders. It does not create any participants' rights with respect to whatever collateral may be related to any loan.

5) CFAB's statute presently is silent with respect to the disposition of limited entry permits acquired through foreclosure. CFAB requested the substance and language of Section 8 as an expression of clarification and legislative intent and to remove the uncertainties which may arise from having a statute which provides no guidance.

The suggestion that CFAB might "handpick" individuals in order to exercise "control" borders on the ludicrous. How? To what purpose? To whose benefit? CFAB is a cooperative -- its borrowers are its owners, and they elect five of its seven directors; the other two are

Memorandum/Pete Spivey
April 3, 1989
Page 3

appointed by the Governor. CFAB's only business is to make loans in accordance with AS44.81. The 1987 State Legislature enacted an amendment -- again, at CFAB's request -- which requires an annual examination by the State's Bank Examiners with a summary of the examination report transmitted to the Legislature. CFAB's annual report is distributed to legislators. AS44.81 authorizes the Budget and Audit Committee to direct the Legislative Auditor to audit CFAB. There are more bases for fishermen to fear Legislative "control" of CFAB than for Legislators to fear CFAB's "control" of a fishery!

Aside from the matter of relationships, loan documents and the law do not permit lenders to "control" borrowers. In the United States today, including in Alaska, there is an increasing wave of lender liability lawsuits. One of the surest ways for a borrower-plaintiff to win such a suit is to demonstrate that the lender exercised, or attempted to exercise, "control" over the borrower!

CFAB has actually foreclosed one permit lien in nine years (although, coincidentally, the second and third foreclosure processes are currently under way). The permit involved was sold to a longtime Alaska fisherman who was financed by the State rather than by CFAB. That record does not seem to support the image of CFAB as a Machivellian manipulator.

There are a number of reasons for use of the word "may" rather than "shall." The first, as expressed earlier, is that in the eyes of CFAB's Board of Directors and management an expression of legislative intent provides sufficient basis for a workable policy as well as to respond to potential external pressures. The second is that a two-year residency requirement for anything appears to represent a Constitutional "gray area" which some attorneys have cautioned against (and which was acknowledged on the Senate floor during debate on SB82); a pointless and costly test of that matter may be less likely with a permissive "may" than with a mandatory "shall." Third, since the residual proceeds of a permit sale by CFAB belong to the original borrower/permitholder (presumably an Alaska fisherman, since CFAB finances only Alaska fishermen) CFAB has a third-party obligation to obtain a reasonable -- if not the highest available -- price for any permit it sells. Which Alaska fisherman would the Legislature like to disadvantage, to the benefit of another; and is the Legislature prepared to provide financial indemnification to those fishermen who are disadvantaged? Finally, and in spite of the fact that CFAB's policies, practices, and directions are guided by AS44.81 and appear to be consistent with the intents expressed by the Legislature over the years, it is a private corporation. Why should the Legislature control the disposition of a permit it has acquired, or a processing plant it has acquired through foreclosure, or a used typewriter which is surplus to its needs? If the Legislature collectively believes it is "good" for