

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5941 HOUSE LABOR & COMMERCE

345

must pursue a sound, growth-oriented policy if progress is to be made. Far too often, the governments of developing countries undermine their own private sector -- one of the essentials for commercial and industrial expansion -- only to see the standards of living decline in the countries that do that.

If the leaders of Africa's nations recognize the critical role of private enterprise, they can then expect to share in much more of the worldwide economic upturn that we think is now beginning in this country. Americans recognize both the special development needs and the great potential of Africa. The African Development Bank Group symbolizes the determination of Africa and the International Community to meet those needs and to achieve that potential.

We, in the United States, are enthusiastic about this partnership as I am sure the Secretary has told you. And we look forward to seeing tangible results from this cooperative and very special effort.

And now, I am going to sign a letter to the President of the Bank, and I am going to sign our Action Paper.

(The documents are signed. Applause.)

There, that makes it absolutely official.

(Applause.)

PRESIDENT MUNG'OMBA: Mr. President of the United States, Mr. Secretary of the Treasury, and the Governor of the African Development Bank, distinguished Senators and Congressmen, Your Excellencies, ladies and gentlemen, on behalf of the Board of Governors and the Board of Directors of the African Development Bank and on my own behalf, permit me to acknowledge with sincere gratitude the singular honor you have done the Bank and ourselves today in deciding to mark the signing of the formal instruments of accession of the United States to membership of the African Development Bank with this special ceremony.

Mr. President, the ceremony we have just witnessed is significant in many respects. But I think it is most obviously significant in that it marks the clearest commitment of the government and the people of this great country to the development objectives and aspirations of the African peoples as collectively expressed in their institutions that form the African Development Bank Group.

Mr. President, we have long had clear and consistent proof of the sincerity and sympathy of the United States toward these institutions. Your country's assistance both in the formal funds and technical assistance to the Bank has been a reliable and invaluable supplement to the Bank's own efforts for nearly as long as the Bank has been in existence. And this notwithstanding that, for reasons that are now happily historical, the United States could not at that time be a member of the African Development Bank.

The same history of great care and concern is even more amply evident in the clear leadership position that the

MORE

United States unreservedly accepted, in terms of both direct contributions and indirect assistance, when it became possible for this country to become a state participant in the African Development Fund a few years after its creation. Sir, today it marks a further confirmation of the commitment of your people, your government, and we recognize it as an explicit assurance that it is a long-term commitment.

And because it's long-term in nature, it further underscores the concern of the people of this country for the plight of the people of Africa, which is the chief duty of the institutions of the Bank group to help mitigate.

On behalf of the governing bodies of the Bank, it is my singular honor and pleasant duty to welcome the United States of America to membership of the Bank. You will, Mr. President, have, no doubt, have been informed at least in outline of the long period of internal debate which preceded the decision of our governors to admit non-African countries to membership of the Bank. In the end, what persuaded them was the consideration that non-African membership could create an opportunity on the continental level and, under their own leadership, for a more extensive dialogue and partnership between the two sides in combatting Africa's endemic development problems.

Mr. President, it is this opportunity which we in the Bank, with the assistance of countries like yours, have the responsibility to translate into reality. And I am convinced that we will succeed in this endeavor. There can be no doubt that with the material and technical resources that will be made available to the Bank as the result of this day's work, its effectiveness in manning this frontier and pushing it back is significantly enhanced.

Mr. President, your decision to have present at this ceremony such a distinguished and broadly representative selection of the members of the executive, the legislature and the business and banking organs of the nation signifies clearly to all of us how essential is the participation of all these sectors of the nation before this great adventure in international cooperation can become a true success.

Allow me, sir, to address a word of gratitude to the many concerned friends of Africa in the Senate and Congress whose consistent support for this program over all these years has today brought our efforts to fruition.

Equally, sir, a word of thanks is due to these tasks of both of the executive and the legislative who sought tirelessly and patiently assisted us at all stages of our preparations.

Mr. President, I would on this happy occasion go further and take this wonderful opportunity, on behalf of my colleagues, myself, the African Development Bank, personally to wish you a belated Happy Birthday and sincere good wishes for health, success and God's blessings in your future endeavors.

Sir, on behalf of the Boards of Governors and Directors of the Bank group, accept our most sincere welcome to the African Development Bank and our thanks to you and to the people of your great country. (Applause.)

END

2:05 P.M. EST

OFFICE OF THE PRESIDENT

MEMBER

TENTH ALASKA LEGISLATURE
ELEVENTH ALASKA LEGISLATURE
TWELFTH ALASKA LEGISLATURE
THIRTEENTH ALASKA LEGISLATURE
FOURTEENTH ALASKA LEGISLATURE
FIFTEENTH ALASKA LEGISLATURE
SIXTEENTH ALASKA LEGISLATURE



SENATOR TIM KELLY

P.O. BOX V
JUNEAU, ALASKA 99811
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P.O. BOX 210001
ANCHORAGE, ALASKA 99521
(907) 561-7612

February 28, 1990

MEMORANDUM

To: Representative Donley, Chair
House Labor & Commerce Committee

From: Senator Tim Kelly *TK*

Re: Scheduling SB 353, relating to investments in development banks.

I would appreciate a hearing on SB 353 at your earliest convenience. I introduced the bill in response to interest expressed in the Anchorage community. As you can read from the attached support information, it appears to have not only a laudible purpose but provides a valuable investment opportunity to Alaskan institutions.

Current law restricts insurers to only those investment opportunities of the Inter-American Development Bank. This bill would expand the the authorization to invest in obligations of the African Development Bank and the Asian Development Bank.

Henry Lancaster is a good resource person to contact for more information on the merits of SB 353. He can be reached at 278-4729.

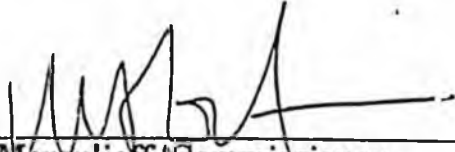
Thank you for your attention to this request.

SB 353: "An Act relating to insurer investments in development banks."

SB 353 adds the African and Asian Development Banks to the eligible list of development banks into which investments can be placed. Provisions regarding solvency and nondefault status are also added.

The provisions in this bill are identical to the language contained on page 30, Section 30 of SB 212, an Act relating to insurer solvency, introduced last session by the Governor. SB 212 is in the Senate Labor and Commerce Committee.

The department supports this legislation. The additional provisions regarding solvency and nondefault status give the department the opportunity to make sure these banks are good investments before they are used by insurers.



Larry Mercurieff, Commissioner

Date: 9/1/90

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MEMORANDUM

AFRICAN DEVELOPMENT BANK STATE
LEGISLATIVE PROGRAM - ALASKA

I. Background

The African Development Bank ("the Bank") is currently seeking the enactment of legislation, where necessary, which would permit state-regulated banks, insurance companies, fiduciaries and public employee retirement systems to invest in Bank obligations if they choose to do so. Several years ago, largely through the joint efforts of the Congressional Black Caucus and the Reagan Administration, Congress enacted Title XIII of P.L. 97-35 authorizing United States membership and financial participation in the Bank, which was initially created in 1964 and until 1982 limited its membership to African countries. Today, the Bank's membership includes all African nations except for South Africa, plus the Governments of the United States, Canada, Japan and Western Europe.

The Bank, a principal source of financing for economic development projects on the African continent, funds these projects through the sale of its obligations in the world's capital markets. As with the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank and the Asian Development Bank, investments in African Development Bank securities by the state-regulated institutions described above generally require either state legislation or administrative agency rulings prior to the time such securities can be marketed in a particular state. P.L. 97-35 referred to above authorized federally regulated financial institutions to invest in such securities.

Since initiating state legislation activities several years ago, the Bank has obtained passage of legislation or secured comparable administrative agency public rules to qualify its securities for investment in forty-two states.^{1/}

^{1/} These include Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, Washington, West Virginia and Wisconsin. In addition, Alaska state-chartered banks obtained such investment authorization through legislation enacted in the 1988 session.

Bills are also pending in several additional states, while others have either issued private administrative rulings or have laws which already permit such investments under a "prudent investor" standard. It should be noted that each state has its own particular laws applicable to state-regulated institutional investors and no two states are alike in this regard.

The Bank entered the United States capital market for the first time in the Fall of 1985 and most recently in early November 1987 with highly successful bond issues. The three principal American bond rating services have given its bonds AAA, AAA and AA ratings, which makes this type of investment quite attractive once a regulated investor receives appropriate legal authorization. In order to assure a successful United States market presence, the Bank is seeking enactment of legislation in a number of additional states, including Alaska, to obtain this authorization.

II. Specific Legislation Needs in Alaska

A review of the applicable Alaska laws indicates a need for amending only one section of the Alaska Statutes to gain investment authorization for state-regulated insurance companies. This involves merely adding the name of the African Development Bank to those of the World and already eligible for such investments. Alaska state banks recently gained this investment authorization in similar legislation, while other regulated investors apparently already have the necessary authority without the need for statutory change.

Based upon experience to date in other states, this legislation should be completely noncontroversial. President Reagan and the U.S. Treasury Department have actively supported efforts to get this legislation enacted, as have many Black political leaders around the country. Because of the high Bank securities ratings, prospective investors also support it since this increases their high-yield, low-risk portfolio options and provides them an opportunity to make both profitable and socially worthwhile investments. Finally, since the Bank is the major source of foreign exchange financing for transactions in or with Africa, American exporters and technical assistance providers to that continent have ample incentive to support the Bank's financial success.

Prepared November 1988 by:

David Aronofsky, Esq.
U.S. Legal Counsel, African Development Bank
Arent, Fox, Kintner, Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339
202-857-6054



THE SECRETARY OF THE TREASURY
WASHINGTON

FEB 12 1988

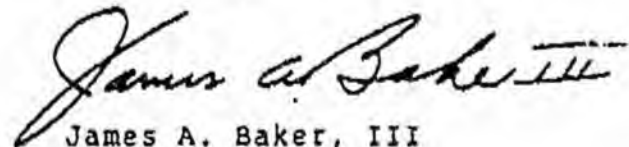
Dear Governor Cowper:

I am writing in support of the African Development Bank's efforts to obtain the qualification of its obligations in the State of Alaska for investment by certain state-regulated institutions.

The African Development Bank was established as a multilateral development bank in 1963 to foster economic and social development of its African members individually and through regional cooperation. In addition to all independent African countries except for South Africa, the Bank's membership now includes the United States, as well as the countries of Western Europe, Japan and other developed nations. The African Development Bank is patterned after the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank and the Asian Development Bank, in that they all make extensive use of the world's capital markets through the sale of their highly rated bonds and other obligations to obtain funds for development lending activities. A substantial percentage of such funds finances the purchase of American goods and services used in critical development projects. This in turn enables American businesses and academic institutions to participate directly in these activities, to the benefit of all concerned.

I would appreciate your State taking the necessary steps to have the African Development Bank receive at least as favorable treatment under the laws of Alaska as is currently accorded to one or more of the other multilateral development banks with respect to the qualification of the Bank's securities for purchase by state chartered banks, savings and loan associations, insurance companies, public employee retirement systems and any special statutory or constitutional funds. At least 34 states have already wholly or partially accorded such treatment to the African Development Bank through enactment of legislation or, where appropriate, administrative agency rulings. I anticipate that the Bank will be in touch with you through its American legal counsel to present detailed legislative proposals.

Sincerely,


James A. Baker, III

The Honorable Steve Cowper
Governor, State of Alaska
Juneau, AK 99811-0101

cc: The Honorable Jan Faiks
The Honorable Ben Grussendorf

Third World Projects Create a New Market

By CLYDE H. FARNSWORTH

Special to The New York Times

WASHINGTON, Oct. 9 — Although the market for exports to cash-strapped developing countries has fallen strikingly in the past decade, third-world projects financed by the international development banks have created a booming market for an array of products.

Under their crushing debt burden, developing countries, which normally buy about a third of all American exports, cut purchases from the United States by 13 percent since 1981, to \$82.7 billion in 1987.

But in the same period, American companies doubled, to \$2.1 billion a year, their sales of items needed for projects financed by the four leading development banks — the World Bank, the Inter-American Development Bank, the African Development Bank and the Asian Development Bank.

The market created by the development banks includes power generators, water pumps, trucks, tractors, drilling rigs, irrigation equipment, farm implements, telecommunications equipment, pesticides, seeds and schoolbooks.

In the past five years, the World Bank and the three regional institutions have disbursed \$7 billion to business contractors, chiefly in industrial countries, to supply projects in more than 100 developing countries, according to a recent report by Development Bank Associates Inc., a research group based in Washington.

Chances are that future disbursements will be even greater, following recent Congressional action authorizing American participation in a \$75 billion increase in the resources of the World Bank, nearly doubling its capital. A large increase in funds for the Inter-American Development Bank is likely to be approved in the next few months as well.

"The development banks have created an enormous market," said David A. Raymond, director of international programs for the Enserch Corporation of Dallas, a diversified energy operator which aggressively pursues World Bank contracts. "It isn't an easy business and there's more competition than ever. But it pays hard currency on projects throughout the world."

Despite the numbers, analysts here note that American bidders like Enserch are still relatively few.

"Many business executives do not

The development banks are bringing about a boom for many products.

know about the bidding process," the United States Chamber of Commerce said in a special study of the market published two years ago. "Others fear red tape."

Development Bank Associates said in a recent report, "A Practical Guide to the Development Bank Business," that less than 3 percent of United States exporters are actually engaged in marketing products for such projects.

The lack of interest has hit the pocketbook. Even as the United States has strikingly increased exports to the development-bank market, it has been losing market share to its principal commercial rivals — West Germany and Japan.

By far the biggest of the development institutions, the World Bank committed \$17.7 billion in 1987 to expand power distribution in Argentina, build irrigation works in Belize, expand technical education in Brazil and to aid scores of other programs. Commitments by the three regional institutions totaled \$7 billion, bringing the total for the four to \$24.7 billion.

The commitments become actual disbursements as the multiyear projects reach varying stages of completion needing additional equipment and supplies.

Most of the contracts are relatively small — in the range of \$10,000 to \$50,000. In a recent year, 65 percent of all equipment contracts and 55 percent of all consultancy contracts on World Bank projects were for less than \$50,000, according to the Development Bank Associates study.

Over the same period there were 2,000 payments by the World Bank of more than \$1 million.

The development-bank business is confined to developing countries, which includes nearly all countries with per-capita yearly income of less than \$3,000. These include such giants as China and India and such tiny island states as Kiribati and Vanuatu. The market also includes some East bloc countries like Hungary and Poland.

low rates. Others disagree.

"I think tax policy in 1989 is going to be a backburner issue," said Donald H. Straszheim, chief economist for Merrill Lynch & Company, even though "the budget and trade deficits are troubling to economists."

"We're likely to end up with higher taxes down the road, but not immediately," he said. Some form of energy tax is likely, he suggests, and eventually a value-added tax could be imposed. If income tax rates are raised, then preferential treatment for capital gains is "not unreasonable," he said. But with a new Administration and a new Congress due to take office, he does not expect the tax rates to be changed in 1989.

Mr. Straszheim sees a modest recession and lower interest rates for the second half of 1989. If that forecast is accurate, it would argue against making tax-driven sales of bonds now, because bond prices would rise if rates fell. One strategy, though, would be to sell bonds on which one has a loss and replace them with similar securities.

Vern Martens, vice president of Merrill Lynch Tax Advisory, noted that if there is no change in tax rates next year, "taxpayers will pay lower taxes because of indexing for inflation." Nevertheless, he said, "people are still looking for something that will provide a tax break."

The most popular tax-exempt investments are municipal bonds, although certain municipal bonds are subject to the alternative minimum tax. These latter bonds pay slightly higher rates and thus are attractive to investors who are not liable for the alternative minimum tax.

Mr. Martens offered these additional possibilities for reducing taxes:

Rehabilitation credits for low-income housing can cut taxes by up to \$7,000.

Tax-deferred annuities can be attractive for retirement plans.

By switching from money market funds to certificates of deposit or Treasury bills or notes, investors can defer income into future years. A switch in October, however, will only reduce 1988 interest income by 25 percent.



Uari Goldenberg

is a current investment bars, but the it by 1991.

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of these in- should do so 7 to lock in might con- against the at one also ions against

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Oil Producers' Challenge to OPEC

From First Business Page

Oil producers are demanding a 10 percent increase in production, from around 4.3 billion barrels a day a month ago. Officials said their current goal was to keep their production at 4.3 billion barrels a day to protect their share of the market against other producers who are discounting their oil production to secure sales.

Industry officials said that a deal would substantially lower the overall OPEC ceiling, bringing it to 14 billion barrels a day, 4 billion barrels above the current 10 billion barrel ceiling.

permanently lower oil prices.

One industry expert said the tentative proposal depended upon a compromise between Iraq and Iran under which the countries would agree to equal production shares of 2.5 million barrels a day each. Iraq is now producing about 2.7 million barrels a day, while Iran's output is just below 3 million barrels a day.

Under the new proposal, OPEC would also agree to lower the official price it has used as a yardstick, to closer to \$15 a barrel, from \$18.

But OPEC officials and oil analysts fear that until an agreement is reached, a further steep drop in oil prices is a real possibility, bringing prices to \$10 a barrel, and perhaps,

Pillsbury Sued Over Offer

... to protect the interests of the ...

HENRY LANCASTER, INC.

550 West Seventh Avenue • Suite 1325 • P.O. Box 10-3461 • Anchorage, Alaska 99510 • (907) 278-4729 • FAX (907) 276-4289

January 29, 1990

RECEIVED
JAN 30 1990

Senator Dick Eliason, Chair
Labor & Commerce Committee
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Dear Senator Eliason:

I am writing to thank you for allowing me to testify via teleconference in the January 24, 1990 Senate Labor & Commerce Committee meeting.

Senator Faiks raised a question during the meeting that deserves further clarification. She asked whether the World Bank should be included in SB 353. My review of the Alaska Statutes has revealed that AS 21.21.120 already allows an insurer to invest in the obligations of International Bank for Reconstruction and Development (IBRD). The IBRD is more commonly known as the "World Bank." Thus the concern for inclusion that Senator Faiks expressed is already addressed in Alaska law.

Please do not hesitate to contact me if you have any other questions or concerns.

Sincerely,



Henry M. Lancaster II
President

HML:bgm

cc: Sen. Tim Kelly
Sen. Jan Faiks
Sen. Pat Rodey
Sen. Jalmar Kertula
Sen. Jack Coghill

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WASHINGTON, D.C. 20036-2806

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SARA D. SCHOTLAND

JOHN S. MAGREY
MARK LEDDY
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HONG KONG

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JOHN T. BYAM
ALAN B. COHEN
JOHN M. BREDEHOFT
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FRANK R. BORCHERT III
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HELEN KWOK-WAI HO
SANDRA E. TRIMBLE
MICHAEL J. BYRNES
JOHN S. NICHOLAS
JAMES G. VOTAW

March 20, 1990

*NOT ADMITTED IN THE DISTRICT OF COLUMBIA

VIA FEDERAL EXPRESS

Honorable Dave Donley, Chairman
Committee on Labor and Commerce
Alaska House of Representatives
Juneau, Alaska 99811

Re: Alaska Senate Bill 353

Dear Representative Donley:

As U.S. counsel for the Asian Development Bank, I am writing to urge your support for Senate Bill 353, "An Act relating to insurer investments in development banks." Passage of this legislation will enable Alaskan insurers to invest in obligations of the African Development Bank and the Asian Development Bank.

Both the African Development Bank and the Asian Development Bank are international financial institutions organized as corporations whose shareholders are member countries. The Asian Development Bank's membership is composed primarily of Asian and Pacific countries (including both the People's Republic of China and the Republic of China), but also includes the United States and certain Western European countries. The Banks' purposes are to promote economic growth in the regions that they serve by making loans to finance agricultural and industrial projects within the territories of their developing members.

The proposed legislation would conform the laws of Alaska to give obligations of the African Development Bank and the Asian Development Bank the same status as obligations of the World Bank and the Inter-American

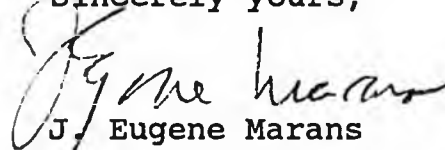
Honorable Dave Donley, Chairman
March 20, 1990
Page Two

Development Bank, both of which have long been included in the insurance company investment statute. Banks, savings and loan associations, pension funds and other categories of institutional investors in Alaska already have the right to acquire obligations of all four Banks.

Both the African Development Bank and the Asian Development Bank play a crucial role in raising money in the bond markets to lend for vitally needed social and economic projects in the developing countries of Africa, Asia and the Pacific. Your support of the proposed legislation will confirm the recognition of the state of Alaska of the importance of the role of the developing banks in promoting social and economic progress of people in the developing nations of Asia and Africa.

If you need further information on the Asian Development Bank, please contact me at (202)727-2746 or Brenda Taylor at (202)727-2824. On behalf of the Asian Development Bank, I thank you and the members of the Committee for your support and assistance.

Sincerely yours,



J. Eugene Marans

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HOUSE COMMITTEE REPORT

(7)

Date Referred: January 26, 1990

FURTHER REFERRALS:

Date of Committee Action: 4/24/90

4/25
Rubin

The LABOR & COMMERCE Committee considered:

CSSB 357(L&C)

CS FOR SENATE BILL NO. 357 (L&C)

ELECTRIC CODES

"An Act relating to the state, borough, and city electric codes."

RECOMMENDATIONS:

- be replaced with _____ 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 _____

Senate

LABOR Public
CTED Safety

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

<u>Dave Donley</u> Donley			
<u>Mark Boyer</u> Boyer			
<u>John Finkelstein</u> Finkelstein			
<u>Ron Leman</u> Leman			
<u>John Collins</u> Collins			
<u>Bob Boucher</u> Boucher			
<u>Max Greenberg</u> Greenberg			

Dave Donley
Chairman's Signature

Bill No: Committee Substitute for
Senate Bill 357 (L&C)

Date: January 29, 1990

Title: "An Act relating to the state,
borough, and city electric
codes."

Contact: Tom Stuart
264-2452

Eileen Plate
465-2700

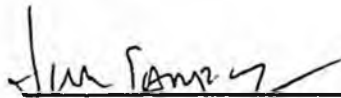
The National Electrical Code and the National Electrical Safety Code establish the State's minimum electrical standards.

These codes are updated every three years, and the 1990 editions are the most recent effort in this regard. The 1987 codes presently in effect for the State of Alaska, are, therefore, outdated and will not be reprinted.

Adoption of the 1990 codes as proposed in this bill will bring Alaska's minimum standards into conformity with those commonly accepted and used by industry across the nation. The latest editions of the codes are also commonly adopted by political subdivisions in the state as the minimum standards enforced under their building inspection programs.

The Department supports Committee Substitute for Senate Bill 357 (L&C) which provides for adoption of the 1990 National Electrical Code and National Electrical Safety Code. It will not have a fiscal impact on the Department.

APPROVED:



Jim Sampson, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

Alaska State Legislature



SENATOR JIM DUNCAN

P. O. Box V JUNEAU, ALASKA 99811-3100
(907) 465-4766

COMMITTEES:
FINANCE
VICE CHAIR —
HEALTH EDUCATION
& SOCIAL SERVICES
BUDGET & AUDIT
BANKING &
ECONOMIC
DEVELOPMENT

TO: REPRESENTATIVE DAVE DONLEY
CHAIR
LABOR AND COMMERCE COMMITTEE

FROM: SENATOR JIM DUNCAN

REGARDS: REQUEST FOR HEARING ON CSSB 357 (L&C)

DATE: JANUARY 29, 1990

I WOULD APPRECIATE THE EARLIEST POSSIBLE HEARING FOR CSSB 357 (L&C) BY THE HOUSE LABOR AND COMMERCE COMMITTEE.

THIS BILL AMENDS ALASKA STATUTE 18.60 TO REFLECT THE 1990 UPDATE OF MINIMUM ELECTRICAL STANDARDS APPROVED BY THE AMERICAN NATIONAL STANDARDS INSTITUTE AND PUBLISHED IN THE NATIONAL ELECTRICAL CODE. THE MEASURE WILL ALLOW THE ALASKA DEPARTMENT OF LABOR TO ADOPT AMENDMENTS TO ITS REGULATIONS TO COMPLY WITH THE UPDATED STANDARDS. SINCE MINIMUM ELECTRICAL STANDARDS ARE ADDRESSED IN ALASKA STATUTE, THIS BILL IS NECESSARY TO KEEP ABREAST OF THESE CHANGES.

THE SENATE LABOR AND COMMERCE COMMITTEE MADE A MINOR AMENDMENT TO THE ORIGINAL BILL TO REFLECT THE EXACT NAME OF THE AMERICAN NATIONAL STANDARDS INSTITUTE IN LINE 20. THE DEPARTMENT OF LABOR SUGGESTED THIS AMENDMENT. CURRENT STATUTE READS THIS WAY AND THE COMMITTEE TOOK THE OPPORTUNITY TO CLEAN UP THE LANGUAGE.

ATTACHED ARE POSITION PAPERS IN SUPPORT OF THIS MEASURE AND ZERO FISCAL NOTES FROM THE DEPARTMENTS OF COMMERCE AND ECONOMIC DEVELOPMENT, PUBLIC SAFETY AND LABOR.

THANK YOU FOR YOUR KIND CONSIDERATION OF THIS REQUEST.

RECEIVED
JAN 30 1990

Bill No Senate Bill 357

Date: January 16, 1990

Title: "An Act relating to the state, borough, and city electric codes."

Contact: Tom Stuart
264-2452

Eileen Plate
465-2700

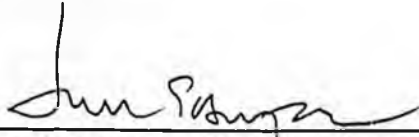
The National Electrical Code and the National Electrical Safety Code establish the State's minimum electrical standards.

These codes are updated every three years, and the 1990 editions are the most recent effort in this regard. The 1987 codes presently in effect for the state of Alaska, are, therefore, outdated and will not be reprinted.

Adoption of the 1990 codes as proposed in Senate Bill 357 will bring Alaska's minimum standards into conformity with those commonly accepted and used by industry across the nation. The latest editions of the codes are also commonly adopted by political subdivisions in the state as the minimum standards enforced under their building inspection programs.

The Department supports Senate Bill 357 which provides for adoption of the 1990 National Electrical Code and National Electrical Safety Code. It will not have a fiscal impact on the Department.

APPROVED:



Jim Sampson, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSSB 357 (L&C)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
Title: "An Act relating to the state, borough, and city electric codes." BRU: Labor Standards & Safety
Sponsor: Duncan Components: Mechanical Inspection
Requestor: Senate Labor & Commerce

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	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Note: there is no fiscal impact in FY 90.

Prepared by: Tom Stuart, Director Phone: 465-2712
Division: Labor Standards & Safety Date: 1/19/90
Approved by Commissioner: Jim Sampson Date: 1/19/90
Agency: Department of Labor

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

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION : SB 357
PUBLISH DATE : _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
 Title: "An Act relating to the state, borrough, and city electric codes." BRU: Labor Standards & Safety
 Sponsor: Duncan Components: Mechanical Inspection
 Requestor: Senate Labor & Commerce

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	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Tom Stuart, Director Phone: 465-2712
 Division: Labor Standards & Safety Date: 1/16/90
 Approved by Commissioner: Jim Sampson Date: 1/16/90
 Agency: Department of Labor

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

SB 357: "An Act relating to the state, borough, and city electric codes."

The Department of Commerce and Economic Development supports the passage of SB 357. This proposed legislation amends electrical safety provisions in AS 18.60.580 to adopt the 1990 editions of the National Electrical Codes.

The Board of Electrical Examiners (hereinafter "board") within the Division of Occupational Licensing (hereinafter "division") supports this adoption of the most up-to-date editions of the National Electrical Code and the National Electrical Safety Code.

The board now utilizes and administers an electrical administrator exam written by the National Assessment Institute (NAI). NAI routinely revises its exam to incorporate in its exam questions the most current electrical safety standards. It is, therefore, important that Alaska also adopt the most current national standards; if we fail to do so, then Alaska is forced to continue to test on the outdated standards and use past exams no longer actively validated by the testing institute.

The stated purpose of the Board of Electrical Examiners "is to protect the safety of people and property in the state from the danger of improperly installed electrical wiring and equipment" by providing procedures to assure "the public that persons responsible for making electrical installations in this state are qualified" (see AS 08.40.005).

The board believes that it can only achieve this mandated purpose if the state is testing on the most current national electrical safety standards and if all presently licensed electrical administrators are inspecting and approving electrical installations that are installed according to the most up-to-date safety standards available.

For the reasons stated above, the department supports passage of SB 357.


Larry Merculieff, Commissioner

Date: 12/1/90

LM/RPB/dgl6117D
11790c

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An Act relating to the state,
borough, and city electric codes.
 Sponsor: Senator Duncan
 Requestor: Senate Labor & Commerce

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

Components: All

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	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	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

The bill updates the minimum electrical standards to reference the current electrical codes. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Officer
 Division: Occupational Licensing

Phone: 465-2144
 Date: 1-16-90

Approved by Commissioner: Larry Merculieff
 Agency: Commerce and Economic Development

Date: 12/17/89

Distribution (by preparer):

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

BILL NOSB 357

DATE: January 17, 1990

TITLE: An act relating to state, CONTACT: Gordon Brunton
borough, and city electric 465-4331
codes

This bill adopts the 1990 National Electrical Code and the 1990 National Electrical Safety Code, replacing the 1987 editions.

These changes will predominately affect the Department of Labor, Division of Labor Standards and Safety. The Division of Fire Prevention, Department of Public Safety utilizes these national codes in a limited manner in its fire and life safety code enforcement program.

The Department of Public Safety supports passage of SB 357.

for 
Arthur English
Commissioner

DEPARTMENT OF
PUBLIC SAFETY

POSTER

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: An act relating to state, borough, and city electric codes BRU: Fire Prevention
 Sponsor: Senator Duncan Component: Fire Prevention
 Requestor: Senate Labor & Commerce Operations

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

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	0	0	0	0	0	0
---------	---	---	---	---	---	---

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
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.

Jnr
1/17/90

Prepared by: Gordon E. Brunton
 Division: Fire Prevention

Phone: 465-4331
 Date: 1/17/90

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

Date: 1-18-90
 Page 1 of 1

S B

3 9 3

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 28, 1990

FURTHER REFERRALS:

Date of Committee Action: 3/29/90

The LABOR & COMMERCE Committee considered:

SB 393

SENATE BILL NO. 393

SAFETY OF PROPANE GAS DEVICES ON RV'S

"An Act relating to sale or rental of recreational motor vehicles; and providing for an effective date."

RECOMMENDATIONS:

- [] be replaced with _____ [] 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 _____
[] zero fiscal note _____
[] zero with analysis _____

- [] fiscal note(s) _____
[] zero fiscal note(s) Public Safety
[] zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass
No Rec
All

David Donley Donley
Mark Bayer Bayer
Frank Finkelstein Finkelstein
Ch. B. Boucher Boucher
W. G. Grunberg Grunberg

	Do Not Pass	No Rec	All <input checked="" type="checkbox"/>

David Donley

Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: Safety of Propane Gas Devices
on RV'S BRU: DMV
 Sponsor: Fahrenkamp Component: _____
 Requestor: Senate Labor & Commerce

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

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	-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	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Juanita M. Henslev
 Division: DMV

Phone: 465-4361
 Date: 02/12/90

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

Date: 2-12-90

Handwritten:
2/12/90

Alaska State Legislature




SENATOR BETTYE FAHRENKAMP
CHAIRMAN, RESOURCES COMMITTEE
119 N. CUSHMAN STREET, SUITE 201
FAIRBANKS, ALASKA 99701
OFFICE (907) 452-4882
HOME (907) 456-2899

WHILE IN JUNEAU
PO BOX V
JUNEAU, ALASKA 99811
CAPITOL, ROOM 125
OFFICE (907) 465-3834
HOME (907) 780-6027

Senate

MEMORANDUM

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

FROM: Senator Bettye Fahrenkamp 

DATE: March 20, 1990

SUBJECT: Senate Bill 393
"An Act relating to sale or rental of recreational motor vehicles; efd."

A couple in Fairbanks, who are both friends and neighbors of mine, bought a motor home awhile back. They were excited about the new travel possibilities it opened up, and wanted to spend a night in the new RV at home, before taking it on the road. Parked in their driveway, that night, while they were sleeping, there was a propane leak (the result of an improperly done factory-installed hookup), and an explosion. Both the husband and the wife were burned, with the wife suffering very serious third degree burns.

ABOUT THE BILL:

SB 393 requires that a basic propane detector, which retails for about \$100, be installed on newer RV's that are sold and on all RVs that are rented in Alaska after January 1, 1992. A propane detector working off a 12 volt battery will sound an alarm when it detects more than 25% of the lower explosion limit in the air.

Although "mercaptan" is added to propane so that people can smell the gas should it leak, not all people can smell the additive (for example, people who are sleeping or whose sense of smell is impaired). Couple this with the increasing incidence of people living in recreational vehicles and thus putting greater stress than was designed for on the appliances and connections, and people doing their own repairs and modifications in order to save money, and you can easily have a literally "explosive" situation.

BILL SUMMARY:

SB 393 requires that a gas detector be installed in all recreational vehicles that are rented, and on 1990 or newer model recreational vehicles that are sold in Alaska. This applies only to RVs that are equipped with propane stoves or heating devices. The bill takes effect January 1, 1992.

FISCAL IMPACT/PREVIOUS ACTION:

Zero fiscal note from the Department of Public Safety, Division of Motor Vehicles. Senate Labor & Commerce Committee considered the bill on February 12, and all members present at the meeting recommended "do pass". The Senate considered the measure on 2/27/90; measure passed with unanimous "yea" votes, with all 20 members present.

S B

4 2 5

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 2, 1990

FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: _____

The LABOR & COMMERCE Committee considered: CSSB 425 (LABOR & COMMERCE)

CS SB NO. 425 (L&C) DISCLOSURE OF AGENCY BY REALTORS

"An Act relating to disclosure of agency by holders of real estate licenses; and providing for an effective date."

RECOMMENDATIONS:

- [] be replaced with _____ [] 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 _____ [] fiscal note(s) _____
- [] zero fiscal note _____ [] zero fiscal note(s) Com + Econ Dev.
- [] zero with analysis _____ [] zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not Pass No Rec Amend

<u>Walter Donley Donley</u>	<u>Steven A. Luan Luan</u>	✓	
<u>Mark Boyer Boyer</u>	<u>William Collins</u>	✓	
<u>John Finkelstein</u>			
<u>Robert Boucher</u>			
<u>Greenberg</u>			



 Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
 Title: An Act relating to disclosure of BRU: Occupational Licensing
agency by holders of real estate licenses;
 Sponsor: Sen. Sturgulewski Components: _____
 Requestor: Senate Labor & Commerce

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	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)

The bill requires real estate licensees to disclose the licensee's agency relationship with the seller to each prospective buyer; and when a licensee acts as an agent for a prospective buyer, to disclose the relationship with the buyer to a prospective seller of real estate. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144
 Division: Occupational Licensing Date: 2/2/90

Approved by Commissioner: Larry Mercurieff Date: 2/7/90
 Agency: Department of Commerce & Economic Development

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

Changes in SSB425 (L&C)
 have no fiscal impact.
 This fiscal note is
 appropriate.

Original sponsor(s): SEN. STURGULEWSKI

IN THE SENATE

BY THE LABOR & COMMERCE COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 425 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to disclosure of agency by holders of real estate licenses; and providing for an effective date."

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

* Section 1. AS 08.88 is amended by adding a new section to read:

Sec. 08.88.396. DISCLOSURE OF AGENCY. (a) A person holding a license under this chapter shall, when acting as an agent for a prospective seller of real estate,

(1) disclose in writing the person's agency relationship with the seller to each prospective buyer at the time that the person begins to provide specific assistance to locate or acquire real estate for the buyer, and obtain from each prospective buyer a signed acknowledgement that the buyer is aware of the agency relationship between the person licensed under this chapter and the seller; and

(2) include in the purchase agreement a statement of the agency relationship between the person licensed under this chapter and the seller.

(b) A person holding a license under this chapter shall, when acting as an agent for a prospective buyer of real estate,

(1) disclose the person's relationship with the buyer to a prospective seller of real estate, or to the seller's agent, at the time of the initial contact between the person licensed under this chapter and the prospective seller or the seller's agent, and confirm the relationship in writing as soon as possible after the initial

1 contact;

2 (2) include in the purchase agreement a statement of the
3 agency relationship between the person licensed under this chapter and
4 the buyer;

5 (3) if the prospective seller has an unexpired exclusive
6 listing contract for a property, present an offer to purchase that
7 property to the seller's agent; and

8 (4) disclose in writing to all parties to a transaction
9 when the person's compensation as agent for the buyer is to be paid by
0 anyone other than the buyer being represented by the person.

1 (c) A person licensed under this chapter may not act as an agent
2 for both a prospective seller and a prospective buyer of real estate
3 unless the person informs both the seller and the buyer and obtains
4 written consent to the joint agency from both.

5 (d) When a change occurs during a transaction that makes a prior
6 written disclosure required by this section incomplete, misleading, or
7 inaccurate, the person licensed under this chapter shall make a re-
8 vised disclosure, in writing, to all parties to the transaction as
9 soon as possible. The revised disclosure must include the date of the
10 revision and shall be acknowledged in writing by all the parties.

11 * Sec. 2. AS 08.88.401(d) is amended to read:

12 (d) A person who violates a provision of this section, [OR OF]
13 AS 08.88.161, or AS 08.88.396 is guilty of a class A misdemeanor.

14 * Sec. 3. This Act takes effect January 1, 1991.

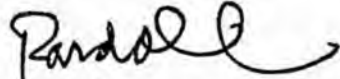
MEMORANDUM

State of Alaska

TO: Frank Homan, Legislative Aide
to Senator Arliss Sturglewski

DATE: April 2, 1990

FILE NO:



TELEPHONE NO:

FROM: Randall P. Burns, Director
Division of Occupational Licensing
Department of Commerce and
Economic Development

SUBJECT: Comments on
CSSB 425(L&C)

Apparently, as a result of several public opinion messages (POMs), questions were raised in the House Labor and Commerce Committee regarding ~~SB 425~~. Of apparent interest was an issue related to the impact of AS 08.88.396(b)(4) of the bill (page 2, lines 8 - 10) on the sale of HUD homes.

In the original bill, this paragraph required the buyer's agent to obtain the written consent of all parties when "the person's compensation as agent for the buyer is to be paid by anyone other than the buyer being represented by the person." This was amended in Senate Labor and Commerce to require disclosure -- rather than written consent -- to all parties to the transaction of the origin of compensation.

We have learned that HUD cannot sign addenda (i.e., the HUD purchase agreement form is a standardized national contract that cannot be altered without Washington, D. C.'s blessing), thus making it very difficult for salespersons representing HUD purchasers to comply with this section. The Senate Labor and Commerce amendment therefore makes sense in light of the inability to alter HUD contracts to reflect the written consent required of the original bill.

Another POM stated that, by law, all agents on HUD contracts represent the buyer. This is not true. While many agents do represent buyers on HUD-home purchases, there is no law mandating only agent-buyer relationships. Further, it is our understanding that the practice is not consistent across the nation by HUD's regional offices. Some consider the agents as buyers' agents and some consider them as HUD agents. HUD does not list properties exclusively with any agent.

Generally, the primary purpose of the bill is to make consumers aware of whom an agent is representing in a real estate transaction. Subsection (a) alerts buyers when they are not being represented. The disclosure required of this subsection will apprise the buyer that an agency relationship has been established between the salesperson and the seller, and clarify for the buyer that the seller is the one providing compensation for the agent's professional services. This requirement assures that the buyer is aware of the agent's role in the transaction.

Subsection (b) alerts a seller when an agent is representing the interests of a buyer, and apprises the seller that the salesperson will be advocating/negotiating on behalf of the buyer during the transaction. If the agent expects to be compensated by someone other than the buyer, then the seller should be put on notice before considering an offer. As stated previously above, to require written consent in this instance would be an unreasonable expectation and potentially discriminate against agents who represent buyers.

Finally, subsection (c) requires disclosure of "dual or joint agency," when the salesperson represents both the buyer and the seller.

This division and the Real Estate Commission support the bill as it passed out of the Senate Labor and Commerce Committee.

Thank you for your assistance in this matter.

RB/11p7463s
040290a

Alaska State Legislature



SENATOR
ARLISS STURGULEWSKI
Senate President Pro Tempore
Chairman, Senate Rules Committee

2957 SHELDON JACKSON STREET
ANCHORAGE, ALASKA 99508


While in Juneau
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3818

Senate

MEMORANDUM

March 20, 1990

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

FROM: Senator Arliss Sturgulewski 
District F

RE: Hearing request for CSSB 425(L&C) "An Act relating to
disclosure of agency by holders of real estate
licenses; and providing for an effective date."

Senate Bill 425 was requested by the Alaska Association of Realtors based on recommendations by the National Association of Realtors and a 1988 Alaska Real Estate Commission Task Force recommendation.

This legislation is aimed at reducing the confusion that the real estate consumers often encounter as to whom the real estate agent represents. Senate Bill 425 would place requirements on real estate agents to disclose whether they represent the seller, the buyer, or both to all parties.

This legislation is supported by the Alaska Association of Realtors, the Real Estate Commission, and the Department of Commerce and Economic Development. There is a zero fiscal note.

I would appreciate your consideration of SB 425 for a public hearing. Thank you.

Attachments

SB 425: "An Act relating to disclosure of agency by holders of real estate licenses; and providing for an effective date."

Background

When a real estate broker consents to market a property for a seller, the relationship established between the seller (also known as the principal) and the broker is called an "agency" relationship because the broker becomes an agent for the seller. The agent (broker) is authorized by the principal (seller) to act on the principal's behalf, subject to the principal's control.

Because the relationship is a fiduciary one, the agent owes his principal the following:

1. good faith and fidelity;
2. exercise of reasonable care, skill, and judgment in securing the best price and terms possible for the principal;
3. avoidance of representing any interest contrary to that of the principal without the express written consent of the principal; and
4. full, fair, and timely disclosure to the principal of all facts which are/may be material to the principal's interest or which may influence his/her actions.

In the real world of real estate practice, this basic agency relationship has traditionally been between a seller and the broker who has a listing contract to market his property (commonly known as the "listing broker"). All of the sales associates in the listing broker's office, and sales associates affiliated with any other broker who works in cooperation with the listing broker are "subagents" for the same principal (seller). As subagents, they have the same level of fiduciary responsibilities to the principal as the agent (listing broker).

Problem

When one of these subagents introduces the property to a prospective buyer, prepares an offer to purchase, helps to negotiate a "good buy" for the buyer, assists the prospective buyer in obtaining financing, and serves as the conduit for information between the buyer and the seller, the buyer may think that the subagent is acting as a buyer's agent. This is NOT the case; the only duty to represent that has been established thus far is with the seller via the listing broker. However, if the buyer continues to believe the "subagent" is his agent and looking out for his interests as a buyer, that buyer is likely to feel he has been deceived or betrayed if and when he is finally informed that the seller was the one really being represented throughout the transaction.

It is not uncommon for lawsuits charging misrepresentation to follow. The Courts have ruled that the actions of an agent which imply that the agent was working on behalf of the buyer, representing the buyer's interests to the seller, are, in fact, sufficient to create that relationship. If this happens, a buyer becomes a principal and the real estate licensee is a "dual agent" with fiduciary responsibilities to both the buyer and the seller. Dual agency is recognized as valid only if both principals are informed and agree to it in writing. Failure to obtain this consent can result in transactions negotiated under such circumstances being rescinded by the Court.

This is not an isolated problem. In the 1980's, a Federal Trade Commission survey reported that 80% of the consumers in real estate transactions did not realize that real estate salespersons were actually agents of the seller in most cases. Both the National Association of Realtors (NAR) and the National Association of Real Estate License Law Officials (NARELLO) created task forces to study this issue and suggest solutions. In addition to the general lack of understanding of "agency" by consumers and the potential for inadvertent dual agency, the task forces also recognized that there were increasing industry efforts by brokers to represent a buyer's interest in a real estate transaction by executing an agency contract between a buyer and a broker in addition to the usual seller/broker relationship.

Recommended Solution

Since 1986, both NAR and NARELLO have supported the introduction and passage of agency disclosure laws as the most effective means of addressing this issue. By the beginning of 1988, twenty-six (26) states had enacted agency disclosure laws; legislation was pending in seven (7) more states. A one-line summary of the agency disclosure requirements in these states is attached. These were compiled by the NARELLO Agency Subcommittee in 1987 and published in the 1988 NARELLO DIGEST. No updates were published in 1989.

In 1988, the Alaska Real Estate Commission created its own task force to study the issue. The task force recommended the addition of an agency disclosure requirement to Alaska's real estate license law; the recommendation was endorsed by the full commission.

SB 425

The proposed language in SB 425 recognizes that an agency relationship can be established by a broker with either the buyer or the seller. Either is workable, but all parties involved in a real estate transaction should know exactly what these relationships are. SB 425, by requiring real estate agents to make written disclosures of the nature of these relationships to all parties of a real estate transaction, will minimize any misconceptions as to who is representing whom.

Through this disclosure, buyers will be advised of what the agents representing a seller must do for their principal, and what service they can still provide to a prospective buyer. Likewise, sellers will be put on notice that, when an agent is representing a buyer, he will be negotiating with the buyer's best interests in mind and that agent's fiduciary responsibilities will be to the buyer.

The states which have already implemented agency disclosure laws are finding that buyers generally welcome the early explanation of how this process works. Discussion by the agent of the agency issue early in a working relationship is a key factor in its acceptance by both buyers and sellers. Hence, section (a) of SB 425 would require that written disclosure of an agent's relationship to a seller be made as soon as that agent begins to provide specific services to a prospective buyer (i.e. locating properties to show which meet that buyer's specific criteria). However, it would not, for instance, require a written disclosure for every person stopping by an open house while out for a Sunday drive.

Section (b) of SB 425 specifies that an agent representing a buyer would be required to disclose the agency relationship with the buyer to a seller or his listing agent at the time of the initial request to show a property. This section also provides that any agency relationship which a seller may have established be recognized, and that any arrangements for compensation for the services of the buyer's agent are clearly understood by all parties.

Section (c) of SB 425 allows an agent to act in a dual role, representing both the buyer and the seller, provided both are informed and agree in writing to the agent's doing so.

Section (d) of SB 425 provides that, if the agency relationship is altered during the course of a transaction, all parties be apprised of the change as soon as possible after it becomes effective.

It is the position of the department, on behalf of the Real Estate Commission, that the establishment of mandatory disclosure laws, as proposed in SB 425, would decrease litigation and significantly increase both agent and consumer understanding of the agency relationship. We, therefore, urge passage of SB 425.



Larry Mercurieff, Commissioner

Date: 2/12/90

LM/LW/dgl6289D
2990a
Attachments

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
 Title: An Act relating to disclosure of BRU: Occupational Licensing
agency by holders of real estate licenses;
 Sponsor: Sen. Sturgulewski Components: _____
 Requestor: Senate Labor & Commerce

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	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)

The bill requires real estate licensees to disclose the licensee's agency relationship with the seller to each prospective buyer; and when a licensee acts as an agent for a prospective buyer, to disclose the relationship with the buyer to a prospective seller of real estate. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144
 Division: Occupational Licensing Date: 2/2/90

Approved by Commissioner: Larry Merculieff Date: 2/7/90
 Agency: Department of Commerce & Economic Development

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

Changes in CSSB425 (L&C)
 have no fiscal impact.
 This fiscal note is
 appropriate.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 1, 1990

SUBJECT: Sectional analysis of SB 425
TO: Senator Arliss Sturgulewski
FROM: John B. Gaguine JBG
Legislative Counsel

At your request, here is a sectional analysis of SB 425, for an act relating to disclosure of agency by holders of real estate licenses.

Section 1 would enact a new section, AS 08.88.396, imposing a duty to disclose agency relationship on the holders of real estate licenses (brokers, associate brokers and salespersons). Subsection (a) would require a licensee acting as the agent for a seller of real estate to disclose that fact to a prospective buyer when the licensee begins to provide assistance to the buyer, and would require the licensee to obtain from the buyer written acknowledgement that the buyer is aware of the relationship. Subsection (b) would require a licensee acting as the agent for a real estate buyer to disclose that fact to a prospective seller, to present offers only through the seller's agent if there is an unexpired exclusive listing contract, and obtain the written consent of all parties to a transaction if the licensee's compensation is being paid by anyone other than the buyer. Subsection (c) would forbid a licensee from acting as agent for both buyer and seller unless the licensee has written consent from both. Subsection (d) would require a licensee to update prior written disclosures if there are changes in the licensee's agency status during a transaction.

Section 2 would make it a class A misdemeanor for a licensee to violate a provision of AS 08.88.396, enacted by section 1. Violation of certain other provisions of the real estate licensing chapter is already a class A misdemeanor.

Section 3 establishes an effective date for this act of January 1, 1991.

JBG:pl
WKP1/081

AGENCY DISCLOSURE LAWS - 10/87

CALIFORNIA Effective January 1, 1988, broker must provide seller and buyer with a prescribed disclosure form "as soon as practicable" and confirm agency relationship on the contract. Mandates 3-hour course on agency.

COLORADO Regulations E-31 - E-35 require oral and written disclosure to sellers and buyers.

FLORIDA Law requires disclosure in sales contract that selling broker is agent of, and will be paid by, seller if such is the fact.

GEORGIA Written disclosure of who broker represents and who will pay the broker; made at time of or before written offer.

GUAM Violation to act for more than one party without knowledge or consent.

HAWAII Law and regulations requiring oral or written disclosure at least once prior to contract, and confirmation on the contract.

IDAHO Pending regulations requiring oral or written disclosure as early as possible, confirmation on contract and re-affirmation at closing.

MAINE Written disclosure to buyer prior to showing; if buyer's agent, notice to seller at initial contact.

MINNESOTA Written disclosure in contract prior to offer being made or accepted by buyer.

MISSISSIPPI Every contract must reflect whom the broker represents by a statement over the parties' signatures.

MISSOURI Presumed to be seller's agent unless written agreement to the contrary. New rules are pending.

NEBRASKA Written disclosure that licensee represents seller unless a contract with buyer and notice to seller of buyer agency.

NEW YORK Broker shall make it clear for which party acting.

NORTH DAKOTA Rules and regulations pending.

OHIO Statute that licensee is agent of owner unless agreement to contrary disclosed to all.

OREGON Pending agency disclosure bill combining oral and written disclosure.

PENNSYLVANIA Law requires broker to disclose that broker is agent of seller, not buyer.

SOUTH CAROLINA Licensee must disclose on mandatory disclosure form for which party he is acting.

TEXAS Must make clear for which party broker is acting; new rules and approved form.

UTAH Rule requiring early disclosure of agency relationship, at least once prior to confirmation on contract.

VERMONT Licensee must disclose to buyer, no later than offer, that licensee represents seller, unless there is a buyer agency agreement.

WASHINGTON Oral or written disclosure at least once prior to contract, with confirmation on contract.

WISCONSIN Pending rules requiring the agent of one party to make written disclosure at the first meeting.

WYOMING Violation to act for more than one party without knowledge of all parties.

AGENCY DISCLOSURE

Seller's Agent

_____ has disclosed that he/she as
(Name of Licensee)

(Check one) _____ the listing broker
_____ licensee in listing broker's office
_____ sub-agent through cooperating broker
is an agent of the seller. The seller is the only principal
for this agent.

_____ Date _____ Acknowledgement of Seller

_____ Date _____ Acknowledgement of Prospective Buyer

Buyer's Agent

_____ has disclosed that he/she is
(Name of Licensee)

working as an agent of the buyer. The buyer is the only
principal for this agent.

_____ Date _____ (Acknowledgement of Seller)

_____ Date _____ (Acknowledgement of Prospective Buyer)

REVISED DISCLOSURE STATEMENT

The disclosure dated _____ is revised to
disclose that _____ is now
(Name of Licensee)

(Check one) _____ a seller's agent, exclusively.
_____ a buyer's agent, exclusively.
_____ an agent for both the buyer and the seller.
(Acknowledgement by both principals below
constitutes express written consent as
required for dual agency representation.)

_____ Date _____ (Acknowledgement by Seller)

_____ Date _____ (Acknowledgement by Prospective Buyer)

_____ Date _____ (Acknowledgement of revised status
by Broker of Named Licensee)

AGENCY DISCLOSURE

All licensees have affirmative obligations to both parties of a transaction which include:

1. Diligent exercise of reasonable skill and care in performance of the agent's duties.
2. A duty of honesty, fair dealing and good faith.
3. A duty to be both truthful and informed whenever he/she undertakes to make a representation.

When entering into an agency relationship, both buyers and sellers have a responsibility to carefully read all agreements and understand the type of representation they are to receive.

AGENT'S DUTY TO A PRINCIPAL

The duties that an agent and subagent owe to a principal are:

1. Good faith and fidelity.
2. To exercise reasonable care, skill and judgment in securing the best price and terms possible for the principal.
3. To avoid representing any interest contrary to that of the principal without the express written consent of the principal.
4. To make full, fair, and timely disclosure to the principal of all facts which are or may be material to his/her interest or influence his/her actions.

Under a listing agreement with a seller (principal) an agency relationship is created with the seller. Other licensees in the same office or in a cooperating broker's office are subagents of the seller with all of the duties listed above.

A licensee can agree to act as an agent for the buyer only. In this instance, the agent owes the same duties to the buyer as his principal. When acting in this capacity, the agent is not the seller's agent even if all parties agree that the compensation for services rendered is to be paid from the seller's proceeds of sale.

Any offers to purchase a currently listed property will be presented through the listing agent.

DUAL AGENCY

An agent can legally be the agent of both the seller and the buyer in a transaction, BUT ONLY WITH THE KNOWLEDGE AND CONSENT OF BOTH PRINCIPALS. The agent then owes all of the above listed duties to both buyer and seller, and both are principals for the agent. Both parties must be informed and consent to any compensation paid to the agent by the other party.



Agency/Subagency Committee Report



Submitted by David W. Johnson, Chairman

RESPONSES TO AGENCY/SUBAGENCY QUESTIONNAIRE
LAST REVISED SEPTEMBER 14, 1987

1. STATES WITH NO SPECIFIC AGENCY DISCLOSURE LAWS AND NONE PENDING:

Alabama	Kentucky	Oklahoma
Alaska	Louisiana	Ontario
Alberta	Maryland	Quebec
Arizona	Michigan	South Dakota
Arkansas	Montana	Tennessee
British Columbia	Nevada	Virginia
Connecticut	New Jersey	West Virginia
Illinois	New Mexico	
Kansas	North Carolina	

2. STATES WITH STATUTES OR RULES PENDING ON AGENCY DISCLOSURE:

North Dakota - A committee will be meeting in August to draft an administrative rule on agency disclosure. Plans to have the rule in effect by January 1, 1988.

Wisconsin - Is ready to begin the formal rulemaking process with disclosure rule.

Iowa - A proposed bill supported by Iowa Association of Realtors died in Committee. This bill will probably be reintroduced at the next legislative session.

Rhode Island - Real Estate Commission will be reviewing a proposal on September 17, 1987.

Delaware - Delaware Association of Realtors is looking at a standardized disclosure form for all of its membership. The New Castle County Board of Realtors have already adopted a form for use in agency disclosure. The Delaware Real Estate Commission will be looking at this issue at its next meeting in October - 1987.

Idaho - Is in the process of rulemaking. Anticipate effective date of new rule to be 1-1-88 or 7-1-88.

Oregon - Has proposed legislation for introduction in the 1989 Legislative Session.

3. STATES WITH AGENCY DISCLOSURE LAWS:

California	Minnesota	Saskatchewan*
Colorado	Mississippi	South Carolina
District of Columbia*	Missouri	Texas**
Florida	Nebraska	Utah
Georgia	New Brunswick*	Vermont
Guam*	New Hampshire	Washington
Hawaii	New York	Wyoming*
Indiana	Ohio	Massachusetts*
Maine	Pennsylvania	

**NOTE: The statutes in these states/provinces do not have specific agency disclosure language. However, they do provide that it is a licensing violation to represent more than one party in a real estate transaction without the knowledge and consent of the other party. Accordingly, agency disclosure is an implicit obligation of that provision.*

***NOTE: Texas has deferred (as of September 14, 1987) final action on its proposed rules for another 120 days to further evaluate industry input.*

4. ENFORCEMENT OF AGENCY DISCLOSURE LAW:

The overwhelming majority of states are enforcing or anticipate enforcement through two basic approaches: (1) include compliance with agency disclosure rule as an element of a routine audit of broker records; and (2) look for agency disclosure as an issue when reviewing all consumer complaints.

5. OBSERVATIONS FOR IMPLEMENTING NEW AGENCY DISCLOSURE LAW:

Colorado - (Comments quoted directly from Michael B. Gorham, Director, Colorado Real Estate Commission) - (1) Did not give sufficient enough lead time before implementing agency disclosure rule. The rule went into effect before most licensees were aware of it, consequently, there was a need for a Declaratory Order implementing the rule. Suggest any jurisdiction considering such a rule give a six-month or one-year period for education; (2) Even though the rule provides for both oral and written disclosure, Colorado feels that many agents do not make the oral disclosure and instead rely on preprinted contract disclosure. This, however, is

S B

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HOUSE COMMITTEE REPORT

(7)

Date Referred: March 21, 1990

FURTHER REFERRALS:

Date of Committee Action: 5/3/90

The LABOR & COMMERCE Committee considered: CSSB 492(LABOR & COMMERCE)

CS SENATE BILL NO. 492 (L&C) BOILER/PRESSURE VESSEL INSPECTION CODES

"An Act relating to the inspection standards for boilers and pressure vessels."

RECOMMENDATIONS:

- be replaced with _____ 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) Dept of Labor ^{3/5/90}
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

	Do Not Pass	No Rec	Amend
<u>James D. Donley</u> Donley			
<u>John H. Finkelstein</u> Finkelstein			
<u>William J. Greenberg</u> Greenberg			
<u>John J. Boucher</u> Boucher			

James D. Donley
Chairman's Signature

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907.465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 2, 1990

SUBJECT: Inclusion of certain new material
in CSSB 492 (L&C)

TO: Senator Steve Frank
Attn: Rick Solie

FROM: Theresa L. Bannister *TB*
Legislative Counsel

You have asked whether the addition of certain material to CSSB 492 (L&C) would violate the title expression requirement in Art. II, sec. 13, of the Alaska Constitution. This provision requires that the subject of a bill be expressed in the title of the bill. The purpose of the rule is to provide the reader with notice of what is in the bill. A bill will only be set aside for violating the provision if the violation is substantial and plain. Griffin v. Sheldon, 78 F.Supp. 466, 11 Alaska 605, 615-616, 469-70 (D. Alaska 1948), rev'd on other grounds 174 F.2d 382, 12 Alaska 329, (9th Cir. 1949). In this case, I believe that the addition would violate the constitutional requirement and that it would be a substantial and plain violation.

The new material creates an exemption for certain automatic utility hot water heaters from AS 18.60.180 - 18.60.390, the article dealing with boilers and pressure vessels. The title of CSSB 492 (L&C) relates "to the inspection standards for boilers and pressure vessels". The new material pulls in all of the provisions of AS 18.60.180 - 18.60.390, and these provisions include more than standards for inspection. They include, among other things, a prohibition against installing and operating certain boilers and pressure vessels, unless they conform to department regulations on construction and installation. The title, therefore, would not provide the reader with notice that any other provision of AS 18.60.180 - 18.60.390 than inspection standards was included in the bill. This appears to be a substantial and plain violation of the expression requirement.

Senator Steve Frank

Page 2

May 2, 1990

Although it is possible to argue that the term "standards" could be interpreted to include any rule related to inspection and that the department must inspect an item to determine if it violates the prohibition, this is a weak and unpersuasive argument. This interpretation requires manipulation of the meaning of the title to such a degree that the title does not give the reader the requisite notice of all of the new added material.

Therefore, it appears that the addition of the new material under the present title would cause a substantial and plain violation of the constitutional expression requirement. If I can be of further assistance, please advise.

TLB:gc
G14/055

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION CS SB 492 (L&C)

PUBLISH DATE: 3/6/90

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
 Title: "An Act relating to the inspection
of boilers and pressure vessels." BRU: Labor Standards & Safety
 Sponsor: Frank, Coghill, Sturgulewski Components: Mechanical Inspection
 Requestor: Senate Labor & Commerce

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	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Note: There will be no impact on FY 90.

Prepared by: Tom Stuart, Director Phone: 465-2712
 Division: Labor Standards & Safety Date: 3/5/90
 Approved by Commissioner: Jim Sampson Date: 3/5/90
 Agency: Department of Labor

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

Changes in CSSB492 (L+C)
 have no fiscal impact. This
 fiscal note is appropriate.
 Projections of no fiscal impact
 would continue through 1996.

page 1 of 1

STEVE FRANK
DISTRICT K
SEAT A

119 N. Cushman, Rm. 213
Fairbanks, Alaska 99701

While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3709
Capitol Rm. 514

Alaska State Legislature



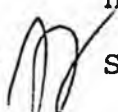
Senate

MEMBER
Finance Committee
Resources Committee
Legislative Council
Special Committee on Banking &
Economic Development

VICE-CHAIR
Community & Regional
Affairs Committee

MEMORANDUM

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

FROM:  Senator Steve Frank

RE: Request for Scheduling, CS SB 492 "An Act relating
to the inspection of boilers and pressure vessels."

DATE: March 22, 1990

The Senate recently passed SB 492 unanimously and it is now in the Labor & Commerce Committee awaiting scheduling. I respectfully request that you calendar it for a hearing at your earliest convenience.

The legislation will allow the Department of Labor to adopt the National Board Inspection Code (NBIC) Manual for Boiler and Pressure Vessel Inspectors. The National Board Code is intended to "...maintain the integrity of such boilers and pressure vessels after they have been placed into service..."

Currently, the Department only operates under the American Society of Mechanical Engineers (ASME) code, which establishes the rules of safety governing the design, fabrication and inspection during construction of boilers and pressure vessels. These two codes are intended to be complementary and allow for a complete safety inspection program both before, during and after construction.

The Department of Labor supports this legislation as do the impacted industries, such as, ARCO Alaska, Fairbanks Municipal Utilities System and the Alaska Pulp Corporation.

Without SB 492, the Department tells us that they cannot adopt the new code because they do not have the statutory authority.

Thank you for your consideration.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION CS SB 492 (L&C)

PUBLISH DATE: 3/6/90

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
 Title: "An Act relating to the inspection
of boilers and pressure vessels." BRU: Labor Standards & Safety
 Sponsor: Frank, Coghill, Sturgulewski Components: Mechanical Inspection
 Requestor: Senate Labor & Commerce

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	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Note: There will be no impact on FY 90.

Prepared by: Tom Stuart, Director Phone: 465-2712
 Division: Labor Standards & Safety Date: 3/5/90
 Approved by Commissioner: Jim Sampson Date: 3/5/90
 Agency: Department of Labor

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

Changes in CS SB 492 (L+C)
 have no fiscal impact. This
 fiscal note is appropriate.
 Projections of no fiscal impact
 would continue through 1996.

page 1 of 1

DOL & Fiscal Note CS(L&C)

SENATE FINANCE COMMITTEE REPORT

DATE: 3/6/90

FURTHER:

DATE TURNED INTO OFFICE: 3/15/90

The Finance Committee considered

SB 492

~~XXXXXXXXXXXXXXXXXXXX~~

"An Act relating to the inspection of boilers and pressure vessels."

and recommended:

- replace with _____ CS same title
- or adopt _____ CS SB 492 (LPC) new title
- attached amendment(s) technical title change (HB only)
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Dept/Date:

fiscal note(s) _____

zero fiscal note(s) _____

appropriation-no fiscal note

APPROVES PREVIOUS:

Dept/Date:

fiscal note(s) _____

zero fiscal note(s) _____

Do Labor 3/5/90

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

J. Duncan

[Signature]

[Signature]

Paul Grail

John Kelly (DO PASS)

1.

2.

Co-Chairs: Signatures and Recommendations

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 2/12/90

FURTHER: Finance

Date of 5-Day Notice: 3/1/90
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3/6/90

L & C Committee considered SB 492

"An Act relating to the inspection of boilers and pressure vessels."

and recommended:

- replace with _____ CS SB 492 (L+C) same title
 - attached amendment(s) new title
 - _____ letter of intent adopted
- + maj of Cmttee rec ap*

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

PKM

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) _____

zero fiscal note(s) _____
Dept of Labor 3/5/90
(for SB 492 + CSSB492 (L+C))

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

[Signature]
[Signature]
Walter Bodley

OTHER RECOMMENDATIONS:

2 Jan Feb No Rec

[Signature]
Chair: Signature and Recommendation

STATE OF ALASKA

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 21149
JUNEAU, ALASKA 99802-1149
PHONE: (907) 465-2700

FAX: (907) 465-2784

March 5, 1990

The Honorable Dick Eliason, Chairman
Labor & Commerce Committee
Alaska State Senate
P.O. Box V
Juneau, AK 99811


Dear Senator Eliason:

The Department has reviewed the draft committee substitute for Senate Bill 492 (L&C), which adopts the 1989 National Board Inspection Code Manual for boilers and pressure vessels.

We have worked closely with the sponsor on this bill, and support it.

Thank you.

Sincerely,



Eileen Plate
Special Assistant

EP:kh

Municipal Utilities System

March 2, 1990

Senator Steve Frank
Alaska State Legislature
P.O. Box V
Juneau AK 99811

Dear Senator Frank:

I have had the opportunity to review the Labor and Commerce Committee Substitute for Senate Bill No. 492. The original Senate Bill 492 and the Labor and Commerce Committee Substitute both address a present legislative need for the State of Alaska. The owners and users of pressure vessels throughout the state and the Department of Labor all recognize the necessity for adoption and use of the National Board Inspection Code Manual for boiler and pressure vessel inspectors. However, the legislative procedure has not existed which would allow the Alaska Department of Labor to administratively adopt applicable portions or all of the National Board Inspection Code. The Committee Substitute for Senate Bill No. 492 clearly paves the way and provides the necessary vehicle the Department of Labor needs to continue to perform a valuable service to the citizens of Alaska.

I heartily support the Labor and Commerce Committee Substitute for Senate Bill No. 492 and certainly hope that the remaining necessary steps are completed and fruitful so as to allow the bill to become a very useful piece of legislation.

Sincerely,



Marty M. Lanum
Fairbanks Municipal Utilities System
Electric Utility Superintendent

bj



ALASKA PULP CORPORATION

4600 SAWMILL CREEK ROAD
SITKA, AK 99835-9801

January 24, 1990

The Honorable Richard Eliason
Alaska State Senate
Room 417, Capitol
P.O. Box V
Juneau, Alaska 99811

Dear Senator Eliason:

Some time ago, I spoke to you about urgent need for Alaska adopting a Uniform Boiler and Pressure Vessel Safety bill.

There is a good deal of interest statewide on this issue because of the arbitrary and constantly changing interpretation of the current law by the Department of Labor. As an example, Department of Labor has required proof testing on boilers and pressure vessels after even very minor repairs. This practice leads to premature leaking and is a step backwards as a safety practice. Boiler manufacturers, insurance underwriters, and the National Board disagree with the State's implementation of this practice of proof testing.

The Municipality of Fairbanks Utilities is currently drafting a bill, and we understand that that bill will be forwarded to the Legislature very shortly.

There is widespread support around the State for this law change. Fundamentally, it would adopt National standards and implement a boiler and pressure vessel law similar to what is currently in use in most of the other states. The current Alaska law was adopted in 1955, which was before the time when there was much in the way of pressure vessel or industrial application in the State.

In any event, we hope that you will be able to support the law revisions when the bill is drafted and gets to your committee.

Very truly yours,

ALASKA PULP CORPORATION

Franklin C. Roppel
Executive Vice President

FCR:lc

cc: Joh.evich

747-8313

8849

SB

506

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 17, 1990

FURTHER REFERRALS:

Date of Committee Action: 5-4-90

The LABOR & COMMERCE Committee considered:

SB 506

SENATE BILL NO. 506

OVERTIME WAGE REQUIREMENTS/TRUCK DRIVERS

"An Act exempting certain employment of line haul truck drivers from overtime wage requirements."

RECOMMENDATIONS:

- [] be replaced with _____ [] 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) D. of Labor 2/5/9
[] zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not Pass No Rec Amend

SIGNING DO PASS:		SIGNING:		
		(Check approp. column)		
		Do Not Pass	No Rec	Amend
<u>Maxim Boyer</u>	<u>Boyer</u>	<u>Collins</u>	X	
<u>Robert A. Lemmon</u>	<u>Lemmon</u>	<u>Dowley</u>	X	
<u>W. A. Boucher</u>	<u>Boucher</u>			

Dave Dowley
Chairman's Signature

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION : SB 506
PUBLISH DATE : 3/15/90

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
 Title: " An Act exempting certain
employment of line haul truck drivers..." BRU: Labor Standards & Safety
 Sponsor: Senate Labor & Commerce Components: Wage & Hour
 Requestor: Senate Labor & Commerce

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	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

" Note: There is no fiscal impact on FY 90. "

Prepared by: Tom Stuart, Director Phone: 264-2452
 Division: Labor Standards & Safety Date: 3/5/90
 Approved by Commissioner: Jim Sampson Date: 3/5/90
 Agency: Department of Labor

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

HOUSE COMMITTEE REPORT

4/17

(5)

Date Referred: March 22, 1990

FURTHER REFERRALS:

LABOR & COMMERCE

Date of Committee Action: _____

The TRANSPORTATION Committee considered:

SB 506

SENATE BILL NO. 506 OVERTIME WAGE REQUIREMENTS/TRUCK DRIVERS

"An Act exempting certain employment of line haul truck drivers from overtime wage requirements."

RECOMMENDATIONS:

- be replaced with _____ 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 _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) Senate
- zero fiscal note(s) Labor 3/15/90
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

Bill Hudson HUDSON

Steven A. Leman LEMAN

Richard J. Foster FOSTER

SIGNING:		Do Not Pass	No Rec	Amend
<u>Ben Grussendorf</u>	GRUSSENDORF		X	

FOSTER

Richard J. Foster
Chairman's Signature

Alaska State Legislature

SB 506 ~~SB 506~~
~~State to Alaska~~

REPRESENTATIVE
BERT SHARP

DISTRICT 20

COMMITTEE
RESOURCE

FINANCE SUBCOMMITTEE.
DEPARTMENT OF NATURAL RESOURCES



FAIRBANKS

119 N CUSHMAN
FAIRBANKS, ALASKA 99701
(907) 452-7885 / 7886

WHILE IN JUNEAU

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STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3004 / 3018

House of Representatives

M E M O R A N D U M

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

FROM: Representative Bert M. Sharp *BMS*

SUBJECT: SB 506

DATE: April 18, 1990

In regards to our earlier conversation, attached you will find the information that was provided to me concerning SB 506.

I request that you or your committee staff review these concerns and if appropriate, any clarification language change would be appreciated.

Thank you.



REPRESENTING
GOLDEN HEART
OF ALASKA

FAX TRANSMITTAL MEMO

TO: Best Sharp
DEPT: _____ FAX # 465-2294
FROM Whitey PHONE 452-1187
CO SDX FAX # _____
Post-it® and fax transmits memo 2671

NO OF PAGES
3

KELLICUT AND JONES

A PARTNERSHIP

ATTORNEYS AT LAW

341 W TUDOR, SUITE 102 · ANCHORAGE, ALASKA 99501

(907) 581-2655

JANET C PLATT

April 5, 1990

Whitey Gregory
Sourdough Express
P.O. Box 73398
Fairbanks, AK 99707

Re: Overtime compensation
SB 506

Dear Whitey:

You asked me about SB 506. As I suggested, I picked up a copy from Legislative Affairs. I've read the bill and I've compared the bill's provisions to existing (old) statutes.

I do not know what the carrier's perception is, with regard to the effect of this new bill, nor do I know how, or if carriers intend to respond to this bill; if they intend to respond.

The context in which this problem arose was one where the carriers were paying drivers on a mileage basis, regardless of the number of hours they worked during a day or during a week. In the PTI case, and as with most other carriers to my knowledge, the drivers contended that for each hour worked over 8 or over 40, they should have been paid "overtime". The "hourly rate", even under a mileage system is easily determined by dividing the number of hours worked into the total pay received. This hourly rate then forms the basis for overtime, at one and one-half (1-1/2) the computed hourly rate.

This new bill, SB 506, is confusing both as its title and with respect to its provisions. First, this bill does not exempt line haul truck drivers from overtime wage requirements even though the title says it does.

If this bill intended to do that, they would supply "line item" paragraph 16, like they did other local categories. For instance, in item 10, the act simply exempted taxicab drivers; period. See also, lines 11-14. But look at item 15. This subparagraph exempts employees of a voluntary flexible work plan, but only if paragraphs (A) and (B) are satisfied. Therefore, for such employees, the exemption is conditional upon compliance with this paragraph.

The paragraph 16 dealing with line haul drivers is likewise conditional, and it appears to me that the drafter did not want to exempt drivers, or, this language was made condition to get through the legislature.

This paragraph provides that a line haul driver may be exempted from overtime wages if:

1. The trip exceeds 100 miles one way; and
2. The company/employer implements a compensation system wherein the driver is paid overtime for all hours over 8 and 40; and
3. The employer's pay system requires a rate of pay comparable to the rate required by this section.

It is clear that this new bill does not exempt line haul drivers from overtime wages. It is also clear, however, that the employer may pay any rate of pay he wants, or can negotiate, so long as that rate is equal to and above the minimum wage, and, based upon that wage, the employer pays overtime. These attributes did not alter existing law.

What this says, is that this bill appears to attempt to alter existing law by making certain drivers exempt from overtime wages.

I've spent all afternoon reviewing the existing statutes, regulations, and reading and re-reading this bill.

There is a possible interpretation, however attained, that one can read into this section of the bill. That is, that the company can employ a driver on a set haul, or fee for haul basis, without necessarily considering overtime/straight time wages and rates, but only under a system where straight and overtime is computed into that set haul rate. I can find no other manner interpreting this provision.

The provision is very poorly drafted, unclear and is subject to at least two (?) different interpretations. The irony of this is that the system the provision now apparently authorizes was always the law, so this changes nothing, and is the system I've suggested before, and help set up before to comply with the existing law.

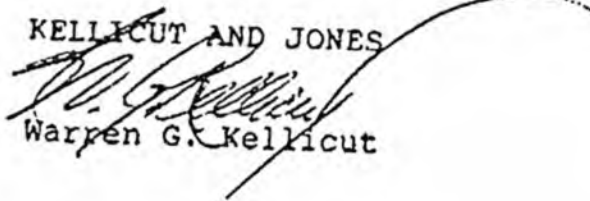
One conclusion you should be clear in understanding is that the bill does not exempt drivers from overtime compensation, it appears to permit a company to compensate on a per trip or per haul basis so long as straight time and overtime are built into the system of compensation.

Whitey Gregory
April 5, 1990
Page 3

If you wish anything further of me, please advise.

Regards,

KELLCUT AND JONES


Warren G. Kellicut

WGK/dk
Encl.

KELLCUT AND JONES

A PARTNERSHIP

ATTORNEYS AT LAW

341 W TUDOR, SUITE 102 · ANCHORAGE, ALASKA 99503

(907) 561-2655

WARREN G. KELLCUT
CALVIN R. JONES
JANET D. PLATT

April 11, 1990

Mr. Whitey Gregory
Sourdough Express
P.O. Box 73398
Fairbanks, AK 99707

Re: Driver Overtime

Dear Whitey:

I have received a copy of the Washington State regulations after which our recent SB 506 is patterned. The language is different, but ours was taken as a condensed version of the Washington regulations. This Washington regulation is, by virtue of its scope, much more clear and expressive of the intent of the statute.

The Washington regulation provides as follows:

1. It only deals with ICC Commerce; our bill is not so restricted. Our bill deals with all commerce, intra or interstate;
2. The systems must include overtime pay provisions;
3. The Employer may pay other than hourly; i.e., can pay by the trip, or mileage or unit;
4. The pay system must include an overtime factor and rate; this must be distributed over the pay period and be within the pay systems. Overtime as a factor must be considered in the pay system, and must be paid for at one and one-half (1-1/2) time base pay rate;
5. The base pay/overtime system must be supportable from actual wage and time histories. This may present a problem if the company does not have the same route and time movements.

In addition to the above, the Alaska bill refers only to line-haul drivers.

Given this information, some substantial thought must go into developing a pay system that complies with this bill.

Regards,

KELLICUT AND JONES

Warren G. Kellicut/dk
Warren G. Kellicut

WGK/dk
Dictated but not read
Encl.

Act, may obtain copies of the formula, the base rate of pay, and the overtime rate of pay.

NEW SECTION

WAC 296-128-012 OVERTIME FOR TRUCK AND BUS DRIVERS. (1)(a) The compensation system under which a truck or bus driver subject to the provisions of the Federal Motor Carrier Act is paid shall include overtime pay at least reasonably equivalent to that required by RCW 49.46.130 for working within the state of Washington in excess of forty hours a week. To meet this requirement, an employer may, with notice to a truck or bus driver subject to the provisions of the Federal Motor Carrier Act, establish a rate of pay that is not on an hourly basis and that includes in the rate of pay compensation for overtime. An employer shall substantiate any deviation from payment on an hourly basis to the satisfaction of the department by using the following formula or an alternative formula that, at a minimum, compensates hours worked within the state of Washington in excess of forty hours per week at an overtime rate of pay and distributes the projected overtime pay over the average number of hours projected to be worked. The following formula is recommended for establishing a uniform rate of pay to compensate work that is not paid on an hourly basis and for which compensation for overtime is included:

1. Define work unit first. E.g., miles, loading, unloading, other.
2. Average number of work units = Average number of work units accomplished per week

 per hour Average number of hours projected to be worked per week
3. Weekly Base Rate = Number of units per hour x 40 hours x base rate of pay
4. Weekly Overtime rate = Number of units per hour x number of hours over 40 x overtime rate of pay
5. Total weekly pay = Weekly base rate plus weekly overtime rate
6. Uniform rate of pay = Total weekly pay

 Total work units

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SB 506
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
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employment of line haul truck drivers..." BRU: Labor Standards & Safety
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CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Note: There is no fiscal impact on FY 90.

Prepared by: Tom Stuart, Director *Stuart* Phone: 264-2452
 Division: Labor Standards & Safety Date: 3/5/90
 Approved by Commissioner: Jim Sampson *Sampson* Date: 3/5/90
 Agency: Department of Labor

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

ALASKA STATE SENATE

SENATOR DICK ELIASON
SITKA
CHAIRMAN

SENATOR PAT RODEY
ANCHORAGE
VICE-CHAIRMAN



LABOR AND COMMERCE COMMITTEE

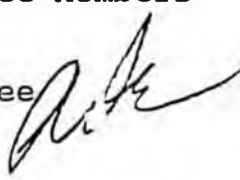
MEMBERS
SENATOR JAN FAIKS
ANCHORAGE

SENATOR JACK COGHILL
NENANA

SENATOR JALMAR KEFTTULA
PALMER

MEMORANDUM

TO: Senate Labor and Commerce Committee Members

FROM: Senator Dick Eliason, Chair
Senate Labor and Commerce Committee 

DATE: February 21, 1990

RE: Proposed legislation

Attached is a proposed legislation addressing a problem recently brought to my attention. Please let me know if you have any concerns about this legislation being introduced as a Senate Labor and Commerce Committee bill.

In October, 1988, the Washington State Supreme Court ruled that the State of Washington Minimum Wage Act was not inconsistent with the Federal Motor Carriers Act for the purpose of compliance with the state's overtime pay requirements. Prior to the ruling, motor carriers typically paid a flat rate per mile to the owner/operators of trucks which carry freight over long distances. After the ruling, there was considerable concern by both motor freight companies and owner/operators about problems created by the decision, including possible retroactive payments and the way in which the Department of Labor would draft new regulations.

The Alaska motor carriers followed the events in Washington with interest, as Alaska's overtime wage statutes are very similar to Washington State statutes, and a similar court decision would likely occur here if a suit was filed.

The State of Washington has recently passed legislation to allow the historic practice of flat rate/mile compensation so long as it reasonably approximates payment under the overtime

statute. The legislation was supported by both management and labor in Washington.

This proposed legislation contains the same language as adopted in Washington. This approach will eliminate uncertainty within the motor freight industry in Alaska, and is supported by management, labor, and the Department of Labor. The legislation assures that the intent of the overtime statute will be followed while allowing motor carriers the flexibility of doing so under a method which all carriers are familiar.

Executive Vice President's Report

On October 20, 1988 the Washington State Supreme Court handed down its decision in the case of Common Carriers, Inc. versus the State of Washington. The decision stated in effect that there was no conflict between the Federal Motor Carrier Act and the Washington State Minimum Wage Act, and that these two could be enforced simultaneously and without conflict.

This meant the requirement for payment of time and one-half for overtime work in excess of 40 hours per week, which had been established by the Washington State Minimum Wage Act, was now imposed upon those motor carriers engaged in interstate commerce. These carriers had previously been exempted from these state requirements by the Federal Motor Carrier Act. However, since most carriers had already been paying time and one-half or its equivalent, this court decision did not affect them significantly, or at least that was their impression.

At the present time the Department of Labor and Industries is auditing somewhere in excess of 50 individual companies in the state with a eye to enforcing the payment of overtime retroactively up to two years. Their interpretation presently is that unless a labor contract states specifically that the salary involved reflects at least time and one-half for hours worked beyond 40 hours a week, they will be required to compensate an employee for time worked up to two years previously.

Let me stress that the Department has been most cooperative in affording us opportunities to discuss the nature of our business with them and to offer arguments

as to why certain procedures within the industry do presently reflect the payment of overtime. They, however, are charged with the administration of this law and, of course, have no alternative but to proceed with the application of the findings of the court.

Many of our members expressed concern about their practice of paying a flat mileage rate, a flat rate for the haul involved, or a percent of gross for services performed and whether this would be accepted as constituting payment of time and a half for overtime. We therefore introduced a bill which stated that drivers paid on some basis other than straight time with time and a half for overtime would be exempted from the requirements of this law, provided the compensation was "reasonably equivalent" to time and a half as required under the state's Minimum Wage Act.

After several discussions, both the Department of Labor and Industries and the Teamsters supported the legislation, which was enacted and signed into law in April of this year.

We have had several discussions with the Department on the appropriate rules for implementation of this law, and appeared in force at a hearing conducted by Mark McDermott, Assistant Director of Employees, ESAC of the Department of Labor and Industries, who is in charge of drafting the appropriate regulations along with Paul Parker, Rules Officer. A hearing on the proposed rules took place in Olympia on Thursday, August 31, 1989, and the following individuals appeared on behalf of their companies:



Marty Sangster, Executive Vice President

Don Frey, Vice President

Metro Hauling, Inc.

Wayne Klenda, General Manager

Fedderly Marion Freight Lines

Don Lemmons, President

Interstate Wood Products

Edon Renfro, President,

Renfro Trucking

Mac Williams, Director, Industrial

Relations, Puget Sound Freight Lines

Dan Lavaty, Line Haul Payroll Manager,

Consolidated Freightways

Steve Hillstead, Puget Sound Group

Manager, Consolidated Freightways

Marty Sangster, Executive Vice President,

WTA

We retained legal counsel, Phil Talmadge, who did an excellent job of analysis of the regulations from a legal standpoint.

We had hoped to select a company whose set of circumstances would afford an objective review in court of the issue of retroactive overtime pay, and were awaiting the development of the final rules in order to select the most representative for a court test of retroactivity. This approach to the issue was rendered moot on August 10, 1989 when the Department of Labor and Industries, through the Attorney General's office, served a Summons and Complaint against "PUGET SOUND TRUCK LINES, INC., individually and as representative of the Washington Trucking Association, and as a representative of all employer motor carriers similarly situated subject to RCW 49".

A question of whether a class action can be brought by the State against the defendants is questionable, but nevertheless it brings the matter to a head. President John Bredeson called a meeting of the Legislative Committee on September 7, 1989, at which a lengthy discussion and evaluation of the situation was held. Puget

(Continued on page 12)



Executive Committee Meeting on overtime issue

Re: Washington Concern

49.46.090

Title 49 RCW: Labor Regulations

of this chapter, the director may take an assignment under this chapter or as provided in RCW 49.48.040 of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court. [1959 c 294 § 9.]

49.46.100 Prohibited acts of employer—Penalty.
 (1) Any employer who hinders or delays the director or his authorized representatives in the performance of his duties in the enforcement of this chapter, or refuses to admit the director or his authorized representatives to any place of employment, or fails to make, keep, and preserve any records as required under the provisions of this chapter, or falsifies any such record, or refuses to make any record accessible to the director or his authorized representatives upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this chapter to the director or his authorized representatives upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this chapter, or otherwise violates any provision of this chapter or of any regulation issued under this chapter shall be deemed in violation of this chapter and shall, upon conviction therefor, be guilty of a gross misdemeanor.

(2) Any employer who discharges or in any other manner discriminates against any employee because such employee has made any complaint to his employer, to the director, or his authorized representatives that he has not been paid wages in accordance with the provisions of this chapter, or that the employer has violated any provision of this chapter, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this chapter, or because such employee has testified or is about to testify in any such proceeding shall be deemed in violation of this chapter and shall, upon conviction therefor, be guilty of a gross misdemeanor. [1959 c 294 § 10.]

49.46.110 Collective bargaining not impaired. Nothing in this chapter shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum under the provisions of this chapter. [1959 c 294 § 11.]

49.46.120 Chapter establishes minimum standards and is supplementary to other laws—More favorable standards unaffected. This chapter establishes a minimum standard for wages and working conditions of all employees in this state, unless exempted herefrom, and is in addition to and supplementary to any other federal, state, or local law or ordinance, or any rule or regulation issued thereunder. Any standards relating to wages, hours, or other working conditions established by any applicable federal, state, or local law or ordinance, or any rule or regulation issued thereunder, which are more

favorable to employees than the minimum standards applicable under this chapter, or any rule or regulation issued hereunder, shall not be affected by this chapter and such other laws, or rules or regulations, shall be in full force and effect and may be enforced as provided by law. [1961 ex.s. c 18 § 4; 1959 c 294 § 12.]

49.46.130 Minimum rate of compensation for employment in excess of forty hours week—Exceptions. (1) No employer shall employ any of his employees for a work week longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed, except that the provisions of this subsection (1) shall not apply to any person exempted pursuant to RCW 49.46.010(5) as now or hereafter amended and the provision of this subsection shall not apply to employees who request compensating time off in lieu of overtime pay nor to any individual employed as a seaman whether or not the seaman is employed on a vessel other than an American vessel, nor to seasonal employees who are employed at concessions and recreational establishments at agricultural fairs, including those seasonal employees employed by agricultural fairs, within the state provided that the period of employment for any seasonal employee at any or all agricultural fairs does not exceed fourteen working days a year, nor to any individual employed as a motion picture projectionist if that employee is covered by a contract or collective bargaining agreement which regulates hours of work and overtime pay, nor to an individual employed as a truck or bus driver who is subject to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system under which the truck or bus driver is paid includes overtime pay, reasonably equivalent to that required by this subsection, for working longer than forty hours per week.

(2) No public agency shall be deemed to have violated subsection (1) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if: (a) In a work period of twenty-eight consecutive days the employee receives for tours of duty which in the aggregate exceed two hundred and forty hours; or (b) In the case of such an employee to whom a work period of at least seven but less than twenty-eight days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as two hundred forty hours bears to twenty-eight days; compensation at a rate not less than one and one-half times the regular rate at which he is employed: *Provided*, That this section shall not apply to any individual employed (1) on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management

(b) The lien claimant, a representative of the claimant, or the trustee of the fund on behalf of the claimant must record a notice of claim within 60 days after the employer's payment is due with the recorder of the recording district in which the employer's place of business is located or in which the claimant resides. The notice contains

- (1) the name of employee;
- (2) the name of the employer and the name of the person employing the claimant if known;
- (3) a statement of the pertinent terms and conditions of the employee benefit plan;
- (4) the date when the payments are due and were to have been paid; and
- (5) a statement of the demand including the amounts due to the claimant if expenses have been incurred.

(c) The notice of claim of lien is served on the employer in the same manner as a summons and complaint in civil actions or mailed to the employer by registered mail.

(d) The lien created by the recording of the notice of claim of lien is enforced within the same time and in the same manner as a mechanic's lien is foreclosed if the lien is on real property, or as a chattel lien is enforced if the lien is on personal property. The court may allow, as part of the costs of the action, the recording fees for the notice of claim, reasonable attorney's fees, and court costs.

(e) The lien created under (a) of this section is preferred and superior to an encumbrance which attaches after the employer's payments became due, and is also preferred and superior to an encumbrance which has attached previously, but which was not recorded and of which the lien claimant had no notice. (§ 43-2-14 ACLA 1949; added by § 1 ch 145 SLA 1962)

Revisor's notes. — Minor word changes related to the recording of documents were made in subsections (b), (d), and (e) of this section in 1988 under sec. 42, ch. 161, SLA 1988.

Article 3. Alaska Wage and Hour Act.

NOTES TO DECISIONS

Punitive damages may not be awarded for a willful violation of the Alaska Wage and Hour Act. *Gore v. Schlumberger Ltd.*, 703 P.2d 1165 (Alaska 1985).

§ 23.10.050

Sec. 23.1

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Sec. 23

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Sec. 2

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Quot 703 P.2 State. Alaska

Sec

Quo 703 P.

Sec. 23.10.050. Public policy.

NOTES TO DECISIONS

Purpose of the overtime statutes are to compensate those who labored in excess of the statutory maximum number of hours for the wear and tear of extra work and to spread employment through induc- ing employers to shorten hours because of the pressure of extra cost. *Janes v. Otis Eng'g Corp.*, 757 P.2d 50 (Alaska 1988). Cited in *O'Dell v. Alyeska Pipeline Serv. Co.*, 856 F.2d 1452 (9th Cir. 1988).

Sec. 23.10.060. Payment for overtime.

NOTES TO DECISIONS

Purpose of the overtime statutes are to compensate those who labored in excess of the statutory maximum number of hours for the wear and tear of extra work and to spread employment through inducing employers to shorten hours because of the pressure of extra cost. *Janes v. Otis Eng'g Corp.*, 757 P.2d 50 (Alaska 1988). **State not bound to federal regulatory definitions.** — See *Dresser Indus., Inc. v. Alaska Dep't of Labor*, 633 P.2d 998 (Alaska 1981), cert. denied, 455 U.S. 1019, 102 S. Ct. 1716, 72 L. Ed. 2d 137 (1982).

Sec. 23.10.065. Minimum wages.

NOTES TO DECISIONS

Cited in *Jeffcoat v. State, Dep't of Labor*, 732 P.2d 1073 (Alaska 1987).

Sec. 23.10.090. Administrative procedures.

NOTES TO DECISIONS

Cited in *Dayhoff v. Temsco Helicopters, Inc.*, 772 P.2d 1085 (Alaska 1989).

Sec. 23.10.110. Remedies of employee.

NOTES TO DECISIONS

Quoted in *Gore v. Schlumberger Ltd.*, 703 P.2d 1165 (Alaska 1985). *Jeffcoat v. State, Dep't of Labor*, 732 P.2d 1073 (Alaska 1987). **Cited in *Dayhoff v. Temsco Helicopters, Inc.***, 772 P.2d 1085 (Alaska 1989).

Sec. 23.10.115. Enforcement by injunction.

NOTES TO DECISIONS

Quoted in *Gore v. Schlumberger Ltd.*, 703 P.2d 1165 (Alaska 1985). **Cited in *Dayhoff v. Temsco Helicopters, Inc.***, 772 P.2d 1085 (Alaska 1989).

Sec. 23.05.330. Actions in courts of other states. The commissioner may, to the extent permitted by a reciprocal agreement with an agency of another state, maintain actions in the courts of that state for the collection of claims or judgments for wages, and may assign claims or judgments to the labor department or agency of that state for collection. (§ 1 ch 114 SLA 1966)

Sec. 23.05.340. Actions in this state for demands arising in other states. The commissioner may, upon the written request of the labor department or corresponding agency of another state or of a person, board, officer, or commission authorized to act on behalf of that department or agency, maintain actions in the courts of this state upon assigned claims or judgments for wages arising in another state in the same manner and to the same extent that such actions by the commissioner are authorized for claims arising in this state; provided that these actions may be maintained only in the event that the department or agency in the other state provides, by agreement, reciprocal services to the commissioner. (§ 1 ch 114 SLA 1966)

Chapter 10. Employment Practices and Working Conditions.

Article

1. Coercion and Fraud (§§ 23.10.015 — 23.10.037)
2. Payment of Wages (§§ 23.10.040 — 23.10.047)
3. Alaska Wage and Hour Act (§§ 23.10.050 — 23.10.150)
4. Employment of Children (§§ 23.10.325 — 23.10.370)
5. Transportation of Employees (§§ 23.10.375 — 23.10.400)
6. Employment in Underground Mines (§§ 23.10.405 — 23.10.415)

Article 1. Coercion and Fraud.

Section	Section
15. False representations to procure employees prohibited	30. Worker's right of action
20. Penalty for violation of AS 23.10.015	35. Limit of application
	37. Lie-detector tests

Secs. 23.10.005 — 23.10.010. Coercion to use hotel or store prohibited; penalty. [Repealed, § 21 ch 166 SLA 1978. For current law on the crime of coercion see AS 11.41.530.]

Sec. 23.10.015. False representations to procure employees prohibited. A person doing business in this state may not personally or through an agent induce an individual to change from one place to another in this state, or bring an individual into this state to work as an employee in this state, by means of false or deceptive representations, false advertising, or false pretenses concerning the kind and character of the work to be done, or the amount and character of the compensation to be paid for the work, or the sanitary or other conditions of employment. (§ 43-2-43 ACLA 1949; am § 1 ch 59 SLA 1971)

Collateral references. — 18 Am. Jur.
2d, Labor and Labor Relations, §§ 6-9.
51 C.J.S., Labor Relations, §§ 6-15.

Sec. 23.10.020. Penalty for violation of AS 23.10.015. A person who, personally or as agent or servant for another, violates AS 23.10.015 is punishable by a fine of not more than \$2,000, or by imprisonment for not more than one year, or by both. (§ 43-2-44 ALCA 1949)

Sec. 23.10.025. Use of armed guards. (Repealed. § 3 ch 59 SLA 1976.)

Sec. 23.10.030. Worker's right of action. A worker induced to accept employment with a person mentioned in AS 23.10.015 by conduct violating that section has a right of action for damages caused by the false or deceptive representations used to induce the worker to change the worker's place of employment, against the person directly or indirectly causing the damages. In addition to the actual damages the worker has sustained, the worker may recover the reasonable attorney fees which the court shall fix, to be taxed as costs. (§ 43-2-46 ACLA 1949)

Sec. 23.10.035. Limit of application. AS 23.10.015 — 23.10.030 may not be construed to interfere with the right of a person to guard or protect the person's private property, or private interest as provided by law. AS 23.10.015 — 23.10.030 may be construed only to apply when a worker is brought into the state or induced to go from one place to another in the state by a false pretense, false advertising, or deceptive representation, or is brought into the state under arms, or is moved from one place to another in the state under arms. (§ 43-2-45 ACLA 1949)

Sec. 23.10.037. Lie-detector tests. (a) A person either personally or through an agent or representative may not request or suggest to an employee of the person or to an applicant for employment by the person or require as a condition of employment that the employee or applicant submit to an examination in which a polygraph or other lie-detecting device is used.

(b) The provisions of (a) of this section do not apply to the state or a political subdivision of the state when dealing with policemen in its employ or with persons applying to be employed as policemen.

(c) In this section "person" includes the state and a political subdivision of the state.

(d) A person who violates this section is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both. (§ 1 ch 36 SLA 1964)

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Article 2. Payment of Wages.

Section	Section
40. Payment of wages in state	45. Payments into benefit fund
43. Deposit of wages	47. Employee's lien

Sec. 23.10.040. Payment of wages in state. (a) An employer of labor performing services in this state shall pay the wages or other compensation for the services with lawful money of the United States or with negotiable checks, drafts or orders payable upon presentation without discount by a bank or depository inside the state.

(b) *[Repealed, § 2 ch 28 SLA 1971.]*

(c) *[Repealed, § 2 ch 28 SLA 1971.]*

(d) A person who violates a provision of this section is guilty of a misdemeanor. (§ 43-2-12 ACLA 1949; am § 1 ch 35 SLA 1967; am §§ 1, 2 ch 28 SLA 1971)

Cross references. — For sentences for 51B C.J.S., Labor Relations, § 1179. 56
misdemeanors, see AS 12.55.135. C.J.S., Master and Servant, §§ 120, 121.

Collateral references. — 48A Am Jur.
2d, Labor and Labor Relations, § 2584. 53
Am. Jur. 2d, Master and Servant, § 82.

Sec. 23.10.043. Deposit of wages. An employer may not deposit wages due or to become due or an advance on wages to be earned in an account in a bank, savings and loan association or credit union unless the employee has voluntarily authorized the deposit. All deposits under this section shall be in a bank, savings and loan association or credit union of the employee's choice. (§ 1 ch 120 SLA 1976)

Revisor's notes. — Enacted as AS
23.10.040(e). Renumbered in 1976.

Sec. 23.10.045. Payments into benefit fund. (a) If an employer agrees with an employee to make payments to a fund for the benefit of the employees, including but not limited to a fund for medical, health, hospital, welfare and pension benefits or any of them, or has entered into a collective bargaining agreement providing for these payments, the employer may not without just cause fail to make the payments required by the terms of the agreement.

(b) Each violation of this section is a separate offense and a person found guilty of a violation is punishable in accordance with the schedule of punishment set out in AS 23.10.415. (§ 43-2-13 ACLA 1949; added by § 1 ch 23 SLA 1957; am § 1 ch 111 SLA 1959; am § 10 ch 2 SLA 1964)

Sec. 23.10.047. Employee's lien. (a) If an employer agrees with an employee or group of employees to make payment to a medical, health, hospital, welfare, or pension fund or such other fund for the benefit of

the employees, or has entered into a collective bargaining agreement providing for the payments, but fails to make the payments when due, a lien is created in favor of each affected employee on the earnings of the employer and on all property of the employer used in the operation of the employer's business to the extent of the money, plus penalties due to be paid on the employee's behalf to qualify the employee for participation in the fund and for expenses incurred by the employee for which the employee would have been entitled to reimbursement under the fund if the required payment had been made.

(b) The lien claimant, a representative of the claimant, or the trustee of the fund on behalf of the claimant must file a notice of claim within 60 days after the employer's payment is due with the recorder of the judicial district in which the employer's place of business is located or in which the claimant resides. The notice contains

- (1) the name of employee;
- (2) the name of the employer and the name of the person employing the claimant if known;
- (3) a statement of the pertinent terms and conditions of the employee benefit plan;
- (4) the date when the payments are due and were to have been paid; and
- (5) a statement of the demand including the amounts due to the claimant if expenses have been incurred.

(c) The notice of claim of lien is served on the employer in the same manner as a summons and complaint in civil actions or mailed to the employer by registered mail.

(d) The lien created by the filing of the notice of claim of lien is enforced within the same time and in the same manner as a mechanic's lien is foreclosed if the lien is on real property, or as a chattel lien is enforced if the lien is on personal property. The court may allow, as part of the costs of the action, the filing and recording fees for the notice of claim, reasonable attorney's fees, and court costs.

(e) The lien created under (a) of this section is preferred and superior to an encumbrance which attaches after the employer's payments became due, and is also preferred and superior to an encumbrance which has attached previously, but which was not filed or recorded and of which the lien claimant had no notice. (§ 43-2-14 ACLA 1949; added by § 1 ch 145 SLA 1962)

Article 3. Alaska Wage and Hour Act.

Section	Section
50. Public policy	71. Wages for work therapy
55. Exemptions	75. Labor standards and safety division
60. Payment for overtime	80. Powers and duties of division
65. Minimum wages	85. Scope of administrative regulations
70. Exemptions from minimum wage	90. Administrative procedures

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 100. Employer to keep records
 105. Posting summary required
 110. Remedies of employee
 115. Enforcement by injunction
 120. Enforcement of subpoena

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125. Collective bargaining
 130. Statute of limitations
 135. Violations
 140. Penalty
 145. Definitions
 150. Short title

NOTES TO DECISIONS

Based on Fair Labor Standards Act. — AS 23.10.050 — 23.10.150, enacted in 1959, have similar purposes to the federal Fair Labor Standards Act, 29 U.S.C. §§ 201-219 and are based upon it. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980); *Nolan v. Sea Airmotive, Inc.*, Sup. Ct. Op. No. 2337 (File No. 5177), 627 P.2d 1035 (1981).

The federal Fair Labor Standards Act, 29 U.S.C. §§ 201-219 and AS 23.10.050 — 23.10.150 were both enacted for the same purposes: to establish minimum wage, maximum workweek, and overtime com-

penensation standards which are adequate to maintain the health, efficiency and general well-being of workers. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Origins of AS 23.10.050 — 23.10.150. — See *Nolan v. Sea Airmotive, Inc.*, Sup. Ct. Op. No. 2337 (File No. 5177), 627 P.2d 1035 (1981).

AS 23.10.050 — 23.10.150 are not preempted by the federal Fair Labor Standards Act, 29 U.S.C. §§ 201-219. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Collateral references. — 48A Am. Jur. 2d, Labor and Labor Relations, §§ 2551 — 2580, 2625 — 2652. 53 Am. Jur. 2d, Master and Servant, §§ 71 — 96.

51B C.J.S., Labor Relations, §§ 1141 — 1145, 1166, 1172 — 1174. 56 C.J.S., Master and Servant, §§ 15 — 17, 151 — 153.

What employees are within "hours of labor" statutes. 16 ALR 537.

Constitutionality of statute limiting hours of labor in private industry. 90 ALR 814.

Waiver or loss of statutory right as to maximum hours of labor. 102 ALR 842; 129 ALR 1145.

"Right to work" laws. 92 ALR2d 598.

Sec. 23.10.050. Public policy. It is the public policy of the state to

(1) establish minimum wage and overtime compensation standards for workers at levels consistent with their health, efficiency and general well-being, and

(2) safeguard existing minimum wage and overtime compensation standards which are adequate to maintain the health, efficiency and general well-being of workers against the unfair competition of wage and hour standards which do not provide adequate standards of living. (§ 1 ch 171 SLA 1959)

NOTES TO DECISIONS

Based on Fair Labor Standards Act. — See notes under same catchline under article analysis. Webster v. Bechtel, Inc., Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980), Notes to Decisions.

AS 23.10.050 — 23.10.150 are directed toward a situation distinct from that of

the Equal Pay for Women Act. Brown v. Wood, Sup. Ct. Op. No. 1551 (File Nos. 2564, 2565), 575 P.2d 760 (1978), modified on rehearing on other grounds, 592 P.2d 1250 (1979).

Applied in Dresser Indus., Inc v. Alaska Dep't of Labor, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

Sec. 23.10.055. Exemptions. The provisions of AS 23.10.050 — 23.10.150 do not apply to

(1) an individual employed in agriculture, which includes farming in all its branches and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices, including forestry and lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with the farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market;

(2) an individual employed in the catching, trapping, cultivating or farming, netting or taking of any kind of fish, shellfish, or other aquatic forms of animal and vegetable life;

(3) an individual employed in the hand picking of shrimp;

(4) an individual employed in domestic service, including a baby-sitter, in or about a private home;

(5) an individual employed by the United States or by the state or political subdivision of the state including prisoners not on furlough detained or confined in prison facilities;

(6) an individual engaged in the activities of a nonprofit religious, charitable, cemetery or educational organization where the employer-employee relationship does not, in fact, exist, and where services rendered to the organization are on a voluntary basis;

(7) an employee engaged in the delivery of newspapers to the consumer;

(8) an individual employed solely as a watchman or caretaker of a plant or property that is not in productive use for a period of four months or more;

(9) an individual employed in a bona fide executive, administrative or professional capacity or in the capacity of an outside salesman or a salesman who is employed on a straight commission basis;

(10) an individual employed in the search for placer or hard rock minerals;

(11) an individual under 18 years of age employed on a part-time basis not more than 30 hours in a week; or

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(12) employment by a nonprofit educational or child care facility to serve as a parent of children while the children are in residence at the facility if the employment requires residence at the facility and is compensated on a cash basis exclusive of room and board at an annual rate of not less than

(A) \$10,000 for an unmarried person; or

(B) \$15,000 for a married couple. (§ 2(1) ch 171 SLA 1959; am § 1 ch 2 SLA 1962; am § 1 ch 50 SLA 1972; am § 2 ch 124 SLA 1978; am § 1 ch 115 SLA 1982)

Cross references. — For wage rates for prisoners, see AS 33.30.227.

Effect of amendments. — The 1982 amendment added paragraph (12).

NOTES TO DECISIONS

Employees covered by and exempt from Fair Labor Standards Act. — AS 23.10.050 — 23.10.150 apply to both employees covered by the Fair Labor Standards Act, 29 U.S.C. §§ 201-219, and those who are, because of insufficient connections to interstate commerce, exempt from the Fair Labor Standards Act. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Prisoners excluded from operation of chapter. — See *McGinnis v. Stevens*, Sup. Ct. Op. No. 1207 (File Nos. 2255, 2312), 543 P.2d 1221 (1975).

Applied in *Alaska Int'l Indus., Inc. v. Musarra*, Sup. Ct. Op. No. 1966 (File Nos. 3652, 3676), 602 P.2d 1240 (1979).

Cited in *Dresser Indus., Inc. v. Alaska Dept. of Labor*, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

Collateral references. — Who is employed in "executive or administrative capacity" within exemptions from mini-

mum wage and maximum hours provisions of Fair Labor Standards Act, 40 ALR2d 332.

Sec. 23.10.060. Payment for overtime. An employer who employs employees engaged in commerce, or other business, or in the production of goods or materials in Alaska may not employ an employee not acting in a supervisory capacity, either male or female, for a workweek longer than 40 hours or for more than eight hours a day, except that if the employer finds it necessary to employ an employee in excess of 40 hours a week or eight hours a day, compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid, and this provision is considered included in all contracts of employment. This section does not apply with respect to

(1) an employee employed by an employer employing less than four employees in the regular course of business, as regular course of business is defined by regulations of the commissioner;

(2) [Repealed, § 33 ch 127 SLA 1974.]

(3) [Repealed, § 1 ch 243 SLA 1970.]

(4) an employee employed in handling, packing, storing, pasteurizing, drying, preparing in their raw or natural state, or