

ALASKA LEGISLATURE COMMITTEE FILES 1989-1990 8672
6237 SENATE COMMUNITY & REGIONAL AFFAIRS

441

A M E N D M E N T

OFFERED IN THE SENATE

BY THE C&RA COMMITTEE

TO: SCS CSHB 284 (C&RA) (6-1026D, 3-29-90)

Page 2, line 5:

Delete "that is equal to the amount set out in AS 45.45.010(a)"

Insert "of 1.5 percent a month, unless an agreement exists between the prime contractor and the state or political subdivision that establishes a lower rate of interest or precludes the charging of interest"

Page 3, lines 7 - 8:

Delete "that is equal to the amount set out in AS 45.45.010(a)"

Insert "of 1.5 percent a month, unless an agreement exists between the prime contractor and the state or political subdivision that establishes a lower rate of interest or precludes the charging of interest"

Page 4, lines 1 - 2:

Delete "that is equal to the amount set out in AS 45.45.010(a)"

Insert "of 1.5 percent a month, unless an agreement exists between the prime contractor and the subcontractor that establishes a lower rate of interest or precludes the charging of interest"

Page 4, lines 22 - 23:

Delete "that is equal to the amount set out in AS 45.45.010(a)"

Insert "of 1.5 percent a month, unless an agreement exists between the subcontractor and the person that establishes a lower rate of interest or

precludes the charging of interest"

Page 6, lines 4 - 5:

Delete "that is equal to the amount set out in AS 45.45.010(a)"

Insert "of 1.5 percent a month, unless an agreement exists between the prime contractor and the subcontractor that establishes a lower rate of interest or precludes the charging of interest"

A M E N D M E N T

OFFERED IN THE SENATE

BY THE C&RA COMMITTEE

TO: SCS CSHB 284(C&RA)

Page 7, following line 3:

Insert a new section to read:

"Sec. 36.90.265. APPLICABILITY TO MUNICIPALITIES. AS 36.90.200 - 36.90.290 do not apply to a public construction or public works contract of a municipality unless the municipality has entered into a written contract with the state for the state to provide funds for the public construction or public work."

Alaska State Legislature

REPRESENTATIVE
MARK BOYER

VICE CHAIRMAN, HOUSE
HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

MEMBER, HOUSE LABOR AND
COMMERCE COMMITTEE

CHAIR, CHILDREN'S CAUCUS



House of Representatives

FAIRBANKS


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

JUNEAU

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

MEMORANDUM

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

FROM: Representative Mark Boyer 

DATE: May 7, 1989

SUBJECT: Scheduling CSHB 284 (L&C) am, "An Act relating to the terms and conditions under which prime contractors and subcontractors are paid for materials and services provided to a public construction project," for a Labor and Commerce Committee hearing.

This is a formal request to ask that you schedule CSHB 284 (L&C) am for a committee hearing before the end of this session. This bill passed the House on reconsideration with a 37-0 vote. Two amendments were adopted on the House Floor:

- 1) changing the calendar days from 21 to 30 calendar days for the state or political subdivision to pay the prime contractor; and
- 2) AS 36.90.200, which is Section 1 of the bill, does not apply to public construction or public works contracts in communities that have a population under 800.

This House bill has the broad support of 20 co-sponsors and the Department of Transportation and Public Facilities. A companion bill, SB 289, sponsored by Senator Fahrenkamp with 7 co-sponsors, has been introduced in the Senate.

This legislation, which has the support of the Associated General Contractors of Alaska (AGC) and the American Subcontractors Association (ASA), will solve many of the problems regarding fair dealings in the construction industry. The bill, patterned after the Federal Prompt Payment Act, will require owners to pay contractors, and contractors and subcontractors to pay suppliers and subcontractors within a specified time frame. All parties will be on notice because the bill requires these prompt payment provisions to be in all construction contracts and subcontracts.

FAIRBANKS 20B

Senator Dick Eliason
CSHB 284 (L&C) am
Page 2

Attached is the following back-up:

- 1) CSHB 284 (L&C) am
- 2) "0" Fiscal Note from DOT/PF
- 3) DOT/PF non-opposition position paper
- 4) Section-by-Section Analysis of CSHB 284 (L&C) am
- 5) Joint Statement of Support from AGC and ASA

If you have any questions, contact me or my staff, Nancy Groszek, at 465-3466.

Thank you in advance for your prompt consideration.

MB/NJG/bhn

Attachments

cc: Labor and Commerce Committee Members

**STATE OF ALASKA
1989 LEGISLATIVE SESSION**

BILL VERSION: CSHB 284 (L&C)

PUBLISH DATE: HOUSE 5/1/89

FISCAL NOTE

Revision Date:
Title: Public Construction Contract Payments

Agency Affected: DOT&PF
BRU: Finance

Sponsor: Boyer
Requestor: House Labor and Commerce

Components:

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

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

CAPITAL	0	146.0	146.0	146.0	146.0	146.0
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REVENUE	0	0	0	0	0	0
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FUNDING: (THOUSANDS OF DOLLARS)	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
GENERAL FUND	0	146.0	146.0	146.0	146.0	146.0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS:

The annual costs are based on the fact that 15% of all contractor payments could not be paid within the proposed 14 day time frame and would require payment of increased interest costs. The costs reflected are calculated based on late payments incurring 15 days of interest charges. Significant budget reductions being considered for all administrative units would cause a delay in the processing of payments and could increase the annual costs to approximately \$300,000.

Prepared by: Robert N. Bartholomew, Director
Division: Management and Finance

Phone: 465-3911
Date: 4/17/89

Approved by Commissioner: Mark S. Hickay
Agency: Department of Transportation and Public Facilities

Date: 4/18/89

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor

Department of Transportation & Public Facilities



POSITION PAPER

BILL NO. (S) HB No. 284

An act relating to terms & conditions under which prime contractors & subcontractors are paid for materials & services provided to a public construction project.

TITLE:

APPROVED: *M. K. D. [Signature]*

DATE:

April 19, 1989

The department is not opposed to this bill. The proposed legislation would reduce from 30 calendar days to 21 calendar days the period within which the state must make payment on public construction contractor payment requests or incur late payment interest costs. Any payment not made within 21 days of receipt would result in the state paying interest at the rate of 1.5% per month. AS 36.90.010 currently requires the state to "initiate procedures" to pay a contractor's payment request within 15 days with interest charges are only incurred for payments made 30 days after receipt.

Currently DOT&PF's payment process and experience indicates that the vast majority of standard contractor payments can be made within the proposed 21 day time frame. The shorter payment period (which includes weekends) would not allow for any margin of error in the department's review, approval and payment process. Significant budget reductions are being considered for all administrative units which would result in increased workloads and a slowdown in processing payment transactions. If those reductions are realized the department's ability to comply with the reduced timeframe would be impacted.

Current experience indicates that 8% of standard contractor payments could not be made within the shortened timeframe. This would result in an annual increased cost charged to the state's general fund capital budget of between \$80,000 and \$110,000 (fiscal note attached). Adverse effects of accounting staff budget cuts could increase the annual interest costs to between \$160,000 and \$200,000. Late payment fees are not eligible for federal participation.

(4)

Alaska State Legislature

REPRESENTATIVE
MARK BOYER

VICE-CHAIRMAN, HOUSE
HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

MEMBER, HOUSE LABOR AND
COMMERCE COMMITTEE

CHAIR, CHILDREN'S CAUCUS



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House of Representatives

SECTION BY SECTION ANALYSIS

CSHB 284 (L&C) am

Section 1. This section amends AS 36.90 by adding a new article relating to Public Construction Contract Payments. Within the article are provisions which require public owners to timely pay construction contractors and provisions requiring contractors to timely pay subcontractors and suppliers. Further references in this section are to the proposed AS 36.90 section numbers contained in the bill.

Section 200 requires the state or political subdivision to pay a prime contractor within 30 days of receiving a pay request. This 30 calendar day time clock does not begin to run until the state or political subdivision actually receives "the grant or federal money. Previously, there was no requirement for timely payment by a political subdivision. Failure to timely pay will result in liability for interest in accordance with AS 45.45.010 (currently 10.5%). If the state or political subdivision believes the pay request does not comply with the contract or if all or part of a payment is going to be withheld for unsatisfactory performance, then the state or political subdivision must notify the contractor in writing of the problem and the remedial action necessary. A failure to provide a timely notice results in liability for interest until the notice is provided or the contractor interest until the notice is provided or the contractor is paid. Once corrected, the contractor is entitled to payment within 14 days or else interest accrues.

Section 210 requires all contractors and subcontractors to include within their subcontracts a provision requiring them to pay their subcontractors and suppliers within eight (8) days of receiving a payment from which the subcontractor is to be paid. This "flow down" concept is common to construction and an accepted industry practice. All contractors and subcontractors are also required to contractually provide for interest in accordance with AS 45.45.010, if payment is not timely made. Finally, any interest received on state held retention must be passed through to the appropriate subcontractors.

Section 220 continues to provide maximum flexibility to the prime contractor and subcontractor to negotiate provisions relating to withholding without cause ("retention") and withholding for cause, i.e., unsatisfactory performance without interest liability if the article's notice provisions are complied with.

Section 230 allows a contractor to withhold payment to a lower tiered contractor for which the contractor has received payment without interest liability if the contractor notifies that lower tiered contractor of the reason the money is being withheld and the appropriate remedial action. A copy of this notice is required to be sent to the state or political subdivision. The payment is due by the eighth day after the remedial action is taken.

Section 240 prescribes the form for notices required by this article.

Section 250 requires the state or a political subdivision to pay interest on retainage and warranty retainage. This section is similar to existing AS 36.90.010(c)-(e).

Section 260 establishes the beginning times for the time limits imposed throughout the article and exempts communities of less than 800 people from complying with the provisions of AS 36.90.200.

Section 2. This section makes necessary editorial amendments in other Titles.

Section 3. This section repeals AS 36.90.010 which is superseded by Section 1 of this bill.

Section 4. This section clarifies that this act does not take effect on public works contractors entered into before this Act's effective date.

Section 5. Establishes the effective date for this act as July 1, 1989.



ASSOCIATED GENERAL CONTRACTORS of ALASKA

401 E STREET - 1 • ANCHORAGE ALASKA 99501
PO BOX 260001 • ANCHORAGE ALASKA 99524 0001
TELEPHONE (907) 561-5334 • FAX (907) 562-6218

JOINT STATEMENT OF SUPPORT

Attached you will find legislation requiring prompt payment which is jointly supported by the Associated General Contractors of Alaska (AGC) and the Alaska Chapter, American Subcontractors Association (ASA).

Support for the legislation was achieved by meetings with general and subcontractor representatives of AGC and subcontractor representatives of ASA. The legislation will encourage fair dealing amongst government owners, contractors, subcontractors and suppliers. In essence it will require owners to promptly pay contractors; and contractors and subcontractors to promptly pay their subcontractors and suppliers. The failure of any party to promptly pay will cause interest to accrue at the current rate of 10.5%. Most of this will be achieved by requiring certain provisions to be in all construction contracts and subcontracts. The parties retain maximum freedom to negotiate contract terms to meet their particular circumstances. The proposed legislation is similar to the recently enacted Federal Prompt Payment Act Amendments of 1988.

We urge you to cosponsor this joint general contractor-subcontractor effort. It is our desire to achieve quick passage of this legislation so that fair dealing in the construction industry is attainable for this season.

ASSOCIATED GENERAL CONTRACTORS
OF ALASKA

ALASKA CHAPTER,
AMERICAN SUBCONTRACTORS ASSOC.

wfr\promtpay.wp

6-1026D -
Bannister
3/29/90

Original sponsor(s): REP. BOYER, Donley, Furnace, Grussendorf, Boucher, Foster, Gruenberg, Hudson, Koponen, Larson, Menard, Pettyjohn, Rieger, Sharp, Shultz, Taylor, Ulmer, Zawacki, Collins, Navarre, Leman

1 IN THE HOUSE

BY THE C&RA COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 284 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the terms and conditions under
7 which prime contractors and subcontractors are paid
8 for materials and services provided to a public
9 construction project; and providing for an effective
10 date."

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

12 * Section 1. AS 36.90 is amended by adding new sections to read:

13 ARTICLE 2. PUBLIC CONSTRUCTION CONTRACT PAYMENTS.

14 Sec. 36.90.200. PAYMENT DEADLINE AND INTEREST. (a) The state
15 or a political subdivision of the state shall pay the prime contractor
16 for satisfactory performance on a public construction or public works
17 contract within 30 calendar days of the date the state or political
18 subdivision receives a payment request from the prime contractor that
19 complies with the contract. If a political subdivision is going to
20 use grant money for the contract, the subdivision shall pay the prime
21 contractor for satisfactory performance within 21 calendar days of the
22 date the subdivision receives a payment request that complies with the
23 contract or within 21 calendar days of the date the subdivision ac-
24 tually receives the grant money, whichever is later. If the state is
25 going to use federal money for the contract, the state shall pay the
26 prime contractor for satisfactory performance within 21 calendar days
27 of the date the state receives a payment request that complies with
28 the contract or within 21 calendar days of the date the state actually
29 receives the federal money, whichever is later.

1 (b) If the prime contractor is not paid as required by (a) of
2 this section, the state or political subdivision shall pay interest on
3 the unpaid amount of the required payment from the 21st calendar day
4 after the date required for payment under (a) of this section at an
5 interest rate that is equal to the amount set out in AS 45.45.010(a).

6 (c) If part or all of a payment is going to be withheld for
7 unsatisfactory performance or if the payment request made under (a) of
8 this section does not comply with the requirements of the contract,
9 within eight working days after receipt of the payment request the
10 state or political subdivision shall notify the prime contractor in
11 writing stating specifically why part or all of the payment is being
12 withheld and what remedial actions may be taken by the prime contrac-
13 tor to receive the full payment.

14 (d) If the notification by the state or political subdivision
15 required by (c) of this section does not comply with (c) of this
16 section, the state or political subdivision shall pay interest on the
17 withheld amount from the eighth working day after receipt of the
18 initial payment request until the state or political subdivision
19 provides notice that does comply with (c) of this section.

20 (e) If part or all of a payment is withheld under (c) of this
21 section, the state or political subdivision shall pay the withheld
22 amount within 21 calendar days after the prime contractor satisfac-
23 torily completes the remedial actions identified in the notice. If a
24 political subdivision is going to use grant money for the contract,
25 the subdivision shall pay the prime contractor within 21 calendar days
26 after the prime contractor satisfactorily completes the remedial
27 actions identified in the notice or within 21 calendar days after the
28 political subdivision actually receives the grant money, whichever is
29 later. If the state is going to use federal money for the contract,

1 the state shall pay the prime contractor within 21 calendar days after
 2 the prime contractor satisfactorily completes the remedial actions
 3 identified in the notice, or within 21 calendar days after the subdivi-
 4 sion actually receives the money, whichever is later. If the with-
 5 held amount is not paid within the 21 calendar days, the state or
 6 political subdivision shall pay interest on the withheld amount from
 7 the 21st calendar day at an interest rate that is equal to the amount
 8 set out in AS 45.45.010(a).

9 (f) The obligation to pay interest under this section does not
 10 apply to retainage.

11 (g) This section does not apply to public construction or public
 12 works contracts made by a political subdivision that has a population
 13 under 800.

14 Sec. 36.90.210. REQUIRED CONTRACTUAL TERMS. (a) The prime
 15 contractor and a subcontractor on a public construction or public
 16 works contract shall include in a subcontract between the prime con-
 17 tractor and subcontractor for the public construction or public works
 18 a clause that requires the prime contractor

19 (1) to pay the subcontractor for satisfactory performance
 20 under the subcontract within eight working days after receiving pay-
 21 ment from which the subcontractor is to be paid;

22 (2) to pay the subcontractor all retainage due under the
 23 subcontract within eight working days after final payment is received
 24 from the state or political subdivision or after the notice period
 25 under AS 36.25.020(b) expires, whichever is later;

26 (3) to pay the subcontractor interest on an amount that is
 27 not paid in accordance with (1) of this subsection for the period
 28 beginning on the day after the required payment date and ending on the
 29 day on which payment of the amount due is made; the interest shall be

1 computed at an interest rate that is equal to the amount set out in
2 AS 45.45.010(a);

3 (4) to pay interest on retainage withheld from the subcon-
4 tractor at an interest rate that is equal to the amount set out in
5 AS 45.45.010(a).

6 (b) A subcontractor on a public construction or public works
7 contract shall include in each subcontract under which a person agrees
8 to provide the subcontractor with services, other than as an employee,
9 or supplies to be used in the public construction or public works
10 project a clause that requires the subcontractor

11 (1) to pay the person for satisfactory performance under
12 the subcontract within eight working days after receiving payment from
13 which the person is to be paid;

14 (2) to pay the person all retainage due under the subcon-
15 tract with the person within eight working days after the subcontrac-
16 tor receives its share of the state-held retainage from the prime
17 contractor or another subcontractor;

18 (3) to pay the person interest on an amount that is not
19 paid in accordance with (1) of this subsection for the period begin-
20 ning on the day after the required payment date and ending on the day
21 on which payment of the amount due is made; the interest shall be
22 computed at an interest rate that is equal to the amount set out in
23 AS 45.45.010(a);

24 (4) to pay interest on retainage withheld from the person
25 at an interest rate that is equal to the amount set out in AS 45.45.-
26 010(a).

27 Sec. 36.90.220. OPTIONAL CONTRACTUAL TERMS. Notwithstanding
28 AS 36.90.210 and 36.90.230, the prime contractor or a subcontractor
29 may negotiate and include in a public construction or public works

1 subcontract a provision that

2 (1) permits the prime contractor or a subcontractor to
3 determine that part or all of a subcontractor's request for payment
4 may be withheld for unsatisfactory performance under the subcontract;
5 and

6 (2) permits the prime contractor or a subcontractor to
7 withhold payment for unsatisfactory performance without incurring an
8 obligation to pay interest for late payment, if a notice complying
9 with AS 36.90.240 has been previously furnished to the subcontractor
10 and a copy of the notice is furnished to the contracting officer of
11 the state or political subdivision.

12 Sec. 36.90.230. WITHHOLDING PAYMENT FOR UNSATISFACTORY PERFOR-
13 MANCE. (a) if the prime contractor on a public construction or
14 public works contract, after making a request for payment to the state
15 or political subdivision but before paying a subcontractor for the
16 subcontractor's performance covered by the payment request, discovers
17 that part or all of the payment otherwise due to the subcontractor is
18 subject to withholding from the subcontractor under the subcontract
19 for unsatisfactory performance, the prime contractor may withhold the
20 amount as allowed under the subcontract. If the prime contractor
21 withholds an amount under this subsection, the prime contractor shall

22 (1) give the subcontractor a notice complving with AS 36.-
23 90.240 as soon as practicable after determing the cause for the with-
24 holding but before the due date for the subcontractor payment;

25 (2) give the contracting officer of the state or political
26 subdivision a copy of the notice furnished to the subcontractor under
27 (1) of this subsection;

28 (3) pay the subcontractor within eight working days after
29 correction of the identified subcontractor performance deficiency.

1 (b) If the prime contractor does not comply with the notice and
2 payment requirements of (a) of this section, the contractor shall pay
3 the subcontractor interest on the withheld amount from the eighth
4 working day at an interest rate that is equal to the amount set out in
5 AS 45.45.010(a).

6 Sec. 36.90.240. FORM OF CERTAIN NOTICES. A notice under AS 36.-
7 90.220(2) or 36.90.230(a)(1) must be in writing and must state the
8 amount being withheld, the specific causes for the withholding under
9 the terms of the subcontract, and the remedial actions to be taken by
0 the subcontractor to receive payment of the amount withheld.

1 Sec. 36.90.250. RETAINAGE. (a) The state or a political subdi-
2 vision of the state shall pay to the prime contractor interest on
3 retainage, including warranty retainage, on a contract for public
4 construction or public works at an interest rate that is equal to the
5 amount set out in AS 45.45.010(a). Interest on retainage accrues from
6 the date of approval of a pay request until the date of payment to the
7 contractor.

8 (b) A political subdivision that has a population of 500 or less
9 is exempt from the payment of interest under (a) of this section.

0 Sec. 36.90.260. MISCELLANEOUS PROVISIONS. (a) In AS 36.90.-
1 210 - 36.90.290,

2 (1) a payment is considered to be made when mailed or
3 personally delivered to the party being paid;

4 (2) a payment is considered to be received when it is
5 endorsed for payment, if it is a check;

6 (3) an invoice is considered to be received when it is
7 date-stamped or otherwise marked as delivered; if the invoice is not
8 date-stamped or otherwise marked as delivered, the date of the invoice
9 is considered to be the date when the invoice is received.

1 (b) A political subdivision that receives a state grant for a
2 public construction or public works project may use money from the
3 state grant to pay the interest under AS 36.90.200 - 36.90.290.

4 Sec. 36.90.270. WAIVER OF PROVISIONS PROHIBITED. A contract
5 provision that waives a provision required by AS 36.90.200 - 36.90.290
6 is void.

7 Sec. 36.90.290. DEFINITIONS. In AS 36.90.200 - 36.90.290,

8 (1) "prime contractor" means a person required to be regis-
9 tered under AS 08.18 who has a contract with the state or a political
10 subdivision of the state to provide materials or services, other than
11 as an employee, for a public construction or public works project;

12 (2) "subcontractor" means a person at any level, other than
13 a prime contractor, who provides materials or services, other than as
14 an employee, to be used in a public construction or public works
15 project;

16 (3) "working day" does not include a Saturday, Sunday, or a
17 state holiday.

18 * Sec. 2. AS 37.05.285(d) is amended to read:

19 (d) This section does not apply

20 (1) if the cost of the goods or services purchased exceeds
21 \$500,000;

22 (2) to payment for specific goods or services in dispute
23 after a seller of goods or services receives notice from the state
24 official responsible for authorizing payment for goods and services
25 that the amount of the invoice or quality of specific goods or ser-
26 vices is in dispute and stating the reasons for the dispute; the state
27 agency shall pay for the specific goods or services in dispute within
28 30 days after resolution of the dispute; or

29 (3) to a contract covered by AS 36.90.200 - 36.90.290

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 15, 1990

SUBJECT: Correction of CSHB 284 (L&C) am
TO: Senator Mike Szymanski
Chair
Community and Regional Affairs Committee
FROM: Theresa L. Bannister *TB*
Legislative Counsel

The language added by amendment to the above-referenced bill needs correction. This memo is to explain just why the correction is needed.

BACKGROUND. Sec 36.90.260(4) was added to the bill by floor amendment on May 7, 1989 and reads:

"(4) As 36.90.200 does not apply to public construction or public works contracts in communities that have a population under 800."

ANALYSIS AND SUGGESTION REGARDING PROBLEM. The placement of this paragraph is the problem. The introductory language of sec. 36.90.260 does not refer to sec. 36.90.200 and, therefore, raises a question about the amendment's application. The introductory language reads: "In AS 36.90.210 - 36.90.-290,".

This situation presents the possibility that your amendment would be applied only in connection with sec. 36.90.210 - 36.90.290. Since this does not appear to be the purpose of the new language, it is advisable that the placement of the amendment be changed.

Since your amendment deals only with sec. 36.90.200, the new language could be placed in that section as subsection (f).

OTHER CONSIDERATIONS. The term "communities" is not defined in sec. 36.90.200. The section imposes the requirements on the state and "political subdivisions of the state". The

Senator Mike Szymanski
Page 2
January 15, 1990

definition of "political subdivision of the state", found in AS 36.95.010(6), is very broad and covers villages in addition to cities and boroughs. I would suggest replacing "communities" with the term "political subdivisions" in the amendment.

Finally, since the criteria for coverage is that the contract be made by a political subdivision, not "in" the subdivision, I suggest replacing "in" with "made by" in the amendment.

CONCLUSION. Incorporating all of the above suggestions, the amendment would be placed in sec. 36.90.200 and read as follows:

"(f) This section does not apply to public construction or public works contracts made by a political subdivision that has a population under 800."

The above language has not been reviewed by the revisors yet, so if you would like an amendment or a committee substitute covering part or all of the above suggestions, please advise me so I can prepare it with the usual in-house review.

TB:pl
wkp1/001

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

January 15, 1990

SUBJECT: Sectional summary of CSHB 284 (L&C) am

TO: Senator Mike Szymanski
Chair
Senate Community and Regional Affairs
Committee

FROM: Theresa L. Bannister *TB*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 contains the main provisions of the bill.

Sec. 36.90.200(a) requires the state and political subdivisions to pay a prime contractor for satisfactory performance on a public construction contract within 30 days of the state or political subdivision's receipt of a payment request from the contractor that complies with the contract. Establishes different payment deadlines when a political subdivision is using grant money for the contract or when the state is using federal money for the contract.

Sec. 36.90.200(b) requires the state or political subdivision to pay interest at a specified amount on the unpaid amount of a required payment. The interest starts from the 21st day after the required payment date established under (a).

Sec. 36.90.200(c) requires the state or political subdivision to notify the prime contractor within a certain time in writing if part or all of a payment is going to be withheld for unsatisfactory performance or if the payment request does not comply with the contract. The subsection indicates what the notice should contain.

Sec. 36.90.200(d) requires the state or political subdivision to pay interest on the withheld amount from a certain date if the notification required under (c) does not comply with (c). The interest continues until notice that complies with (c) is given.

Sec. 36.90.200(e) requires the state or political subdivision to pay the amount withheld under (c) within 21 days after the prime contractor satisfactorily completes the remedial actions identified in the notice. Establishes different payment deadlines when a political subdivision is using grant money for the contract or when the state is using federal money for the contract. (Lines 3-4 on page 3 need a technical correction to replace "subdivision" with "state".) Requires the state or political subdivision to pay interest at a specified rate on the withheld amount from a certain date if the withheld amount is not paid by the date set in this subsection.

Sec. 36.90.210(a) identifies certain terms that prime contractors and subcontractors must include in all of the subcontracts between them for public construction projects. The terms include requiring the prime to pay the sub for satisfactory performance within 8 days after receiving payment from which the sub is to be paid, to pay the sub all retainage due under the subcontract by a certain date, to pay the sub interest on certain unpaid amounts at a specified rate for a given period, and to pass through to the sub certain retainage interest.

Sec. 36.90.210(b) identifies certain terms that a subcontractor on a public construction contract must include in each subcontract under which a person agrees to provide the sub with services, other than as an employee, or supplies for the project. The terms include requiring the sub to pay the person for satisfactory performance by a certain date, to pay the person certain retainage by a certain date, to pay the person interest on certain unpaid amounts at a specified rate for a given period, and to pass through to the person certain retainage interest.

Sec. 36.90.220 allows a prime subcontractor or a subcontractor to negotiate and include in a public construction subcontract certain provisions. These provisions include

(1) permitting the prime or a sub to retain without cause and under mutually agreeable terms a specified percentage of a progress payment otherwise due to the sub for satisfactory performance without incurring an obligation to pay interest on the retainage, except for certain specified retainage (line 28 needs a technical correction: replacement of "the" by "a"); the paragraph authorizes the parties to consider when making the provision the ability of the sub to furnish performance and payment bonds;

(2) permitting the prime or a sub to determine that part or all of a sub's payment request may be withheld for unsatisfactory performance under the subcontract;

(3) permitting the prime or a sub to withhold payment for unsatisfactory performance without incurring an obligation to pay interest for late payment, if a specified notice has previously been given to the sub and a copy furnished to the contracting officer of the state or political subdivision.

Sec. 36.90.230(a) authorizes a prime on a public construction contract to withhold payment from a sub for unsatisfactory performance under certain conditions. Directs the prime who is withholding to give the sub a specified notice within a certain time frame, to give the contracting officer of the state or political subdivision a copy of the notice, and to pay the sub within eight days after correction of the identified subcontractor performance deficiency.

Sec. 36.90.230(b) requires the prime to pay the sub interest at a specified rate after a certain point if the prime does not comply with the notice and payment requirements of (a) of this section.

Sec. 36.90.240 establishes the form and contents of certain required notices.

Sec. 36.90.250 requires the state or political subdivision to pay the prime contractor interest on retainage at a specified rate. Specifies when the interest begins accruing and when it stops. Allows a political subdivision to use state grant money received for the project to pay the retainage

Senator Mike Szymanski

Page 4

January 15, 1990

interest. Exempts political subdivisions of 500 or fewer persons from the interest payment requirement of this section.

Sec. 36.90.260 establishes some guidelines for determining in secs. 36.90.210 - 36.90.290 when payments are considered to be made and received and when an invoice is considered to be received. Paragraph (4) states that it exempts public construction contracts in communities with a population under 800 from sec. 36.90.200.

Sec. 36.90.270 voids a contract provision that waives a provision required by secs. 36.90.200 - 36.90.290.

Sec. 36.90.290 defines "prime contractor" and "subcontractor" for secs. 36.90.200 - 36.90.290.

Section 2 makes a technical change. Substitutes a citation of the new sections in bill section 1 for the citation of the present statutory section in this area.

Section 3 repeals the present public construction payment statute, AS 36.90.010.

Section 4 indicates which public construction projects are subject to this bill.

Section 5 makes the Act effective July 1, 1989.

If I can be of further assistance, please advise.

TB:pl
wkp1/002


Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325
FAX 463-5480

217 SECOND STREET, SUITE 200
JUNEAU, ALASKA 99801

February 27, 1990

TO: Senator Mike Szymanski, Chairman, Senate Community and Regional
Affairs Committee

FROM: Scott A. Burgess, Executive Director 

SUBJECT: HB 284 - Prompt pay of contractors and subcontractors

I understand there will be a work session on HB 284 today. The AML is opposed to HB 284 and CS for HB 284 (L&C). I have outlined our comments and objections below.

1. AML is not opposed to paying bills according to contracts for satisfactory performance and in a reasonable amount of time.
2. It may be appropriate for the legislature to set policy for the state administration.
3. It may also be appropriate for the State to require contractors to pay subcontractors on public construction projects.
4. HB 284 is an unnecessary and inappropriate intrusion into local government.
5. HB 284 is a potentially costly mandate on local government.
6. Local government operations are different from federal and state government because:
 - a. legislative bodies are directly involved with payment of bills, and
 - b. contractors have direct, daily, and year-round access to administrators and the governing bodies for remedies.
7. There has been no specific testimony as to significant problems at the local level.
8. HB 284 would allow an unaffected third party (state) to control a two-party (contractor-municipality) agreement.
9. The payment time line is too short to adequately review and process a request for payment; construction projects require professional and technical review to determine satisfactory performance in addition to the time necessary to approve and process the payment; the bill would add additional time and cost for notification and to calculate interest.

Senator Szymanski re HB 284
February 27, 1990
Page 2

10. AML is opposed to Section 36.90.250. RETAINAGE. (AS 36.90.010 (c) in existing law). AML Policy Statement, Part VII.A.7. states, "The League supports repeal of the application to municipalities of the Public Construction Contract Payments section of Title 36, Public Contracts Code (AS 36.90.010) relating to payment on retainage on construction contracts."

11. Section 36.90.250 RETAINAGE (b) dealing with the use of project funds to pay interest applies only to interest on retainage not the new interest provisions.

12. HB 284 would be a particular hardship on smaller municipalities; the exemption for populations of 500 or less applies only to interest on retainage.

13. The eight-day provision to notify contractor of unsatisfactory performance, specifically, is too short for adequate review and processing; see #9 above.

Thank you for your consideration.

sab3:hb284

Alaska
MUNICIPAL
League

MAY - FII

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217 SECOND STREET, SUITE 200
JUNEAU, ALASKA 99801

March 21, 1990

TO: Senator Mike Szymanski, Chair
Community and Regional Affairs Committee

FROM: Chrystal Smith, Programs Manager *Chrystal*

RE: Issues of Immediate Importance to AML Members

Since we have several issues to deal with today, I thought I would summarize them in writing for your reference.

1. **Prompt Pay - HB 284 and HB 139:** What is your intention re the Thursday committee hearing scheduled for this bill and HB 139? As you know, AML continues to oppose these bills, but if they are going to pass we would like to have some amendments that would make it easier for municipalities to handle the provisions of the bills. Scott Burgess sent you a memo last week outlining these proposed amendments, and I have enclosed an additional copy for your reference. You had asked Scott to meet with Resa Jarrel to reach some compromise position, but unfortunately he was quite sick last week and was unable to do so. He did provide her with a copy of the memo outlining our proposed amendments.

If you are intent on moving these bills out of committee, we have two questions: 1) Are you willing to have these amendments drafted and introduced for consideration by the committee? and 2) Will you support them?

2. **In-place Resources - HB 159:** You have pulled this bill, which was scheduled for a vote on the floor today, back into your committee. Since the bill has had several hearings in both houses and is not controversial, we request that you send it back to Rules and, thus, to the floor for action. As you know, the bill merely puts a two-year moratorium on the enforcement of the statute requiring that the value of in-place resources be included within a municipality's full and true value determination.

In-place resources are such things as minerals in the ground and trees growing in the forest, and determining the value of such resources is extremely difficult, as current negotiations on the Mental Health Trust lands point out. If the State Assessor is required to include a value for these resources within

3/23/90

RECEIVED
MAR 27 1990

TO; Sen Mike Szymanski
FROM; Ray Zirger, Owner of Arctic Excavating Co.
SUBJECT; HB 284 Prompt pay on public construction.

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I would think that a good share of these public representatives dont have the foggiest idea of how the contractor system works. When the contractor bids these small jobs, we have to put our own money into materials and labor. The labor has to be paid weekly, and I know of very few suppliers that are willing to wait 60 to 90 days for thier money. But the owners seem to think that it is OK to tie up our money for an indefinate time. A lot of us are small and dont have the money to loan to the bureaucratic system,

I have long since quit bidding on public work on the local level for this very reason. We used to do work for the local service areas set up by the North Star Borough, but it got to the point where, once we entered into a contract with a service area, the two or three commissioners in that service area wanted to change the rules in the middle of the job, or one or more of them wanted something besides what had been contracted and therefore refused payment. After losing money on two or three in a row, we decided to not do any more bidding with them.

It is therefore my opinion, that the interest rates should be high enough to give the members of the municipal league an incinitave to pay promptly.
IT IS, AFTER ALL, OUR MONEY THEY ARE PLAYING GAMES WITH.

Thank you for your time.

Ray Zirger
Owner of Arctic Excavating Co.

cc; Sen; Steve Frank	Reps; Mark Boyer
Sen Al Adams	Rep Dave Donley
Sen Drue Pearce	Rep Walt Furnace
Sen Pat Pourchot	Rep Bert Sharp
A.G.C. Marie Wilson	Rep Nillo Koponen

CORRECTION

**THIS DOCUMENT
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TO ASSURE LEGIBILITY**

MAY - FYI

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POSITION PAPER
A.G.C. OF ALASKA
TO THE
HOUSE LABOR AND COMMERCE COMMITTEE
ON
HB 284

AN ACT RELATING TO THE TERMS AND CONDITIONS UNDER WHICH PRIME CONTRACTORS AND SUBCONTRACTORS ARE PAID FOR MATERIALS AND SERVICES PROVIDED TO A PUBLIC CONSTRUCTION PROJECT.



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Senator Mike Szymanski

March 21, 1990

page 2

the full and true value determination of municipalities, which is used as the basis for distribution of school foundation funding, municipal assistance, and revenue sharing, cities and boroughs across the state will be negatively affected. HB 159 calls for a study of the taxing policy that should be followed with respect to this issue and for a two-year extension of existing practice while this study is conducted. **Holding up passage of HB 159 will not benefit anyone or any group -- please send it back to Rules.**

3. **Taxation of certain state and federal property - SB 308:** We are requesting that you schedule this bill and move it out of your committee, as you indicated to Scott you would be willing to do. Quick action will be needed if this important piece of legislation is going to pass during this session.

4. **Revision of Senior Citizens/Disabled Veterans property tax exemption program:** As you will recall, both Scott and I have talked about this issue with you during the last couple of months. You had agreed to introduce a bill that would change the program from one mandated by the State but administered, and primarily funded, by municipalities to one that would provide a direct rebate from the State to seniors and disabled veterans. The House C&RA Committee CS for HB 243, which was crafted by AML, the Department of Community and Regional Affairs, and the Older Alaskans Commission, does just that. We are asking you to introduce a bill identical to CS HB 243 (C&RA) in the Senate to facilitate passage this year. I have attached a copy of CS HB 243 (C&RA) for your use.

Thanks for your assistance. Please let me know if you have any questions about these issues.

Enclosures

CSS:LEG szy.321

3/23/90

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MAR 27 1990

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FROM; Ray Zirger, Owner of Arctic Excavating Co.
SUBJECT; HB 284 Prompt pay on public construction.

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POSITION PAPER
A.G.C. OF ALASKA
TO THE
HOUSE LABOR AND COMMERCE COMMITTEE
OF
HB 284

AN ACT RELATING TO THE TERMS AND CONDITIONS UNDER WHICH PRIME CONTRACTORS AND SUBCONTRACTORS ARE PAID FOR MATERIALS AND SERVICES PROVIDED TO A PUBLIC CONSTRUCTION PROJECT.



THANK YOU MR. CHAIRMAN. FOR THE RECORD, MY NAME IS RESA JERREL AND I AM THE DIRECTOR OF GOVERNMENTAL RELATIONS FOR THE ASSOCIATED GENERAL CONTRACTORS OF ALASKA (A.G.C.). ON BEHALF OF OUR OVER 600 MEMBER FIRMS WE APPRECIATE THE OPPORTUNITY TO TESTIFY IN FAVOR OF HB 284.

I HAVE BEEN ASKED BY SOME LEGISLATORS WHAT LEAD TO THE NEED FOR THIS LEGISLATION: QUITE SIMPLY GENERAL CONTRACTORS, SUBCONTRACTORS, SUBS OF SUBCONTRACTORS AND SUPPLIERS WERE NOT BEING PAID IN A TIMELY MANNER.

IN THE CONSTRUCTION INDUSTRY CASH FLOW IS IMPORTANT FOR THE SURVIVAL OF THE CONTRACTOR'S AND THE LOWER TIERED SUBCONTRACTOR'S BUSINESSES. THE FAILURE OF AN OWNER TO PROMPTLY PAY A GENERAL CONTRACTOR EFFECTS THE CASH FLOW OF NOT ONLY THE GENERAL CONTRACTOR BUT, THE CASH FLOW OF THE SUBCONTRACTOR, LOWER TIERED SUBCONTRACTOR AND SUPPLIER. LIKEWISE, THE FAILURE OF A GENERAL CONTRACTOR TO PROMPTLY PAY A SUBCONTRACTOR EFFECTS THE SUBS OF THE SUBCONTRACTOR AND SUPPLIER. A.G.C. OF ALASKA BELIEVES, INORDER TO PROMOTE FAIR DEALING AMONGST GOVERNMENT OWNERS, GENERAL CONTRACTORS, SUBCONTRACTORS AND SUPPLIERS IT IS ONLY REASONABLE TO EXPECT EACH SEGMENT TO PAY THEIR BILLS ON TIME.

IF YOU HAVE ANY QUESTIONS, I WOULD BE HAPPY TO TRY AND ANSWER THEM.



AMERICAN SUBCONTRACTORS ASSOCIATION OF ALASKA

2908 Commercial Drive
Anchorage, Alaska 99501
907 - 276 - 6893

PRESIDENT
Frank Thomas-Mears
Multiple Risk Mgrs.
345-7181

VICE PRESIDENT
Larry Phelps
Capitol Glass
272-4433

SECRETARY
Rozanne Horschel
ACME Fence Co.
522-1155

TREASURER
Earlene Careus
S & S Welding
276-5532

April 17, 1989

→ Have there been problems
w/ fed prompt pay
law

Rep. Mark Boyer
P.O. Box V
Juneau, Alaska 99519

Dear Representative Boyer,

On behalf of the Alaska Chapter of American Subcontractors Association, I want to thank you for your assistance in the prompt payment legislation.

Slow payment and retainage topped the list of concerns of subcontractors in 1988. A survey by A.S.A. in 1988 found that 81 percent of the subcontractors considered untimely final payments to be the most serious problem they have, with more than half that number rating it "a very major problem." This survey agrees with a 1982 survey on payment problems on federal construction. In that survey, A.S.A. learned that subcontractors wait an average of 120 days after they last perform labor or supply material to a federal construction job before receiving final payment. Subcontractors' problems typically begin long before the final payment. Seventy percent reported that untimely progress payments are a "serious problem" with half calling it a "very major problem." This reinforces a 1987 survey finding that subcontractors wait an average of 60 days after submitting a request to receive progress payments.

On October 17, 1988 President Reagan signed a prompt pay bill into law. The new law, which took effect April 1, 1989 makes clear for the first time that contractors and subcontractors of all types on federal construction projects must be paid promptly or receive interest. In Alaska, subcontractors received this victory news as a message that says subcontractors' cries have been heard.

In October of 1988 A.S.A. Alaska Chapter formed a task force to work on prompt pay legislation. The message this committee received was loud and clear. Untimely payments were now described as an overwhelming problem among 100% of the members and non-members contacted. The reason for the escalating problem was that most often given as a result in our declining economy where work starved general contractors are bidding jobs at prices barely covering their costs. By delaying payments to subs and material suppliers they in effect write themselves an interest free loan. The often times slow and inconsistent

payment policies among government agencies to general contractors was also listed as adding to the problem. Because subcontractors rely on receiving payments within a given amount of days after the prime contractor receives payment, it is often uncertain when effort to collect a sub's money should even begin.

Because the state of Alaska will be forced to comply with the Federal Prompt Payment Act Amendments of 1988 on all federally funded projects which address the immediate concerns of Alaskan subs, A.S.A. Alaska legislative task force felt it should follow this law as a guideline.

In January of 1989 it was decided to join forces with A.G.C. of Alaska to work on legislation fair to all contractors, subcontractors, material suppliers and government owners before presenting the principles in Juneau. In March a draft was presented to you with full support by A.S.A. and A.G.C. Alaska chapters.

We believe prompt pay as outlined in your bill HS284 is a positive step to assure fair dealings among the entire construction industry, and is asking for no more than what is now law on federal construction projects. As funds are available and set aside for public projects, passage of this bill will protect the interests of prime contractors, subcontractors, material suppliers, as well as government in the payment process.

Our sincere thanks to you and your staff for your hard work and support.

Sincerely,



Roxanna Horschel

Prompt Pay

HB 284 was introduced April 12, 1989, by Representatives Boyer, Donley, Furnace, Grussendorf, Boucher, Foster, Gruenberg, Hudson, Koponen, Larson, Menard, Pettyjohn, Reiger, Sharp, Shultz, Taylor, Ulmer, Zawacki and Collins. It passed the House May 7, 1989.

SB 289 was introduced April 18, 1989, by Senators Fahrenkamp, Rodey, Pourchot, Sturgulewski, Pearce, Frank and Coghill. Senator Szymanski added his name as a co-sponsor April 21, 1989.

The following are some highlights of CSHB 284(L&C) am:

- Government agencies are to pay prime contractors within 30 days after receiving progress payment application or pay interest. Communities with a population of 800 or less are exempt. The original bill contained 14 days and the Federal law is 7 days.
- Government agencies would pay interest on retainage. Communities with a population of 500 or less are exempt.
- Contract documents between prime contractor and subcontractors and between subcontractors and their subcontractors and supplies would require payment for satisfactory performance within 8 days after receiving payment or pay interest.
- If payment is withheld for unsatisfactory performance, by an agency, they are to notify the prime contractor and the remedial actions needed. The agency is to pay within 21 days after completion of the remedial action or within 21 days after a community actually receives its grant funds.
- The prime and subcontractor can negotiate provisions for retainage without cause and for cause and not have to pay interest.

6-1026J
Bannister
3/22/90

Original sponsor(s): REP. BOYER, Donley, Furnace, Grussendorf, Boucher, Foster, Gruenberg, Hudson, Koponen, Larson, Menard, Pettyjohn, Rieger, Sharp, Shultz, Taylor, Ulmer, Zawacki, Collins, Navarre, Leman

1 IN THE HOUSE

BY THE C&RA COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 284 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the terms and conditions under
7 which prime contractors and subcontractors are paid
8 for materials and services provided to a public
9 construction project; and providing for an effective
10 date."

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

12 * Section 1. AS 36.90 is amended by adding new sections to read:

13 ARTICLE 2. PUBLIC CONSTRUCTION CONTRACT PAYMENTS.

14 Sec. 36.90.200. PAYMENT DEADLINE AND INTEREST. (a) The state
15 or a political subdivision of the state shall pay the prime contractor
16 for satisfactory performance on a public construction or public works
17 contract within 30 calendar days of the date the state or political
18 subdivision receives a valid payment request from the prime contractor
19 that complies with the contract or within 30 calendar days after the
20 warranty period expires, whichever is later. If a political subdivi-
21 sion is going to use grant money for the contract, the subdivision
22 shall pay the prime contractor for satisfactory performance within 21
23 calendar days of the date the subdivision receives a valid payment
24 request that complies with the contract, within 21 calendar days of
25 the date the subdivision actually receives the grant money, or within
26 21 calendar days after the warranty period expires, whichever is
27 latest. If the state is going to use federal money for the contract,
28 the state shall pay the prime contractor for satisfactory performance
29 within 21 calendar days of the date the state receives a valid payment

1 request that complies with the contract, within 21 calendar days of
2 the date the state actually receives the federal money, or within 21
3 calendar days after the warranty period expires, whichever is latest.

4 (b) If the prime contractor is not paid as required by (a) of
5 this section, the state or political subdivision shall pay interest on
6 the unpaid amount of the required payment from the 21st calendar day
7 after the date required for payment under (a) of this section at an
8 interest rate that is equal to the amount set out in AS 45.45.010(a).

9 (c) If part or all of a payment is going to be withheld for
10 unsatisfactory performance or if the payment request made under (a) of
11 this section is not valid or does not comply with the requirements of
12 the contract, within eight working days after receipt of the payment
13 request the state or political subdivision shall notify the prime
14 contractor in writing stating specifically why part or all of the
15 payment is being withheld and what remedial actions may be taken by
16 the prime contractor to receive the full payment.

17 (d) If the notification by the state or political subdivision
18 required by (c) of this section does not comply with (c) of this
19 section, the state or political subdivision shall pay interest on the
20 withheld amount from the eighth working day after receipt of the
21 initial payment request until the state or political subdivision
22 provides notice that does comply with (c) of this section.

23 (e) If part or all of a payment is withheld under (c) of this
24 section, the state or political subdivision shall pay the withheld
25 amount within 21 calendar days after the prime contractor satisfac-
26 torily completes the remedial actions identified in the notice or
27 within 21 calendar days after the warranty period expires, whichever
28 is later. If a political subdivision is going to use grant money for
29 the contract, the subdivision shall pay the prime contractor within 21

1 calendar days after the prime contractor satisfactorily completes the
2 remedial actions identified in the notice, within 21 calendar days
3 after the political subdivision actually receives the grant money, or
4 within 21 calendar days after the warranty period expires, whichever
5 is latest. If the state is going to use federal money for the con-
6 tract, the state shall pay the prime contractor within 21 calendar
7 days after the prime contractor satisfactorily completes the remedial
8 actions identified in the notice, within 21 calendar days after the
9 subdivision actually receives the money, or within 21 days after the
10 warranty period expires, whichever is latest. If the withheld amount
11 is not paid within the 21 calendar days, the state or political subdi-
12 vision shall pay interest on the withheld amount from the 21st calen-
13 dar day at an interest rate that is equal to the amount set out in
14 AS 45.45.010(a).

15 (f) This section does not apply to public construction or public
16 works contracts made by a political subdivision that has a population
17 under 800.

18 Sec. 36.90.210. REQUIRED CONTRACTUAL TERMS. (a) The prime
19 contractor and a subcontractor on a public construction or public
20 works contract shall include in a subcontract between the prime con-
21 tractor and subcontractor for the public construction or public works
22 a clause that requires the prime contractor

23 (1) to pay the subcontractor for satisfactory performance
24 under the subcontract within eight working days after receiving pay-
25 ment from which the subcontractor is to be paid;

26 (2) to pay the subcontractor all retainage due under the
27 subcontract within eight working days after final payment is received
28 from the state or political subdivision or after the notice period
29 under AS 36.25.020(b) expires, whichever is later;

1 (3) to pay the subcontractor interest on an amount that is
2 not paid in accordance with (1) or (2) of this subsection for the
3 period beginning on the day after the required payment date and ending
4 on the day on which payment of the amount due is made; the interest
5 shall be computed at an interest rate that is equal to the amount set
6 out in AS 45.45.010(a);

7 (4) to pass through to the subcontractor the retainage
8 interest under AS 36.90.250(a) that is attributable to the retainage
9 withheld from the subcontractor.

10 (b) A subcontractor on a public construction or public works
11 contract shall include in each subcontract under which a person agrees
12 to provide the subcontractor with services, other than as an employee,
13 or supplies to be used in the public construction or public works
14 project a clause that requires the subcontractor

15 (1) to pay the person for satisfactory performance under
16 the subcontract within eight working days after receiving payment from
17 which the person is to be paid;

18 (2) to pay the person all retainage due under the subcon-
19 tract with the person within eight working days after the subcontrac-
20 tor receives its share of the state-held retainage from the prime
21 contractor or another subcontractor;

22 (3) to pay the person interest on an amount that is not
23 paid in accordance with (1) or (2) of this subsection for the period
24 beginning on the day after the required payment date and ending on the
25 day on which payment of the amount due is made; the interest shall be
26 computed at an interest rate that is equal to the amount set out in
27 AS 45.45.010(a);

28 (4) to pass through to the person the retainage interest
29 under AS 36.90.250(a) that is attributable to retainage withheld from

1 the person.

2 Sec. 36.90.220. OPTIONAL CONTRACTUAL TERMS. Notwithstanding
3 AS 36.90.210 and 36.90.230, the prime contractor or a subcontractor
4 may negotiate and include in a public construction or public works
5 subcontract a provision that

6 (1) permits the prime contractor or a subcontractor to
7 retain without cause and under mutually agreeable terms and conditions
8 a specified percentage of a progress payment otherwise due to the
9 subcontractor for satisfactory performance under the subcontract
10 without incurring an obligation to pay interest on the retainage,
11 except for interest under AS 36.90.250(a) that is attributable to
12 retainage, including warranty retainage, withheld from the subcontrac-
13 tor; when making the provision, the parties may consider the ability
14 of the subcontractor to furnish performance and payment bonds;

15 (2) permits the prime contractor or a subcontractor to
16 determine that part or all of a subcontractor's request for payment
17 may be withheld for unsatisfactory performance under the subcontract;
18 and

19 (3) permits the prime contractor or a subcontractor to
20 withhold payment for unsatisfactory performance without incurring an
21 obligation to pay interest for late payment, if a notice complying
22 with AS 36.90.240 has been previously furnished to the subcontractor
23 and a copy of the notice is furnished to the contracting officer of
24 the state or political subdivision.

25 Sec. 36.90.230. WITHHOLDING PAYMENT FOR UNSATISFACTORY PERFOR-
26 MANCE. (a) If the prime contractor on a public construction or
27 public works contract, after making a request for payment to the state
28 or political subdivision but before paying a subcontractor for the
29 subcontractor's performance covered by the payment request, discovers

1 that part or all of the payment otherwise due to the subcontractor is
2 subject to withholding from the subcontractor under the subcontract
3 for unsatisfactory performance, the prime contractor may withhold the
4 amount as allowed under the subcontract. If the prime contractor
5 withholds an amount under this subsection, the prime contractor shall

6 (1) give the subcontractor a notice complying with AS 36.-
7 90.240 as soon as practicable after determining the cause for the with-
8 holding but before the due date for the subcontractor payment;

9 (2) give the contracting officer of the state or political
10 subdivision a copy of the notice furnished to the subcontractor under
11 (1) of this subsection;

12 (3) pay the subcontractor within eight working days after
13 correction of the identified subcontractor performance deficiency.

14 (b) If the prime contractor does not comply with the notice and
15 payment requirements of (a) of this section, the contractor shall pay
16 the subcontractor interest on the withheld amount from the eighth
17 working day at an interest rate that is equal to the amount set out in
18 AS 45.45.010(a).

19 Sec. 36.90.240. FORM OF CERTAIN NOTICES. A notice under AS 36.-
20 90.220(3) or 36.90.230(a)(1) must be in writing and must state the
21 amount being withheld, the specific causes for the withholding under
22 the terms of the subcontract, and the remedial actions to be taken by
23 the subcontractor to receive payment of the amount withheld.

24 Sec. 36.90.250. RETAINAGE. (a) The state or a political subdi-
25 vision of the state shall pay to the prime contractor interest on
26 retainage, including warranty retainage, on a contract for public
27 construction or public works at the prevailing interest rate. Inter-
28 est on retainage accrues from the date of approval of a pay request or
29 from the end of the warranty period, whichever is later, until the

1 date of payment to the contractor.

2 (b) A political subdivision that has a population of 500 or less
3 is exempt from the payment of interest under (a) of this section.

4 Sec. 36.90.260. MISCELLANEOUS PROVISIONS. (a) In AS 36.90.-
5 210 - 36.90.290,

6 (1) a payment is considered to be made when mailed or
7 personally delivered to the party being paid;

8 (2) a payment is considered to be received when it is
9 endorsed for payment, if it is a check;

10 (3) an invoice is considered to be received when it is
11 date-stamped or otherwise marked as delivered; if the invoice is not
12 date-stamped or otherwise marked as delivered, the date of the invoice
13 is considered to be the date when the invoice is received.

14 (b) A political subdivision that receives a state grant for a
15 public construction or public works project may use money from the
16 state grant to pay the interest under AS 36.90.200 - 36.90.290.

17 Sec. 36.90.265. MUNICIPALITIES. AS 36.90.200 - 36.90.290 do not
18 apply to a public construction or public works contract of a munic-
19 ipality unless the municipality has entered into a written contract
20 with the state for the state to provide funds for the public con-
21 struction or public work.

22 Sec. 36.90.270. WAIVER OF PROVISIONS PROHIBITED. A contract
23 provision that waives a provision required by AS 36.90.200 - 36.90.290
24 is void.

25 Sec. 36.90.290. DEFINITIONS. In AS 36.90.200 - 36.90.290,

26 (1) "prime contractor" means a person required to be regis-
27 tered under AS 08.18 who has a contract with the state or a political
28 subdivision of the state to provide materials or services, other than
29 as an employee, for a public construction or public works project;

1 (2) "subcontractor" means a person at any level, other than
2 a prime contractor, who provides materials or services, other than as
3 an employee, to be used in a public construction or public works
4 project;

5 (3) "working day" does not include Saturday, Sunday, or a
6 state holiday.

7 * Sec. 2. AS 37.05.285(d) is amended to read:

8 (d) This section does not apply

9 (1) if the cost of the goods or services purchased exceeds
10 \$500,000;

11 (2) to payment for specific goods or services in dispute
12 after a seller of goods or services receives notice from the state
13 official responsible for authorizing payment for goods and services
14 that the amount of the invoice or quality of specific goods or ser-
15 vices is in dispute and stating the reasons for the dispute; the state
16 agency shall pay for the specific goods or services in dispute within
17 30 days after resolution of the dispute; or

18 (3) to a contract covered by AS 36.90.200 - 36.90.290
19 [AS 36.90.010].

20 * Sec. 3. AS 36.90.010 is repealed.

21 * Sec. 4. This Act applies to public construction and public works
22 contracts that are entered into on or after the effective date of this Act.

23 * Sec. 5. This Act takes effect July 1, 1990.
24
25
26
27
28
29

H B

358

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act..thermal & lighting energy standards..."
Sponsor: Reps Brown, M.Davis, MacLean, etc
Requestor: _____

Agency Affected: Community & Regional Affairs
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL	13.0	-0-	5.0	-0-	5.0	-0-
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	13.0	-0-	5.0	-0-	5.0	-0-

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	13.0	-0-	5.0	-0-	5.0	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	13.0	-0-	5.0	-0-	5.0	-0-

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

There is no fiscal effect for FY 90. Travel is for private industry members of the technical advisory committee.

Prepared by: Jam Plasmon, Deputy Director
Division: Municipal & Regional Assistance

Phone: 465-4750
Date: 3/26/90

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

Date: 3-26-90

Distribution (by preparer):

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



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

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

TO: Senator Mike Szymanski, Chair
Senate Community and Regional Affairs Committee

FROM: Representative Kay Brown

DATE: February 28, 1990

SUBJ: CS SS HB 358 (Fin) - Minimum Thermal Energy Standards

I want to take this opportunity to provide you with some background information on CS SS HB 358 (Fin), legislation that would require future new housing built with state financial assistance after December 31, 1990 to meet at least minimum energy efficiency standards.

The Need for Minimum Thermal Energy Standards

Nearly all states have some form of minimum standard. It is ironic that, Alaska -- the state with the most extreme cold-weather temperatures and the highest heating costs in the nation -- is without even minimum energy efficiency requirements. The arguments in support of minimum standards are compelling:

- A survey of eight rural villages found that 16 to 37% of family income is spent on energy while a 1988 "Alaska Rural Housing Needs Assessment" found that 36% of rural homes could not maintain an indoor temperature of 70 degrees during the cold winter months.
- An audit of 714 HUD housing units concluded that "projects are being developed that are infeasible, improperly designed, and inadequately constructed" noting that many of the the rural housing units being constructed were generally unsuited for the harsh Alaskan environment (in some homes interior walls were sheathed in ice during the winter).
- The State of Alaska is the financier (and now owner through AHFC) of thousands of repossessed residential properties. Due to poor building

practices these REOs have required substantial funds to repair and upgrade simply to make them marketable.

- Typical home buyers do not have -- nor can they reasonably be expected to have -- the kind of technical expertise necessary to determine whether a home has been built to reasonable energy efficiency standards.

A point worth emphasizing is that under HB 358 the state minimum thermal standards *would apply only to future new homes built with state financial assistance* (homes built "out-of-pocket" or financed without state assistance would not be subject to the standard.)

Legislative History of the Alaska Thermal Energy Standard

In 1980, the Alaska Legislature recognized the need for minimum energy efficiency standards by enacting Chapter 83 SLA 1980. This legislation provided for the development and adoption of minimum thermal and lighting standards (AS 46.11.010 -.900) for new structures built with "state financial assistance." Between 1983 and 1988, the Department of Community and Regional Affairs undertook an extensive public process with the help of an Advisory Committee that included representatives of the housing industry to develop an appropriate "regionalized" Alaska standard for new state-financed residential construction.

During the formulation of the standard the by the Advisory Committee a clear choice was made to recommend a truly *minimum* energy standard that a number of builders were already building to in a given region in order to assure that the standard would not cause a disruption in the marketplace. Ultimately, the advisory committee developed a consensus recommendation concerning a proposed minimum standard. However, just prior to the standard becoming effective last year a lawsuit was filed that exploited a drafting oversight in the original 1980 law.

Briefly, although the original 1980 legislation clearly stated the Legislature's intent to establish "mandatory energy efficiency standards for buildings purchased or constructed with state financial assistance" (emphasis added), the language actually codified into law only referenced financing "for the construction of" new structures. Due to this drafting oversight, the Superior Court ruled that the standard should apply only to state financial assistance in the form of direct construction lending. Pending appeal to the Alaska Supreme Court, implementation of the Standard has been enjoined. HB 358 was introduced to reaffirm the clear legislative objective of requiring that new homes financed through AHFC meet at least minimum thermal standards.

CS SS HB 358 (Fin)

In summary, CS SS HB 358 (Fin) would:

- explicitly reaffirm the original 1980 intent of the legislature that minimum thermal standards apply to homes constructed, as well as those financed through AHFC, with state financial assistance;
- make it clear that the thermal standards apply only to future new homes built with state-financial assistance homes (i.e., construction starting after December 31, 1990); and
- explicitly identify several alternative means by which builders can demonstrate compliance with the standard, including self-certification.

Assuming CS SS HB 358 (Fin) passes this session, the Department of Community and Regional Affairs would develop and adopt a new minimum standard by way of regulation. This public process will afford an opportunity for all affected parties to participate in the formulation of the minimum standard.

It should be noted that a substantial number of Alaska homebuilders already construct homes that meet or exceed the proposed state minimum standard that had been developed by DCRA prior to the lawsuit. These builders have expressed strong support for the standard, particularly because a minimum standard will help put quality homebuilders on a "level playing field" relative to less conscientious builders.

To put the proposed state minimum standard developed by DCRA into perspective, for Anchorage gas-heated homes, the minimum insulation requirements under the proposed state standard are nearly identical to HUD's Minimum Property Standards (MPS). It should also be noted that significantly higher insulation levels for Anchorage homes are recommended in the most recently published industry developed standard published by the American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE, March 1989 - 90.2P). A comparison of these various standards is attached.

In any case, passage of CS SS HB 358 (Fin) would require that the state minimum thermal standard be developed anew. This would mean that a new standard (presumably building on the extensive work already done to date) would be developed by the Department of Community and Regional Affairs by regulation with full public participation. One possibility I have been exploring with the Alaska State Homebuilders Association is amendment of the bill to formally create, in statute, an advisory committee to help with the development of the new standard. This advisory committee would include

representatives of the homebuilding industry to ensure that any standard adopted is reasonable and workable.

Another possibility I have been considering is establishment of an "early adopter" incentive program. In concept, the early adopter proposal would include:

- postponing the effective date of the thermal standards from December 31, 1990, as currently proposed in CS SS HB 358 (Fin), to December 31, 1991;
- creation of a thermal standards Early Adopter Program and early adopter incentive awards of \$1,500 for homebuilders that voluntarily meet the state thermal standard prior to the minimum standard taking effect, i.e., in the case of new homes constructed after passage of CS SS HB 358 (Fin) and before December 31, 1991; and
- a one-time appropriation of \$250,000 to provide a total of 167 grants (at \$1,500 each) to qualifying "early adopter" builders.

This "early adopter" program would provide builders with the incentive to learn how to meet the standard during the year before it took effect and would help to offset the incremental costs some builders will face in meeting the new standard relative to their current building practices.

As you can see by the attachments, CS HB 358 (Fin) has broad support from all across the state. During the most recent House Finance Committee hearing, builders from Nome to Sitka testified in unanimous support of the bill and the need for minimum thermal standards. I have also provided excerpts of testimony and comment from various builders and other housing professionals that endorse this legislation and the need for minimum thermal energy standards.

Finally, although we can not rectify many of the housing problems that have resulted from poor building practices in the past, we can make a new start in the 1990s.

I look forward to working with you on this legislation.

attachments

2/9/90
Rep. Kay Brown

**BUILDER AND HOUSING PROFESSIONAL COMMENT
IN SUPPORT OF
HB 358 - MINIMUM THERMAL ENERGY STANDARDS**

AHFC has been committed to the development of energy standards for new construction. Staff members have been working with DCRA from the very outset. We served on the Advisory Committee which assisted in the development of the recommended standards.... We believe the standards are a necessity to help ensure a better housing stock for Alaskans as well as provide homeowners with the potential for lower fuel bills.

Tom Behan, Executive Director
Alaska Housing Finance Corporation

The Alaska State Legislature should enact legislation to restore clear legal authority for the implementation of appropriate minimum thermal standards, based on regional differences, for newly constructed state-financed housing.

Housing Policy Development Committee
Alaska Housing Market Council

At Anchorage Neighborhood Housing Services we have had many occasions to inspect housing units as part of our requirements for lending and in conjunction with our construction assistance programs. There exists a great need for improvement to minimum thermal standards in most of the existing housing stock in Anchorage.

Cynthia A. Parker, Executive Director
Anchorage Neighborhood Housing Services, Inc.

As a builder of energy efficient homes in the Fairbanks area for many years which without exception exceed the State Energy Standard, I feel that [HB 358] will tend to put conscientious Alaskan builders on an even playing field with the fly-by-night contractors from outside who don't know how to build in this environment and, in some cases, don't care.

Mike Musick
Ester Construction
Ester, Alaska

As a builder, I am intimately familiar with what it takes to build appropriately for the Alaska climate. I know we can do better for the people of Alaska than we have in the past.... My own building practices meet or exceed the State minimum energy standard. Other builders should be doing the same.

Ralph W. Brodin, Owner
EE/CC General Contractors
Girdwood, Alaska

During the past two years I have built several homes in the Homer area that meet or exceed HB 358's energy standards. I counsel every one that I build for that an energy efficient house is not only healthy and comfortable but also a good investment because of energy savings.

David Ellington
Ellington Construction
Homer, Alaska

As the American Institute of Architects/Alaska Chapter representative on the Advisory Committee for the [state standard] I was impressed by the participation of all Alaska building industry's sectors.... [The standards] are reasonable and reflect logical and climatic conditions for each region of the State.... Too often builders have sought short term practices through the use of inadequate building practices at the expense of long term operation and maintenance costs.

Robert Balivet, AIA
McGlothlin Balivet Co. - Architects & Planners
Anchorage, Alaska

I am an architectural designer and have been involved in the design and construction of several homes that exceed the minimum energy standards. I am very knowledgeable about the building science and practices that ensure a comfortable, healthy, and energy efficient home. I am also aware of the very slow pace in which the building trades adopt new methods and materials... In order to improve the comfort and quality levels of our housing stock, we simply need HB 358.

James A. Dory
Dory and Associates
Nome, Alaska

As a building official of a major Southeast Alaska community, I have been involved with the entire public development of the standards [The standards] are technically sound, reasonable in their scope and practical in their nature and application.

Harry Chartier, Building Official
City and Borough of Sitka

[T]he minimum insulation requirements between the proposed State of Alaska "Energy Standard" for gas heated dwellings in [the] Anchorage area and HUD's MPS [Minimum Property Standards] are nearly identical. The major differences between the two is the state proposes to quantify acceptable infiltration losses and ventilation requirements. We believe that this is a positive step in establishing building performance criteria.

Arlene Patton
U.S. Housing and Urban Development
Anchorage Office - Region X

[T]here must be some inducement to encourage builders to maintain certain standards since businesses tend to stay with the old easy less expensive methods. We are just finishing a new home built to meet or exceed ACHP [Alaska Craftsman Home Program] specs which are more stringent than the proposed State standards.

David T. Thompson
Fairbanks, Alaska

The lack of thermal standards in the past provides the Low-Income Weatherization Program here in the Fairbanks North Star Borough with a seemingly endless supply of rapidly deteriorating high-energy-use dwellings...in need of so much more than the [weatherization] program can provide that the measures often become a band-aid approach to a terminal wound.... There is no reasonable excuse to perpetuate the supply of inadequately constructed buildings.

Robert Maxwell
S.I.H., Inc. - Weatherization
Fairbanks, Alaska

The average homebuyer knows very little, if anything, about energy efficient home design.... Yet they will live in these homes and pay the bills for them ever after.... In our design practices we always strive to meet or exceed the State minimum energy standard. Other architects should be doing the same.

Ronald Bisset and Andrew Simasko
Architects Bissett/Simansko
Palmer, Alaska

I view this legislation [HB 358] as critical to the future of our states' building industry in that it will enable Alaska residents to finally receive thermal value in housing that is appropriate to the diverse climate zones of our great state. As a member of the National Association of Home Builders (NAHB) I am aware of attempts by many of our members to stall implementation of these standards and wish to clarify that there is not in any way a consensus to this effect.

Philip Loudon
Arctic Technical Services
Fairbanks, Alaska

As a four year member of the Alaska Home Builders Association, I would like you to know that I support the Thermal Standards as written and their original intent. One of the reasons I especially liked the original implementation of the Alaska State Thermal Standards is they were not mandatory [and only apply to housing using] Alaska public funds.

C.R. Deer
Alaska Window
Fairbanks, Alaska

Even though the standards will eventually help the construction trades, the industry is taking a short-term viewpoint by delaying implementation.... [further delay] is really unnecessary and only focuses on special interest groups who voice objections... Once again, Alaska is lagging behind the nation in implementing a rational energy policy.

Raj Bhargava, MSME
Raj Bhargava Associates - Engineering in Alaska

2/16/90
Rep. Kay Brown

HB 358 - Minimum Thermal Energy Standards
Endorsements and Statements of Support

Alaska Center for the Environment
Alaska Community Development Corporation (Anchorage)
Alaska Federation of Natives
Alaska Health Project
Alaska Housing Finance Corporation
Alaska Housing Policy Development Committee
Alaska Public Interest Research Group
Alaska Rural Electric Cooperative Association
Alaska State AFL-CIO
Alaska State Employees Association
Alaska Village Electric Cooperative
Alaska Wilderness Alliance
Alaska Wildlife Alliance
Alaska Window (Fairbanks)
Alaska Chapter Sierra Club
Analysis North/Alaska Utility Consumer Advocate
Anchorage League of Women Voters
American Lung Association of Alaska
Anchorage Daily News
Anchorage Neighborhood Housing Services, Inc.
Anchorage Recycling Center
Architects Bisset/Simansko (Palmer)
Arctic Technical Services (Fairbanks)
Barrow Utilities and Electric Cooperative
Brandywine Homeowners Association (Eagle River)
Cedar Park Condominium Association (Anchorage)
Chugach Electric Association (Anchorage)
City and Borough of Juneau
City of White Mountain
City of Brevig Mission
City of Nome
City of Koyuk
City of Shishmaref
City and Borough of Sitka
Denali Citizens Council
Dick Mueller Realty, Inc. (Kenai)
Dinyee Village Corporation (Stevens Village)
Dory and Associates (Nome)
Ellington Construction (Homer)
ENSTAR Natural Gas Company (Anchorage)

Ester Construction (Fairbanks)
Fairbanks North Star Borough
Golden Valley Electric Association (Fairbanks)
Greenpeace USA
Kotzebue Electric Association
Heat Loss Analysis, Inc. (Anchorage)
Home Energy Service (Juneau)
Kachemak Bay Conservation Society
Kodiak Island Mayors League
Low-Income Weatherization Policy Advisory Committee
McGlothlin Balivet Co. - Architects & Planners (Anchorage)
National Audubon Society
North Slope Borough
North and Northwest Alaska Mayors Conference
Nushagak Electric Co-operative, Inc. (Dillingham)
Older Alaskans Commission
Older Persons Action Group, Inc.
Raj Bhargava Associates/Engineering in Alaska (Anchorage)
Rotecki, Bill (Ketchikan)
Rural Alaska Community Action Program
Second Annual Rural Energy Conference Resolution
S.I.H. Inc. Weatherization (Fairbanks)
Southwest Alaska Municipal Conference
State of Alaska Energy Policy Task Force
Thermo-Kool of Alaska, Inc. (Anchorage)
Thompson, David (Fairbanks)
Tlingit & Haida Regional Electrical Authority
Trustees for Alaska
U.S. Department of Housing and Urban Development
Western Alaska Building and Construction Trades Council

2/13/90
Rep. Kay Brown

COMPARISON OF MINIMUM THERMAL STANDARDS
Anchorage Gas-Heated Homes

	<u>STATE*</u>	<u>HUD MPS</u>	<u>FHA</u>	<u>ASHRAE 90**</u>
Ceilings	R 38	R 38	R 38	R 50
Walls	R 18	R 20	R 25	R 23.3
Floors	R 19	R 20	R 22	R 30.3
Windows	R 2.1 - 4 ⁽¹⁾	R 2.13	R 2.6	R 2.44
Doors	R 7 (one 2.5)	R 3.12	R 5	R 7.14

* proposed state standard

** American Society of Heating, Refrigerating and Air-Conditioning Engineers
"Energy Efficient Design of New Low-Rise Residential Buildings" (March 1989)

(1) under proposed state standard, variable according to window area as % of wall area.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act..thermal & lighting energy standards..."
Sponsor: Reps Brown, M.Davis, MacLean, etc
Requestor: _____

Agency Affected: Community & Regional Affairs
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

There is no fiscal effect for FY 90.

Prepared by: *Jim Resman* Phone: 465-4750
Division: Municipal & Regional Assistance Date: 2/2/90
Approved by Commissioner: *James G. Hoffner* Date: 2/2/90
Agency: Community & Regional Affairs

Distribution (by preparer):

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- Impacted Agency(ies)

STATE OF ALASKA

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February 21, 1990

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P.O. Box 190769
Anchorage, AK 99519-0769

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This is a recap of what I heard you propose in terms of amendments for House Bill 358:

- (1) That you agree that a minimum thermal standard is necessary for Alaska and that House Bill 358 needs to be enacted.
- (2) An "early adopter" program for builders who want to voluntarily meet the standard in the interim period. The application process would be simple and verified by a home rating through the Energy Rated Homes of Alaska program. You also advocated the program be adjusted to take into account square footage of the home. We also discussed making the Home Energy Loan Program fit into the effort.
- (3) Have the bill indirectly address the technical fixes necessary to the state standard. The technical fixes will be primarily focused on ventilation requirements, heating system efficiency and air tightness. This would involve a committee that would include representation of home builders.
- (4) Have the bill indirectly address having a provision that the standard would not go into effect in areas where the climate or the cost of energy would not make it economical. The standard would go into effect when an energy cost index is reached. The bill would outline how this would be developed. We both agreed that a simple payback may not be the best analysis for this determination.

Gregory Jones
February 21, 1990
Page Two

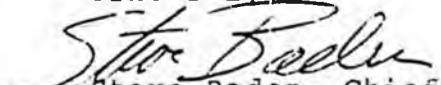
(5) In the areas that would be covered under (4), the FHA thermal standards as modified by the Department working with the committee that is formed in (3) would go into effect.

(6) Having a period before the thermal standard goes into effect after the enactment of the legislation that would be contained in the bill. You proposed two years after the bill's passage and I felt that one year was more appropriate.

You agreed that you would further discuss this with builders and draft language for numbers 3 and 4. We agreed that we would get together again at 10 am., on March 6 in the B.I.A.A.'s office.

As you work on your proposed language please do not hesitate to call me if I can provide you additional information and assistance. I would appreciate it if you could provide me a copy of your draft on Monday, March 5, so that I can review it and have a thought-out response. I look forward to reviewing what you come up with and meeting with you on the 6th.

Sincerely,


Steve Baden, Chief
Energy Programs

cc: Representative Kay Brown
Larry Taylor
Barbara Collins
Randy Nicklas

21 February, 1990

Steve Boden, Chief
Energy Programs
Rural Development Division
949 E. 36th Avenue, Suite 402
Anchorage, AK 99508

Re: Proposed Revision to HB 358

Dear Steve,

I agree that yesterday's meeting was productive. I am encouraged by the State's willingness to work with us in achieving a Minimum Thermal Standard that will work for the entire state.

In response to the six points in your letter today:

1. Minimum thermal standards are needed for Alaska particularly for the rural areas and portions of the state subject to harsh climates and/or high energy costs. HB 358 needs to be amended to reflect this emphasis.

2. The "Early Adopter" program is very encouraging. We need to work with Barbara Collins to assure compatibility of the thermal standards with the Energy Ratio Homes of Alaska criteria. I concur with the rest of your comments in this paragraph.

3. I would not at this time limit technical fixes to the areas indicated in your letter, although they are the primary concerns right now. The committee that you reference should have the latitude to recommend other changes. The make up of the committee is of great importance to us. We will make a proposal to you in that regard.

4, 5, and 6. I concur with your comments in these paragraphs.

As indicated at our meeting, I will be communicating often and in detail with the builders around the state throughout this process. When we do reach a final agreement it is in the best interest of each of us to have unanimity within our respective ranks. Consequently, the logistics are cumbersome and somewhat unpredictable. I will try to have a draft proposal to you by March 5, and will at least have an outline by March 3.

Thanks for your attention.

Very truly yours,
Alaska State Home Builders Association

Gregory L. Jones
National Representative

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

STEVE COWPER, GOVERNOR

Rural Development Division
949 E. 36th Ave. #402
Anchorage, AK 99508
(907) 563-1073
Telefax: (907) 563-1734

February 21, 1990

Gregory Jones
Alaska Diversified Properties
P.O. Box 190769
Anchorage, AK 99519-0769

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Gregory Jones
February 21, 1990
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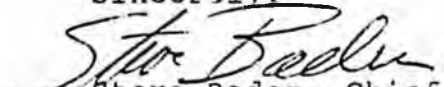
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Alaska State Home Builders Association

Gregory L. Jones
National Representative



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

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

TO: Senator Mike Szymanski, Chair
Senate Community and Regional Affairs Committee

FROM: Representative Kay Brown

DATE: February 28, 1990

SUBJ: CS SS HB 358 (Fin) - Minimum Thermal Energy Standards

I want to take this opportunity to provide you with some background information on CS SS HB 358 (Fin), legislation that would require future new housing built with state financial assistance after December 31, 1990 to meet at least minimum energy efficiency standards.

The Need for Minimum Thermal Energy Standards

Nearly all states have some form of minimum standard. It is ironic that, Alaska -- the state with the most extreme cold-weather temperatures and the highest heating costs in the nation -- is without even minimum energy efficiency requirements. The arguments in support of minimum standards are compelling:

- A survey of eight rural villages found that 16 to 37% of family income is spent on energy while a 1988 "Alaska Rural Housing Needs Assessment" found that 36% of rural homes could not maintain an indoor temperature of 70 degrees during the cold winter months.
- An audit of 714 HUD housing units concluded that "projects are being developed that are infeasible, improperly designed, and inadequately constructed" noting that many of the the rural housing units being constructed were generally unsuited for the harsh Alaskan environment (in some homes interior walls were sheathed in ice during the winter).
- The State of Alaska is the financier (and now owner through AHFC) of thousands of repossessed residential properties. Due to poor building

practices these REOs have required substantial funds to repair and upgrade simply to make them marketable.

- Typical home buyers do not have -- nor can they reasonably be expected to have -- the kind of technical expertise necessary to determine whether a home has been built to reasonable energy efficiency standards.

A point worth emphasizing is that under HB 358 the state minimum thermal standards *would apply only to future new homes built with state financial assistance* (homes built "out-of-pocket" or financed without state assistance would not be subject to the standard.)

Legislative History of the Alaska Thermal Energy Standard

In 1980, the Alaska Legislature recognized the need for minimum energy efficiency standards by enacting Chapter 83 SLA 1980. This legislation provided for the development and adoption of minimum thermal and lighting standards (AS 46.11.010 -.900) for new structures built with "state financial assistance." Between 1983 and 1988, the Department of Community and Regional Affairs undertook an extensive public process with the help of an Advisory Committee that included representatives of the housing industry to develop an appropriate "regionalized" Alaska standard for new state-financed residential construction.

During the formulation of the standard by the Advisory Committee a clear choice was made to recommend a truly *minimum* energy standard that a number of builders were already building to in a given region in order to assure that the standard would not cause a disruption in the marketplace. Ultimately, the advisory committee developed a consensus recommendation concerning a proposed minimum standard. However, just prior to the standard becoming effective last year a lawsuit was filed that exploited a drafting oversight in the original 1980 law.

Briefly, although the original 1980 legislation clearly stated the Legislature's intent to establish "mandatory energy efficiency standards for buildings purchased or constructed with state financial assistance" (emphasis added), the language actually codified into law only referenced financing "for the construction of" new structures. Due to this drafting oversight, the Superior Court ruled that the standard should apply only to state financial assistance in the form of direct construction lending. Pending appeal to the Alaska Supreme Court, implementation of the Standard has been enjoined. HB 358 was introduced to reaffirm the clear legislative objective of requiring that new homes financed through AHFC meet at least minimum thermal standards.

CS SS HB 358 (Fin)

In summary, CS SS HB 358 (Fin) would:

- explicitly reaffirm the original 1980 intent of the legislature that minimum thermal standards apply to homes constructed, as well as those financed through AHFC, with state financial assistance;
- make it clear that the thermal standards apply only to future new homes built with state-financial assistance homes (i.e., construction starting after December 31, 1990); and
- explicitly identify several alternative means by which builders can demonstrate compliance with the standard, including self-certification.

Assuming CS SS HB 358 (Fin) passes this session, the Department of Community and Regional Affairs would develop and adopt a new minimum standard by way of regulation. This public process will afford an opportunity for all affected parties to participate in the formulation of the minimum standard.

It should be noted that a substantial number of Alaska homebuilders already construct homes that meet or exceed the proposed state minimum standard that had been developed by DCRA prior to the lawsuit. These builders have expressed strong support for the standard, particularly because a minimum standard will help put quality homebuilders on a "level playing field" relative to less conscientious builders.

To put the proposed state minimum standard developed by DCRA into perspective, for Anchorage gas-heated homes, the minimum insulation requirements under the proposed state standard are nearly identical to HUD's Minimum Property Standards (MPS). It should also be noted that significantly higher insulation levels for Anchorage homes are recommended in the most recently published industry developed standard published by the American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE, March 1989 - 90.2P). A comparison of these various standards is attached.

In any case, passage of CS SS HB 358 (Fin) would require that the state minimum thermal standard be developed anew. This would mean that a new standard (presumably building on the extensive work already done to date) would be developed by the Department of Community and Regional Affairs by regulation with full public participation. One possibility I have been exploring with the Alaska State Homebuilders Association is amendment of the bill to formally create, in statute, an advisory committee to help with the development of the new standard. This advisory committee would include

representatives of the homebuilding industry to ensure that any standard adopted is reasonable and workable.

Another possibility I have been considering is establishment of an "early adopter" incentive program. In concept, the early adopter proposal would include:

- postponing the effective date of the thermal standards from December 31, 1990, as currently proposed in CS SS HB 358 (Fin), to December 31, 1991;
- creation of a thermal standards Early Adopter Program and early adopter incentive awards of \$1,500 for homebuilders that voluntarily meet the state thermal standard prior to the minimum standard taking effect, i.e., in the case of new homes constructed after passage of CS SS HB 358 (Fin) and before December 31, 1991; and
- a one-time appropriation of \$250,000 to provide a total of 167 grants (at \$1,500 each) to qualifying "early adopter" builders.

This "early adopter" program would provide builders with the incentive to learn how to meet the standard during the year before it took effect and would help to offset the incremental costs some builders will face in meeting the new standard relative to their current building practices.

As you can see by the attachments, CS HB 358 (Fin) has broad support from all across the state. During the most recent House Finance Committee hearing, builders from Nome to Sitka testified in unanimous support of the bill and the need for minimum thermal standards. I have also provided excerpts of testimony and comment from various builders and other housing professionals that endorse this legislation and the need for minimum thermal energy standards.

Finally, although we can not rectify many of the housing problems that have resulted from poor building practices in the past, we can make a new start in the 1990s.

I look forward to working with you on this legislation.

attachments

2/9/90
Rep. Kay Brown

**BUILDER AND HOUSING PROFESSIONAL COMMENT
IN SUPPORT OF
HB 358 - MINIMUM THERMAL ENERGY STANDARDS**

AHFC has been committed to the development of energy standards for new construction. Staff members have been working with DCRA from the very outset. We served on the Advisory Committee which assisted in the development of the recommended standards.... We believe the standards are a necessity to help ensure a better housing stock for Alaskans as well as provide homeowners with the potential for lower fuel bills.

Tom Behan, Executive Director
Alaska Housing Finance Corporation

The Alaska State Legislature should enact legislation to restore clear legal authority for the implementation of appropriate minimum thermal standards, based on regional differences, for newly constructed state-financed housing.

Housing Policy Development Committee
Alaska Housing Market Council

At Anchorage Neighborhood Housing Services we have had many occasions to inspect housing units as part of our requirements for lending and in conjunction with our construction assistance programs. There exists a great need for improvement to minimum thermal standards in most of the existing housing stock in Anchorage.

Cynthia A. Parker, Executive Director
Anchorage Neighborhood Housing Services, Inc.

As a builder of energy efficient homes in the Fairbanks area for many years which without exception exceed the State Energy Standard, I feel that [HB 358] will tend to put conscientious Alaskan builders on an even playing field with the fly-by-night contractors from outside who don't know how to build in this environment and, in some cases, don't care.

Mike Musick
Ester Construction
Ester, Alaska

As a builder, I am intimately familiar with what it takes to build appropriately for the Alaska climate. I know we can do better for the people of Alaska than we have in the past.... My own building practices meet or exceed the State minimum energy standard. Other builders should be doing the same.

Ralph W. Brodin, Owner
EE/CC General Contractors
Girdwood, Alaska

During the past two years I have built several homes in the Homer area that meet or exceed HB 358's energy standards. I counsel every one that I build for that an energy efficient house is not only healthy and comfortable but also a good investment because of energy savings.

David Ellington
Ellington Construction
Homer, Alaska

As the American Institute of Architects/Alaska Chapter representative on the Advisory Committee for the [state standard] I was impressed by the participation of all Alaska building industry's sectors.... [The standards] are reasonable and reflect logical and climatic conditions for each region of the State.... Too often builders have sought short term practices through the use of inadequate building practices at the expense of long term operation and maintenance costs.

Robert Balivet, AIA
McGlothlin Balivet Co. - Architects & Planners
Anchorage, Alaska

I am an architectural designer and have been involved in the design and construction of several homes that exceed the minimum energy standards. I am very knowledgeable about the building science and practices that ensure a comfortable, healthy, and energy efficient home. I am also aware of the very slow pace in which the building trades adopt new methods and materials... In order to improve the comfort and quality levels of our housing stock, we simply need HB 358.

James A. Dory
Dory and Associates
Nome, Alaska

As a building official of a major Southeast Alaska community, I have been involved with the entire public development of the standards [The standards] are technically sound, reasonable in their scope and practical in their nature and application.

Harry Chartier, Building Official
City and Borough of Sitka

[T]he minimum insulation requirements between the proposed State of Alaska "Energy Standard" for gas heated dwellings in [the] Anchorage area and HUD's MPS [Minimum Property Standards] are nearly identical. The major differences between the two is the state proposes to quantify acceptable infiltration losses and ventilation requirements. We believe that this is a positive step in establishing building performance criteria.

Arlene Patton
U.S. Housing and Urban Development
Anchorage Office - Region X

[T]here must be some inducement to encourage builders to maintain certain standards since businesses tend to stay with the old easy less expensive methods. We are just finishing a new home built to meet or exceed ACHP [Alaska Craftsman Home Program] specs which are more stringent than the proposed State standards.

David T. Thompson
Fairbanks, Alaska

The lack of thermal standards in the past provides the Low-Income Weatherization Program here in the Fairbanks North Star Borough with a seemingly endless supply of rapidly deteriorating high-energy-use dwellings...in need of so much more than the [weatherization] program can provide that the measures often become a band-aid approach to a terminal wound.... There is no reasonable excuse to perpetuate the supply of inadequately constructed buildings.

Robert Maxwell
S.I.H., Inc. - Weatherization
Fairbanks, Alaska

The average homebuyer knows very little, if anything, about energy efficient home design.... Yet they will live in these homes and pay the bills for them ever after.... In our design practices we always strive to meet or exceed the State minimum energy standard. Other architects should be doing the same.

Ronald Bisset and Andrew Simasko
Architects Bissett/Simansko
Palmer, Alaska

I view this legislation [HB 358] as critical to the future of our states' building industry in that it will enable Alaska residents to finally receive thermal value in housing that is appropriate to the diverse climate zones of our great state. As a member of the National Association of Home Builders (NAHB) I am aware of attempts by many of our members to stall implementation of these standards and wish to clarify that there is not in any way a consensus to this effect.

Philip Loudon
Arctic Technical Services
Fairbanks, Alaska

As a four year member of the Alaska Home Builders Association, I would like you to know that I support the Thermal Standards as written and their original intent. One of the reasons I especially liked the original implementation of the Alaska State Thermal Standards is they were not mandatory [and only apply to housing using] Alaska public funds.

C.R. Deer
Alaska Window
Fairbanks, Alaska

Even though the standards will eventually help the construction trades, the industry is taking a short-term viewpoint by delaying implementation.... [further delay] is really unnecessary and only focuses on special interest groups who voice objections... Once again, Alaska is lagging behind the nation in implementing a rational energy policy.

Raj Bhargava, MSME
Raj Bhargava Associates - Engineering in Alaska

2/16/90
Rep. Kay Brown

HB 358 - Minimum Thermal Energy Standards
Endorsements and Statements of Support

Alaska Center for the Environment
Alaska Community Development Corporation (Anchorage)
Alaska Federation of Natives
Alaska Health Project
Alaska Housing Finance Corporation
Alaska Housing Policy Development Committee
Alaska Public Interest Research Group
Alaska Rural Electric Cooperative Association
Alaska State AFL-CIO
Alaska State Employees Association
Alaska Village Electric Cooperative
Alaska Wilderness Alliance
Alaska Wildlife Alliance
Alaska Window (Fairbanks)
Alaska Chapter Sierra Club
Analysis North/Alaska Utility Consumer Advocate
Anchorage League of Women Voters
American Lung Association of Alaska
Anchorage Daily News
Anchorage Neighborhood Housing Services, Inc.
Anchorage Recycling Center
Architects Bisset/Simansko (Palmer)
Arctic Technical Services (Fairbanks)
Barrow Utilities and Electric Cooperative
Brandywine Homeowners Association (Eagle River)
Cedar Park Condominium Association (Anchorage)
Chugach Electric Association (Anchorage)
City and Borough of Juneau
City of White Mountain
City of Brevig Mission
City of Nome
City of Koyuk
City of Shishmaref
City and Borough of Sitka
Denali Citizens Council
Dick Mueller Realty, Inc. (Kenai)
Dinyee Village Corporation (Stevens Village)
Dory and Associates (Nome)
Ellington Construction (Homer)
ENSTAR Natural Gas Company (Anchorage)

Ester Construction (Fairbanks)
Fairbanks North Star Borough
Golden Valley Electric Association (Fairbanks)
Greenpeace USA
Kotzebue Electric Association
Heat Loss Analysis, Inc. (Anchorage)
Home Energy Service (Juneau)
Kachemak Bay Conservation Society
Kodiak Island Mayors League
Low-Income Weatherization Policy Advisory Committee
McGlothlin Balivet Co. - Architects & Planners (Anchorage)
National Audubon Society
North Slope Borough
North and Northwest Alaska Mayors Conference
Nushagak Electric Co-operative, Inc. (Dillingham)
Older Alaskans Commission
Older Persons Action Group, Inc.
Raj Bhargava Associates/Engineering in Alaska (Anchorage)
Rotecki, Bill (Ketchikan)
Rural Alaska Community Action Program
Second Annual Rural Energy Conference Resolution
S.I.H. Inc. Weatherization (Fairbanks)
Southwest Alaska Municipal Conference
State of Alaska Energy Policy Task Force
Thermo-Kool of Alaska, Inc. (Anchorage)
Thompson, David (Fairbanks)
Tlingit & Haida Regional Electrical Authority
Trustees for Alaska
U.S. Department of Housing and Urban Development
Western Alaska Building and Construction Trades Council

2/13/90
Rep. Kay Brown

COMPARISON OF MINIMUM THERMAL STANDARDS
Anchorage Gas-Heated Homes

	<u>STATE*</u>	<u>HUD MPS</u>	<u>FHA</u>	<u>ASHRAE 90**</u>
Ceilings	R 38	R 38	R 38	R 50
Walls	R 18	R 20	R 25	R 23.3
Floors	R 19	R 20	R 22	R 30.3
Windows	R 2.1 - 4 ⁽¹⁾	R 2.13	R 2.6	R 2.44
Doors	R 7 (one 2.5)	R 3.12	R 5	R 7.14

* proposed state standard

** American Society of Heating, Refrigerating and Air-Conditioning Engineers
"Energy Efficient Design of New Low-Rise Residential Buildings" (March 1989)

(1) under proposed state standard, variable according to window area as % of wall area.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Community & Regional Affairs
 Title: "An Act..thermal & lighting energy standards..." BRU: _____
 Sponsor: Reps Brown, M.Davis, MacLean, etc Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

There is no fiscal effect for FY 90.

Prepared by: *Jim Pearson* Phone: 465-4750
 Division: Municipal & Regional Assistance Date: 2/2/90
 Approved by Commissioner: *David G. Holmes* Date: 2/2/90
 Agency: Community & Regional Affairs

Distribution (by preparer) :

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

Alaska State Legislature

Al Adams
District L

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Juneau, Alaska 99811
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P.O. Box 333
Kotzebue, Alaska 99752
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3111 C Street
Anchorage, Alaska 99503
(907) 561-7622

Official Business

TO: Senator Mike Szymanski, Chair
Community and Regional Affairs Committee

FROM: Senator Al Adams *AA*

RE: CS for SS HB 358 (Finance) "An Act relating to minimum thermal and lighting energy standards; and providing for an effective date."

DATE: March 1, 1990

This memo suggests amendments to the aforementioned legislation if the bill is scheduled.

The amendments have a dual purpose. They avert a potential problem in the future if the Alaska Craftsman Home Program becomes extinct. They also provide the opportunity for alternatives to this program that may be more readily available in rural areas.

I appreciate your consideration.

A M E N D M E N T

OFFERED IN THE SENATE

BY SEN. ADAMS

TO: CSSSHB 358(Fin)

Page 6, line 8, after "Program":

Insert "or an equivalent training program"

Page 6, line 14, after "Program":

Insert "or an equivalent training program"



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

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

March 15, 1990

Gregory L. Jones, President
Alaska Diversified Properties
P.O. Box 196769
4100 West International Airport Road
Anchorage, Alaska 99519-6769

Dear Greg,

Steve Baden provided me with a copy of the material that you developed outlining possible amendments to CS SS HB 358 (Fin). Based on my understanding of the concerns you have expressed, and working with the concepts you provided to Steve Baden, I have attempted to draft language that responds to your concerns (enclosed).

As you know, *passage of this legislation will have the effect of requiring a new state standard to be developed and adopted through the regulation process.* In this context, I have drafted possible amendments to the legislation to ensure that the homebuilding industry is directly involved with the development of the standard and also prepared language that specifically addresses the issue of cost-effectiveness. Language to establish the "early adopter program" is also provided. More specifically, these amendments would:

- establish a Residential Energy Standards Technical Advisory Committee, with designated "seats" for homebuilder representatives from across the state, to guide the formulation of the new state minimum thermal standard (after adoption of the standard, the committee would review the standard every two years and recommend appropriate changes);
- amend language in current law at AS 46.11.040 to explicitly require that "specific consideration be given to the availability of inexpensive home heating energy sources" (i.e., natural gas) when making the determination as to whether the standards are economically justifiable;
- add language to ensure that the standard is cost-effective by requiring that incremental costs attributable to the standard is reflected in the value added by the energy efficiency improvements; and

- establish the "early adopter" program, defer the implementation of the standard for one year, and make \$1,500 incentive award payments to builders that voluntarily meet the standard during this period.

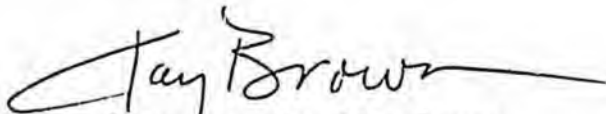
While these amendments take a somewhat different approach than the suggestions you have conceptually outlined, I think you will find that this language responds directly to the fundamental need you have identified to ensure the "reasonableness" of the standard by:

- 1) providing for an active role on the part of the homebuilding industry in the standard development process;
- 2) adding language to ensure that the standard be reasonable and cost-effective, including specific consideration of low-cost gas; and
- 3) by providing an incentive, through the "early adopter" program, to assist builders through the initial transition period.

As you are aware, CS SS HB 358 (Fin) passed through the House with a strong bi-partisan vote and the legislative record clearly shows that this legislation has enormous statewide support. I feel that the bill in its present form is a responsible and defensible measure. Nevertheless, in the spirit of cooperation and compromise and in the genuine hope of enlisting the support and assistance of the homebuilding industry as represented by Alaska State Homebuilder's Association, I would be willing to offer these amendments to the bill during its consideration in the Senate Community and Regional Affairs Committee, but only if I can be assured that the Association will actively support the legislation thereafter. (In particular, the addition of the "early adopter program" amendment has substantial fiscal implications and I will need your wholehearted support if we are to succeed in securing an appropriation for this part of the package.)

As you know, the bill has been scheduled for hearing in the Senate C&RA Committee on March 22nd. It is my hope that we can quickly reach a consensus before that time so that we can apply our collective efforts toward passage (and funding) of this legislation.

Sincerely,



Representative Kay Brown

cc: Bob Peterson
Randy Niklas
Tony Doyle

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSSHB 358 (Finance)

Page 9, line 4, after "affairs":

Insert "after consultation with the Residential Energy Standards Technical Advisory Committee established under AS 46.11.045"

Page 9, following line 7:

Insert a new bill section to read:

"* Sec. 7. AS 46.11 is amended by adding new sections to read:

Sec. 46.11.045. RESIDENTIAL ENERGY STANDARDS TECHNICAL ADVISORY COMMITTEE. (a) To assist with the development and review of the thermal standards developed under AS 46.11.040, the commissioner shall establish a Residential Energy Standards Technical Advisory Committee and appoint its members. The advisory committee is composed of 18 members and must include

(1) a homebuilder, residential building contractor, or other person who is actively engaged in the construction or sale of residential homes from each of the following regions of the state:

- (A) Anchorage and the Matanuska-Susitna Borough;
- (B) Kenai Peninsula Borough;
- (C) Bristol Bay-Kodiak-Aleutian Islands;
- (D) Fairbanks and Interior Alaska;
- (E) Southeast Alaska;

- (F) Southwest Alaska;
- (G) Northwest Alaska;
- (H) the Arctic Slope;
- (2) a representative of the Department of Housing and Urban Development;
- (3) a representative of the Alaska Housing Finance Corporation;
- (4) a representative of the Alaska Craftsman Home Program;
- (5) a representative of the Energy Rated Homes of Alaska Program;
- (6) a residential real estate appraiser;
- (7) a health professional with expertise in the area of indoor air quality;
- (8) a building official employed by a municipality;
- (9) a registered architect or engineer with experience in energy efficient building design and construction techniques;
- (10) a representative of the University of Alaska Energy Extension Service; and
- (11) a representative of residential home buyer consumer interests.

(b) A member appointed to the advisory committee established in (a) of this section serves a three-year term.

(c) The advisory committee appointed under (a) of this section shall assist the commissioner in the preparation of the thermal and lighting standards and, after initial adoption of the standards, review the standard every two years and make recommendations to the