

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672

6766 HOUSE COMMUNITY & REGIONAL AFFAIRS

Section-by-Section Analysis

HB 223

By Bob Ward
Assoc. General
Contractors

An Act permitting the state or political subdivisions
of the state to enter into project labor agreements

lines 4 - 8
page 1

This section requires the Labor Relations Agency to adopt regulations to carry out section 2 of this Bill. Note: While the Labor relations Agency is given the power to adopt regulations relating to project labor agreements ("PLA"), PLAs are not within the enumerated power of the agency stated in AS 36.05.370.

lines 9 - 13
page 1

This section sets forth the alleged purpose of the bill. There is no indication that industrial harmony suffers now or that it will continue to suffer without this bill; nor is there any showing that public agencies will be able to "make optimal use of their construction resources" as a result of this bill.

line 14 pg 1
through
line 21 pg 2

This section allows the state or a political subdivision to enter into a PLA with a labor union whether or not that union is a majority status labor organization or represents a majority of the workers in the area. In effect this allows a state agency or political subdivision to negotiate a PLA which may preclude some Alaskan contractors from bidding on particular projects. At a minimum the PLA will affect the labor relations and productivity of the contractors bidding the job.

Additionally, a PLA may require contractors to hire through the union labor hiring halls and provide for a priority system of referrals. In effect this provision allows the state to participate in a

system of discrimination against Alaskan workers who do not belong to a union or Alaskan workers who do not belong to a particular union;

For example, Alaskan's who presently are not members of a union (or the "right union") would be at the bottom of union referral list; practically speaking work would not be available to them. Even if a non-union worker were to become employed under a PLA then approximately \$7.00 out of every hour's wage would be paid to union pension and health and welfare plans the benefits of which the employee would not be entitled. In other words, the union pension plans and health and welfare plans will receive a windfall as a result of these project labor agreements.

Additionally; employees of a construction company may be members of a union which is not signatory to the PLA. These employees will be disenfranchised and unable to be represented by the organization of their choice.

Finally, the state or a political subdivision that is signatory to a PLA may be responsible for the contributions to the union trusts if a contractor fails to make those payments.

lines 22 - 24
page 2

This provision is quite unclear. It is not common for the owner to retain control over the labor relations between a construction contractor and its employees. During testimony on SB 95, IBEW counsel stated the language was necessary for the state to maintain "substantial control" or the Act would be subject to federal preemption. Unfortunately, this language is totally contrary to the concept of construction contracting. A contractor bids a hard dollar amount to construct a project in accordance with plans and specifications. The plans and specifications require the use of certain materials and the finished project must meet certain criteria. However, the contractor is given the freedom and the responsibility to employ the means and methods of staffing its work force and constructing the finished product.

According to this language the state or a political subdivision shall control the standards of performance for all persons working on the project

covered by the agreement. No longer will the contractor be able to determine if an employee is performing unsatisfactorily---the state will make that determination. No longer can a contractor direct the manner or means an employee uses in performing his work---the state will undertake that responsibility. Such a provision will simply open the door for claims by contractors for extras and impact costs because of state interference with the means and methods of construction.

lines 25 - 28
page 2

This provision is unclear. Testimony on SB 95 by IBEW declares this to be an application of "principles of good faith" found in the Public Employment Relations Act ("Act"). However, an examination of the incorporated provisions is less obvious.

AS 23.40.070 is the declaration of policy for the Act which is limited to public employees' right to organize, requiring public employers to negotiate, and maintaining a merit-system for public employees. Either this AS 23.40.070 is totally inapplicable or it may require a public employer to enter into negotiations with a union for a project labor agreement. IBEW testified on SB 95 that a PLA would be voluntary.

AS 23.40.110 defines certain unfair labor practices in the context of public employment. Incorporating AS 23.40.110 into HB 223 is confusing because HB 223 does not pertain to public employment. Thus, AS 23.40.110 is either inapplicable or may be incorrectly applied. For example, is it an unfair labor practice to refuse to bargain collectively for a project labor agreement?

AS 23.40.120 - 23.40.150 empowers the labor relations agency to investigate complaints, issue orders, and hold hearings. By incorporating these provisions into HB 223, does the state labor relation agency obtain jurisdiction over a private employer working under a PLA? What is the budget impact on the agency?

AS 23.40.190 provides for mediation in the

negotiation of labor agreement terms and conditions. The reason for incorporating this provision in HB 223 is unclear. Mediation is often used when an impasse is reached in the negotiation process. If impasses are contemplated in the negotiation of PLAs then public agencies will be spending considerable time and money negotiating these agreements. Also, by implication, providing for mediation on the terms and conditions of a PLA is consistent with a mandatory requirement that the state negotiate PLA's with unions.

line 29, pg 2
through
line 5, pg 3

This section sets the maximum term for a PLA and requires the PLA to include a grievance procedure with binding arbitration as a final step. "Either party" may enforce the agreement by petitioning the Alaska labor relations agency. "Either party" presumably is the union or the state and not the contractor. The state may find itself in a position where the union is seeking enforcement of a labor provision which if upheld could precipitate a claim under the construction contract by the contractor.

lines 6 - 7
page 3

This section requires the Alaska labor relations agency to adopt regulations under the Administrative Procedures Act. Has a budget been submitted for this process?

lines 8 - 10
page 3

This section declares that contractor employees are not employees of the state or a political subdivision.

lines 11 - 12
page 3

This section declares that a PLA is not an election. Of course, if there was an election and the contractor's employees chose to be represented by a different union than one signatory to the PLA, then those employees would still continue to pay dues and fringe contributions to the union signatory to the PLA with the state.

lines 12 - 14
page 3

This section exempts the application of the procurement code.

lines 15 - 16
page 3

This section exempts the application of Alaska's Anti-trust provisions.

lines 17 - 21
page 3

These sections are redundant exemptions to the procurement code and anti-trust provisions.

April 2, 1991

The Honorable Jerry Mackie, Chairman
House Community & Regional Affairs
State of Alaska House of Representatives
P. O. Box V
Juneau, Alaska 99811

RE: HB223

Dear Representative Mackie,

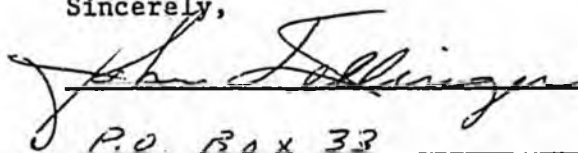
I feel that the above legislation allowing the State to enter into project labor agreements with labor organizations on public construction projects would be highly detrimental to everyone concerned, including labor, management and the public.

First, it seeks to equate union hire with local hire and thereby associates open shop contractors with non-local hire. This inference is simply not true and a great disservice to Alaskan open shop businesses. Second, it allows public employers to force employees into involuntary union membership. Finally, and most importantly, it could severely limit or eliminate competitive bidding on publicly funded construction projects. I believe strongly in the principle of free and open competition in bidding and obtaining public work. It provides the best quality services for the lowest costs, and to pretend otherwise is simply bad public policy.

As an Alaskan construction worker, I recognize the short and long term economic benefit of hiring Alaskans, but I cannot understand why Alaskan legislators would even consider placing non-union Alaskan workers in a position to be excluded from Alaskan public construction jobs.

I strongly urge you to consider the negative consequences of this ill advised and unnecessary legislation and ask that you do not support it in any way.

Sincerely,



P.O. Box 33

SUTTON, AK. 99674

cc: Cheri Davis
Bettye Davis
Richard Foster
Larry Baker
Johnny Gonzales
Gail Phillips

April 2, 1991

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House Community & Regional Affairs
State of Alaska House of Representatives
P. O. Box V
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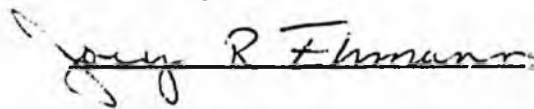
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Sincerely,



Po Box 3323 Palmer AK 99645

cc: Cheri Davis
Bettye Davis
Richard Foster
Larry Baker
Johnny Gonzales
Gail Phillips

April 3, 1991

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House Community & Regional Affairs
State of Alaska House of Representatives
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Sincerely,

Bernard N. Neumann

P. O. Box 355

Palmer, Alaska 99645

cc: Cheri Davis
Bettye Davis
Richard Foster
Larry Baker
Johnny Gonzales
Gail Phillips

April 3, 1991

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House Community & Regional Affairs
State of Alaska House of Representatives
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Sincerely,

Stephanie J. Cass
P.O. Box 873756
Wasilla, AK 99637

cc: Cheri Davis
Bettye Davis
Richard Foster
Larry Baker
Johnny Gonzales
Gail Phillips

April 3, 1991

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House Community & Regional Affairs
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Sincerely,

Chris M. East

P.O. Box 873756

Wasilla, AK. 99687

cc: Cheri Davis
Bettye Davis
Richard Foster
Larry Baker
Johnny Gonzales
Gail Phillips

April 3, 1991

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House Community & Regional Affairs
State of Alaska House of Representatives
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Sincerely,

Yolanda Butcher
P.O. Box 674
Wasilla, AK. 99687

cc: Cheri Davis
Bettye Davis
Richard Foster
Larry Baker
Johnny Gonzales
Gail Phillips

April 3, 1991

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House Community & Regional Affairs
State of Alaska House of Representatives
P. O. Box V
Juneau, Alaska 99811

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Sincerely,

Dale Butcher
POB 694
Wasilla, AK 99687

cc: Cheri Davis
Bettye Davis
Richard Foster
Larry Baker
Johnny Gonzales
Gail Phillips

April 3, 1991

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House Community & Regional Affairs
State of Alaska House of Representatives
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TONI UTT

HC30 Box 5446

Wasilla, AK 99687

cc: Cheri Davis
Bettye Davis
Richard Foster
Larry Baker
Johnny Gonzales
Gail Phillips

Floyd R. Ehmann
P. O. Box 1582
Palmer, Alaska 99645

April 2, 1991

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House Community & Regional Affairs
State of Alaska House of Representatives
P. O. Box V
Juneau, Alaska 99811

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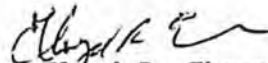
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Sincerely,


Floyd R. Ehmann

cc: Cheri Davis
Bettye Davis
Richard Foster
Larry Baker
Johnny Gonzales
Gail Phillips

Robert W. Ward
10003 Frank Maier Dr.
Juneau, Alaska 99801
(907) 789-3713
OFFICE 443-4474

4/11/91

REPRESENTATIVE MACKIE:

THE SECTION BY SECTION ANALYSIS OF HB223 THAT WAS DELIVERED TO YOUR OFFICE BY BOB WARD WAS PREPARED BY BILL REEVES, AN ATTORNEY DOING WORK FOR THE ASSOCIATED GENERAL CONTRACTORS OF ALASKA. MR. REEVES WILL BE ON TELECONFERENCE FROM ANCHORAGE FOR TODAY'S HEARING.

Bob Ward



Alaska State Legislature

Please enter into the record my testimony to the House Community & Regional Affairs
committee name

committee on HS. 223 , dated April 11, 1991
bill/subject

Brechan Enterprises, Inc. is a union construction contractor in the State of Alaska. We feel this legislation allowing the State to enter into project labor agreements with labor organizations in public construction projects would be highly detrimental to everyone concerned, including labor, management and the public.

1. The legislation requires the political entity to retain substantial control of the means, manner, and standards of performance of all employees on the job. This requirement represents a monumental change in the traditional relationship between the owner and contractor.

2. The political agency and the labor organization could refrain from doing business with a contractor, subcontractor, or other person. In essence, this provision might allow an innocent party to be "blacklisted" from bidding on work subject to a project labor agreement.

3. Wage rates and fringe benefits are defined in the Davis-Bacon Act, and ensure that all Contractors, Union or Non-union, pay the appropriate wages and benefits. If the public sector undertakes to reach Project Agreements with the Union and to make those agreements binding on Contractors bidding and performing State funded projects, our current process of bargaining with these Unions will be subverted which is an integral part of our competitive bid process and free market economy.

Signed: _____

Testifier Michael C. Brechan

Brechan Enterprises, Inc.

Representing (Optional)

2705 Mill Bay Road, Kodiak Alaska 99615

Address

(907) 486-3215

Phone No.

April 3, 1991

The Honorable Jerry Mackie, Chairman
House Community & Regional Affairs
State of Alaska House of Representatives
P. O. Box V
Juneau, Alaska 99811

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Sincerely,

Caselyn B. Hunter
1750 Westmoreland Dr.
Wasilla, Alaska 99687

cc: Cheri Davis
Bettye Davis
Richard Foster
Larry Baker
Johnny Gonzales
Gail Phillips

April 3, 1991

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House Community & Regional Affairs
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Sincerely,

Richard K. Hunter
1500 Chattahoochee Cr.
Wasilla, Alaska 99687

cc: Cheri Davis
Bettye Davis
Richard Foster
Larry Baker
Johnny Gonzales
Gail Phillips

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1750 Westmerchall Dr.

Wasilla, AK 99687

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Bettye Davis
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HC 33 Box 2866

Wasilla, AK 99687

cc: Cheri Davis
Bettye Davis
Richard Foster
Larry Baker
Johnny Gonzales
Gail Phillips



Woodard CONSTRUCTION



907-563-3050

April 12, 1991

Senator Drue Pearce, Chairman
Senate Labor & Commerce Committee
Alaska State Legislature
P.O.Box V, (MS3100)
Juneau, AK 99811

RE: CS SB95

Dear Senator Pearce:

Woodard Construction Company is a bona-fide construction contractor, now in our 40th year of continuous service in the Construction Industry. For the most recent 25 years, we have been a "resident" Alaskan Contractor. We are, and always have been, a "Union Contractor" and have constructed many public projects as you can see from our attached resume. A substantial number of these projects have been in the outlying or "bush" areas. In these remote areas, contractors are encouraged, and often "mandated" to utilize local hire. We believe this is as it should be, because residents of villages and remote areas often have very little opportunity to participate in the economy of this state. They need the income, the work and indeed there are many qualified workers in these areas who are deserving of the work.

In these areas, we have generally been guided by the "Little Davis Bacon Wage Rates." These rates have sometimes provided a real handicap to "local hire," because of the fact that no allowance was made in that wage structure for untrained - totally unskilled workers (we note here that the Federal Davis Bacon Act wage structure has now been modified to allow for the employment of "helpers"). When a contractor prepares his bid for the work, he must prepare it on the basis of utilizing his known skilled workers production capabilities for competitive reasons. (After all, our economy is best served by open and free competition by private enterprise!) But when the contractor has been awarded a contract, he often finds himself and his finances under what amounts to a "state of siege" against him. He has fulfilled all the bidding requirements, non-discrimination, equal opportunity rules and the multitude of other regulations that currently are imposed upon a construction contractor. Then he finds himself further restricted by the imposition of more "rules."

*Copy All CRA
Committee members*

Senator Drue Pearce, Chairman

April 12, 1991

Page 2

Example: The "local-local" hire as imposed by then Governor Cowper in the area above the Yukon River in 1986-87. During that period, Woodard Construction Company bid for and entered into a contract for an addition to the Huslia School. Woodard had been one of five firms competing for this project. We based our bid on production rates known to us.

After the award and signing of the contract, this local-local hire of 97% was imposed upon Woodard Construction. Because of this condition, our total payroll was increased from \$60,000 to \$128,000. More than double our estimate, and, of course, resulting in a direct loss to Woodard Construction Company. We paid "Little Davis Bacon Act" wages, including wages for the Camp Cook (local hire) in excess of \$24.00 per hour.

This is a concrete example of why, for one reason, in our opinion the State has no business entering into the area of free and private enterprise.

We have successfully participated in labor negotiations for 39 years, have never had any labor disputes which resulted in work stoppage-discrimination, time overruns, or product quality deterioration. We do not believe anything can be gained, and much could be lost if the State or any agency thereof were to enter into the business of the free enterprise employer. The public has been served and will continue to be served best under our present system.

Sincerely yours,

C. E. Woodard
C. E. Woodard

CEW/tlp
Ser. 910029

Enclosure

cc: Virginia Collins
Dick Eliason
Rick Halford
Jay Kerttula
AGC of Alaska - Anchorage



BERG CONSTRUCTION CO., Inc.

GENERAL CONTRACTORS

Juneau, Alaska 99802

PHONE
(907) 780-6444

April 12, 1991

Representative Jerry Mackie, Chairman
House Community & Regional Affairs Committee
and Committee Members:

My name is Clifford Berg and I live here in Juneau. I appreciate this opportunity to testify opposing passage of HB 223.

I am President of Berg Construction Co., Inc., an Alaskan Corporation formed here in Juneau in 1937 by my Dad and myself. I have worked throughout Southeast Alaska from Haines and Skagway in the North to Metlakatla in the South and we have performed millions of dollars worth of contracts.

When we first began in 1937, the construction unions were just becoming active in this area and there was quite a scramble between the AFL and the CIO to sign up contractors. As I recall, we ended up with AFL carpenters and laborers and CIO teamsters. We did sign with the unions then and have been signatory to labor agreements all these years and have been known as a "union" contractor. This doesn't imply that we have always seen eye to eye with various union demands but, generally, we have maintained a good rapport with the union leaders. We have also been a member of the Alaska Chapter of the Associated General Contractors of America since 1952. I would like to make the observation that about fifteen years ago, there was only one open shop contractor in the Alaska AGC out of about 120 general contractor members. Presently, there are only a half dozen members out of seventy who have assigned their bargaining rights. Because of this trend toward open shop contractors is probably the reason the unions are making this attempt to gain control of the entire construction industry.

HB 223 is contrary to normal procedure for contracting with a State agency.

No third party, and particularly any labor union, should ever have any authority as to how State money is spent. Allowing a union to decide which contractors may or may not be permitted to bid on State projects is discrimination. This may prevent some Alaskan contractors from bidding on projects unless they have been approved by the union. The union would require employees to belong to, or join, their union. This could place Alaskan workers who did not previously belong to the union at the bottom of the hiring list. Or if they belonged to a union not signatory to this agreement, they would also be at the bottom of the hiring list. We are firm believers in the competitive bidding system in which the Contracting Agency awards a contract to the lowest responsible bidder to construct a project in accordance with the plans and specifications for a specified dollar amount. The Contractor, and the Contractor only, is the sole judge as to the competency of their personnel.

Therefore, I urge you to vote against passage of HB223. Thank you for your consideration.

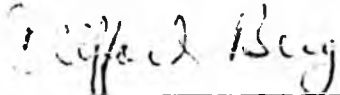
A Pioneer Alaskan Contractor Since 1937

Representative Jerry Mackie, Chairman
House Community & Regional Affairs Committee
and Committee Members

April 12, 1991
Page Two

Sincerely,

BERG CONSTRUCTION CO., Inc.



Clifford Berg, President

CB:p

April 2, 1991

The Honorable Jerry Mackie, Chairman
House Community & Regional Affairs
State of Alaska House of Representatives
P. O. Box V
Juneau, Alaska 99811

RE: HR223

Dear Representative Mackie,

I feel that the above legislation allowing the State to enter into project labor agreements with labor organizations on public construction projects would be highly detrimental to everyone concerned, including labor, management and the public.

First, it seeks to equate union hire with local hire and thereby associates open shop contractors with non-local hire. This inference is simply not true and a great disservice to Alaskan open shop businesses. Second, it allows public employers to force employees into involuntary union membership. Finally, and most importantly, it could severely limit or eliminate competitive bidding on publicly funded construction projects. I believe strongly in the principle of free and open competition in bidding and obtaining public work. It provides the best quality services for the lowest costs, and to pretend otherwise is simply bad public policy.

As an Alaskan construction worker, I recognize the short and long term economic benefit of hiring Alaskans, but I cannot understand why Alaskan legislators would even consider placing non-union Alaskan workers in a position to be excluded from Alaskan public construction jobs.

I strongly urge you to consider the negative consequences of this ill advised and unnecessary legislation and ask that you do not support it in any way.

Sincerely,

Joseph H Spann

J. H. SPANN

HCO3 Box 8102-E

Palmer AK

cc: Cheri Davis
Bettye Davis
Richard Foster
Larry Baker
Johnny Gonzales
Gail Phillips

April 3, 1991

The Honorable Jerry Mackie, Chairman
House Community & Regional Affairs
State of Alaska House of Representatives
P. O. Box V
Juneau, Alaska 99811

RE: HB 223

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I strongly urge you to consider the ^{ne}gative consequences of this ill advised and unnecessary legislation and ask that you do not support it in any way.

Sincerely,

BUSCH CONCRETE CONSL., INC.

P. O. BOX 870854

WASILLA, AK. 99687 376-2125

Ray J. H. [Signature]
Pres.

cc: Cheri Davis
Bettye Davis
Richard Foster
Larry Baker
Johnny Gonzales
Gail Phillips

April 3, 1991

The Honorable Jerry Mackie, Chairman
House Community & Regional Affairs
State of Alaska House of Representatives
P. O. Box V
Juneau, Alaska 99811

RE: HB 223

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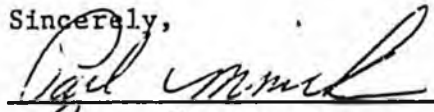
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Sincerely,



P.O. Box 474550

WASILLA ALASKA 99687

cc: Cheri Davis
Bettye Davis
Richard Foster
Larry Baker
Johnny Gonzales
Gail Phillips

April 3, 1991

The Honorable Jerry Mackie, Chairman
House Community & Regional Affairs
State of Alaska House of Representatives
P. O. Box V
Juneau, Alaska 99811

RE: HB 223

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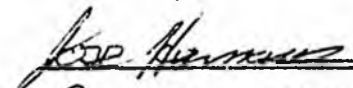
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Sincerely,



P.O. Box 671307

Wasilla AK 99667

cc: Cheri Davis
Bettye Davis
Richard Foster
Larry Baker
Johnny Gonzales
Gail Phillips

April 3, 1991

The Honorable Jerry Mackie, Chairman
House Community & Regional Affairs
State of Alaska House of Representatives
P. O. Box V
Juneau, Alaska 99811

RE: HB 223

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Sincerely,

John W. Merrill

PO Box 870455

Wasilla AK 99687

cc: Cheri Davis
Bettye Davis
Richard Foster
Larry Baker
Johnny Gonzales
Gail Phillips

April 3, 1991

The Honorable Jerry Mackie, Chairman
House Community & Regional Affairs
State of Alaska House of Representatives
P O. Box V
Juneau, Alaska 99811

RE: HB 223

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Sincerely,

Rob Robinson
P.O. Box 871355
Wasilla Alaska

cc: Cheri Davis
Bettye Davis
Richard Foster
Larry Baker
Johnny Gonzales
Gail Phillips

April 3, 1991

The Honorable Jerry Mackie, Chairman
House Community & Regional Affairs
State of Alaska House of Representatives
P. O. Box V
Juneau, Alaska 99811

RE: HB 223

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Sincerely,

William Mackie
Box 8 70211 Juneau Alaska
99811

cc: Cheri Davis
Bettye Davis
Richard Foster
Larry Baker
Johnny Gonzales
Gail Phillips

April 3, 1991

The Honorable Jerry Mackie, Chairman
House Community & Regional Affairs
State of Alaska House of Representatives
P. O. Box V
Juneau, Alaska 99811

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Sincerely,

Neil A. Browne
DBA Wasilla Service Co.
211 No. Knik St - Wasilla - AK

cc: Cheri Davis
Bettys Davis
Richard Foster
Larry Baker
Johnny Gonzales
Gail Phillips

April 3, 1991

The Honorable Jerry Mackie, Chairman
House Community & Regional Affairs
State of Alaska House of Representatives
P. O. Box V
Juneau, Alaska 99811

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Sincerely,

Loren C. Browne
D/B/A/ Wasilla Service Co.
211 N. Knik St. Wasilla AK
99687

cc: Cheri Davis
Bettye Davis
Richard Foster
Larry Baker
Johnny Gonzales
Gail Phillips

April 3, 1991

The Honorable Jerry Mackie, Chairman
House Community & Regional Affairs
State of Alaska House of Representatives
P. O. Box V
Juneau, Alaska 99811

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Sincerely,


PATRICIA Y. CLIFTON

PO BOX 1744

PALMER AK 99645-1744

cc: Cheri Davis
Bettye Davis
Richard Foster
Larry Baker
Johnny Gonzales
Gail Phillips

April 3, 1991

The Honorable Jerry Mackie, Chairman
House Community & Regional Affairs
State of Alaska House of Representatives
P. O. Box V
Juneau, Alaska 99811

RE: HB 223

Dear Representative Mackie,

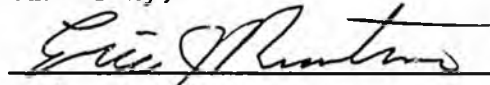
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Sincerely,



Box 154

Houston, AK 99694

cc: Cheri Davis
Bettye Davis
Richard Foster
Larry Baker
Johnny Gonzales
Gail Phillips

JACKSON CONSTRUCTION

241 ASPEN STREET
SOLDOTNA, AK 99669
907-262-4485

April 12, 1991

Representative Gail Phillips
465-3472

This appears to be an effort to circumvent Davis Bacon and or union labor rates.

I can not support any action that tends to drive down rates that I consider already to be at a poverty level.

Private sector construction and trucking rates are extremely low (at the expense of labor). Not only are wages low but the industry is not able to furnish any benefits, i.e., health insurance, retirement, vacation or sick leave, that has become an expected consideration through out the nation. Particularly in government and utilities.

In fact, these same factors are behind the sudden appearance of "jake leg" private contracting that is nothing more than thinly disguised methods to cheat everybody involved, i.e., workmans comp insurance, payroll taxes, federal wage and hour laws, income taxes and yes, even child support laws and collections.

This same public dollar we are talking about stretching by lower contract prices is out of the pockets of labor who ultimately is the public.

A large factor in the national recession is that wage rates are so low that most are not able to participate in our society, i.e., purchase homes, cars, stocks and all the things that lead to general prosperity. This is also a contributing factor for 35-40 million americans with no health insurance.

If you must legislate labor rates, I suggest legislation prohibiting award of any construction or maintenance contract by any public funded entity, that is more than 10% under the architect or engineers estimate.

Nothing the legislature will ever do would be of more direct benefit to the working people of Alaska.

Public employee wage rates and benefits are extremely high compared to the private sector. I do not begrudge them this, in fact they are at a level that lets them participate at a dignified level in our society, that I encourage. Rather than bring these people down to our level, I advocate any measure or action that will elevates all working people to the same level of prosperity.

Harold A. Jackson

A handwritten signature in cursive script, appearing to read "Harold A. Jackson".

FULL LINE DIRT CONTRACTORS

Ross Services
P.O. Box 834
Soldotna, Ak. 99669

Rep. Jerry Mackie, Chairman
House Community & Regional Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, Ak. 99811

Subject: HB223

Dear Representative Mackie:

Ross Services is an open shop contractor in the State of Alaska. I have been a resident of this State for 41 years and a licensed contractor for the last 15 years.

I feel that this legislation allowing the State to enter into project labor agreements with the labor organizations is not in the best interest of everyone concerned, including, Labor, Management and the Public.

This whole thing reeks of a play by the IBEW to dupe the State into signing the same kind of foolhardy and wasteful labor agreements that the IBEW has duped the utilities into signing.

This bill equates union hire with local hire and thereby associates open shop with non-local hire. I can assure you that in my time in the construction industry I have seen this to not be the true scenario. In fact, in a number of cases, I have seen just the opposite with union hire equating to non-local hire.

I believe it would behoove all of you to read the Section by Section Analysis of this legislation (as put out by the AGC).

These public works jobs are bid on by contractors who put their butts on the line every time they bid a job.

Don't be duped into believing that a labor organization with nothing to lose on an over budget job will allow "public agencies to make optimal use of their construction resources".

And as for the State entering into a PLA, give us a break!! This is the same State that gave us the Highway Dept. Have you tried driving on any road in the Kenai, Soldotna, Sterling area lately?

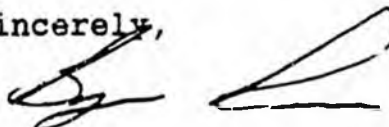
Believe me the State and the labor organizations, thru PLA's are not the best choice for handling "Means", "Manner", or "Performance" of the contractors employees. Leave that to the contractor who has something to lose.

As I stated previously, I work as an open shop. I am an open shop business because my employees want it that way. My employees are Alaska residents and they always will be. They are paid all wages and benefits in cash, which goes back into the local economy. Taking these cash benefits away from them, thru a PLA, will be of no benefit to them or to the economy.

I would strongly suggest that any legislator who would waste his or her time and State dollars on legislation like this should be considered a prime candidate for a Frontal Lobotomy.

It is legislation like this that adds fuel to the Capitol Move Initiative people. If the Legislature can't get it's finger on the pulse of the people, then bring them back close enough for the people to get their hands on the throats of the Legislators.

Sincerely,



Byron Ross, Owner
Ross Services

cc:

Gail Phillips
Cheri Davis
Richard Foster
Larry Baker
Mike Navarre



April 15, 1991

Representative Jerry Mackie, Chairman
House Community & Regional Affairs
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Representative Mackie:

Re: HB 223

When I testified on HB 223 on April 11, I was asked to submit a copy of my comments for the committee. Accordingly, you will find a copy of my remarks on the bill as well as a copy of the first page of the February, 1991, I.B.E.W. newsletter.

Please do not hesitate contacting me if I might be of further assistance on this matter.

Sincerely,

Richard Cattanch

cc: Representative Cheri Davis
Representative Berrye Davis
Representative Richard Foster
Representative Larry Baker
Representative John Gonzales
Representative Gail Phillips

Mr. Chairman, members of the committee.

My name is Richard Cattanach, Vice-President of Unit Company, an Alaskan based union contractor. I appreciate the opportunity to offer some comments on HB 223.

I believe that some of the provisions of the bill present serious areas of concern. First, in Sec 2 (b)(3), which reads as follows;

(3) require the state or a political subdivision of the state and one or more labor organizations representing employees in the building, maintenance, and construction industry to enter into an agreement concerning labor relations on a public construction project, to cease or refrain, or agree to cease or refrain, from handling, using, selling, transporting, or doing business with a contractor, subcontractor, or other person.

By so doing, the political agency and the labor organization could refrain from doing business with a contractor, subcontractor, or other person. In essence, this provision might allow an innocent party to be "blacklisted" from bidding on work subject to a project labor agreement. This provision should be either eliminated or the conditions for implementation clearly set forth.

Second, Sec 2 (c) requires the political entity to retain substantial control of the means, manner, and standards of performance of all employees on the job. This requirement represents a monumental change in the traditional relationship between the owner and contractor. The contractor is traditionally responsible for the means, manner, and standards of performance necessary to prosecute the work in a timely, efficient manner. Historically, the intrusion of the owner into this area of the contractor's responsibility has led to construction claims if the intrusion negatively impacts the contractor in any manner. Such claims are almost always successful, and the responsibilities of the parties are so clearly established by both tradition and law, that owner's representatives clearly avoid any attempt to direct the work of the contractor. This provision should be eliminated or the political entities attempting to use this authority will most likely be forced to defend their actions in court.

Perhaps the greatest concern regarding the intent of the legislation is the stated purpose set forth by the IBEW. In their February, 1991 newsletter, they say, *"This particular piece of legislation is, without a doubt, the single most important bill before the Legislature from labor's construction industry*

affiliates' perspective and, if passed, could truly change the fate of people working in Alaska's construction industry forever. The beauty of the bill is that it promises to secure for Alaska a legal means to insure local hire, The local hire could be predominately union for sure but, with passage of this bill, the state would have granted itself authority to enter into collective bargaining agreements with unions which could require all contractors to secure their employees exclusively through union hiring halls."

I thank you for giving me the opportunity for testifying on this bill and urge you to vote against it.



I.B.E.W. NEWS

February 1991

The Official Publication of Local Union 1547



Volume XIII

PROGRESS - POLITICS - PROMISE

Gary Brooks



The 102nd Congress, which convened January 3, 1991, faces a carry-over list of unfinished business on work-related legislation from the previous Congress, the promise of a major, new initiative in the area of occupational safety and health, and intensified pressure from organized labor to provide job protection to workers who go on strike. Optimistic union officials who see a slight improvement in the political landscape for labor as a result of last November's election also expect the

Democratic leadership to place a high priority on overcoming President Bush's objections to civil rights and family and medical leave legislation, on examining proposals to reform the nation's health care system and on considering necessary modifications to the 1989 law that increased the minimum wage.

Despite Bush's perfect veto record, organized labor enjoyed many victories including Bush's approval of legislation to raise the minimum wage, establish health and safety standards for child care, protect the retirement assets of workers whose pension plans are terminated, prohibit discrimination against the disabled and older workers and prohibit U.S. air carriers from using foreign workers during a strike.

Alaska's 17th Legislature convened on January 21, 1991 and also faces a carry-over list of unfinished business on labor-related legislation from the previous session. IBEW is back before the State Legislature with a request to fix a loophole in the state's overtime law which permits certain employers to work employees seven consecutive days without paying overtime. We have proposed to redefine "work week" so that it consists of any consecutive seven-day period that an individual works, regardless of what day of the week the seven-day shift begins. Now, if an employee begins work on Wednesday and the employer's work week is technically Monday through Friday, the employee can be worked from Wednesday through the following Tuesday without overtime paid for the sixth and seventh days because they will fall into a separate "work week."

We are again working to secure passage of camp bill legislation which would require adequate living quarters be provided workers when state-funded projects are located in rural areas where such facilities are not otherwise available.

But, more importantly, we are again attempting to secure

passage of a bill that would permit the state to enter into pre-hire agreements with single labor organizations or multi-trade associations that, if passed and implemented, would prohibit contractors from bidding state-funded construction work in the absence of union signatory status. This particular piece of legislation is, without a doubt, the single most important bill before the Legislature from labor's construction industry affiliates' perspective and, if passed, could truly change the fate of people working in Alaska's construction industry forever. The beauty of the bill is that it promises to secure for Alaska a legal means to insure local hire. The local hire would be predominately union for sure but, with passage of this bill, the state would have granted itself authority to enter into collective bargaining agreements with unions which could require all contractors to secure their employees exclusively through union hiring halls. When you consider the millions of dollars that are taken out of Alaska annually by non-resident workers and non-resident contractors, this bill, if passed, could be a major victory.

Similar pre-hire legislation was passed last year by the City of Seward which facilitated the negotiation of an agreement between Seward and Local Union 1547 with the same effect. Only contractors signatory to an IBEW agreement can be qualified to bid on the Lawing to Fort Raymond 115KV transmission line under an addendum to the Seward/IBEW collective bargaining agreement. Unfortunately, but as we predicted, our agreement with Seward has been attacked by Aaron Downing, Irby Construction Company, Associated Builders and Contractors, and Associated General Contractors in a lawsuit recently filed in U.S. District Court. Downing has also attacked our subcontracting agreements with Chugach Electric Association, Inc. and Homer Electric Association, Inc. with National Labor Relations Board unfair labor practice charges. Although we are deadly serious about these challenges, we did an enormous amount of preparatory work before we initiated these projects and are thus optimistic that we will prevail.

With the economy pulling out of its previous several year slump, I feel we can begin to look forward to an increase in construction in Alaska. Although we remain skeptical, we are nonetheless optimistic that our new Governor's emphasis on construction should operate to enhance this trend. For the first time in several years, we have negotiated package increases to our Outside Construction agreement and are underway with negotiations for our Inside Construction agreement. Although the work picture has not rebounded as strongly for our Inside electrical industry, we are hopeful that at least we can achieve some long overdue gains for our members working under our Inside Agreement.

In an effort to deal more effectively and forcefully with our upcoming utility elections, we have retained Tom Begich in sufficient time to prepare detailed and constructive plans to insure the success of our endorsed candidates. Likewise, we intend to take an active

(continued on page 2)

April 3, 1991

The Honorable Jerry Mackie, Chairman
House Community & Regional Affairs
State of Alaska House of Representatives
P. O. Box V
Juneau, Alaska 99811

RE: HB 223

Dear Representative Mackie,

I feel that the above legislation allowing the State to enter into project labor agreements with labor organizations on public construction projects would be highly detrimental to everyone concerned, including labor, management and the public.

First, it seeks to equate union hire with local hire and thereby associates open shop contractors with non-local hire. This inference is simply not true and a great disservice to Alaskan open shop businesses. Second, it allows public employers to force employees into involuntary union membership. Finally, and most importantly, it could severely limit or eliminate competitive bidding on publicly funded construction projects. I believe strongly in the principle of free and open competition in bidding and obtaining public work. It provides the best quality services for the lowest costs, and to pretend otherwise is simply bad public policy.

I recognize the short and long term economic benefit of hiring Alaskans, but I cannot understand why Alaskan legislators would even consider placing non-union Alaskan workers in a position to be excluded from Alaskan public construction jobs.

I strongly urge you to consider the negative consequences of this ill advised and unnecessary legislation and ask that you do not support it in any way.

Sincerely,

MARK E. JAMES HULL
W.C. 30 BOX 5325A
WASILLA, AK 99687

cc: Cheri Davis
Bettye Davis
Richard Foster
Larry Baker
Johnny Gonzales
Gail Phillips



H. C. PRICE
CONSTRUCTION CO.

471 W. 36th, Suite 201, Anchorage, Alaska 99503
Telephone (907) 581-4400, Telecopy (907) 583-3255
Telex 090-25370

April 18, 1991

VIA FAX NO. 463-5661

The Honorable Jerry Mackle
State House of Representatives
P. O. Box 7
Juneau, Alaska 99811

Subject: CS for SB 95 and HB 223

Dear Representative Mackle:

My firm is a large and well established construction firm in Alaska. We have been here since 1974 and have participated in many major projects beginning with construction of the Trans Alaska Pipeline and including the almost completed Bradley Lake Powerhouse.

Our firm negotiates Project Labor Agreements or is signatory to Geographical Labor Agreements which have been negotiated by construction industry organizations such as the North Slope Contractors Association, the TAPS Contractors Association, and the Pipe Line Contractors Association.

We are currently performing the \$32 million Bradley Lake Powerhouse under a Project Labor Agreement negotiated between the successful contractors and the local unions. The PLA is working fine and does not put the State at risk since they are not party to the Agreement.

We oppose the subject bills on the grounds that the state has no business in a contractor's labor relations.

Labor Unions are fine organizations, however, they are notorious for trying to achieve their goals through political means rather than competing in the market place. Please do not help them further their goals at the expense of the private construction industry and by placing the citizens of the State of Alaska in the position of having no choice in the matter.

The passage of either bill would restrain trade and would unnecessarily increase the cost of all work performed under such a law.

Very truly yours,

H. C. PRICE CONSTRUCTION CO.

W. P. Nason
Wesley P. Nason @
Vice President & General Manager

WPN/rh/126

ROCKFORD CORPORATION

GENERAL CONTRACTORS

PIPELINE CONSTRUCTION

Phone (907) 344-4551

April 12, 1991

P.O. Box 111706
Anchorage, Alaska 99511

TANK ERECTION

FAX (907) 344-2130

Representative Jerry Mackie, Chairman
Community & Regional Affairs Committee
P.O. Box V
Juneau, AK 99811

Subject: House Bill 223

Dear Representative Mackie:

Rockford Corporation, an Alaskan corporation, has been performing work as a Union Contractor throughout Alaska for over twenty (20) years, with individual projects ranging in size to over ten (10) million dollars, for the Navy, Corps of Engineers, Air Force, Coast Guard, AIDEA, Cominco Alaska, BP Exploration, ARCO, and several other public and private owners, including the Municipality of Anchorage, Butler Aviation, and many others.

There are many aspects to the relationship between a contractor and a union, which are established through the collective bargaining process, either directly between the contractor and the union or between the authorized contractors' organization and the respective union. Some of the aspects involved include not only the hourly wage rate, fringe benefits, travel and subsistence, apprenticeship, work rules, crew size and make-up, coffee breaks, lunch breaks, overtime pay, shift hours and differential, rules for hiring, layoffs and firing, show-up time, supervisory authority, transfer of employees, responsibilities of stewards to work in a productive manner, dues check-off and other reporting requirements, but also many other subtle aspects which affect the welfare of the workers as well as the rights of the contractor to perform the work in a safe, productive, competitive manner.

Beside the unions, only the Contractor can truly understand these relationships, because beside the unions, only the Contractor has to live with all the clauses of the respective Collective Bargaining Agreement. The project Owner will inevitably look to the Contractor for competent, timely completion of the project at the lowest competitive price, to the standards and quality required by the plans and specifications.

If a project Owner or bureaucrat negotiates agreements with the unions and then imposes these agreements on the Contractor, the result will most certainly be higher project costs due to restricted competition and the reduced ability of the Contractor to control his work. Such a process would also water down the Contractor's ability to control adherence to safety and environmental requirements, for which the Contractor is held responsible by the respective State and Federal agencies involved, as well as the Owner itself.

House Bill 223 would unfairly restrict competition, not only by eliminating non-union contractors, but also tipping the balance toward any favored union contractors who do not object to whatever agreements the bureaucrats and the unions come up with. The potential result would be that the unions would be in a position to influence which contractors would realistically be able to perform on public construction projects. The contractor would merely be the vehicle through which the bureaucrat runs the project and deals with the union. Such agreements would have a ripple effect on private construction work.

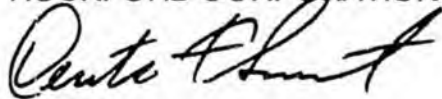
House Bill 223 would also have the effect of eliminating the right of construction workers to decide for themselves whether or not they wish to be represented by a union on public construction work.

If House Bill 223 passes, you might as well eliminate the Contractor from the construction process, and open wide the public pocketbook. The sponsors of this disastrous bill should try to actually build a job as a project manager, and then see if this bill makes any sense.

ROCKFORD CORPORATION respectfully requests that this bill be filed where it belongs - in the circular vertical file.

Very truly yours,

ROCKFORD CORPORATION



Dexter F. Smith
VP/General Manager

DFS/GRS/ps

cc: Representatives C. Davis, B. Davis, Foster, Baker, Gonzales, G. Phillips, Ellis, Navarre, Koponen, Gruenberg, Brown, Finkelstein, Boyer, Moyer
Jim Lane - Executive Director, AGC, Alaska Chapter

3111 C STREET, SUITE 455
ANCHORAGE, ALASKA 99503
(907) 561-7828

WHILE IN SESSION
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3704

ALASKA STATE HOUSE



CHAIR
RULES COMMITTEE

JUDICIARY


SPECIAL COMMITTEE ON INTERNATIONAL
TRADE & TOURISM

LEGISLATIVE COUNCIL

REPRESENTATIVE JOHNNY ELLIS

April 11, 1991

To: Representative Jerry Mackie, Chair
Members of the Community and Regional Affairs Committee

From: Representative Johnny Ellis 

Re: HB 223 - Project Labor Agreement Bill

Thank you for your consideration of HB 223. The purpose of this legislation is to afford state agencies the same opportunity the private sector now enjoys to enter into project labor agreements.

While current law is silent with regard to state agency authority to enter into project labor agreements (PLAs), state agencies have successfully utilized these agreements in the past. On the Bradley Lake hydro project, for example, an agreement was entered into between Enserch Corporation (primary contractors) and organized labor, which helped bring the project toward completion some \$40 million under budget.

In another instance, a direct project labor agreement was entered into between a labor union and the Alaska State Housing Authority for an asbestos abatement project.

Why should a state agency enter into a project labor agreement? The simple answer is for the same reason the private sector utilizes them - cost savings.

As in the Trans-Alaska Pipeline project, Bradley Lake, and many North Slope construction projects of significant magnitude, there can be cost savings realized by negotiating wages, working conditions, benefits, and



In addition to obvious potential cost savings, any successful major project must be constructed following a stringent time-line. This time-line requires that a "construction cadence" be followed in an uninterrupted manner. Any significant project needing a sizeable labor force must be able to count on a reliable, skilled work force to meet the construction cadence demands. The bottom line being - disruptions in labor supply can and will cost millions in lost worker hours.

Underscoring the potential for cost savings and stable construction cadence, project labor agreements can bring about "**Alaska local hire**," specifically provided for in federal labor law and supported by the U.S. Supreme Court. Local hire provisions found in all labor unions within Alaska allow local Alaska residents to be given preference for employment on Alaska projects. If this law had been in effect, projects such as "Red Dog Mine" could have entered into PLAs which might have resulted in local village residents having the first opportunity for employment on the project.

It is also important to note that, while project labor agreements are between state agencies or local governments and labor unions, they do not preclude non-union residents from going to work on these projects. Equally important, anyone can and must be given access to employment on a PLA project through the union's hiring hall, whether a union or non-union applicant. An Alaskan can, if desired, go through a union hall under a PLA, but not be required to join the union as a member. Under federal law, exclusive union membership is specifically prohibited. Union and non-union applicants for employment on state negotiated PLAs are to be given equal consideration. If a non-union Alaskan walks through the hiring hall door first, he or she will be given priority for dispatch.

Passage of this legislation will provide state agencies with the opportunity to utilize project labor agreements that could result in cost savings, success in meeting or exceeding construction deadlines, and help ensure that Alaskans are hired for Alaskan public works projects.

I am planning to introduce this bill on Friday, March 15. If you would like to co-sponsor, please contact me or Jim Nordlund by noon Thursday.

Thank you for your consideration.

7-LS0924D
Cramer
4/10/91

CS FOR HOUSE BILL NO. 223 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES ELLIS, Navarre, Koponen, Gruenberg, Brown, Finkelstein, Boyer, Moyer

A BILL

FOR AN ACT ENTITLED

1 "An Act permitting the state or political subdivisions of the state to enter into project
2 labor agreements; and providing for an effective date."

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

4 * Section 1. AS 23.05.380 is amended to read:

5 Sec. 23.05.380. REGULATIONS. The agency shall adopt regulations under the
6 Administrative Procedure Act (AS 44.62) to carry out labor relations functions under
7 AS 23.05.360 - 23.05.390, AS 23.40.070 - 23.40.260, AS 36.90.150, and AS 42.40.730 -
8 42.40.890.

9 * Sec. 2. AS 23.05.380 is repealed and reenacted to read:

10 Sec. 23.05.380. REGULATIONS. The agency shall adopt regulations under the
11 Administrative Procedure Act (AS 44.62) to carry out labor relations functions under
12 AS 23.05.360 - 23.05.390, AS 23.40.070 - 23.40.260, and AS 42.40.730 - 42.40.890.

13 * Sec. 3. AS 36.90 is amended by adding a new section to read:

14 Sec. 36.90.150. PROJECT LABOR AGREEMENTS. (a) The purpose of this section

1 is to enable the state or a political subdivision of the state to structure labor relations at the job
2 site of a public construction project in the interests of industrial harmony and to permit public
3 agencies to make optimal use of their construction resources.

4 (b) The state or a political subdivision of the state and a representative of one or more
5 labor organizations representing employees in the building, maintenance, and construction
6 industry may enter into a project labor agreement concerning labor relations on a public
7 construction project whether or not the representative is a majority status labor organization under
8 29 U.S.C. 159. However, they may not enter into a project labor agreement to cover work
9 currently or traditionally performed by employees of the state or political subdivision or work
10 covered under a current collective bargaining agreement between the state or political subdivision
11 and a labor organization representing employees of the state or political subdivision unless both
12 the state or political subdivision and the labor organization representing the employees consents
13 to coverage of that work in the project labor agreement. In addition to addressing wages, hours,
14 and other terms and conditions of employment, the agreement may, with respect to labor relations
15 on the project,

16 (1) require the state or political subdivision to require a contractor, subcontractor,
17 or other person on the project to

18 (A) notify labor organizations representing building, maintenance, and
19 construction industry employees of project employment opportunities; or

20 (B) accept referrals of qualified applicants from the labor organizations
21 for project employment;

22 (2) provide for priority in opportunities for employment referrals based on
23 minimum training or experience qualifications or based on length of service

24 (A) with the contractor, subcontractor, or other person;

25 (B) in the industry; or

26 (C) in the particular geographical area;

27 (3) require the state or a political subdivision of the state and one or more labor
28 organizations representing employees in the building, maintenance, and construction industry to
29 enter into an agreement concerning labor relations on a public construction project, to cease or
30 refrain, or agree to cease or refrain, from handling, using, selling, transporting, or doing business
31 with a contractor, subcontractor, or other person.

1 (c) The state or political subdivision shall retain substantial control of job site labor
2 relations including the means, manner, and standards of performance of all employees engaged
3 in work or employed on projects covered by an agreement entered into under this section.

4 (d) If a settlement is reached at the completion of negotiations under this section, the
5 state or political subdivision shall reduce the settlement to writing in the form of an agreement.
6 The agreement may include a term for which it will remain in effect, not to exceed three years.
7 However, if the specific project is expected to last longer than three years, the term may exceed
8 three years but may not exceed the length of the project. The agreement must include a
9 grievance procedure with binding arbitration as its final step.

10 (e) The labor relations agency shall adopt regulations under the Administrative Procedure
11 Act (AS 44.62) to implement this section.

12 (f) Notwithstanding a project labor agreement entered into under this section, employees
13 of the contractors and subcontractors on a public construction project are not considered
14 employees of the state or political subdivision of the state.

15 (g) An agreement entered into under (b) of this section does not constitute an election
16 under 29 U.S.C. 159.

17 (h) The provisions of AS 36.30 do not apply to agreements entered into under this
18 section.

19 (i) An agreement entered into under this section is not prohibited under AS 45.50.562 -
20 45.50.596.

21 * Sec. 4. AS 36.30.850(b) is amended by adding a new paragraph to read:

22 (23) agreements entered into under AS 36.90.150.

23 * Sec. 5. AS 45.50.572 is amended by adding a new subsection to read:

24 (j) AS 45.50.562 - 45.50.596 do not prohibit agreements entered into under AS 36.90.150
25 between a public employer and a labor organization or representative of labor organizations.

26 * Sec. 6. AS 36.30.850(b)(23), AS 36.90.150, and AS 45.50.572(j) are repealed January 1, 1995.

27 * Sec. 7. Section 2 of this Act takes effect January 1, 1995.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

(attachment #1)

MEMORANDUM

October 14, 1991

SUBJECT: Project labor agreements by the state or political subdivisions
(HB 223)

TO: Representative Jerry Mackie
Chair, Community and Regional Affairs Committee

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have requested a brief analysis of the effect of the First Circuit Court of Appeals' decision in the "Boston Harbor Case," Associated Builders and Contractors of Massachusetts/Rhode Island Inc. v. Mass. Water Resources Authority, F.2d , (1st Cir. 1991), on HB 223, permitting the state and political subdivisions of the state to enter into project labor agreements on public construction projects.

SHORT ANSWER

In my opinion, the decision raises serious questions about the likelihood that a project labor agreement as contemplated by HB 223 would survive judicial scrutiny. If a court considering a project labor agreement under HB 223 followed the reasoning of the majority decision of the First Circuit Court of Appeals, the project labor agreement would fail.

DISCUSSION

Under HB 223, the state or a political subdivision could enter into an agreement with a labor organization representing employees in the construction industry before a public construction project had begun. The agreement would be binding on contractors and subcontractors who ultimately were selected to work on the project and could set wages, hours, and other working conditions, and could require that the contractors and subcontractors accept referrals for filling jobs on the project. (See Sec. 36.90.150(b).) The effect of this is to allow the state to negotiate the labor conditions with an umbrella labor organization and then require contractors and subcontractors on the public construction contract to comply with those terms.

Representative Jerry Mackie

October 14, 1991

Page 2

The "Boston Harbor" case involved a similar agreement. The Massachusetts Water Resources Authority (MWRA) was established to carry out \$6.1 billion worth of public works projects to clean up the Boston harbor. Concerned that it avoid labor disputes on the project, the MWRA entered into a project labor agreement with the Building and Construction Trades Council, an organization representing labor unions. The agreement required, among other things, that successful bidders for contracts on the project use the Trades Council hiring halls as the initial and principal source of the labor force for the project. The MWRA required that successful bidders and their subcontractors comply with the project labor agreement. An organization of nonunion construction contractors claimed that the project labor agreement prevented them from obtaining any bids on the project and asked for a preliminary injunction against implementation of the agreement.

The federal district court upheld the agreement and denied the injunction. A panel of the federal circuit court of appeals overturned the district court and granted a preliminary injunction. The full court agreed to hear the case and to decide whether the state's proprietary interest, as owner, in the project was sufficient to uphold the agreement.

Under the supremacy clause of the federal constitution, states are prohibited both from enacting laws that conflict with the National Labor Relations Act (NLRA) and also from enacting laws to regulate the conduct of parties involved in labor relations in areas that the NLRA meant to leave unregulated. The majority of the First Circuit Court of Appeals found that the second of these prohibitions was most directly involved in resolving the "Boston Harbor" case. The court noted that the action of the MWRA in requiring that contractors and subcontractors on the project comply with the terms of the project labor agreement was a pervasive intrusion into the bargaining process between those contractors and their employees and was forbidden by the NLRA. The fact that the project was a public project did not save it. While the MWRA could enter into a project labor agreement covering its employees, that was not the case here. There were "insufficient indicia of an employer/employee relationship between the MWRA and the laborers. If a state could impose restrictions on all companies from which it purchased goods or services, the state could effectively circumvent the national labor relations policy established by the NLRA."

In footnote 17, the court noted that

The distinction between an employee and an independent contractor under the NLRA is to be determined by application of common law agency principles. Under this standard, the relationship between the construction workers and the MWRA is a contracting, not an employment relationship. For example, the MWRA does not have the right to control the laborers' performance, nor does it pay their salaries, provide pension or other benefits, or make FICA payments on their behalf.

Representative Jerry Mackie

October 14, 1991

Page 3

(citations omitted). The court then added, in the following footnote, that there may be situations where the state would be considered the employer for purposes of the NLRA, depending on the level of control that the private employer performing service for a government retains over the employment relationship. If the level of control is insufficient, the government is deemed the true employer.

The dissent would have accepted that the MWRA was acting as a private employer and therefore those exceptions in the NLRA which apply to the construction industry would permit the project labor agreement here.

Under the majority analysis, the governmental employer can only avoid a ruling that it has intruded unduly into labor relations activity preempted by the NLRA if it retains sufficient control of the employment relationship with the laborers to establish the government as the true employer as well as the owner of the project. In retaining that control, the governmental employer may well exercise sufficient control to establish itself as the employer for other purposes as well -- liability for federal income tax payments, unemployment insurance and workers compensation insurance premiums, and the obligation to provide whatever employment benefits it offers employees. HB 223 attempts to avoid the result of the "Boston Harbor" case while also avoiding liability for these employment benefits. Under subsection (c), the bill states that the government retains "substantial control of job site labor relations including the means, manner, and standards of performance of all employees." Under subsection (g), however, the bill states that "employees of the contractors and subcontractors on a public construction project are not considered employees of the state or political subdivision of the state." Despite these statements, a court examining a project labor agreement would almost certainly look to the actual relationship between the laborers on the project and the contractors and the government in deciding whether the contractor or the government was the employer. It would be difficult for a court to find that the government was an employer for purposes of satisfying the NLRA preemption question but was not an employer for purposes of employment taxes, insurance, and benefits.

If I may be of further assistance, please advise.

TBC:gc
91-367.glc

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 223

Revision Date: _____
 Title: Permitting the State or political
subdivisions to enter into proj labor agreements.
 Sponsor: Rep. Ellis
 Requestor: House CRA

Department Affected: DEC
 BRU: Facilities, Construction and
Operations
 Component: FC & O

COMPONENT SERIAL NO.

0	1	6	3	1	7
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: NONE

ANALYSIS: (Attach a separate page if necessary.)

It is impossible to determine the fiscal impact of this bill on the department's construction projects. Labor costs could be expected to increase. Projects may also be slowed down as the agreements are negotiated thus increasing administrative costs.

Prepared by: Janice Adair
 Division: Commissioner's Office

Phone: 465-2600
 Date: 4/11/91

Approved by Commissioner: [Signature]
 Agency: Dept. of Environmental Conservation

Date: 4/11/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

BILL No: House Bill No. 223

DATE: April 9, 1991

TITLE: "An Act permitting the State or political subdivisions of the state to enter into project labor agreements."

CONTACT: Eileen Plate
465-2700

House Bill 223 would authorize states and political subdivisions to enter into project labor agreements on public works construction projects. The bill would apply the Public Employment Relations Act's procedures for unfair labor practice charges and contract enforcement to the project labor agreements. Oversight of the negotiations and enforcement of the project labor agreements would be the responsibility of the Alaska Labor Relations Agency, which currently administers the Public Employment Relations Act, AS 23.40.070 -- 23.40.260.

Specific Provisions:

House Bill 223 would amend AS 36.90 to add a section authorizing the state or political subdivisions to enter into a project labor agreement on a public works project with a representative of one or more labor organizations in the construction trades. The labor organization is not required to be a majority bargaining representative under the Labor Management Relations Act of 1947, as amended, § 9, 29 U.S.C. § 159.

The bill would outline the subjects that a project labor agreement could address. In addition to wages, hours, and terms and conditions of employment, the agreement could (1) require contractors on the construction project to notify labor organizations of opportunities on the project and to accept union dispatches; and (2) establish priorities for dispatching prospective employees to the project based on minimum training, on minimum experience qualifications, or on length of service with the contractor, length of service in the industry, or length of service in a geographical area.

House Bill 223 would require the state or political subdivision to retain substantial control over construction project labor relations.

House Bill 223 would require the parties to comply with provisions of the Public Employment Relations Act when negotiating and implementing project labor agreements. Specifically, the parties would be required to follow PERA's statement of purpose (AS 23.40.070); unfair labor practice provisions (AS 23.40.110); procedures for resolving unfair labor practice charges (AS 23.40.120 -- 23.40.160); any applicable orders of the labor relations agency (AS 23.40.180); mediation provision (AS 23.40.190); and definitions of key terms (AS 23.40.250).

POSITION PAPER/Department of Labor

The application of the unfair labor practice provisions of PERA would result in the requirement that the state or political subdivision sit down and negotiate in good faith when a request to negotiate a project agreement is made. Any violations of this requirement could be brought before the Alaska Labor Relations Agency under its procedures for unfair labor practice charges in AS 23.40.120 -- 23.40.160.

House Bill 223 would authorize the Alaska Labor Relations Agency to enforce these project agreements. This enforcement authority is in addition to the dispute resolution procedure of binding arbitration that must be included in the agreement.

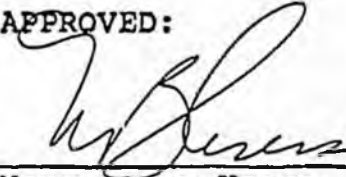
It should be noted that the bill does not address potential preemption by the federal labor relations laws. A project labor agreement similar to the project labor agreements anticipated under House Bill 233 was found preempted and thus invalid under the National Labor Relations Act, as amended, in Associated Builders and Contractors of Massachusetts v. Massachusetts Water Resources Authority, 135 L.R.R.M. (BNA) 2713 (1st Cir. 1990).

House Bill 223 would expand substantially the work of the Alaska Labor Relations Agency beyond its current purpose of promoting harmony in public sector labor relations. The responsibilities could be burdensome and could interfere with the primary responsibilities of the Agency under PERA unless adequate provision is made for the increase in the Agency staff and board members' workloads.

Fiscal Note:

A fiscal note is attached. The Alaska Labor Relations Agency's responsibilities are extensive under the bill. If pending capital project appropriation bills are adopted and labor organizations actively pursue these agreements on those projects, the Agency should experience a substantial increase in its workload. The increase would be in the number of investigations and hearings that the Agency would conduct and is estimated at a fifty percent increase. The fiscal note covers an additional hearing officer position and the office equipment, supplies, contractual services, and travel that the hearing officer would require. Included also is a halftime clerk-typist III to cover the need for increased staff support.

APPROVED:



Nancy Bear Usera, Commissioner
Department of Labor

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO

HB 223

Revision Date: _____
 Title: "An Act permitting the state...
 to enter into project labor agreements."
 Sponsor: Representative Ells, et al.
 Requestor: House C&RA

Department Affected: Labor
 BRU: Commissioner's Office
 Component: _____
Alaska Labor Relations Agency
 COMPONENT SERIAL NO. 1200

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	82.0	82.0	82.0	82.0	82.0	82.0
TRAVEL	15.0	15.0	15.0	15.0	15.0	15.0
CONTRACTUAL	18.4	18.4	18.4	18.4	18.4	18.4
SUPPLIES	6.0	6.0	6.0	6.0	6.0	6.0
EQUIPMENT	10.4					
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOT/ L OPERATING	131.8	121.4	121.4	121.4	121.4	121.4

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	131.8	121.4	121.4	121.4	121.4	121.4
FEDERAL FUNDS						
OTHER						
TOTAL	131.8	121.4	121.4	121.4	121.4	121.4

POSITIONS:

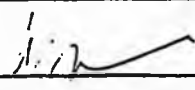
FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME	1.0	1.0	1.0	1.0	1.0	1.0
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

(see attached)

Prepared by: Jan DeYoung, Hearing Examiner Phone: 264-2587
 Division: Alaska Labor Relations Agency Date: 4/8/91

Approved by Commissioner: Nancy Bear Usura 
 Agency: Department of Labor Date: 4/8/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Fiscal Note Analysis for:

"An Act permitting the state...to enter into project labor agreements..."

This bill would require the department to include project labor agreements on public works projects within the scope of the Public Employment Relations Act (PERA). The department would therefore be responsible investigating complaints, investigating charges of unfair labor practices, and conducting hearings when necessary on these project labor relations agreements.

Although we do not know the exact number of projects that would require intervention by the labor relations agency, we estimate one full-time hearing officer and one part-time clerk typist would be required to address the workload.

We have assumed an effective date of July 1, 1991.

Position Title Hearing Officer			No. of Positions 1	Range/Step 21a	Barg. Unit EE
Time Status PFT	Staff Months 12		Location Anchorage		Election District 99
Type of Expenditure			Amount		
1			2		3
Salary			\$49,972		
Benefits			18,501		
Premium Pay					
Other					
Total Personal Services			\$68,473		
Travel			15,000		
Contractual			12,700		
Commodities			3,000		
Equipment			4,600		
Other					
Total Cost			\$103,773		
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	\$103,773			
GF Program Receipts	1005				
Other					
Justification					
<p>This hearing officer would ensure the provisions of the Public Employment Relations Act (PERA) are followed when project agreements are entered into on public works projects. This would include investigation and conciliation of complaints, investigation of unfair labor practices, and conducting hearings when necessary.</p> <p>Travel costs would be for the hearing officer to travel to all parts of the state where public works projects require project agreement resolution. Contractual costs would include normal per-employees costs (\$6.0) as well as office space rent (\$2.7) and a contract for legal recording services (\$4.0). Commodities is for normal per employee supplies. Equipment includes a desk, chair, filing cabinet, personal computer, a recorder and transcription machine. These equipment expenses would be one-time items.</p>					

**Request For
New Position**

Agency Labor
 BRU Commissioner's Office
 Component Labor Relations Agency

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Revised Date

FY 91

Position Title Clerk Typist III			No. of Positions 1	Range/Step 8a	Barg. Unit EE
Time Status Part Time	Staff Months 6		Location Anchorage		Election District 99
Type of Expenditure			Justification		
Amount			<p>This part time clerk typist would provide the clerical support related to PERA activities on project agreements. The person would maintain a file of project agreements and provide other clerical support to the hearing officer as required.</p> <p>Contractual and commodity costs are average per-employee expenses. Equipment would include a desk, chair, filing cabinet, and personal computer. The equipment expense would be a one-time item.</p>		
1	2	3			
Salary	\$10,614				
Benefits	2,880				
Premium Pay					
Other					
Total Personal Services		\$13,494			
Travel		0			
Contractual		5,700			
Commodities		3,000			
Equipment		5,800			
Other					
Total Cost		\$27,994			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1001	\$27,994			
GI ² Program Receipts	1005				
Other					

**Request For
New Position**

Agency Labor
 BRU Commissioner's Office
 Component Alaska Labor Relations Agency

Page 4 of 4

Revised Date

FY 91

FISCAL NOTE

BILL NO. HB 223

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____
 Title: An Act authorizing the negotiation of project
labor agreements.
 Sponsor: Ellis
 Requestor: _____

Department Affected: Administration
 BRU: General Government
 Component: Labor Relations

COMPONENT SERIAL NO.

0	0	5	8
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	685.3	719.6	755.6	793.3	833.0	874.7
TRAVEL	39.5	41.5	43.6	45.7	48.0	50.4
CONTRACTUAL	49.2	51.7	54.2	57.0	59.8	62.8
SUPPLIES	6.2	6.5	6.8	7.2	7.5	7.9
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	780.2	819.3	860.2	903.2	948.3	995.8

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

GENERAL FUND	780.2	819.3	860.2	903.2	948.3	995.8
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	10.0	10.0	10.0	10.0	10.0	10.0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: None.

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Bruce Cummins *Bruce Cummins*
 Division: Labor Relations

Phone: 465-4403
 Date: 11/1/91

Approved by Commissioner: Millett Keller *Millett Keller*
 Agency: Administration

Date: 4/10/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 223

ANALYSIS: (continued)

This bill would authorize the State to negotiate directly with unions regarding the wages, hours and terms and conditions of employment which private contractors would provide to employees engaged in public works construction and maintenance, and to administer those contract projects. Since line agencies are not staffed to negotiate labor agreements on behalf of the State, this collective bargaining negotiation and administration responsibility will be delegated to the Division of Labor Relations.

It is impossible to predict from the bill itself just how many such project labor agreements the State may negotiate and administer, or whether such efforts would increase or decrease total project costs. The bill is promoted as an Alaskan hire bill; therefore, we assume that it will be utilized for that effort and that it will be otherwise cost-neutral in total project cost. There are over 275 projects listed in the proposed FY 92 budget; that number is likely to grow before passage. Many of these projects are neither construction nor maintenance projects, but the vast majority of them are. We presently negotiate and administer only 10-11 collective bargaining agreements. We conservatively estimate that our FY 92 workload would at least double if this bill becomes law. Inflation is assumed at five percent (5%) per annum in succeeding fiscal years.

COMMUNITY AND REGIONAL AFFAIRS
 COMMITTEE BILLS LOG SHEET

BILL NUMBER	ABBREVIATED TITLE	SPONSOR	DATE RECEIVED	LEGAL SERVICES ACTION	COMMITTEE ACTION/DATE PASSED OUT
HB 1	Borough Incorporation & Annexation	Larson	1-22-91		2-6, Heard & held. 3-14,SSHB 1 heard & Held.
HB 51	APPROP: Child Care Grant Program	Ulmer	1-23-91		2-6, Heard & held. 2-28, passed with individual recommendations
HB 54	Distribution of National Forest Receipts	Mackie	1-23-91		2-6, Heard & held. 2-27, passed CS with individual recommendations
HB 63	Contracts for Day Care Assistance	Taylor	1-23-91		2-6, Heard & held. 3-25, passed out of committee w/DO PASS
HB 81	Publication of Municipal Foreclosure Lists	Sharp	1-30-91		2-20, Heard & Held. 3-27, heard & held. 4-3, passed from committee w/ DO PASS
HB 87	Foreclosure/Execution Notice Requirements	House Judiciary Committee	1-30-91		2-13, Heard & passed out of committee w/do pass
HB 121	Utility Integrated Resource Plans	Brown	2-6-91		3-18, passed out of committee w/ NO RECOMMENDATION
HB 128	Office of Municipal Clk. & Clk/Treasurer	C.Davis	2-8-91		3-25, heard & held. 4-10, passed from committee w/ DO PASS
HB 130	Municipal Ombudsman's Immunity	Parnell	2-11-91		2-20, Heard & passed out of committee w/ individual recommendations ,do pass
HB 143	General Grant Land Selections	Maclean	2-20-91		2-28, Heard & held. 3-11, Heard & held over 3-14, passed out of committee w/ no recomend.
HB 145	Approp: Anch. Ship Creek Project	Ellis	3-8-91		3-18, passed out of committee w/ DO PASS
HB 191	Early Childhood Intervention Services	Ellis	3-6-91		4-3, passed out of committee w/ DO PASS
HB 193	Disposals of State Land & Minerals	Brown	3-6-91		3-27, heard & held. 4-3, Heard & Held. 4-18, Heard & Held. 4-29,NO RECOMMENDATION

COMMUNITY AND REGIONAL AFFAIRS
COMMITTEE BILLS LOG SHEET

PAGE 2

BILL NUMBER	ABBREVIATED TITLE	SPONSOR	DATE RECEIVED	LEGAL SERVICES ACTION	COMMITTEE ACTION/DATE PASSED OUT
HB 199	Investment Pools for Public Entities	(H) CRA	3-8-91		4-3, passed from committee w/ NO RECOMMENDATION
HB 207	Village Safe Water Program	Lincoln	3-11-91		4-4, passed from committee w/ DO PASS
HB 222	Approp: Road/Sewer/Water/Rural Develop. Fund	JACKO	3-15-91		4-10, Heard & held. 4-17, passed from committee w/ DO PASS
HB 223	Project Labor Agreements	Ellis	3-18-91		4-11, Heard & Held. 5-6, Heard & Held.
HB 253	Training for child care workers	Ellis	4-3-91		4-24, passed from committee w/ DO PASS
HB 256	Rural Development Initiative Program	Jacko	4-3-91		4-10, Heard & held. 4-17, passed from committee w/ DO PASS
HB 263	Human Services Community Matching Grants	Boyer	4-8-91		4-24, passed from committee w/ DO PASS
HCR 17	Task Force on Governmental Roles	Finance	4- -91		4-10, passed from committee w/ DO PASS
HB 232	Sunken & abandoned vessels	Jacko	4-10-91		4-18, passed from committee w/ DO PASS
HB 275	Municipal Assistance: Oil response fund	Davidson	4-12-91		4-25, passed from committee w/ DO PASS
SJR 12	Offshore oil revenue sharing	Sturgulewski	4-12-91		4-25, passed from committee w/ DO PASS
SB 9	Bob Blodgett Hwy; Johnston Bridge, Mt.	Adams	4-15-91		4-29, passed from committee w/ DO PASS
HB 286	Local exchange Teleph. Co. Regulation	Ivan	4-17-91		4-29, passed from committee w/ DO PASS

COMMUNITY AND REGIONAL AFFAIRS
COMMITTEE BILLS LOG SHEET

PAGE 3

BILL NUMBER	ABBREVIATED TITLE	SPONSOR	DATE RECEIVED	LEGAL SERVICES ACTION	COMMITTEE ACTION/DATE PASSED OUT
HB 278	Classification of Boats for Municipal Tax	Taylor	4-17-91		5-3, passed from committee w/ DO PASS
HCR 27	Supporting Yakutat Borough Incorporation	Mackie	4-17-91		4-25, passed from committee w/ DO PASS
SB 70	Municipal Taxation of Certain St. Property	Pearce	4-19-91		5-3, passed w/ NO RECOMMENDATION
HB 290	School Debt Reimbursement	Carney	4-19-91		5-3, passed w/ NO RECOMMENDATION
SB 81	Platting Authority for State	Senate Finance	4-22-91		5-8, passed w/ INDIVIDUAL RECOMMENDATION
HB 270	Unpaid parking tickets Impoundment	BAKER	4-26-91		5-6, passed from committee w/ DO PASS
HB 304	Municipal Property Tax Exemption	Donley	4-26-91		5-8, passed w/ INDIVIDUAL RECOMMENDATIONS
SCR 23	Yakutat Borough	Elaison	5-1-91		5-6, passed from committee w/ DO PASS
HB 321	Use of Income of Mental Health Projects	B. Davis	5-8-91		5-13, passed from committee w/ DO PASS
SB 284	Fisheries Taxes	Elaison	5-14-91		5-15, passed from committee w/ DO PASS
HB 330	Housing Assistance Loan Fund	Brown	5-15-91		
HB 335	Grants to Municipalities	Rules	5-16-91		

H B

2 3 2

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CSHB 232

Revision Date: _____ Department Affected: Natural Resources
 Title: Shipwrecks Act BRU: Land & Water Management
 Components: Land & Water Management
 Sponsor: Representative Jacko
 Requestor: House Community & Regional Affairs COMPONENT SERIAL NO. 431

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact: 0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Salli Slaughter Phone: 762-2692
 Division: Land & Water Date: 19-Apr-91
 Approved by Commissioner: Jay Gustafson / Harold Helze Date: 19-Apr-91
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB,
& Impacted Agency(ies).

HOUSE COMMITTEE REPORT

(7) Date Referred: April 10, 1991 FURTHER REFERRALS: Judiciary

Date of Committee Action: 4-18-91

The COMMUNITY AND REGIONAL AFFAIRS Committee considered: HB 232

HOUSE BILL NO. 232 SUNKEN AND ABANDONED VESSELS

"An Act relating to sunken and abandoned vessels and cargo; and providing for an effective date."

- RECOMMENDATIONS:
 be replaced with CSHB 232 (CRA) the same title
 a new title
- have attached amendments(s)
 do pass
 do not pass
 no recommendations
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal impact _____ fiscal note(s) _____
 zero fiscal note DEC, 1991 zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i> Mackie	X				
<i>[Signature]</i> Phillips	X				
<i>[Signature]</i> Betty Darr	X				
<i>[Signature]</i> Cheri Davis	✓				
<i>[Signature]</i> John C. Engler	✓				

[Signature] Mackie

 CHAIRMAN'S SIGNATURE

CS FOR HOUSE BILL NO. 232 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES JACKO, Navarre

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to sunken and abandoned vessels and cargo; and providing for an
2 effective date."

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

4 * Section 1. AS 29.10.200 is amended by adding a new paragraph to read:

5 (51) AS 29.35.085 (sunken or abandoned vessels).

6 * Sec. 2. AS 29.35 is amended by adding a new section to read:

7 Sec. 29.35.085. SUNKEN OR ABANDONED VESSELS. A municipality shall regulate
8 sunken or abandoned vessels or cargo of a vessel on municipal land in accordance with
9 AS 30.30.025 - 30.30.099.

10 * Sec. 3. AS 30.30 is amended by adding a new section to read:

11 Sec. 30.30.011. SINKING OF VESSEL OR CARGO PROHIBITED. (a) Except as
12 provided in (b) of this section, a person may not intentionally sink, or cause to be sunk, a vessel
13 or cargo of a vessel.

14 (b) This section does not apply to a vessel that is sunk with the prior approval under

1 AS 30.30.031(b) of the department or municipality having jurisdiction over the land or water
2 where the vessel is sunk.

3 (c) A person who violates this section is guilty of a class A misdemeanor.

4 * Sec. 4. AS 30.30 is amended by adding a new section to read:

5 Sec. 30.30.021. ABANDONMENT OF VESSEL OR CARGO PROHIBITED. (a) A
6 person may not knowingly abandon, or cause to be abandoned, a vessel or cargo of a vessel.

7 (b) A person who violates this section is guilty of a class B misdemeanor.

8 * Sec. 5. AS 30.30 is amended by adding a new section to read:

9 Sec. 30.30.025. ABANDONED VESSEL. For the purpose of AS 30.30.011 - 30.30.099,
10 a vessel is abandoned if the vessel

11 (1) is

12 (A) unattended;

13 (B) sunk, aground, or in immediate danger of sinking or grounding; and

14 (C) obstructs navigation or endangers life, personal or real property, or
15 natural resources of the state; or

16 (2) has been moored or otherwise left unattended in or on water of the state or
17 on state or municipal land for more than 30 days without permission; and

18 (A) the vessel's certificate of number or marine document, if required, is
19 expired and the registered owner cannot be contacted at the address listed in the vessel
20 registration or marine document records of a state department or the United States Coast
21 Guard;

22 (B) the last registered owner of record disclaims ownership and the name
23 and address of the current owner cannot be determined;

24 (C) efforts to identify the vessel and determine the name and address of
25 owner of the vessel are precluded because the vessel identification numbers and other
26 means of identifying the vessel have been obliterated or removed; or

27 (D) the vessel is not registered or documented with a state or the United
28 States Coast Guard and the name and address of the owner cannot not be determined.

29 * Sec. 6. AS 30.30 is amended by adding new sections to read:

30 Sec. 30.30.031. REMOVAL OF SUNKEN OR ABANDONED VESSEL OR CARGO.

31 (a) Unless a person has permission from the department or a municipality to leave a vessel or

1 cargo of a vessel in place, a person who owned, controlled, or had custody of the vessel or the
2 cargo at the time the vessel or the cargo was sunk or abandoned shall remove the vessel or cargo
3 from the land or water within 30 days of the sinking or abandonment and restore state or
4 municipal land or water damaged as a consequence of the sinking or abandonment to the same
5 condition as the land or water was before the sinking or abandonment.

6 (b) The department or a municipality may grant permission to leave, permanently or
7 temporarily, a sunken or abandoned vessel or cargo of a vessel in place. Permission to leave
8 a sunken or abandoned vessel or cargo in place may be granted only in writing. The department
9 or the municipality may condition temporary permission to leave a sunken or abandoned vessel
10 or cargo in place upon

11 (1) a commitment to remove the vessel or cargo within a specified date and to
12 restore state or municipal land or water damaged as a consequence of the sinking or
13 abandonment; and

14 (2) posting of sufficient bond to ensure the removal of the vessel or cargo and
15 the restoration of state or municipal land or water damaged as a consequence of the sinking or
16 abandonment.

17 (c) Notwithstanding (b) of this section, only the Department of Environmental
18 Conservation may grant permission to leave a hazardous substance on or within land or water
19 in the state.

20 (d) A person who is granted permission under this section to leave a vessel or cargo of
21 a vessel in place is not relieved of liability for damages incurred by a person, the state, or a
22 municipality arising from the presence of the vessel or the cargo of a vessel on or within land
23 or water in the state.

24 (e) The department or municipality that grants permission to leave a vessel or cargo of
25 a vessel in place under this section is not liable for damages arising from the presence of the
26 vessel or the cargo on or within land or water in the state.

27 (f) If a person fails to remove a vessel or cargo of a vessel under (a) of this section or
28 within the time agreed to under (b) of this section, the department or municipality may remove,
29 or cause to be removed, the vessel or cargo from the land or water of the state or the
30 municipality and restore, or cause to be restored, state or municipal land or water damaged as
31 a consequence of the sinking or abandonment. The department or the municipality may bring

1 an action in the superior court against a person who owned, controlled, or had custody of the
2 vessel or the cargo at the time of sinking or abandonment to recover the costs of removing the
3 vessel or cargo from the land or water of the state or municipality and of restoring state or
4 municipal land or water damaged as a consequence of the sinking or abandonment. The costs
5 incurred by the department or municipality to remove a vessel or cargo of a vessel and restore
6 state or municipal land or water under this subsection are a lien against the vessel or cargo until
7 a judgement of the superior court under this subsection is satisfied or the lien is released by the
8 department or the municipality.

9 (g) If a vessel, subject to an action in the superior court under (f) of this section, is
10 longer than 58 feet overall length, then in addition to the costs of removing the vessel and of
11 restoring state or municipal land or water recovered under (b) of this section, the department or
12 the municipality that brought the action shall receive twice the costs of removal and restoration
13 as a civil penalty for the failure to remove the vessel.

14 (h) If the court finds it is proper and just, the insurer of a person who is subject to an
15 action under this section for recovery of the cost of removing a vessel and of restoring state or
16 municipal land or water and for a civil penalty, may be joined in the action to the extent that the
17 contract of insurance between the person and the insurer includes coverage of the costs of
18 removal, restoration, or civil penalties for the failure to remove a sunken or abandoned vessel or
19 to restore state or municipal land or water damaged as a consequence of the sinking or
20 abandonment.

21 (i) The department or municipality may assign its rights to recover costs of removing a
22 sunken or abandoned vessel or cargo of a vessel and of restoring state or municipal land or water
23 under this section to a third party that agrees to complete the removal or restoration within a
24 period fixed by the department or municipality and that does complete the removal or restoration
25 within the time fixed. The right to recover a civil penalty under this section may not be
26 assigned.

27 (j) For the purposes of this chapter, the owner of a vessel or cargo of a vessel is the
28 owner of record as recorded with the appropriate registration or documentation agency on the
29 date that the vessel or cargo of the vessel was sunk or abandoned.

30 Sec. 30.30.035. CUSTODY OF A SUNKEN OR ABANDONED VESSEL. (a) The
31 department, a municipality, or a peace officer may take possession and custody of a sunken or

1 abandoned vessel or cargo of a vessel.

2 (b) The department, a municipality, or a peace officer shall take immediate possession
3 and custody of a vessel or cargo of a vessel that is sunk or may be abandoned, if the vessel or
4 cargo of a vessel poses, or threatens to pose, a danger to navigation, the environment, public
5 health, or public safety.

6 (c) Vessels and cargo of a vessel taken into custody under this section, other than timber
7 property subject to AS 45.50.210 - 45.50.325, are subject to disposal under this chapter.

8 * Sec. 7. AS 30.30.040 is amended to read:

9 Sec. 30.30.040. NOTICE TO OWNER. The department or municipality [ON] taking
10 custody of an abandoned or sunken vessel or cargo of a vessel, shall immediately post, if
11 practical, a written notice [IMMEDIATELY SHALL BE POSTED] on the vessel or cargo and
12 shall send a duplicate of that notice [SENT] by registered or certified mail, with a return receipt,
13 to the registered owner of the vessel or cargo at the registered owner's last known address and
14 to all lienholders shown on the records of a state or federal agency. The notice must [SHALL]
15 contain a brief description of the vessel or cargo, the location of custody, [AND] the intended
16 disposition of the vessel or cargo if not repossessed within 30 [20] days after the mailing of the
17 notice, and a statement of the right to repossession. A notice need not be sent to the purported
18 owner or any other person whose interest in the vessel is not recorded with a state department
19 or a federal agency.

20 * Sec. 8. AS 30.30.050 is amended to read:

21 Sec. 30.30.050. PUBLIC AUCTION. If the vessel or cargo of a vessel is not
22 repossessed under AS 30.30.060 within 30 [20] days after the mailing of the notice under
23 AS 30.30.040, the vessel or the cargo shall be disposed of by public auction, through oral
24 tenders, or by sealed bids, after public advertisement has been made once in a newspaper of
25 general circulation. However, the public auction may not be held less than five days after the
26 publication of the advertisement. If no bid is received, the vessel or the cargo may be sold by
27 negotiation, disposed of as junk, donated to a governmental agency, or destroyed.

28 * Sec. 9. AS 30.30.060 is amended to read:

29 Sec. 30.30.060. POSSESSION BY INTERESTED PARTY. A person having an interest
30 in an abandoned or sunken vessel or cargo of a vessel may take possession of it before the date
31 of the public auction upon payment to the department or municipality that has custody of the

1 vessel or cargo of all port or harbor use fees, towing, handling, storage, appraisal, advertising,
2 and any other expenses incurred by the department or municipality in connection with the vessel
3 or cargo and upon posting a bond in an amount sufficient to ensure removal of the vessel
4 or cargo from on or within the land or water of the state or municipality and to ensure
5 restoration of state or municipal land or water damaged as a consequence of the sinking
6 or abandonment. The amount of the bond that is posted to ensure removal of the vessel
7 or cargo and restoration of state or municipal land or water is not limited to the value of
8 the vessel or cargo. If the person taking possession of the vessel or cargo is not the registered
9 owner, the person shall, before taking possession of the vessel or cargo, pay the expenses
10 incurred by the department or municipality and post adequate security which may not exceed
11 the appraised value of the vessel or cargo. The bond posted to ensure removal of the vessel
12 or cargo and restoration of state or municipal land or water shall be returned to the person
13 upon satisfactory completion of the removal and restoration. The security for the value of
14 the vessel or cargo, if not forfeited, shall be returned to the person one year after receipt.

15 * Sec. 10. AS 30.30.080 is amended to read:

16 Sec. 30.30.080. EFFECT OF SALE. The transfer of interest by sale under
17 AS 30.30.050 - 30.30.060 [AS 30.30.050 - 30.30.070] shall be evidenced by a bill of sale from
18 the department or municipality, considered a transfer by operation of law, and governed by
19 applicable provisions of law.

20 * Sec. 11. AS 30.30 is amended by adding new sections to read:

21 Sec. 30.30.091. JURISDICTION OF STATE DEPARTMENTS AND MUNICIPALITIES.

22 (a) The Department of Natural Resources shall enforce AS 30.30.011 - 30.30.099 over all water
23 and state land that is not subject to the jurisdiction of the Department of Transportation and
24 Public Facilities under (b) of this section or to the jurisdiction of a municipality under (c) of this
25 section.

26 (b) The Department of Transportation and Public Facilities shall enforce AS 30.30.011 -
27 30.30.099 within ports and harbors administered by that department.

28 (c) A municipality shall enforce AS 30.30.011 - 30.30.099

29 (1) within ports and harbors administered by the municipality; and

30 (2) on municipal land that is not within a port or harbor administered by the
31 Department of Transportation and Public Facilities under (b) of this section.

1 Sec. 30.30.099. APPLICABILITY. (a) AS 30.30.031 - 30.30.099 apply to all vessels
2 and cargo of vessels, other than a vessel or cargo of a vessel designated as a historic monument,
3 site, property, location, or remains under AS 41.35.010 - 41.35.240, that have been sunk or
4 abandoned as of the effective date of this Act. The successor in interest of the person who, at
5 the time a vessel or cargo of a vessel was sunk or abandoned, owned, controlled, or had custody
6 of a vessel or cargo of a vessel that is subject to this subsection, is subject to AS 30.30.031 -
7 30.30.099.

8 (b) AS 30.30.011 - 30.30.099 apply to vessels and cargo of vessels, other than a vessel
9 or cargo of a vessel designated as a historic monument, site, property, location, or remains under
10 AS 41.35.010 - 41.35.240, that are sunk or abandoned in the state on or after the effective date
11 of this Act.

12 (c) AS 30.30.011 - 30.30.099 and AS 45.50.210 - 45.50.325 shall be construed as
13 consistent. If specific provisions of AS 30.30.011 - 30.30.099 and AS 45.50.210 - 45.50.325
14 cannot be made consistent, AS 45.50.210 - 45.50.325 shall control in that instance.

15 * Sec. 12. AS 30.30.160 is amended to read:

16 Sec. 30.30.160. REGULATIONS. The department may [SHALL] adopt regulations
17 under the Administrative Procedure Act (AS 44.62) to carry out the provisions of this chapter.

18 * Sec. 13. AS 30.30.170 is amended to read:

19 Sec. 30.30.170. DEFINITIONS. In this chapter

20 (1) "department" means the Department of Transportation and Public Facilities
21 or the Department of Natural Resources, as the context may require [, DIVISION OF
22 WATERS AND HARBORS];

23 (2) "hazardous substance" has the meaning given in AS 46.03.826;

24 (3) "land" includes shore, tide, and submerged land;

25 (4) "state land" has the meaning given in AS 38.05.965;

26 (5) [(3)] "vessel" means every description of watercraft or other artificial
27 contrivance [, OTHER THAN A SEAPLANE ON THE WATER,] used or capable of being used
28 as a means of transportation on or through the water; "vessel" includes a detached portion of
29 a vessel that poses a threat to navigation, the public safety, health, and welfare, or the
30 environment and a barge whether self-propelled or not;

31 (6) "water" means navigable water and all other water of the state, whether

1 inland or coastal, fresh or salt [(4) "WATERS OF THIS STATE" MEANS THE NAVIGABLE
2 WATERS WITHIN THE TERRITORIAL LIMITS OF THE STATE, AND THE MARGINAL
3 SEA ADJACENT TO THE STATE, AS DEFINED IN AS 44.03].

4 * Sec. 14. AS 30.30.010, 30.30.020, 30.30.030, 30.30.070, 30.30.090, and 30.30.100 are repealed.

5 * Sec. 15. This Act takes effect immediately under AS 01.10.070(c).