

**ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672**

**7540 SENATE LABOR & COMMERCE**

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SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERENCE

DATE: 1/30/91

FURTHER: Judiciary

Date of 5-Day Notice: 3/21/91  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: \_\_\_\_\_

L&C Committee considered SB 93

Confidentiality of the records of the Commercial Fishing and Agriculture Bank; efd.

and recommended:

[ ] replace with \_\_\_\_\_ CS \_\_\_\_\_ [ ] same title  
[ ] attached amendment(s) [ ] new title

[ ] \_\_\_\_\_ letter of intent adopted

[ ] do pass

[ ] do not pass

[ ] no recommendation

[x] individual recommendations

[ ] further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

[ ] fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[x] zero fiscal note(s) COMANC / 3-20-91  
\_\_\_\_\_  
\_\_\_\_\_

[ ] appropriation-no fiscal note

[ ] Governor's bill w/fiscal note

SIGNING DO PASS:

*[Signature]*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OTHER RECOMMENDATIONS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*[Signature]*  
Chair: Signature and Recommendation

SENATE LABOR & COMMERCE COMMITTEE  
BILL FILE

BILL NUMBER: SB93

BILL TITLE: CONFIDENTIALITY COMM FISA & AL BANK

SPONSOR: ZHAROFF

RECEIVED: 1/30/91

WRITTEN REQUEST TO SCHEDULE: DATE \_\_\_\_\_ FROM \_\_\_\_\_  
SECTIONAL ANALYSIS RECEIVED: DATE \_\_\_\_\_ FROM \_\_\_\_\_  
FISCAL NOTE REQUESTED: DATE \_\_\_\_\_ FROM \_\_\_\_\_  
FISCAL NOTE RECEIVED: DATE \_\_\_\_\_ FROM \_\_\_\_\_  
FISCAL NOTE CS REQUESTED: DATE \_\_\_\_\_ FROM \_\_\_\_\_  
FISCAL NOTE CS RECEIVED: DATE \_\_\_\_\_ FROM \_\_\_\_\_  
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FISCAL NOTE CS RECEIVED: DATE \_\_\_\_\_ FROM \_\_\_\_\_  
FISCAL NOTE CS REQUESTED: DATE \_\_\_\_\_ FROM \_\_\_\_\_  
FISCAL NOTE CS RECEIVED: DATE \_\_\_\_\_ FROM \_\_\_\_\_

FIVE DAY NOTICE GIVEN:  
COMMITTEES OF REFERRAL: FIRST: LTC SECOND: JUD THIRD: \_\_\_\_\_

DATE	COMMITTEE ACTION
_____	_____
_____	_____
_____	_____
_____	_____

HEARING NOTIFICATION LIST

1. SPONSOR
2. AGENCY
3. \_\_\_\_\_
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10. \_\_\_\_\_

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. SB 93

Revision Date: \_\_\_\_\_ Department Affected: Commerce & Economic Dev  
 Title: Confidentiality of the BRU: Banking, Securities & Corporations  
Commercial Fishing & Agriculture Bank Component: Banking  
 Sponsor: Sen. Zharoff  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 

1	2	3	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Willis F. Kirkpatrick, Director Phone: 465-2521  
 Division: Banking, Securities & Corporations Date: \_\_\_\_\_  
 Approved by Commissioner: Glenn A. Olds  
 Agency: Department of Commerce & Economic Development Date: 3-20-91

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



**SENATOR FRED F. ZHAROFF**  
**ALASKA STATE LEGISLATURE**


P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259  
 DURING SESSION:  
 P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Drue Pearce  
 Chair  
 Labor and Commerce Committee

FROM: Senator Fred F. Zharoff 

DATE: March 8, 1991

RE: Senate Bill 93 - "An Act relating to the confidentiality of the records of the Commercial Fishing and Agriculture Bank; and providing for an effective date."

I respectfully request that SB 93 be scheduled for a hearing before the Senate Labor and Commerce Committee at the committee's earliest convenience.

SB 93 rewrites AS 44.81.260, the statute governing the confidentiality of the Alaska Commercial Fishing and Agriculture Bank's records. The bill was introduced at CFAB's request.

The statute presently holds CFAB to a very strict standard of confidentiality, saying, "...the directors, officers, and employees shall hold in strict confidence all information regarding the business records of the bank..." The statute allows exemptions for the legislative auditor, the legislature (statistical and impersonal information only), the farm credit system, and for specific litigation.

This language has created problems for CFAB in the time period since its adoption (SLA 1981). A number of instances have occurred when attorneys, regulators, law enforcement agents, and judges have sought access to CFAB's records. Under the law, CFAB's only option has been to say "no", forcing formal confrontations before the courts. The end result -- after much time and expense -- is that CFAB predictably loses the cases and the court issues orders requiring CFAB to produce the records.

SB 93 rewrites the statute to avoid unnecessary litigation and provide avenues for the legitimate release of information. While preserving the confidential nature of CFAB's records, it allows exemptions for search warrants, subpoenas, court orders, investigations, legislative audits, etc.

Memo to Senate Labor and Commerce - page 2

The following backup information is attached:

1. Sectional analysis.
2. Current CFAB confidentiality statute.



## SENATOR FRED F. ZHAROFF

### ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465 3474

#### DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIIBILOF ISLANDS • SHUMAGIN ISLANDS

### SECTIONAL ANALYSIS

#### SENATE BILL 93

"An Act relating to the confidentiality of the records of the Commercial Fishing and Agriculture Bank; and providing for an effective date."

#### SECTION 1

Rewrites AS 44.81.260, the section that currently establishes the confidentiality requirements for the records of the Alaska Commercial Fishing and Agriculture Bank (CFAB).

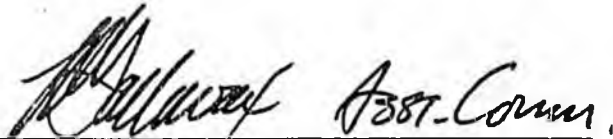
- (a) Provides for the confidentiality of those records identified with a specific borrower, bank member, or loan applicant, or can be identified as being from the records of one of those persons. Allows exemptions (1) through (9).
- (b) Allows CFAB to keep all of its other records confidential, subject to exemptions (a)(1)-(5).
- (c) Allows disclosure of records if a borrower, bank member, or loan applicant authorizes the disclosure in writing.
- (d) Defines "member" and "records".

#### SECTION 2

Immediate effective date.

SB 93: An Act relating to the confidentiality of the records of the Commercial Fishing and Agriculture Bank; and providing for an effective date."

The department has no opposition to this bill, as it does not affect any of the department's programs.



Glenn A. Olds, Commissioner

Date: 3-21-91

SB

95

(File 1)

SENATE COMMITTEE REPORT  
FIRST COMMITTEE OF REFERRAL

DATE: 2/1/91

FURTHER: Judiciary  
Finance

Date of 5-Day Notice: 2/14/91  
(in accordance with Uniform Rule 23)

DATE TURNED  
INTO OFFICE: \_\_\_\_\_

Labor and Commerce Committee considered SB 95

Agreements between a labor organization and a public employer.

and recommended:

- replace with \_\_\_\_\_ CS \_\_\_\_\_  same title
- attached amendment(s)  new title
- \_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) ADMIN  
\_\_\_\_\_  
\_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OTHER RECOMMENDATIONS:

Rich Halford NO Rec.  
Jim Call NO Rec  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Signature]  
Chair: Signature and Recommendation

SENATE LABOR & COMMERCE COMMITTEE  
BILL FILE

BILL NUMBER: SB 95  
BILL TITLE: AGREEMENTS BETWEEN A LABOR ORGANIZATION & A PUBLIC EMPLOYER  
SPONSOR: RODNEY RECEIVED: 2/1/91

WRITTEN REQUEST TO SCHEDULE: DATE 2/14 FROM RODNEY  
SECTIONAL ANALYSIS RECEIVED: DATE \_\_\_\_\_ FROM \_\_\_\_\_  
FISCAL NOTE REQUESTED: DATE 2/14 FROM DOTPF  
FISCAL NOTE RECEIVED: DATE \_\_\_\_\_ FROM \_\_\_\_\_  
FISCAL NOTE ~~CS~~ REQUESTED: DATE 2/14 FROM COMMERCE  
FISCAL NOTE CS RECEIVED: DATE \_\_\_\_\_ FROM \_\_\_\_\_  
FISCAL NOTE ~~CS~~ REQUESTED: DATE 2/14 FROM DNR  
FISCAL NOTE CS RECEIVED: DATE \_\_\_\_\_ FROM \_\_\_\_\_  
FISCAL NOTE ~~CS~~ REQUESTED: DATE 2/14 FROM ADMIN  
FISCAL NOTE CS RECEIVED: DATE \_\_\_\_\_ FROM \_\_\_\_\_

FIVE DAY NOTICE GIVEN:  
COMMITTEES OF REFERRAL: FIRST: LEC SECOND: \_\_\_\_\_ THIRD: \_\_\_\_\_

DATE	COMMITTEE ACTION
_____	_____
_____	_____
_____	_____
_____	_____

HEARING NOTIFICATION LIST

1. SPONSOR
2. AGENCY - DOTPF
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_
9. \_\_\_\_\_
10. \_\_\_\_\_

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. CSSB 95 (100)

Revision Date: 4/10/91

Department Affected: Administration

Title: An Act authorizing the negotiation of project labor agreements.

BRU: General Government

Component: Labor Relations

Sponsor: Rodey

Requestor: \_\_\_\_\_

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	185.0	194.3	204.0	214.2	226.3	237.6
TRAVEL	15.0	15.8	16.6	17.4	18.3	19.2
CONTRACTUAL	18.0	18.9	19.8	20.8	21.8	22.8
SUPPLIES	3.0	3.2	3.4	3.6	3.8	4.0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>221.0</b>	<b>232.2</b>	<b>243.8</b>	<b>256.0</b>	<b>270.2</b>	<b>283.6</b>

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	221.0	232.2	243.8	256.0	270.2	283.6
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

POSITIONS:

FULL-TIME	3.0	3.0	3.0	3.0	3.0	3.0
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.)

This bill, as amended, 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.

Prepared by: Bruce Cummings

Phone: 465-4403

Division: Labor Relations *Bruce Cummings*

Date: 4/10/91

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. CSSB 95 (L&C)

ANALYSIS: (continued)

The Labor and Commerce Committee amended the proposed bill to include the responsibility for those projects over \$7 million which are funded by State or local funds. The FY 92 proposed budget includes four to nine projects that would require State contract negotiations and administration on an ongoing basis. We estimate that our FY 92 workload would increase to the extent that three additional professional analysts would be necessary if this bill becomes law. It is anticipated that negotiations would be protracted in nature, occur concurrently and require continuous oversight for administrative purposes. Inflation is assumed at five percent (5%) per annum in succeeding fiscal years.

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. CSSB 95

Revision Date: 3/12/91  
 Title: An Act authorizing the negotiation of project labor agreements.  
 Sponsor: Rodev  
 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
<b>TOTAL OPERATING</b>	<b>780.2</b>	<b>819.3</b>	<b>860.2</b>	<b>903.2</b>	<b>948.3</b>	<b>995.8</b>

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
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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: 3/12/91

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

Date: 3/12/91

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

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. CSSB 95

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.

*pic  
3/12*

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO : SB 95

Revision Date: \_\_\_\_\_  
Title: "An Act relating to agreements  
between a labor organization..."  
Sponsor: Senator Rodey  
Requestor: Senate Labor & Commerce

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						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Jan Hart DeYoung Phone: 264-2587  
Division: Alaska Labor Relations Agency Date: 2/19/91

Approved by Commissioner: Nancy Bear Usura *Nancy Bear Usura*  
Agency: Department of Labor Date: 2/19/91

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

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. SB 95

Revision Date: 19-Feb-91 Department Affected: Natural Resources  
 Title: An Act relating to agreement BRU: Management and Administration  
between a labor organization & public employer Components: Administrative Services  
 Sponsor: Senator Rodey  
 Requestor: Senate Labor and Commerce COMPONENT SERIAL NO. 424

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Sharon Barton Phone: 465-2406  
 Division: Management and Administration Date: 19-Feb-91

Approved by Commissioner: Harold Heinze Date: 19-Feb-91  
 Agency: Department of Natural Resources

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

REV 10/90

page 1 of 1

**STATE OF ALASKA  
1991 LEGISLATIVE SESSION**

**BILL NUMBER: SB 95**

**FISCAL NOTE**

Revision Date: 2/1/01

Department Affected:

DOT&PF

Title: "An Act relating to agreements between organization and a public employer"

BRU: Statewide

Sponsor: Senator Rodey

Component:

Engineer. &  
Oper. Stnds.

Requestor:

Component Serial Number:

547

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY92	FY93	FY94	FY95	FY96	FY97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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 FUNDS	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL FUNDING:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**POSITIONS**

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

Estimate of current year impact: 0

**ANALYSIS: (Attach a separate page if necessary)**

There should not be any major impact on the department unless we were required to do the negotiations and set up the Labor Agreements. There would be some administrative costs associated with that process, but such costs are nominal.

Prepared by: Jeffery C. Ottesen, Director \_\_\_\_\_

Phone: 465-2951

Division: Engineering and Operations standards

Date: Feb. 19, 1991

Approved by Commissioner:   
Frank G. Turpin

Phone: 465-3900

Agency: Department of Transportation and Public Facilities

Date: Feb. 19, 1991

**Distribution By Preparer:** Legislative Finance, Legislative Sponsor, Requestor, OMB, Impacted Agency(ies).

# Alaska State Legislature

Senator Drue Pearce, Chair  
Senator Virginia Collins, Vice Chair  
Senator Dick Eliason  
Senator Rick Halford  
Senator Jay Kerttula



WHILE IN JUNEAU  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3844

3111 C STREET, SUITE 150  
ANCHORAGE, ALASKA 99504  
(907) 561-2018

## SENATE LABOR AND COMMERCE COMMITTEE

TO: Nancy Quinto  
Senate Secretary

FROM: Rod R. Mourant Legislative Aide  
Senate Labor & Commerce Committee

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

DATE: April 9, 1991

RE: CSSB 95(L&C)

Per our conversation today, I am formally notifying you that I have requested a fiscal note on the subject bill. The bill was moved from committee on April 3rd. I requested a fiscal note from the agency on April 4th, April 5th and April 9th. I contacted the Governor's Office on the matter on April 8th and again today. I had previously spoken with you on April 5th and understood that a new fiscal note was required prior to advancing a bill.

From conversation today, I understand that you can advance the bill to its next committee of referral with a notation that a new fiscal note is forth coming. Please cause this to happen.

Thank you.

cc: Senator Pearce  
Senator Rodey

bill file

Patrick M. Rodey  
Senator

# Alaska State Legislature

3111 C. St., Suite 510  
Anchorage, Alaska 99503  
(907) 561-7618



During Session:  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3793

April 9, 1991

Senate

To: Senator Rick Halford, Chair  
Senate Judiciary Committee

From: Senator Pat Rodey, Vice-Chair  
Senate Judiciary Committee

A large, stylized handwritten signature in black ink that reads "Pat".

Subject: SB-95, Project Labor Agreements, and fiscal notes

I have enclosed three Fiscal Notes and one departmental position paper relative to SB-95 as introduced and subsequently reworked during the committee hearings by the Senate Labor and Commerce Committee before the measure was moved from Labor and Commerce on Wed, April 3, 1991.

I understand there is some confusion over the fiscal notes and the requirement under AS 24.08.035, requiring a fiscal note be attached to the bill "*containing an estimate of the amount of the appropriation increase or decrease which would result from enactment of the bill ...*" (copy attached) before moving a bill from the committee of first referral.

In this case SB-95, has fiscal notes of zero from three different departments and a Department of Administration position paper (3/13/91) addressing CSSB-95, as first proposed by the Labor & Commerce Committee.

The Department of Administration is apparently experiencing great difficulties in figuring a fiscal note. While other department's, (DOT&PF, Labor, and DNR) often involved in major construction projects, have submitted Fiscal Notes indicating they do not expect the "optional provisions" of SB-95 to have a fiscal impact on their respective departments, DOA apparently feels otherwise. However, DOA has been asked for a fiscal note since the bill was introduced, February 1, 1991. In addition, a committee hearing was first announced on February 14, 1991, and the hearing convened on February 20th, in compliance with the five day rule.

Rodey to Halford, April 9, re: SB-95 (page 2)

Departments are required to deliver fiscal notes to the committee requesting the note within five days. Requests for fiscal notes are nearly automatic when the five-day committee announcement is made. The Labor & Commerce Committee heard SB-95 for a second time, March 13th, **still without receiving a fiscal note from DOA.** On April 3, 1991, the Senate Labor and Commerce Committee took action moving CSSB-95 (L&C) from committee with individual member recommendations, again **still without receiving a fiscal note from DOA.** The original three fiscal notes from DOT&PF, Labor, and DNR were not altered by the changes made in the Labor & Commerce CS.

It should be noted that diligent staff efforts by Mr. Mourant of the Senate Labor & Commerce Committee to secure a Fiscal Note from DOA following committee action were attempted on April 4th, 5th, and again, April 9th. **Still no response.**

Why it has taken DOA so long to produce a Fiscal Note for SB-95, is unclear. This department has been engaged in negotiations with labor unions, trade organizations, and employee bargaining units since statehood! Surely they are familiar with the process. The adoption of SB-95, which would permit the option of project labor agreements in advance of going to bid on sizeable public construction projects should not prove difficult to those management personnel already well-experienced in labor negotiations.

Advancing SB-95 to the next committee of referral, complete with three fiscal notes, and a Department Position paper from DOA, would seem to be in the best interest of expediting legislation and certainly in line with the administration's goal of concluding legislative business before the 121 day session limit. A goal I heartily support.

Thanks for the opportunity to shed some light on this subject and for scheduling SB-95 this Thursday, April 11, before the Judiciary Committee.

cc: Senator Pearce, members Senate Judiciary Committee

# Alaska State Legislature

Senator Drua Pearce, Chair  
Senator Virginia Collins, Vice Chair  
Senator Dick Eliason  
Senator Rick Halford  
Senator Jay Karttula



## SENATE LABOR AND COMMERCE COMMITTEE

WHILE IN JUNEAU  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3844

3111 C STREET, SUITE 150  
ANCHORAGE, ALASKA 99504  
(907) 561-2018

TO: Terry Cramer, Legislative Legal Counsel  
Division of Legal Services

FROM: Rod Mourant, Committee Aide  
Senate Labor & Commerce Committee

DATE: March 27, 1991

RE: Senate Bill 95

Working from the bill draft number 7-LS0319\J dated 3/21/91,  
please redraft with the following changes:

1) Add a new section that limits the application of Project Labor Agreements to projects that are entirely funded by state or local funds. This is intended to preclude projects that are either partially or entirely funded by federal funds from being included in PLA's.

2) Add a new section that limits the application of Project Labor Agreements to projects whose state and local funding totals in excess of seven million dollars (\$7,000,000).

Terry, it is our intention to hear this new legislation on Wednesday, April 3.

Thank you.

bill file

Patrick M. Rodey  
Senator

# Alaska State Legislature

3111 C. St., Suite 510  
Anchorage, Alaska 99503  
(907) 561-7618



During Session:  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3793

March 14, 1991

Senate

## MEMORANDUM

To: **Senator Drue Pearce, Chair** ✓  
Senate Labor & Commerce Committee  
and Senators:  
Collins, Eliason, Halford, and Kerttula  
Members, Senate Labor & Commerce Committee

From: Senator Pat Rodey *Pat*

Subject: **SB-95. Project Labor Agreements**

I am forwarding copies of letters from Alaska contractors who support passage of SB-95.

You will note they share the same enthusiasm for Project Labor Agreements because of several positive factors, including:

- ✓ potential project cost savings
- ✓ Alaska residency preference in hiring
- ✓ reliable and skilled source of workers
- ✓ success with prior project labor agreements
- ✓ use PLAs successfully like private sector

As we work to structure a sound, workable bill that will expand options for public agencies to consider when preparing public works projects remember that Alaska's working men and woman and many Alaskan contractors have successfully utilized project labor agreements.

It makes sense that public agencies should at least have the option to successfully employ a project labor agreement on a large scale project.

LEGISLATOR'S COPY

If you have any modifications, please contact the assigned staff immediately.

LEGISLATIVE RESEARCH AGENCY  
RESEARCH REQUEST FORM

91.188  
Request #

Senator Drue Pearce  
Requested for (Legislator)

Project-Specific Labor Agree-  
ments

Rod Mourant (4993)  
Staff Phone Number

ASSIGNMENT

02/27/91 (GSH)  
Date/Time Initials

Carol R. Vandor 02/27/91  
Staff (3991) Date

SUBJECT DESCRIPTION

Research the use of project-specific labor agreements in Alaska. Where have they  
been used? On what projects? By whom?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PURPOSE: \_\_\_\_\_

\_\_\_\_\_

Background Info/Pertinent Files? \_\_\_\_\_

ANTICIPATED COMPLETION DATE: March 15, 1991

Patrick M. Rodey  
Senator

# Alaska State Legislature

3111 C. St., Suite 510  
Anchorage, Alaska 99503  
(907) 561-7618



During Session:  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3793

February 20, 1991

Senate

## Memorandum

To: Senator Drue Pearce, Chair  
Members, Senate Labor & Commerce

From: Senator Pat Rodey *Pat*

Subj: SB-95, relating to agreements between a labor organization and a public employer - Project Labor Agreements (PLA).

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 other matters prior to the job going out to bid. These and other cost savings can be bid out and reflected in the cost of the project.

In addition to obvious potential cost savings any successful major project must be constructed following a stringent time-line. This time-line requires 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 manhours.

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 from the area having the first opportunity for employment on the project.

It is also important to note 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 they desire, 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 PLA 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 SB-95, will provide state agencies the opportunity to utilize project labor agreements that could well result in cost savings, success in meeting or exceeding construction deadlines, and help ensure that Alaskans are hired for Alaskan public works projects.

Patrick M. Rodey  
Senator

# Alaska State Legislature



Senate

3111 C. St., Suite 510  
Anchorage, Alaska 99503  
(907) 561-7618

During Session:  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3793

February 14, 1991

## MEMORANDUM

To: **Senator Drue Pearce**  
Chair, Labor and Commerce Committee

From: **Senator Pat Rodey** *Pat*

Subj: Scheduling request for SB-95, An Act relating to agreements between a labor organization and a public employer.

I respectfully request SB-95, relating to project labor agreements, be considered for scheduling at the earliest possible date before the Senate Labor and Commerce Committee.

I have attached a detailed sectional analysis and line-by-line explanation of the legislation and its intent. Passage of SB-95 has the potential to help reduce the cost of public construction and maintenance projects (as it did in the Bradley Lake project) and it is likely to be a tool in our efforts to ensure Alaskans are employed on Alaskan public works projects.

Senate Bill (SB) 95  
Draft version 7-LS0319/D, 2/28/91

An Act Permitting The State or Political Subdivisions  
Of The State To Enter Into Project Labor Agreements

LINE NO., PAGE 1

- 1 - 3 \*\*\*\*
- 4 - 8 This section simply clarifies how and by which agency, administrative regulations pertaining to project labor agreements will be promulgated.
- 9 - 13 This section describes the purpose of the Bill as being twofold: (a) to structure job site labor relations on public construction projects in the interest of industrial harmony; and (b) to create a public contracting option for the State and political subdivisions that does not now exist. The Bill will allow the State and political subdivisions to negotiate

cost-savings through the vehicle of a project labor agreement, and thus to make more optimal use of public construction resources.

LINE NO., PAGE 1 (con't)

14

A PLA is a type of collective bargaining agreement. Only in the construction industry, however,

LINE NO., PAGE 2

1 - 4

may a Union and an employer or governmental entity enter into a collective bargaining agreement, regardless of whether the Union has achieved formal majority status. This section clarifies this fact and specifically applies this special "private construction industry" rule to the kind of public sector PLA's contemplated by this legislation.

4 - 10

This section specifies what kinds of provisions may be included in a PLA, beyond such traditional subjects as wages and benefits, etc. It specifically authorizes the State or political subdivision to require of prospective and successful bidders that they notify

certain "construction industry" labor organizations of job opportunities on publicly funded construction projects and that they accept applicants referred by such labor organizations. This idea is taken directly from § 8(f) of the National Labor Relations Act (NLRA).

LINE NO., PAGE 2 (con't)

12 - 16

These provisions enable the State or political subdivision to include language in a PLA establishing priorities in opportunities for employment referral based upon training, experience or length of service with the contractor, i.e., seniority; the industry, or in the particular geographical area. These referral priorities are a traditional part of a Union's operation of its hiring hall or job referral system. They are also expressly authorized by § 8(f) of the NLRA and have been approved by the National Labor Relations Board (NLRB) and the United States Supreme Court.

17 - 21

The language of this section comes directly from the construction industry exception to

the rule against "hot cargo" agreements contained in § 8(e) of the NIRA. It allows the State or political subdivision to require would be bidders to comply with the requirement that they subcontract or do business only with parties who agree to honor the terms of the PLA.

LINE NO., PAGE 2 (con't)

22 - 24            This section insures that the State or political subdivision retains a sufficient interest in and control over job site labor relations to qualify for the various construction industry exemptions provided for in this legislation.

25 - 28            This section provides that the standard good faith rules governing the collective bargaining process set forth under the Public Employment Relations Act shall apply to PLA's.

LINE NO., PAGE 3

29, p.2

7, p.3

Here the Bill provides that successfully negotiated PLA's shall be reduced to writing with a maximum term of three years's or for

the length of the project, which ever is longer. Disputes under the agreement shall be resolved through arbitration or by petition to the Alaska Labor Relation's Agency which is empowered to adopt appropriate administrative regulations.

8 - 10

This section clarifies that employees of contractors and subcontractors on public construction projects working under a PLA will not be public employees.

LINE NO., PAGE 3 (con't)

11 - 12

This section provides that the right to participate in an election addressing the question of Union representation is not barred by this legislation.

13 - 14

This section exempts the negotiation of a PLA from the provisions of the procurement code. Once the PLA is negotiated, however, competitive bidding would apply to all other aspects of the project. The PLA would have merely established some of the pre-conditions for submitting a successful bid. Moreover, collective bargaining agreements are already

exempt from the procurement code since they are contracts for "services". This section, however, would remove any doubt.

15 - 16

This section exempts PLA's from the State's anti-trust prohibitions. State law already exempts those arrangements -- such as the negotiation of a PLA, that would be exempt under Federal law. State action itself is also generally exempt from anti-trust scrutiny. Nonetheless, this section would remove any doubt.

LINE NO., PAGE 3 (con't)

17 - 21

These sections add appropriate language to the procurement code and the State's anti-trust statutes to reflect the exemptions provided for above.

BB 95 BY HELENÉ

An Act Relating To Agreements Between  
A Labor Organization And A Public Employer

LINE NO., PAGE 1

(1) \*\*\*\*\*

(2) \*\*\*\*\*

(3) The reference made at line 3 is to the Alaska Public Employment Relations Act AS 23.40.070 et. seq. The part of the statute specifically contained at AS 23.40.110 deals with unfair labor practices or acts that neither (a) a public employer nor (c) a labor organization may legally commit. Subsection (b) currently provides for one exemption from the section's prohibition against employer unfair labor practices as follows: (b) Nothing in this chapter prohibits a public employer from making an agreement with an organization to require as a condition of employment (1) membership in the organization ... following the beginning of employment..."

(4-7) Lines 4-7 add a fourth part or subsection (d) to AS 23.40.110 which will operate to enable the State to enter into typical construction industry or

prehire agreements with a labor organization covering construction industry employees.

(8, 9) Subsection (d)(1) at lines 8-9, authorizes such agreements regardless of whether the union has been elected to act as their bargaining representative by a majority of the employer's employees. Ordinarily, collective bargaining occurs only after a union has first been elected by a majority vote of the employees affected. However, recognizing the enormous workforce instability in the construction industry, several decades ago Congress approved special rules for bargaining between unions and construction industry employers. For example, in the construction industry a project will often be designed and let before any employees have been hired. For this reason, subsection (d)(1) enables a public employer, like its private counterparts, to enter into an agreement with a union covering a construction project before the job has been awarded or any employees are hired.

The language proposed at (d)(1) is a common feature of Federal Labor Law. The language, in fact, is derived in nearly identical form from the

National Labor Relations Act at § 8(f) as follows:

It shall not be an unfair labor practice ... for an employee ... to make an agreement covering employers engaged (or who, upon their employment, will be engaged in the building and construction industry with a labor organization of which building and construction employees are members ... because (1) the majority status of such labor organization has not been established under Section 9 of the Act prior to the making of such agreements ...<sup>1</sup>

(10-12) The language at subsection (d)(2) is also taken from §8(f) of the NLRA and is intended only to empower the public employer to give such a labor organization the opportunity to refer its out-of-work registrants<sup>2</sup> to the public employer for work opportunities. Simply stated, it authorizes the public employer to utilize a union's hiring hall or referral procedures to secure applicants for employment. The language as it appears at (d)(2) is taken directly from the NLRA after the above quote from §8(f)(1) as follows:

---

<sup>1</sup> Section 9 of the NLRA deals with elections as does our reference to AB 23.40.100 at line 9.

<sup>2</sup> Anyone, member and non-member alike, by law may register with a union to secure employment; hence, the term "registrant" as opposed to "member."

\* \* \*

(3) Such agreement requires the employer to notify such labor organization of opportunities for employment with such employer, or gives such labor organization an opportunity to refer qualified applicants for such employment ...

(13-14)

1 (p.2)

Section (d)(3) is again taken directly from the NLRA at §8(f) as follows:

\* \* \*

(4) Such agreement specifies the minimum training or experience qualifications for employment based upon length of service with such employer, in the industry or in the particular geographical area ... (emphasis supplied.)

This language merely authorizes the public employer to utilize a union's hiring hall. By law, such hiring halls may legally provide for distinctions between otherwise equally qualified applicants based upon one applicant's residence in a specified geographical area, i.e., the State of Alaska. Such geographical preferences are a traditional part of a union's hiring hall and have been recognized not

only by congress but approved in Bricklayers Union, 49 LRRM 1223 (1961) by the NLRB and in IBT v. NLRB, 365 U.S. 667 (1961) by the United States Supreme Court.

(2-6) Section 1(d)(1)-(3) of this bill addressed certain actions of the government in its capacity as a direct employer of construction industry employees. The language at subsection (e) addresses the public employer's relationship with its contractors and subcontractors as opposed to its employees. It specifically authorizes in public contracts the kind of "subcontracting agreements" that can and have been utilized in the private sector for decades.

Like the previous sections, this language also comes directly from §8(e) of the NLRA. Section 8(e) generally prohibits an employer and union from refusing to handle the goods of or do business with any other employer. Such prohibited agreements are commonly referred to as "Hot Cargo." Like the "proviso" to §8(e) of the NLRA, our section (e), expressly exempts such contracting agreements from any statutory or other legal prohibition. The "construction industry proviso" or exception to

the NLRA's prohibition against "Hot Cargo" agreements provides as follows:

\* \* \*

(PROVIDED), That nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work ...: Provided further, that for the purposes of this subsection (e) ... The terms any employer ... shall not include persons in the relation of a ... manufacturer ... working on the goods or premises ... or performing parts of an integrated process of production in the apparel and clothing industry ...

(6-8) Certain legal challenges to agreements such as those provided for in §B 95 have been filed. Where such challenges have been preliminarily successful, as in the Boston Harbor case recently decided by the 1st Circuit Court of Appeals, the error most commonly cited by the Courts involved the public employer's failure to retain control over the "means, manner and standards of performance" of employees working on projects covered by such agreements. We have thus shored-up this potential problem by insuring the requisite involvement by

the State with the language that appears at lines 6-8.

(9-11) The NLRA like SB 95 excludes certain activities including manufacturing from its coverage. SB 95, however, goes on to provide additional exemptions for more typical Alaskan industries like fishing, agriculture, logging, timber and shipping. All these exemptions do, however, is to narrow the application of SB 95 to the construction industry only. SB 95 will apply only to construction projects built by the State directly as an employer of construction industry employees, or to projects built for the State by contractors and subcontractors utilizing State funds appropriated for such construction.

(12-14) The language at subsection (f) again parallels the NLRA. It merely provides that execution of the kind of "pre-hire" or project labor agreements contemplated by SB 95 is not intended to prevent any group of employees from exercising their right to vote on the question of union representation. Such elections are currently provided for under AS 23.40.100; hence, the reference at lines 13 and 14. Likewise under the NLRA, pre-hire or project agree

ments authorized under Sections 8(e) and 8(f), do not bar elections as provided for under §9 of the NLRA, as follows:

Provided further, that ... shall not be a bar to a petition filed pursuant to Section 9(c) or 9(e) ...

(15-16) The language of the NLRA on this point is nearly identical to that provided for by SB 95. Subsection (g) provides that the agreements authorized by SB 95 are not prohibited by AS 45.50.562 - 45.50.596 dealing with prohibitions against Monopolies and Restraints of Trade. In a certain sense, it merely clarifies AS 45.50.572(a) which already exempts the activities of labor organizations from coverage as follows:

AS 45.50.562 - 45.50.596 do not forbid the existence or operation of labor ... organizations ... from lawfully carrying out the legitimate objectives of them ...

AS 45.50.572(b) already exempts actions or arrangements authorized

... under the laws of the United States which exempt these actions or arrangements from application of the anti-trust laws ...

To the extent such contracts as provided for under SB 95 might be "required" by a state regulatory

agency, they are again already exempt from the State's anti-trust prohibitions under AS 45.50.572 (g) ;

AS 45.50.562 - 45.50.596 do not forbid activities expressed required by a regulatory agency of the state ... if the regulatory agency has given due consideration to the possible anti-competitive effects ...

(17-18) Like the above reference, subsection (h) exempts the agreements provided for under SB 95 from the application of AS 36.30 et. seq., also referred to as the State Procurement Code. Competitive bidding requirements would thus not necessarily apply to pre-hire or project labor agreements. That is not to say that job awards would go to the other than the low bidder. It merely means that in considering which of several bids would be both low and qualified, the State would be able to legally preference those contractors who had executed agreements to secure their employees from appropriate geographical or "area preference based" union hiring halls.

(19-20) Section 2 of SB 95 adds new language to AS 23.-30.850(b) which now lists those contracts specifically exempt from coverage under the Procurement Code. The new language adds a 23rd exemption for

LINE NO., PAGE 2

"agreements entered into" under SB 95.

(21-24) Finally, Section 3 of SB 95 adds similar language to the current list of anti-trust exemptions provided for at AS 45.50.571 to include the agreements contemplated by SB 95.

COPY

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 13, 1990

SUBJECT: Project labor agreements  
(SB 529)

TO: Senator Pat Rodey

FROM: Teresa B. Cramer  
Legislative Counsel

You have requested additional comments on the contracting and hiring procedures proposed for public construction projects.

Your office has provided me with a copy of a memorandum from Carolyn E. Jones, Assistant Attorney General, in which Ms. Jones suggests that the state procurement code currently bars a state agency from requiring bidders to hire its labor force from a single source. She also suggests that the arrangement is vulnerable to constitutional attack. I would agree with both of these conclusions.

It would be possible to amend the procurement code so that specifications for public construction contracts could include a project labor agreement. SB 529 addresses the state's power as an employer to enter into a prehire agreement on its own behalf. It does not address the state's ability to enter into public construction contracts that require private contractors to secure their workers from a particular union. To do so, an amendment to AS 36.30.060, to permit agencies to include prehire agreements in the specifications for bids for public construction contracts, would be advisable.

The specifications for state contracts constitute state action and provide a basis for challenging the legislation. A bidder who did not use union labor or preferred to secure union labor through a local not included in the specifications could challenge the inclusion of the requirement in the bid specifications as a denial of equal protection. The state could point to the policy favoring collective bargaining for support of the bid specification requirement, but could not

SB 529

March 14, 1991

Drue -

These are the cases Helene Brooks was referring to in last night's hearing. I thought we already had copies but a review of my files proved me wrong. Rodey's office had never distributed.

I have given copy to each committee member.

*TR*

*Put in bill file*

# Alaska State Legislature

Senator Druo Pearce, Chair  
Senator Virginia Collins, Vice Chair  
Senator Dick Ellason  
Senator Rick Halford  
Senator Jay Keritula



## SENATE LABOR AND COMMERCE COMMITTEE

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(907) 561-2018

TO: Members  
Senate Labor & Commerce Committee

FROM: Rod R. Mourant, Legislative Aide  
Senate Labor & Commerce Committee

A handwritten signature in cursive script, appearing to read "Rod", written over the printed name "Rod R. Mourant".

RE: Senate 95

Date: March 14, 1991

Enclosed are copies of the court rulings and legal opinions that Helene Brooks referred to during her testimony on SB 95 in the March 13th committee hearing.

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

COPY

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

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April 13, 1990

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The specifications for state contracts constitute state action and provide a basis for challenging the legislation. A bidder who did not use union labor or preferred to secure union labor through a local not included in the specifications could challenge the inclusion of the requirement in the bid specifications as a denial of equal protection. The state could point to the policy favoring collective bargaining for support of the bid specification requirement, but could not

SB 529

Senator Pat Rodey

Page 2

April 13, 1990

justify, on the basis of resident hire, its choice of a union that included a resident hire policy over one that did not. In Robison v. Francis, 713 P.2d 259 (Alaska 1986), the court held that excluding nonresidents from public construction jobs so that more jobs would be available to state residents was not a permissible justification for discrimination under the privileges and immunities clause. Ms. Antel suggested that Image Carrier Corp. v. Beame, 567 F.2d 1197 (1977), offered some hope on the constitutional issues raised by the proposed contracting provisions. The case arose from a New York City resolution requiring that certain city forms be printed by union shops. Nonunion printing shops challenged the requirement as a denial of equal protection. The court held that the requirement imposed economic regulation only. The state policy in favor of collective bargaining provided a rational basis for the resolution. The dissent argued that the city, as trustee of the people, must conserve public funds and therefore found the union shop only policy as unreasonable and unrelated to qualifications for the job to be performed.

A challenge to the project labor agreements that are the basis for SB 529 would almost certainly include Privileges and Immunities and right to travel issues as well as equal protection claims. The Alaska courts have found the state's justifications for resident hire and local hire statutory requirements unpersuasive in recent years. It seems likely that if the court reaches the constitutional issues, the resident hire requirements would fall. However, a contractor's standing to raise the constitutional claims of a nonresident construction worker could be challenged and, as Ms. Antel points out, a nonresident's standing to assert claims against the state is also attenuated by the removal of the residence discrimination to the union.

If I may be of further assistance, please advise.

TBC:lmb  
L10/066

March 14, 1991

Drue -

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*TR*

*Put in bill file*

# Alaska State Legislature

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## SENATE LABOR AND COMMERCE COMMITTEE

WHILE IN JUNEAU  
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3111 C STREET, SUITE 150  
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Date: March 14, 1991

Enclosed are copies of the court rulings and legal opinions that Helene Brooks referred to during her testimony on SB 95 in the March 13th committee hearing.

either part of the *Toomer* test.<sup>50</sup> First, the state failed to present a substantial justification for its discrimination. Alaska had not shown that nonresidents were a "peculiar source" of the state's high unemployment. In fact, many Alaska residents were jobless because they were not qualified for available employment.<sup>51</sup> Second, the state had failed to prove that the act was sufficiently narrow in scope.<sup>52</sup> The act, which granted an across-the-board preference for all jobs and all residents, regardless of training or employment status, was grossly overinclusive.<sup>53</sup>

The Court also refuted the state's claim of immunity from the strictures of the privileges and immunities clause based on the natural resources exception.<sup>54</sup> The Court noted that a state's proprietary connection to the discrimination may warrant consideration, but held that Alaska's attenuated proprietary interest in the contracts regulated by Alaska Hire could not justify the resulting discrimination.<sup>55</sup> According to the Court, the Act "[was] an attempt to force virtually all businesses that benefit in some way from the economic ripple effect of Alaska's decision to develop its oil and gas resources to bias their employment practices in favor of the state's residents."<sup>56</sup>

The Court next applied privileges and immunities analysis to a local hire law in *United Building & Construction Trades Council v. Mayor of Camden*.<sup>57</sup> *Camden* involved a municipal law that required forty percent of all employees of contractors and subcontractors on city projects to be Camden residents.<sup>58</sup> The proposed justification presented by the city was that the law was enacted to alleviate economic blight and to halt the resulting exodus of Camden's residents.<sup>59</sup>

Although the case applies a privileges and immunities analysis to a municipal law,<sup>60</sup> the Court's opinion is applicable to state laws in

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50. *Id.* at 526-27 (footnote omitted).

51. *Id.*

52. *Id.* at 527-28.

53. *Id.*

54. *Id.* at 528.

55. *Id.* at 529.

56. *Id.* The Court noted that the only limit on the scope of Alaska Hire was that the activity to which the statute was applied take place within Alaska. *Id.* at 531.

57. 465 U.S. 208 (1984).

58. The Camden ordinance, adopted as part of a statewide affirmative action program, required that contractors on public works projects attempt to employ Camden residents and always have Camden residents comprising at least 40% of workers. *Id.* at 211.

59. *Id.* at 222.

60. *Id.* at 216-18. The Court held that the Camden ordinance was not exempt from privileges and immunities clause review at the challenge of out-of-state residents merely because some in-state residents were similarly affected by the ordinance. *Id.* at 217-18.

several respects. The Court held the right to employment with private contractors on public works projects to be fundamental.<sup>61</sup> The Court also outlined the appropriate framework for evaluating the constitutionality of the statute, the *Toomer* test refined in *Hicklin* ("the *Toomer-Hicklin* test").<sup>62</sup> However, due to a sparsity of evidence, the Court declined to apply the test.<sup>63</sup> Instead, the Court remanded the case for evaluation under the articulated standards.<sup>64</sup>

*Camden* shows that the Court is retreating from the hard line it took against local hire laws in *Hicklin*. The Court made several notable points that could work in favor of a state attempting to defend a local hire law. First, the Court held that any analysis under the privileges and immunities clause must "be conducted with due regard for the principle that states should have considerable leeway in analyzing local evils and in prescribing appropriate cures."<sup>65</sup> Second, noting *Camden's* proprietary interest in the jobs at issue, the Court stated that granting leeway was especially important when a government practiced discrimination as a condition of its own spending.<sup>66</sup> The Court distinguished its rejection of the proprietary interest asserted in *Hicklin*,<sup>67</sup> which it had held to be too attenuated to justify Alaska's discrimination. The *Camden* ordinance, by contrast, did not have the "ripple effect" that proved fatal to the Alaska law.<sup>68</sup> "If [the *Camden* ordinance] is limited in scope to employees working directly on city public works projects," the Court noted.<sup>69</sup> As the preceding discussion shows, the *Camden* Court apparently recognized the importance of the mitigating factors it had rejected under the *Hicklin* facts. Unfortunately, due to the lack of evidence before the Court, it could not apply these factors to the local hire law in controversy.<sup>70</sup>

61. *Id.* at 219.

62. *See supra* notes 50-53 and accompanying text.

63. *Camden*, 465 U.S. at 223. No trial had been held in the case. The Supreme Court of New Jersey had certified the case for direct appeal after brief administrative proceedings pertaining to the state treasurer's approval of the law. *Id.*

64. *Id.*

65. *Id.* at 222-23 (quoting *Toomer v. Witsell*, 334 U.S. 385, 396 (1948)).

66. *Id.* at 223.

67. *See supra* notes 59-60 and accompanying text.

68. *United Bldg. & Constr. Trades Council v. Mayor of Camden*, 465 U.S. 208, 223 (1984).

69. *Id.*

70. One group of commentators interprets the *Camden* ruling as clearly favorable to states attempting to uphold local hire laws. *See* 1 R. ROTUNDA, J. NOWAK, & J. YOUNG, *supra* note 23, § 12-7, at 658. The authors state that *Camden's* reference to other cases upholding restrictions on public employment against equal protection and commerce clause claims indicates that the Court is unlikely to invalidate city or state residency requirements for public employment under the privileges and immunities clause. *Id.*

## III. STATE COURT INTERPRETATIONS OF LOCAL HIRE LAWS

A. *State v. Antonich*: Wyoming Preference Act Upheld

Wyoming is the only state in which a highest state court has held a local hire law constitutional in the wake of *Camden*. The case that tested the Wyoming law, *State v. Antonich*,<sup>71</sup> stemmed from the criminal prosecution of construction company superintendent Roger Antonich.<sup>72</sup> The state charged Antonich with violating the Wyoming Preference Act,<sup>73</sup> which gives a complete preference to qualified Wyoming residents for employment on public works projects and provides misdemeanor penalties for supervisors who flout the law.<sup>74</sup> The prosecutor alleged that Antonich fired a Wyoming worker from a public construction project in order to hire nonresident workers.<sup>75</sup> The county court dismissed the charge on the ground that the statute violated the privileges and immunities clause. The Wyoming Supreme Court reversed and found that the statute satisfied the *Toomer-Hicklin* test.<sup>76</sup>

As a threshold matter, the state conceded that the Wyoming Preference Act burdened a fundamental right, the right of a nonresident to work on a public construction project,<sup>77</sup> and therefore fell within the purview of the privileges and immunities clause. The evil that the Act was intended to combat was ". . . a resident remaining unemployed while a nonresident takes a job on a Wyoming public works project."<sup>78</sup> The court found that "without question" reduction in unemployment is a valid state goal.<sup>79</sup> Conceding that other states' local hire laws have usually not survived privileges and immunities scrutiny, the court explained several factors distinguishing the Wyoming statute

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71. 694 P.2d 60 (Wyo. 1985).

72. *Id.* at 61.

73. WYO. STAT. §§ 16-6-201 to -206 (1977). The Act provides:

Every person who is charged with the duty of construction, reconstructing, improving, enlarging, altering or repairing any public works project or improvement for the state or any political subdivision . . . shall employ only Wyoming laborers on the project or improvement. Every contract let by any person shall contain a provision requiring that Wyoming labor be used except other laborers may be used when Wyoming laborers are not available for the employment from within the state or are not qualified to perform the work involved.

*Id.* § 16-6-203 (1977).

74. *Id.* § 16-6-206 (1977).

75. *Antonich*, 694 P.2d at 61.

76. *Id.* at 64.

77. *Id.* at 62.

78. *Id.* (citation omitted).

79. *Id.*

1987]

## LOCAL HIRE LAWS

369

and contrasted the Wyoming law with the Alaska Hire statute stricken in *Hicklin*.<sup>80</sup>

The court described several features that narrow the scope of the Wyoming Preference Act. First, the Act does not attempt to eliminate general unemployment. Instead, it applies only to nonresident applicants for public works construction jobs.<sup>81</sup> Second, the statute limits demands on employers, merely requiring an employer to deny nonresidents employment when the state can provide qualified residents to meet its needs.<sup>82</sup> Finally, the statute applies only to projects in which the state has a proprietary interest.<sup>83</sup> The court concluded that the Act was constitutional because it narrowly addressed the goal of reducing unemployment and because the degree of discrimination "bears a close relation to the state's valid reasons for discriminatory treatment."<sup>84</sup>

Gaps exist in the *Antonich* court's reasoning. The *Toomer-Hicklin* test requires (1) that nonresidents constitute a peculiar source of the evil at which the statute is aimed, and (2) that the discrimination be no greater than necessary. The *Antonich* court's opinion, however, lacks analysis of either of these issues.

Nonresidents may in fact cause unemployment in Wyoming. In 1985, the state ranked fourth highest in percentage of unemployment benefits paid interstate.<sup>85</sup> This factor may indicate a high percentage of nonresidents working in Wyoming.<sup>86</sup> The combination of these factors indicates that Wyoming has an unemployment problem that may be caused by nonresidents. The court should have considered such factors in its opinion rather than assuming that a causal relationship existed between nonresident laborers and unemployment.<sup>87</sup>

80. *Id.* at 64. The court stated:

The Wyoming statute at issue in the present case requires merely that governmental funds, allocated to public works projects, be used to hire qualified, available residents in preference to nonresidents. The statute does not effect the sort of wide-ranging discriminatory treatment fatal to Alaska Hire in *Hicklin v. Orbeck*.

*Id.* at 63.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.* at 64.

85. LABOR REPORT, *supra* note 3, at 19.

86. See *supra* note 5.

87. *State v. Antonich*, 694 P.2d 60, 64 (Wyo. 1985) (Thomas, C.J., concurring). Chief Justice Thomas stated:

I have a concern about the adequacy of the record to support the nexus between the evil of "a qualified Wyoming worker's remaining unemployed

The concurrence in *Antonich* points out a second flaw in the majority's analysis. Although the majority finds that the statute's narrowing features allowed it to pass the second prong of the *Toomer-Hicklin* test, the concurrence disagreed with this holding.<sup>88</sup> The concurrence notes that the preference granted by the statute is not limited to those who are unemployed. Any Wyoming resident who is qualified and available for work receives a preference.<sup>89</sup> A statute granting employed residents a preference to the detriment of nonresidents is overbroad for its stated purposes of reducing unemployment.

In sum, *Antonich* demonstrates that a local hire statute can pass judicial scrutiny. However, the court apparently applied the *Toomer-Hicklin* test perfunctorily. Although it is possible that the Wyoming statute could have passed constitutional muster, the *Antonich* opinion does not prove that the statute *should* have survived.

#### B. Cases Striking Local Hire Laws

State and federal courts outside Alaska have held local hire laws unconstitutional as violative of the privileges and immunities clause. Perhaps the most restrictive interpretation of the constitutionality of a local hire law derives from a 1984 advisory opinion of the Supreme Judicial Court of Massachusetts to the Massachusetts Senate.<sup>90</sup> The Massachusetts court analyzed a proposed bill that would require private contractors on state-funded projects in areas with high unemployment to employ Massachusetts residents in at least eighty percent of all jobs covered by the contract.<sup>91</sup>

In its analysis of the bill, the Supreme Judicial Court of Massachusetts observed initially that the bill would burden a fundamental right.<sup>92</sup> The court then found that the bill failed both prongs of the *Toomer-Hicklin* test. Noting that it had no records with which to work, the court assumed *arguendo* that nonresidents were a peculiar

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while a nonresident goes to work on a government-funded construction project" and the statute in question. I agree that that is a possibility, but the record does not demonstrate it.

*id.*

88. *Id.*

89. *Id.* Unfortunately, the concurring opinion provides merely an unworkable alternative. The concurrence relies upon the state's proprietary interest in the projects to find that the statute does not violate the privileges and immunities clause. The concurrence seems to stipulate that because the state is participating in the marketplace its actions are immune from privileges and immunities clause scrutiny. *Id.* at 65. The United States Supreme Court, however, has rejected that argument. *See supra* note 24.

90. Opinion of the Justices to the Senate, 393 Mass. 1201, 469 N.E.2d 821 (1984).

91. *Id.* at 1201-02, 469 N.E.2d at 822.

92. *Id.* at 1203, 469 N.E.2d at 823.

RON ZOBEL  
ATTORNEY AT LAW  
101B West Sixth Avenue • Suite 300  
Anchorage, Alaska 99501  
(907) 272-3587

January 14, 1988

Mr. Ray Metcalfe  
Metcalf Investments Inc.  
PO Box 4-2766  
Anchorage AK 99509

Re: An Act limiting the period of employment  
in remote locations.

Dear Ray:

I have reviewed your proposed statute limiting the period of time that a person may work in remote locations. This proposed legislation avoids a major legal problem in past resident hire legislation. It has long been held that the states have the legislative power to regulate hours, wages and conditions of employment. See, e.g., West Coast Hotel v. Parrish, 300 U.S. 379 (1937). Past efforts of the state to impose residency requirements have been challenged successfully under the Privileges and Immunities Clause of Article IV of the U.S. Constitution. Hicklin v. Orbeck, 437 U.S. 518 (1978); Robison v. Francis, 713 P.2d 259 (Alaska 1986). However, a successful privileges and immunities challenge would be very difficult if the legislation does not explicitly discriminate between residents of Alaska and non-residents, especially where the proposed legislation has as its primary purpose the regulation of safety and the conditions of working in remote locations. This proposed legislation would have the incidental impact of making it more convenient to live in Alaska. However, it would be very difficult to attack in court, especially if it can be shown that persons who work for long periods of time in remote locations, such as the North Slope, are less efficient, observant, or have more accidents. The purpose of avoiding the long separation of families may also be a neutral, non-discriminatory purpose that would support such a statute. As long as there is some evidence to support this proposition, the legislature or the people through initiative would have a great deal of discretion in regulating hours and working conditions.

Your proposed legislation would be much less vulnerable to the challenges which have been successful in the Hicklin and Francis cases.

Yours truly,

Ron Zobel

Post-It™ brand fax transmittal memo 7671		# of pages >	4
To Max Gifford	From Helene Brooks	Co.	
Dept.	Phone #		
Fax 465-4428	Fax 276-1963		

Max:

This may address  
T. Atamer's concerns  
at least partially.

Helene

For an Act entitled: An Act limiting the period of employment in remote locations.

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

\*Section 1. AS18.60. is amended by adding a new section to read:

Sec. 18.60.061. DECLARATION OF HAZARD. Employment remote locations for excessive periods of time imposes a substantial burden upon, and a hindrance to the people the state in terms of lost production, lost wages, medical expenses, increased insurance costs, disability compensation payments, and physical and mental health problems, and social problems including drug and alcohol abuse, family discord and domestic violence.

\*Section 2. AS18.60 is amended by adding a new section to read:

Sec. 18.60.062. LIMITATION ON PERIOD OF EMPLOYMENT IN REMOTE LOCATIONS. (a) A person may not work at a remote location for more than seven days in fourteen days, excluding time going to or from the job location.

(b) It is the purpose of this section to limit the days of work in a fourteen day period to seven days of work at remote location(s) regardless of the type of duties or number of employers.

(c) In case of emergency, where life or property is in imminent danger, the period of work may be extended during the continuance of the emergency.

(d). Workers in remote locations shall be transported to non-remote locations, or their domicile in another remote location, during the seven day period that they are not working.

(e). This section does not apply to:

(1) Persons who are domiciled at the remote location, and maintain a dwelling unit at the remote location that is not directly related to their employment at the remote location, and who do not occupy employee housing accommodations during the period of work. For the purpose of this subsection employee housing accommodations are accommodations that are not in the ordinary course of business regularly provided on a commercial basis to the general public. Employee housing accommodations shall not be brought within this exception simply by offering lodging to the general public.

(2) Persons who are employed for a period or periods of not more than four work-weeks in the aggregate in any calendar year in an industry found by the Commissioner to be of a seasonal nature.

\*Section 3. AS18.60.105 is amended by adding a new subsection to read:

(c) In AS18.60.061 and AS18.60.062 "remote location" means a location in which the domiciliaries of that location are qualified to harvest fish and game on a subsistence basis under state or federal law or regulation.



United States Government

**NATIONAL LABOR RELATIONS BOARD**

Region 19 - Resident Office

222 West 7th Ave - No. 21

Anchorage, AK 99513-0076

(907)  
271-5015

February 26, 1991

Alaska Utility Construction, Inc.  
101 E. Swanson  
Wasilla, Alaska 99687

Re: I.B.E.W. Local 1547  
Homer Electric Association  
Case No. 19-GE-92

Gentlemen:

The above-captioned case charging violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

As a result of the investigation, it appears that further proceedings are not warranted at this time. I am, therefore, refusing to issue Complaint in this matter. A written summary report of the basis for my conclusions is attached.

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing an appeal with the General Counsel addressed to the Office of Appeals, National Labor Relations Board, 1717 Pennsylvania Avenue N.W., Washington, D.C. 20570, and a copy with me. This appeal must contain a complete statement setting forth the facts and reasons upon which it is based. The appeal must be received by the General Counsel in Washington, D.C. by the close of business on March 12, 1991. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. Any request for extension of time must be submitted to the Office of Appeals in Washington, D.C. and a copy of any such request should be submitted to me.

Re: Local 1547 I.B.E.W./Homer Electric Association  
Case No. 19-CE-92  
and  
Local 1547 I.B.E.W./Chugach Electric Association  
Case No. 19-CE-93

SUMMARY REPORT

Both charges alleges that I.B.E.W. Local 1547 and each of the above Employers have violated Section 8(e) of the Act by entering into collective bargaining agreements or Letters of Understanding which provide that certain work may only be contracted or subcontracted to firms which are signatory to agreements with I.B.E.W. Local 1547.

The investigation established that I.B.E.W. Local 1547 and Homer Electric Association have in effect a Letter of Understanding which provides that only contractors signatory to agreements with I.B.E.W. Local 1547 may perform work normally performed by HEA bargaining unit employees on construction projects. I.B.E.W. Local 1547 and Chugach Electric Association have contractual provisions within separate agreements covering outside employees and generation plant employees which provide that work involving new construction performed at job sites may only be contracted or subcontracted to firms in agreement with I.B.E.W. Local 1547.

The investigation established that the agreements between I.B.E.W. Local 1547 and both Homer Electric and Chugach Electric are secondary in effect and thus within the ambit of Section 8(e) of the Act. However, the investigation also established that the agreements with HEA and CEA are permissible within the construction industry proviso of Section 8(e). In this regard, it was clear that the work covered by the agreements with both HEA and CEA is limited to construction work normally performed by HEA or CEA employees represented by I.B.E.W. Local 1547, that HEA and CEA are functioning as construction contractors with regard to that work, and that the agreements prohibit any economic pressure or threats thereof in the event of disputes. Rather, expedited arbitration is the sole permissible means of dispute resolution.

It was concluded, therefore, that the agreements between I.B.E.W. Local 1547 and both HEA and CEA are not violative of Section 8(e) of the Act. Connell Construction Co. v. Plumbers Local 100, 421 U.S. 616, 633 (1975), Woelke & Romero Framing Co., 456 U. S. 645 (1982), A. L. Adams Construction v. Georgia Power Company, 733 F2d 853 (11th Cir, 1984).

Accordingly further proceedings are not warranted.

Page 2

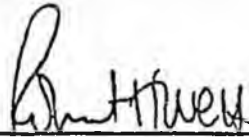
Re: Case No. 19-CE-92

February 26, 1990

If you file an appeal, please complete the Form NLRB-4767, Notice of Appeal, enclosed with this letter and send one copy of the form to each of the other parties whose names and addresses are listed below. The notice forms should be mailed at the same time you file the appeal, but mailing the notice forms does not relieve you of the necessity for filing the appeal itself with the General Counsel and a copy of the appeal with me within the time stated above.

Sincerely,

John D. Nelson  
Regional Director

By:   
Robert H. Wettleson  
Resident Officer

Enclosures

Certified Mail No P 545 870 960  
Return Receipt Requested

cc: General Counsel, Attn: Office of Appeals, National Labor Relations Board, 1717 Pennsylvania Avenue N.W., Washington, D.C. 20570

National Labor Relations Board, 2948 Federal Building,  
915 Second Avenue, Seattle, Washington 98174

National Labor Relations Board, 222 W. 7th Avenue, #21,  
Anchorage, Alaska 99513

✓ I.B.E.W. Local 1547, Attn: Helene Antel, General Counsel  
2702 Denali Street, Anchorage, Alaska 99503

Richard R. Huffman, Attorney, KEMPEL, HUFFMAN, & GINDER,  
255 E. Fireweed Lane, Suite 200, Anchorage, Alaska 99503

Homer Electric Association, 3977 Lake Street, Homer, Alaska 99603

GENE

KULAWIK

276-6781 W

277-7892 H

NEXT TIME SB95

STEVE BURRILL

ALL MINERS

FAX 278-7997

SB 95

DON RAPP

345-2266

SB 95

MURK HICKEY

RL

---

BOB WLAND

A & C

ANN WILLIAMS

MJWL ANELL

SB 95

JIM UTEHOFERN

OIL FIELD SCS.

344-1577

B-15

CS -

Policy changes

Plus

(1) states that  $\frac{1}{2}$  of  
applies to pro parts  
using total - state - level  
function - not state

(2) ~~states that~~ - only  
pro parts apply to  
if  $\frac{1}{2} < \text{state}$  - not  
→

Elissen said he  
would offer me it,  
which would ensure  
the ~~best~~ authority to  
do this in Japan -

~~Be~~ make sure his  
staff gets it drafted  
but don't tell anyone  
about it.

---

I want to make  
it by 4/3.

March 28, 1991

Drue:

RE: SB 95

Thought I would mention that Shiela Peterson in Eliason's office is having sunset drafted. She also mentioned that she thought Dick said the project size limit was going to be greater than \$10,000,000 rather than \$7,000,000.

Also, spoke with Terry Cramer about "state and local funds" vs stae or local funds. She consulted the revisor of statutes who indicate "and" covers "and/or".

Trud

PAT + ADUANT 10 TOO H16.4  
WE COULD LIVE WITHA 25

J HILANE

J MIKE

March 19, 1991

Drue -

Re: SB95

Carol Vandort from Leg Research called. She was having trouble with our research task of finding examples of project specific labor agreements.

She spoke with Dick Fox, Executive Director, Mass. Water Resource Authority. They managed the Boston Harbor cleanup. When they released their RFP it did include union hire and working condition specification. The bid went to Kaiser, a GC type project mgmt firm. The catch on that project is that the Mass Water Resource Authority is not a public employer under Mass state law.

Carl Uhlien, an attorney with Morgan, Lewis & Bockius in DC is considered the national expert on the exemptions that exist in the Nation Labor Relations Act. He drafted the language that covered the pipeline construction. If you would like, I could call him. (202-467-7075)

Rod

As I understand,  
whether is the power  
authority in Kentucky  
they referred to  
according to Halford

SB 95 OUTSTANDING ITEMS

- ✓ 1) AEA fiscal note, position paper & testimony. *LEWIS & CLARK*
- ✓ 2) AIDEA fiscal note. *WAGNER*
- ✓ 3) Definition of "maintenance" - Helene Brooks/Mike Szymanski. *NET WRO + HONS*
- ✓ 4) Definition of employee/employer relationship - Cummings/Strasbaugh.
- ✓ 5) University position & fiscal note. *MISSALDO*
- ✓ 6) Railroad position & fiscal note.

3/13 *H&A*

February 27, 1991

Drue -

Re: SB 95

I spoke with Terry Cramer of Leg Legal about the exclusion provisions on pg 2, sec 2. Terry was the bill drafter.

She believes it provides for the agreement to exclude a firm or product from the project for any reason. She, for instance, could see all non-union employers being excluded through agreement from a project.

That doesn't mean to say that such a clause would be constitutional under equal protection provisions, but rather, that it could occur. It could be subsequently challenged in court.

Rod  
Have language drafted that  
only does what Helene  
intended.

ACTUAL REASON IS ONLY TO ALLOW PROJECT  
SPECIFIC LABOR AGREEMENTS TO BE HONORED

SB 95

Senate Bill 529, an act relating to exemptions to the prohibition against unfair labor practices, was introduced by the Senate Labor & Commerce Committee by request last year.

Senate Bill 95, an act relating to agreements between a labor organization and a public employer, embraces many of the provisions of last year's SB 529 but deletes provisions calling for mandatory union membership as a condition for continued employment.

SB 95 provides the vehicle for project specific labor agreements for publicly funded projects.

SB 95 Points of Interest

1. Section 1. (e) Allows for unions to negotiate with the public employer to exclude certain employers, contractors, subcontractors or persons from handling, using, selling, transporting or providing services.
2. The exclusion possibility in Section 1 (e) only applies to construction projects.
3. Section 1. (h) exempts project specific labor agreements from the state procurement code.
4. Section 2. exempts the entire project specific labor agreement process from the state procurement code.
5. Section 3. exempts project specific labor agreements from statutes governing monopolies, restraint of trade and unfair labor practice provisions.
6. The administration is unclear about who and under what circumstances such labor agreements would be negotiated.
7. The administration is unclear as to whether provisions in Section 1. allows non-state employees to become state employees under such an agreement or become eligible for state retirement and health benefits.
8. SINCE JUDGMENT OF QUALIFICATION AND REFERENCE WILL BE CONDUCTED BY THE HIRING HALL, WHAT GUARANTEE IS THERE THAT STANDARDS WILL BE APPLIED TO MEMBERS AND NON-MEMBERS EQUALLY.

SB 95 Points of Interest

1. Section 1. (e) Allows for unions to negotiate certain exclusion of suppliers or manufacturers from the specific project. *? what does this mean?*
2. The exclusion possibility in Section 1(e) does not apply to projects of fishing, maritime, agricultural, logging, timber industry, and apparel & clothing industries.
3. Section 1. (h) exempts project specific labor agreements from the state procurement code.
4. Section 2. exempts the entire project specific labor agreement process from the state procurement code.
5. Section 3. exempts project specific labor agreements from statutes governing monopolies, restraint of trade and unfair labor practices.

Return my bill  
file.

UNION CAN NEGOTIATE FOR EMPLOYER TO CEASE OR  
REFRAIN FROM HANDLING, USING, SELLING, TRANSPORTING OR  
DOING BUSINESS WITH ANOTHER EMPLOYER, CONTRACTOR, SUBCONTRACTOR  
OR PERSON.

ie., IF THE UNION DOESN'T LIKE YOU, FOR WHATEVER  
REASON, THEY CAN NEGOTIATE TO EXCLUDE YOU FROM THE  
PROJECT.



TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: LABOR RELATIONS Fax: 465-2269

Attn: BRUCE CUMMINGS Phone: \_\_\_\_\_

Transmitted by: ROD MOURANT Date: 4/3/91

Re: SB 95

Comments: HERE IS CS THAT WILL

BE HEARD TODAY. THINK THERE

MIGHT BE AN OTHER AMENDMENT.

SHOULD MOVE OUT TODAY.

ROD

Number of Pages: 4 Including Cover Sheet.





TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: RAY LATCHEM Fax: 522-5224

Attn: Phone:

Transmitted by: ROD MOURANT Date: 3/22/91

Re: SB 95

Comments: HERE IS VERSION CURRENTLY UNDER CONSIDERATION. MY UNDERSTANDING IS THAT SENATOR RODEY WILL BE PRESENTING A NEW VERSION, I DON'T KNOW WHAT CHANGES WILL BE MADE BUT WILL SEND YOU A COPY WHEN AVAILABLE

Rod

Number of Pages: 4 Including Cover Sheet.





TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: AMA Fax: 278-1997

Attn: STEVE BURRELL Phone: \_\_\_\_\_

Transmitted by: ROD MOURANT Date: 3/22/91

Re: SB 95

Comments: PER YOUR REQUEST, HERE IS

COPY OF SB 95. I WILL ADD YOUR

NAME TO THE LIST OF PEOPLE TO

NOTIFY WHEN THE BILL IS NEXT

SCHEDULED TO BE HEARD.

*Rod*

Number of Pages: 4 Including Cover Sheet.





TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

Office Phone (907) 465-4993 FAX (907) 463-5352

TO: HELENE BROOKS Fax: 276-1963

Phone: \_\_\_\_\_

ATTN: \_\_\_\_\_

TRANSMITTED BY: ROD MOURANT

DATE: 3/8/91

RE: SB 95

COMMENTS: THIS IS PROPOSED "EXCLUSION"  
AMENDMENT. DOES IT DO WHAT WE  
DISCUSSED?

NUMBER OF PAGES: 2 (INCLUDING cover sheet)



TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

Office Phone (907) 465-4993 FAX (907) 463-5352

TO: LEG LEGAL SOCS Fax: 465-2029  
Phone: 465-3867  
ATTN: TERRY CLARK

TRANSMITTED BY: RON MOURANT

DATE: 3/8/91

RE: SB 95 ATTORNEY

COMMENTS: PLEASE ADVISE LEGAL INTERPRETATION  
DIFFERENCES IN VERSIONS

NUMBER OF PAGES: 2 (INCLUDING cover sheet)



TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

Office Phone (907) 465-4993 FAX (907) 463-5352

TO: LABOR RELATIONS Fax: 2267

ATTN: BRUCE CUMMINGS Phone: 4404

TRANSMITTED BY: ROD MOURANT

DATE: 3/5/91

RE: SB 95

COMMENTS: THOUGHT YOU MIGHT WANT  
TO SEE THIS PROPOSED CS  
BEFORE TOMORROW'S MEETING.

NUMBER OF PAGES: 4 (INCLUDING cover sheet)

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ELIASON

TO: CSSB 95(L&C) 7-LS0319M dated 3/27/91

Page 1, line 2, following "agreements":

Insert "; and providing for an effective date"

Page 1, after line 8:

Insert a new bill section to read:

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

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

Renumber the following bill sections accordingly.

Page 3, after line 24:

Insert new bill sections to read:

"\* Sec. 6. AS 36.30.850(b)(23), AS 36.90 150, and AS 45.50.572(j) are repealed January 1, 1995.

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

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR RODEY

TO: CSSB 95 ( ) DATED 2/28/91

Page 2, line 4, after "29 U.S.C. 159.":

Insert "However, they may not enter into a project labor agreement to cover work currently or traditionally performed by employees of the state or political subdivision or work covered under a current collective bargaining agreement between the state or political subdivision and a labor organization representing employees of the state or political subdivision unless both the state or political subdivision and the labor organization representing the employees consents to coverage of that work in the project labor agreement."

VARS CO

(CONCERN)

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR PEARCE

TO: CSSB 95( )

Page 2, lines 17 - 21:

Delete all material.

Insert a new paragraph to read:

"(3) require the state or a political subdivision of the state to require a contractor, subcontractor, or other person involved in the project to only do business, including the handling, using, selling, and transporting of goods, and the employment of construction industry employees, with other contractors, subcontractors, or persons who qualify under and are in compliance with the terms of the agreement."

MEMO

DATE: March 8, 1991

TO: Rod Mourant  
Legislative Assistant  
Senator Drue Pearce's Office

FROM: Helene M. Antel, General Counsel  
International Brotherhood of Electrical Worker's

SUBJECT: SB 95

"CONFIDENTIAL ATTORNEY/CLIENT COMMUNICATION"

\*\*\*\*\*

You're right; but, the version that was sent to you was not properly edited. Please see the attached corrected copy. Is this any better?

HMA/rrw

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To	Rod Mourant	From	Helene Brooks
Co.		Co.	
Dept.		Phone #	
Fax #	463-5352	Fax #	270-1463

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR PEARCE

TO: CSSB 95 ( ) dated 2/28/91

Page 2, lines 17 - 21:

Delete all material.

Insert a new paragraph to read:

(3) require a contractor, subcontractor or other person to do business, including the handling, using, selling, and transporting of goods, or the employment of construction industry employees, only with contractors, subcontractors or other persons who comply with the terms of the agreement.

a:SB95.amd

AMENDMENT TO SB 95

Rod Mourant, Legislative Assistant  
to Senator Drue Pearce

MEMO

DATE: March 8, 1991

TO: Rod Mourant  
Legislative Assistant  
Senator Druz Pearce's Office

FROM: Helene M. Antel, General Counsel  
International Brotherhood of Electrical Worker's

SUBJECT: SB 95

"CONFIDENTIAL ATTORNEY/CLIENT COMMUNICATION"

\*\*\*\*\*

I believe our intent is the same but I would feel more comfortable with the attached language. In fact, your suggestion makes a significant improvement in the bill.

HMA/rrw

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR PEARCE

TO: CSSB 95 ( ) dated 2/28/91

Page 2, lines 17 - 21:

Delete all material.

Insert a new paragraph to read:

(3) require a contractor, subcontractor or other person to do business, including the handling, using, selling, and transporting of goods, or the employment of construction industry employees, persons who qualify under only with other contractors, subcontractor or are in compliance with the terms of the agreement.

a:SB95.amd

AMENDMENT TO SB 95

Rod Mourant, Legislative Assistant  
to Senator Drue Pearce

# DRAFT

7-LS03190.1

Cramer

03/07/91

## AMENDMENT

OFFERED IN THE SENATE

BY SENATOR PEARCE

TO: CSSB 95( ) dated 2/28/91

Page 2, lines 17 - 21:

Delete all material.

Insert a new paragraph to read:

*(Contractor, subcontractor or other)*  
 "(3) require a person covered by the agreement ~~to~~ limit the persons with whom  
~~the person or a contractor or subcontractor of the person~~ *do* business, including the handling,  
~~using, selling, and transporting of goods, to persons who qualify under, the terms of the~~ *(only with other contractors, subcontractor or*  
 agreement."

*or and the employment  
 of construction industry  
 employees*

*and are in  
 compliance with*

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To	Szymanski	From	Helene
Cc.	Pat Rodey's	Co.	IBEW
Dept.	office	Phone #	272-9543
Fax #	465-4928	Fax #	276-1963