

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8674 HOUSE LABOR & COMMERCE

1 organization, during which the person actively engaged in piloting while holding at
2 least a United States Coast Guard license as a master of steam or motor vessels
3 [FREIGHT OR TOWING VESSEL] of not more than 1,600 gross tons; or

4 (6) five years of experience gained in a board approved deputy
5 marine pilot apprenticeship program in the pilotage region for which the deputy
6 marine pilot license is sought and hold at least a United States Coast Guard
7 license as master of steam or motor vessels of not more than 1,600 gross tons.

8 * Sec. 9. AS 08.62.093(d) is amended to read:

9 (d) A person licensed as a deputy marine pilot under this section may, except
10 as otherwise provided by the board, pilot vessels of 25,000 [20,000] gross tons or less
11 in a marine pilotage region for which the license is issued.

12 * Sec. 10. AS 08.62.097(b) is amended to read:

13 (b) A person who supervises the training of persons who are seeking a deputy
14 marine pilot license under this chapter shall

15 (1) hold a marine pilot license issued under AS 08.62.100; however,
16 if the board finds that there are no marine pilots licensed in a pilotage region who
17 are available to supervise training under this section, the board may authorize a
18 person who is licensed in that pilotage region as a deputy marine pilot to
19 supervise the training of persons who are seeking a deputy marine pilot license
20 in that pilotage region;

21 (2) receive prior authorization from the board to supervise the training
22 of those persons;

23 (3) maintain a written log and evaluation on a form provided by the
24 board of the training and progress of the person being supervised.

25 * Sec. 11. AS 08.62.120(a) is amended to read:

26 (a) In order to renew a marine pilot license, a person who is licensed under
27 AS 08.62.100 shall

28 (1) submit an application for renewal of the license on a form provided
29 by the department [BOARD];

30 (2) submit proof of continued qualification under AS 08.62.100 to
31 receive a marine pilot license;

1 (3) provide evidence of satisfactory completion of a physical
2 examination by a licensed physician within 60 days before the date of renewal of the
3 license;

4 (4) submit proof satisfactory to the board that the person has

5 (A) engaged in piloting vessels subject to this chapter in the
6 marine pilotage region for which the license is to be renewed during at least
7 120 days [60 DAYS OF EACH CALENDAR YEAR] in the licensing period
8 immediately preceding the licensing period for which renewal is sought; or

9 (B) completed the minimum number of familiarization trips
10 required by the board for renewal of a marine pilot license for a marine
11 pilotage region for which the license is to be renewed.

12 * Sec. 12. AS 08.62.150(a) is amended to read:

13 (a) The board shall impose a disciplinary sanction on a person licensed under
14 this chapter when the board finds that the person

15 (1) is incompetent in the performance of pilotage duties;

16 (2) is chemically impaired;

17 (3) illegally possesses, uses, or sells narcotic or hallucinogenic drugs;

18 (4) makes a false statement to obtain a license;

19 (5) violates a provision of this chapter or a regulation adopted under
20 this chapter [IT];

21 (6) is guilty of misconduct during the course of employment;

22 (7) has had the person's United States Coast Guard pilot license
23 conditioned, suspended, or revoked; or

24 (8) charges, collects, or receives an amount for pilotage services that
25 is [IN EXCESS OF THE MAXIMUM TARIFF ESTABLISHED BY THE BOARD
26 OR] different from the amount set [TARIFF ADOPTED] by the pilot organization of
27 which the person is a member.

28 * Sec. 13. AS 08.62.155(b) is amended to read:

29 (b) The board [DEPARTMENT] may impose a civil fine not to exceed \$5,000
30 on a marine pilot organization recognized by the board [,] if the organization violates
31 this chapter or a regulation adopted under this chapter. The board may also suspend

1 or revoke the recognition of a pilot organization that fails to comply with its
2 articles, bylaws, and rules, so as to no longer satisfy the minimum standards for
3 recognition by the board.

4 * Sec. 14. AS 08.62.157 is amended by adding a new subsection to read:

5 (c) A person licensed under this chapter shall provide pilotage services to a
6 vessel upon being dispatched by the pilot organization of which the person is a
7 member.

8 * Sec. 15. AS 08.62.165(a) is amended to read:

9 (a) A pilot licensed under this chapter is not liable for damages in excess of
10 \$250,000 per incident for damages or loss occurring as a result of the error, omission,
11 fault, or neglect of the pilot in performing pilotage services, except that the limitation
12 does not apply in a case where

13 (1) the pilot is either grossly negligent or guilty of wilful misconduct;

14 or

15 (2) the error, omission, fault, or neglect of the pilot constitutes an act
16 for which the board shall impose a disciplinary sanction under AS 08.62.150(a)(2) or
17 (3) [AS 08.62.150(a)(1), (2), (3), (5), (6), OR (7)].

18 * Sec. 16. AS 08.62.175(c) is amended to read:

19 (c) A pilot organization recognized by the board shall

20 (1) promote a safe and reliable system of marine pilotage for the region
21 in which the organization is recognized;

22 (2) provide for the dispatch of pilots who are members of the
23 organization;

24 (3) subject to the membership application and approval provisions
25 contained in the articles and bylaws of the organization. [ADOPT AND REVISE
26 TARIFFS FOR THE PROVISION OF PILOTAGE SERVICES BY THE MEMBERS
27 OF THE ORGANIZATION;

28 (4)] be open to membership by all persons licensed under this chapter
29 to pilot vessels in the pilotage region in which the organization is recognized;

30 (4) [(5)] operate or participate in a training program for pilots and
31 deputy pilots that is approved by the board;

1 (5) [(6)] cooperate with and assist the board in implementing this
2 chapter.

3 * Sec. 17. AS 08.62.175(d) is amended to read:

4 (d) A pilot organization recognized by the board may not begin operating until
5 the articles, bylaws, and rules of the pilot organization are approved by the board on
6 the basis of

7 (1) uniform and nondiscriminatory application of the articles, bylaws,
8 and rules to marine pilots and deputy marine pilots licensed under this chapter and
9 trainees for marine pilot licenses;

10 (2) compliance with applicable laws; and

11 (3) effectiveness in

12 (A) promoting an efficient, reliable, and professional marine
13 pilotage system in the region;

14 (B) maintaining a sufficient number of qualified pilots available
15 for dispatch to serve the needs of vessels visiting the region during each hour
16 of the day and each day of the year to the extent that it is reasonably possible
17 given the size of the membership of the pilot organization;

18 (C) promoting training programs, that may include deputy
19 marine pilot apprenticeship programs, for marine pilots and deputy marine
20 pilots that are approved by the board.

21 * Sec. 18. AS 08.62.175 is amended by adding new subsections to read:

22 (e) Subject to the prior approval of the apprenticeship program by the board,
23 a pilot organization may establish a deputy marine pilot apprenticeship program for the
24 pilotage region in which the organization is recognized.

25 (f) A pilot organization recognized by the board may enter into agreements
26 with the master, owner, operator, or agent of a master, owner, or operator of a vessel,
27 concerning the terms and conditions under which the pilot organization will provide
28 pilotage services.

29 * Sec. 19. AS 08.62.180 is amended to read:

30 Sec. 08.62.180. EXEMPTIONS. This chapter does not apply to

31 (1) vessels subject to federal pilot requirements under 46 U.S.C. 8502

1 except as provided in AS 08.62.185;

2 (2) fishing vessels, including fish processing and fish tender vessels,
3 registered in the United States or in British Columbia, Canada;

4 (3) vessels propelled by machinery and not more than 65 feet in length
5 over deck, except tugboats and towboats propelled by steam;

6 (4) vessels of United States registry of less than 300 gross tons and
7 towboats of United States registry and vessels owned by the State of Alaska, engaged
8 exclusively

9 (A) on the rivers of Alaska; [,] or

10 (B) in the coastwise trade on the west or north coast of the
11 United States including Alaska and [,] Hawaii, and including British
12 Columbia, Yukon Territory, and Northwest Territories, Canada;

13 (5) vessels of Canada, built in Canada and manned by Canadian citizens
14 [INCLUDING CANADIAN CRUISE SHIPS], engaged in frequent trade between

15 (A) British Columbia and Southeastern Alaska south of 58
16 degrees, 10 minutes North latitude, if reciprocal exemptions are granted by
17 Canada to vessels owned by the State of Alaska and those of United States
18 registry; or

19 (B) northern Alaska north of 68 degrees, 7 minutes North
20 latitude and Yukon Territory or Northwest Territories; [AND]

21 (6) pleasure craft of United States registry; and

22 (7) pleasure craft of foreign registry of less than 300 gross tons as
23 measured under 46 C.F.R. 69.51 - 69.75.

24 * Sec. 20. TRANSITION. (a) Notwithstanding AS 08.62.010, as amended by sec. 2 of
25 this Act, the current members of the Board of Marine Pilots shall continue to serve for the
26 term to which they were appointed.

27 (b) As the terms of the current marine pilot members and current agent or manager
28 members of the Board of Marine Pilots expires, the governor shall appoint marine pilot
29 members and industry representative members to the board in accordance with the
30 qualifications set out in AS 08.62.010, amended by sec. 2 of this Act.

31 (c) In this section, the current members of the board are those persons serving on the

- 1 Board of Marine Pilots on the day before the effective date of this Act.
- 2 * Sec. 21. AS 08.62.093(e) is repealed.
- 3 * Sec. 22. This Act takes effect July 1, 1995.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR LEMAN

TO: CSSB 130(RES)(Draft Version K dated 4/11/95)

1 Page 2, after line 23:

2 Insert a new bill section to read:

3 **** Sec. 5.** AS 08.62 is amended by adding a new section to read:

4 Sec. 08.62.046. PILOTAGE TARIFFS. (a) The board shall adopt by
5 regulation maximum tariffs that may be charged by pilots for the provision of specific
6 pilotage services. The board shall identify those expenses that are included in the
7 tariff. In adopting maximum tariffs under this subsection, the board shall take into
8 consideration

9 (1) reasonable compensation for actual time aboard a vessel as a pilot
10 and for time engaged in preparing to provide pilotage services;

11 (2) differential compensation for seasonal and weather conditions, risks
12 involved in providing pilotage services, and overtime;

13 (3) dispatch expenses, transportation expenses, and other associated
14 costs directly related to the provision of pilotage services;

15 (4) reasonable overhead expenses that are necessary to provide year
16 round pilotage services for the region; and

17 (5) other expenses identified by the board.

18 (b) A pilot organization recognized by the board, acting on behalf of its
19 members, may adopt a new or revised tariff for provision of pilotage services if the
20 pilot organization follows the procedures set out in (c) of this section. The tariff
21 adopted under this subsection must include those expenses identified by the board
22 under (a) of this section, but may not exceed the maximum tariff set by the board.
23 The tariff adopted under this subsection may be revised annually.

24 (c) A pilot organization shall send a notice of intent to adopt a tariff for
25 provision of pilotage services to the board and publish the notice on at least three

1 days during a period of 14 consecutive days in a newspaper of general circulation in
 2 the state. The notice of intent to adopt a tariff shall include a copy of the proposed
 3 tariff, the name and mailing address of the pilot organization that intends to adopt the
 4 tariff, and a statement of the time and place of adoption of the tariff. A pilot
 5 organization may not adopt a tariff until 30 days have elapsed from the later of the
 6 mailing of the notice of intent to adopt a tariff to the board or the last date of
 7 publication of the notice of intent to adopt a tariff. A tariff may not take effect until
 8 30 days after the tariff is adopted by the pilot organization.

9 (d) A pilot organization recognized by the board or a member of the pilot
 10 organization may not charge a tariff for the provision of pilotage services that exceeds
 11 the maximum tariff set by the board, that is different from the tariff adopted by the
 12 pilot organization, or that has not taken effect under (c) of this section."

13 Renumber the following bill sections accordingly.

14 Page 5, lines 25 - 26:

15 Delete "[IN EXCESS OF THE MAXIMUM TARIFF ESTABLISHED BY THE
 16 BOARD OR]"

17 Insert "in excess of the maximum tariff established by the board or"

18 Page 5, line 26:

19 Delete "amount set [TARIFF ADOPTED]"

20 Insert "tariff adopted"

21 Page 7, line 4, after "conditions":

22 Insert ", including tariffs,"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 260(TRA)

1 Page 7, after line 29:

2 Insert new material to read:

3 "(g) A pilot organization recognized by the board shall dispatch a person who
4 is licensed under this chapter and who is a member of the organization to provide
5 pilotage services upon the request of a representative of a vessel required to employ
6 a pilot under AS 08.62.160.

7 * Sec. 19. AS 08.62 is amended by adding a new section to read:

8 Sec. 08.62.178. DISPUTE RESOLUTION. (a) If a pilot organization
9 required to dispatch a pilot under AS 08.62.175(g) cannot reach an agreement with
10 the representative of the vessel who requested the pilotage services as to compensation
11 for the pilotage services provided, either party may request the board to appoint a
12 mediator to assist in the determination of reasonable compensation for the services
13 provided. Upon receiving a request for assistance in resolving the dispute, the board
14 shall designate a person from within or from outside the department to mediate the
15 dispute. The cost of the mediator shall be borne equally by the parties. If the
16 mediator concludes that the dispute will not be resolved through mediation, the
17 mediator shall notify the board of the mediator's conclusion.

18 (b) If the mediator has informed the board that the parties to a dispute
19 regarding compensation for pilotage services will not resolve the dispute by mediation,
20 either party may request the superior court to appoint an arbitrator. The court shall
21 appoint the arbitrator from a list of persons provided by the parties. The cost of the
22 arbitration proceedings shall be borne equally by the parties. Except as provided in
23 this subsection, the arbitration proceeding is subject to AS 09.43.010 - 09.43.180. The
24 arbitrator shall resolve the dispute and determine what constitutes reasonable
25 compensation for the services provided. In determining what constitutes reasonable

1 compensation, the arbitrator shall consider the following factors:

2 (1) current and historical rates charged for comparable pilotage
3 services in the state;

4 (2) the actual time aboard the vessel, time engaged in preparing to
5 provide the pilotage services, seasonal and weather conditions, and risks;

6 (3) the reasonable expenses incurred in providing the pilotage services
7 such as dispatch, transportation, overhead, and other associated expenses;

8 (4) the financial effect of pilotage expenses on the owner of the vessel,
9 except that this factor shall only be considered if the owner provides all financial
10 information that the arbitrator determines is necessary to determine the financial
11 effect;

12 (5) the number of vessels and volume of pilotage services at issue in
13 the dispute;

14 (6) the effect of the determination on the income of affected pilots
15 relative to prior years, taking into account changes in vessel tonnage and vessel traffic
16 in the pilotage region from year-to-year;

17 (7) prior determinations under this subsection; and

18 (8) in the case of a determination as to future pilotage services, the
19 time period stipulated to by the parties, if any, during which the pilotage services are
20 to be provided."

21 Renumber the following bill sections accordingly.

hb. 260
legis dir.

Add new sections to HB 260 to read:

Section 1.

Sec. 08.62.045. Pilotage tariffs. (a) The board shall adopt by regulation tariffs that may be charged by pilots for the provision of specific pilotage services. The board shall identify those expenses that are included in the tariff. In adopting tariffs under this subsection, the board shall take into consideration

(1) reasonable compensation for actual time aboard a vessel as a pilot and for time engaged in preparing to provide pilotage services;

(2) differential compensation for seasonal and weather conditions, risks involved in providing pilotage service, and overtime;

(3) dispatch expenses, transportation expenses, and other associated costs directly related to the provision of pilotage services;

(4) reasonable overhead expenses that are necessary to provide year round pilotage services for the region; and

(5) other expenses identified by the board.

(b) A pilot organization recognized by the board or a member of the pilot organization may not charge a tariff for the provision of pilotage services that differs from the tariff set by the board.

Sec. 2.

Section 1 of this Act takes effect on January 1, 1996.

Sec. 3.

TRANSITION: REGULATIONS. The Board of Marine Pilots may immediately proceed to adopt regulations necessary to establish the tariffs authorized in Section 1 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of sec. 1 of this Act.

Sec. 4.

Section 3 of this Act takes effect immediately under AS 01.10.070(c).



Regional Citizens' Advisory Council / 750 W. 2nd Ave., Suite 100 / Anchorage, Alaska 99501-2168 / 907) 277-7222 / FAX (907) 277-4523

"Citizens promoting environmentally safe operation of the Alyeska terminal and associated tankers."

**Regional Citizens' Advisory Council of Prince William Sound
House Labor and Commerce Committee
Testimony on CSHB 260 (TRA) Board of Marine Pilot Bills
April 12, 1995**

The Prince William Sound Regional Advisory Council's mission is "citizens promoting the environmentally safe operation of the Alyeska terminal and associated tankers." RCAC is certified as an alternative council under Section 5002 of the Oil Pollution Act of 1990. The work of the RCAC is guided by its contract with the Alyeska Pipeline Service Company and the Oil Pollution Act of 1990. RCAC has 18 member organizations representing communities and boroughs impacted by the 1989 *Exxon Valdez* oil spill, as well as commercial fishing groups, Alaska Native interests, and environmental, aquaculture and business organizations. We appreciate the opportunity to testify on HB 260, an act extending the Board of Marine Pilots.

Safety is RCAC's primary concern regarding marine pilotage. Marine pilotage is of critical importance to the residents of the Prince William Sound Region. We have acutely experienced the tragic impact of relatively "minor adjustments" to marine pilotage with the *Exxon Valdez* oil spill. As stated in the legislative intent and findings, marine pilotage is "to assure the protection of lives and property and the marine environment of the state, licensed marine pilots having extensive local knowledge are required to pilot certain vessels on inland and coastal water...." This safety concern is also the primary concern of the public and the State of Alaska. RCAC has no vested economic interest in pilotage. We urge the legislature to remain focused on the potential impacts on safety of the bill under consideration.

During recent years, the Alaska Department of Commerce and Economic Development, Division of Occupational Licensing, Marine Coordinator has made significant improvements towards making licensing, examinations and training more objective. RCAC applauds and supports this progress. However, the department has also been stymied in their efforts to efficiently improve marine pilotage by constant litigation. We hope that the housekeeping portions of this bill will indeed reduce the conflict in the system and allow the State to focus more clearly on the important issues affecting safety. RCAC looks forward to constructive interaction to facilitate continued improvement to the system.

RCAC members and residents of Southcentral Alaska appreciate the excellent safety record of the Southwest Alaska Pilots Association (SWAPA), which has avoided many of the growing pains and accompanying problems occurring in Southeast and Western Alaska. However, we believe this is more a credit to the

members of SWAPA, not how the program is regulated by the State. SWAPA has maintained high professional standards in recruiting, training and licensing pilots. In addition, the Alyeska Pipeline Service Company also evaluates the qualifications of new pilots calling at the TransAlaska Pipeline System (TAPS) terminal. Alyeska can approve or disapprove new certification for pilots serving the TAPS tankers loading at the Port of Valdez. The combination of these two influences have helped to maintain rigorous professional standards for pilot services on TAPS trade tankers.

In hearings to date, there has been considerable discussion regarding competition and whether competition exists. True economic competition can not exist in an industry where the use of pilotage services are mandatory and pilots must belong to pilot associations that must provide services. Arguing whether competition exists is of relatively little use. The larger issue is whether competition between pilot groups and between pilots and shippers has a detrimental impact on safety and whether competition compromises the ability of pilots to make safety decisions unencumbered by fear of reprisal---either in the form of loss of market share to competing pilot groups or reduction in negotiated fees for services.

We question whether there are sufficient measures in state law to protect Prince William Sound, the public and the state's resources from the problems that appear to be the result of competition. RCAC believes that pilot associations should not be able to reduce training and licensing standards in order to increase membership. **We strongly oppose cross-regional licensing because Alaska's size and its many physically dynamic and challenging ports renders familiarization and local knowledge impossible in more than one region.**

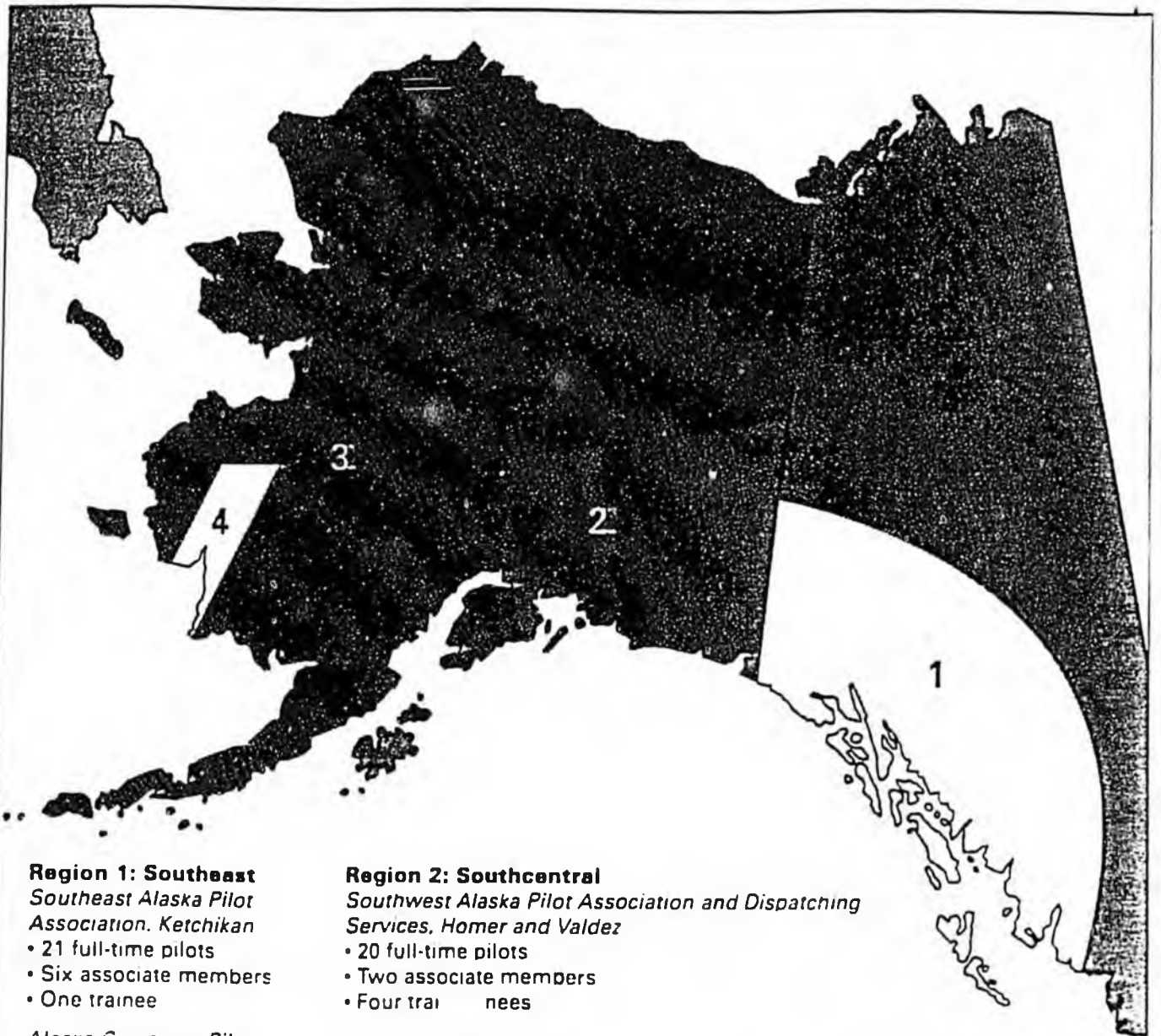
It appears that the effect on safety by competition is a negative one. It seems relevant that Alaska is the only coastal state that provides for the setting of pilot fees based on competition. It also seems that this purely economic issue continues to distract attention from more important issues of recruiting, licensing, training and safety. Competition can be used as leverage by shippers to keep downward pressure on pilotage rates. While it is understandable that shippers would seek reasonable pilot rates, competition may potentially poses a constant threat that undermines the ability of pilots to freely and independently assert their professional judgment on safety considerations. RCAC has received comments from pilots that the competitive system dampens pilot's comfort with expressing safety concerns.

The State needs to be more proactive in assuring that training, examinations, licensing, and safe operating standards are rigorously regulated. Given the State's historic role, we question whether this diligence is likely. The State has usually taken a hands off approach to regulating state pilotage---not stepping in unless there is a problem. Proponents of competition advocate regulating safety directly. The public needs assurance that this will happen. Allowing training and licensing standards to be eroded decreases public confidence. State and Board of Marine Pilots should set high professional training, licensing, and safety standards that can not be lowered by shippers or pilot groups.

Specific comments on bill sections:

Section 2: Board membership. The purpose of marine pilotage is public safety and to protect the environment and property. Therefore, RCAC believes that the public should be proportionally represented; we oppose the percentage reduction in public members that was made in the House Transportation Committee. If additional pilot and industry members are to be added, then another public member should also be added to the Board. We are aware of no other boards or commissions on which a government agency representative is considered a public member as suggested by the proponents of the Transportation Committee amendment. With the board no longer setting tariffs, we question the continued requirement for industry representation on the Board. Maybe the Board should be a safety, training and licensing board with pilot and public members.

Section 15: sanctions against pilots for drug or alcohol use. In previous hearings, there was testimony that this new section allows a pilot's liability to be unlimited in any situation for which the board can sanction a pilot and is thus arbitrary and too harsh. It appears that the section actually provides for unlimited liability in situations in which the pilot could be sanctioned for drug or alcohol use. RCAC supports this excellent and reasonable provision.



Region 1: Southeast

- Southeast Alaska Pilot Association, Ketchikan*
- 21 full-time pilots
 - Six associate members
 - One trainee

Alaska Coastwise Pilot Association, Ketchikan

- 11 full-time pilots
- Six associate members
- Three trainees

Region 2: Southcentral

- Southwest Alaska Pilot Association and Dispatching Services, Homer and Valdez*
- 20 full-time pilots
 - Two associate members
 - Four trainees

Region 3: Western

- Western Alaska Pilots Association, Dutch Harbor*
- Four full-time pilots
 - One trainee

- Alaska Marine Pilots, Dutch Harbor*
- 11 full-time pilots

Region 4:

- Kuskokwim River**
Kuskokwim Pilots Association, Bethel
- Two full-time pilots

INTERPORT PILOTS AGENCY, INC.

FOKI MONTMOUTH, NJ 07708-0086

(908) 787-5554 (908) 346-4877

FAX (908) 787-5558

April 5, 1995

Board of Marine Pilots
 Division of Occupational Licensing
 Dept. of Commerce and
 Economic Development
 P.O. Box 110806
 Juneau, Alaska 99811-0806

DIVISION OF OCCUPATIONAL LICENSING
 RECEIVED
 APR 11 1995 PM 1:30

Dear Sirs:

A colleague of mine, Capt. Michael Spence, has requested that I write to inform the Board of Marine Pilots about the competitive state pilotage scheme which presently exists in Long Island Sound.

There are presently four groups which compete in Long Island Sound for state work. Interport is one of these four groups. Our pilots, as well as the pilots in two other smaller groups, are licensed solely by the state of Connecticut. The fourth group, Sound Pilots, is comprised of pilots from Northeast Marine Pilots and Sandy Hook Pilots. The pilots working in the Sound Pilots group are licensed by both Connecticut and New York. Presently, all four groups operate independently of each other. Pilot work is solicited from ship owners or agents. Each group does its own billing and dispatching, and operates its own equipment. The states fix the rates that are charged by the pilots. This is done in legislation by New York. The rates are set in regulation by Connecticut. The rates are the same regardless of which state pilot is taken. In addition, both Connecticut and New York regulate safety and licensing standards for the pilots.

Throughout most of its history, Long Island Sound has had competitive piloting. New York's history of regulating pilotage in the sound is relatively young. New York did not begin regulating these waters until 1973. Connecticut's history of regulating pilotage in Long Island Sound is even younger. Until recently Connecticut was only concerned with pilots in the ports of Bridgeport, New Haven and New London, leaving regulation of the sound to New York. It was not until the late 1980's that Connecticut began to exercise concurrent jurisdiction over the sound. As such, the state, and the pilots it licenses, had some catching up to do on the regulatory front. This challenge has been met so as to provide for strict regulation by both states. Recent pilot boat regulations proposed in Connecticut are even more strict than New York. In addition, the pilot commissions of each state have begun to meet regularly in order to provide for consistent regulation of these waters.

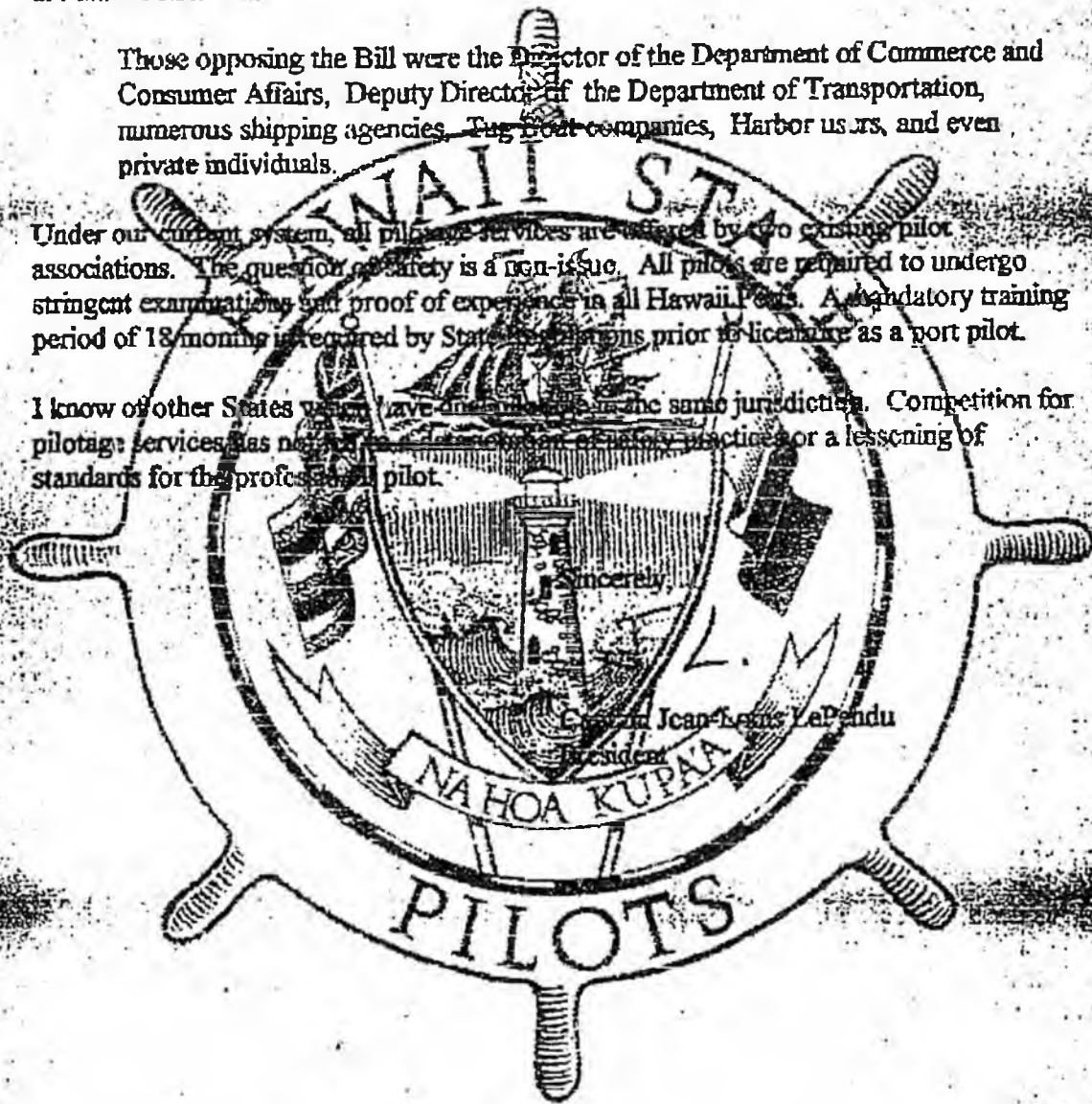
Representative Gail Phillips
February 16, 1995
Page 2

1991... Continued...

Those opposing the Bill were the Director of the Department of Commerce and Consumer Affairs, Deputy Director of the Department of Transportation, numerous shipping agencies, Tug Boat companies, Harbor users, and even private individuals.

Under our current system, all pilotage services are offered by two existing pilot associations. The question of safety is a non-issue. All pilots are required to undergo stringent examinations and proof of experience in all Hawaii Ports. A mandatory training period of 18 months is required by State regulations prior to licensing as a port pilot.

I know of other States which have entered into the same jurisdiction. Competition for pilotage services has not resulted in a relaxation of safety practices or a lessening of standards for the professional pilot.



Sincerely,

Gerald Jean-Louis LePendu
President

Facsimile Transmission Cover Sheet

From: Alaska Coastwise Pilots
fax #(907) 247-4568
tel: #(907) 225-7245



TRANSMITTED BY: Michael Spence
DATE: 4-12-95
TO: Rep. Pete Kott
House Labor & Commerce Cttee -
FAX # SENT TO: 465-2819
OF PAGES INCLUDING THIS PAGE: 1 1

NOTES/COMMENTS: Re. HB 260 Marine Pilots
(573 130)

Please put in folder for
committee members -

Call (907) 225-7245 if difficulty with transmission or the legibility of this FAX. Thank you.

Captain Michael C. Spence
3736 Justice Court
PO Box 7981
Ketchikan,
Alaska 99901

Senator Loren Lemman
Chairman,
Senate Resources Committee
Alaska Legislature
Juneau,
Alaska 99811

April 12, 1995

BY TELEFAX

Dear Senator Lemman,

As you are aware, the legislative committees hearing Marine Pilotage bills this session have heard much regarding the issue of competition in pilotage. Adding to this debate, an anticompetitive paper written by Mr. Brad Pierce of the OMB has been widely circulated to members of this legislature.

I believe the attached three letters from pilots in the states of Hawaii, Oregon, and New York, written in response to the Pierce paper, should be admitted into the record also, since they shed some light on the issue of competitive pilotage as it occurs in other states.

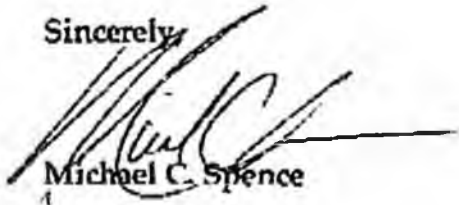
While the Pierce paper offers little in the way of explaining its methodology, my inquiries reveal that it is grossly inaccurate on the facts that are offered. Neither the U.S. Coast Guard, nor the National Transportation Safety Board, nor the State of Alaska, have issued any findings that the grounding of the Nieuw Amsterdam was in any way affected by competitive pilotage. The NTSB is not planning any hearings, as Mr Pierce contends, on the "pilotage situation in Alaska". Neither Hawaii, Oregon or any other maritime state have issued a finding that competition is harmful to safe pilotage. Competition in other maritime states in this nation and worldwide is increasing, not decreasing, as regulatory bodies discover that there is no adverse safety impact from this competition. The few regulatory bodies which have enacted lighter schemes of economic regulation, such as in Florida, have done so not because of a safety factors, but because the pilots had already formed themselves into monopolistic structures, and the legislature would be hard pressed to force them into competition, as had been suggested by the Florida Auditor. Mr. Pierce's analogy of Marine Pilotage with public utilities, which require economic regulation as monopolies, is ironic, since in

recent years public utilities nationwide either have been or are being deregulated in response to findings that those monopolies offer little benefit to the public. In the case of transportation industries, it has been well established by most scientific analyses that safety has *improved* with economic deregulation. The few nations which still maintain state-sanctioned monopolies in aviation are now noted for having the worst safety records on the planet.

Contrary to Mr. Pierce's assertion, training requirements in Southeastern Alaska are many times more stringent than they were during the period of monopoly in the late seventies and early eighties. They are now more stringent than most pilotage areas in the country. Accidents have been reduced, and most importantly, accountability is being increased. The reforms which have occurred in marine pilotage in Alaska during the past five years are largely due to the increased competition which has occurred.

As you ponder the merits of this pilotage legislation, please consider whether it is wise to use a nineteenth century model to set regulatory policy for the twentyfirst. The economic regulation of pilotage is burdensome, costly, and inefficient. Economic or legal protectionism for the dominant pilot groups in the state does not serve the public safety or commerce.

Sincerely,



Michael C. Spence

attachments (3):

letters Capt, Bettinelli, New York
Capt. LePendu, Hawaii
Capt. Nichols, Oregon



February 16, 1995

Representative Gail Phillips
 Speaker of the House
 Alaska House of Representatives
 Alaska State Capitol
 Juneau, Alaska 99810-1182

Re: Document, "Alaska Marine Pilotage System Revisited" (Pierce 1994)

Dear Representative Phillips:

I wish to comment on a recent paper entitled "Alaska Marine Pilotage System Revisited" prepared by the former Commissioner of Commerce and Economic Development.

I am a Hawaii State Pilot licensed by the State of Hawaii and the Federal Government to pilot vessels in all seven commercial harbors in the State of Hawaii. I have been a State pilot for 11 years and Federal licensed pilot for 20 years.

There are inaccuracies in the paper particularly on the issue of regulation of pilotage in Hawaii. Multiple pilot groups have existed in Hawaii and competed since 1984 without any adverse effects on safety. I can assure you that competition in Hawaii is alive and healthy.

HISTORY:

1985... Board of Pilot Commissioners was decommissioned by the legislature on grounds that, "The Board Actions Furthered the Financial Interests of the Licensed Pilots and Not Those of the State." (Legislative Audit 1985)

1989... Director of the Department of Commerce and Consumer Affairs changed the Rules of Pilotage to make the word "association" plural to "associations" to recognize the existence of dual pilot associations working within the State.

1990... Legislature again refused to establish a Pilot Commission based on its findings that, "the Department of Commerce and Consumer Affairs has improved the regulation of pilotage." (Legislative Audit 1990)

1991... Failed... proposed legislation by a pilot association to establish by law only one pilot association, a monopoly. The Bill received no support from industry and died.

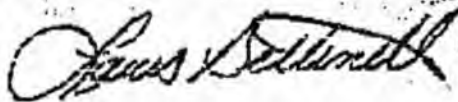
Long Island Sound pilotage cont'

-2-

Piloting is a business which needs to be carefully regulated due to its impact on public safety, the environment, and the economy. Connecticut is quickly approaching the ideal pilot regulatory scheme by allowing competition within a highly regulated environment. When a regulatory body sets high licensing and safety standards, and also sets the rates, the only thing left for which the pilots can compete is quality of service. In this scheme the pilots become far more strict with themselves than the state. Since the customer is paying the same rate regardless of the group he uses that customer will insist on using the best pilots available. The customer wants the most for his money. The individual pilot groups must respond and provide the best pilots they can or risk losing the business to a competitor. If all the groups maintain the same high quality pilots a customer will generally split the work in order to maintain competition and his ability to have a choice. Other regulatory problems, such as too many pilots for an area and the incessant rate increases which characterize the monopolistic scheme, are absent in Long Island Sound. The quality of the pilotage is evidenced by the lack of incidents in the area.

The monopolistic system of regulating pilots is an anachronism that should be abandoned. Its only benefactors are the pilots who enjoy the exclusivity provided by such a system. The state and the public are the losers. Safety, environmental, and economic concerns are better met through regulated competition.

Very truly yours,



Capt. Louis Bettinelli

LEWIS & CLARK PILOTAGE, INC.
P.O. BOX 057
KALAMA, WASHINGTON 98625
PHONE: (206) 673-2277

FEBRUARY 3, 1995

Representative Gail Phillips
Speaker of House
Alaska House of Representatives
Alaska State Capitol
Juneau, Alaska 99810

Dear Representative Phillips;

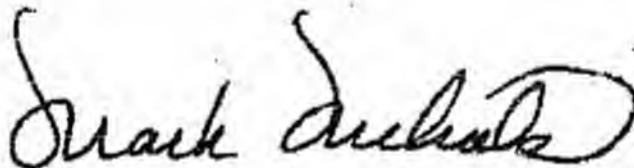
I have been asked by one of my fellow colleagues in the Alaska State Pilotage system to comment on a recent paper released to the Alaska Governors office and the Alaska legislature by the former Commissioner of Commerce. This paper is entitled "ALASKA'S MARINE PILOTAGE SYSTEM REVISITED" (Pierce 1994)

I am an active Oregon State Pilot licensed by the State of Oregon and the Federal Government to Pilot Vessels on the Columbia River. My state license has been in effect for 21 years and my federal license for 31 years.

Although I sailed Alaska waters for several years I cannot comment on the opinions of the author regarding Alaska Pilotage, I can however tell you that his information is inaccurate as to some of the other States regulation of pilotage on their grounds.

In 1989, LEWIS & CLARKS PILOTAGE INC, was formed to pilot Vessels on the Columbia River in direct competition with the existing pilotage group on the grounds, the results to date have not had any adverse safety consequences. I am familiar with some of the other states that have dual pilotage on the same grounds and am not aware of any evidence that a competitive system has led to lower the standards of safety in any of the other states.

Sincerely,



CAPTAIN MARK D. NICHOLS
PRESIDENT

Western Alaska Pilots Association P.O. Box 792 Unalaska Alaska

March 27, 1995

Representative Gary Davis
State Capitol, Suite 420
Juneau, Alaska 99801

Dear Representative Davis:

I am greatly appreciative of the time and effort you are expending in dealing with the marine pilotage legislation. For such a small group, pilots demand an enormous amount of attention. As you said on Friday, it is important that the legislation passed this year be far-sighted and comprehensive in dealing with the problems. Maybe then we will go away and do our work and not bother the legislature for a long time!

In the letter that I left with you last week, I raised the issue of cross regional licensing. While it seems that there is reluctance in discussing it, I encourage you and the committee to give the topic a fair hearing. It is an issue of importance to my group of pilots and, if they were pressed, to the other groups and industry.

Let me give you an analogy. Suppose that the medical board decided one day that, due to the many differences between children and adults, general practitioners were no longer licensed to practice medicine on children under the age of twelve. The rationale was safety. Pediatricians were more highly qualified and children would receive "better care". Suddenly, the GP's across the state have been denied access to a large percentage of their former practice. The state offers no compensation. Of course, the physician could go back into residency and become a pediatrician, but what about the rest of his practice? Or his livelihood in the interim?

Subsequent to the passage of the Marine Pilotage Act of 1991, Region 3 was formed. Prior to that the pilots in my group had been licensed to pilot in what is now Region 2 and Region 3. We view the arbitrary drawing of regional lines as a disenfranchisement and blatantly anti-competitive. With the work in Region 3 slowing, my pilots would like to seek work in Cook Inlet, Kodiak and Prince William Sound. Under the current law as well as the pending legislation, that option is denied us.

What about the safety issue? Well, getting licensed or even renewing a lapsed license is no cakewalk. Keeping a license current also requires a lot of time in the pilot house. I again encourage you to invite the Coast Guard commander over marine safety to testify as to his perceptions of the safety issue. I also encourage you to ask industry what their concerns might be related to this.

Representatives from the other groups may tell you that being licensed in more than one region is not important to their pilots. But I would be very surprised if, given the opportunity to do so, pilots in southeast failed to seek licensure to bring cruise ships into Prince William Sound. I would also expect to see pilots from all regions spread their licensure into "new waters".

In the long term, cross regional licensing may solve the dispute resolution issue. Industry's concern seems to be that a dispute over fees may stop their ships. If they could call on four groups instead of one or two, perhaps their fears would be abated.

This is not an easy issue. Again, I only ask that you give it some consideration and a fair hearing. Because of its importance to my group, I have dedicated this letter solely to it. WAPA's concerns related to the composition of the board and other items in the legislation, I will submit to you separately, or in teleconference.

If you need further clarification on the issue, do not hesitate to call me at 272-3365. I will also be available on Wednesday via teleconference from Anchorage.

Respectfully,

Benée S. Braden
Business Manager
Western Alaska Pilots Association



BY TELECOPIER - 907-465-3835

March 23, 1995

The Honorable Gary L. Davis
Chairman - House Transportation Committee
Alaska State House of Representatives
Juneau, Alaska

Re: House Bill 260

Dear Chairman Davis:

I am writing to urge your support for HB 260, legislation currently pending in the Transportation Committee that would amend various provisions of the Marine Pilotage Act. In our opinion, this legislation represents a fair compromise between the needs of the State, pilots and industry.

I understand that at yesterday's hearing on HB 260, concerns were raised regarding the binding arbitration provisions. Industry had proposed binding arbitration as the fairest and most efficient way of resolving a glaring problem that now exists in the Act as a consequence of the repeal of the maximum tariff provisions in June of last year. There are other options for dealing with this problem. Industry and several of the pilot groups believe, however, that binding arbitration is better than any of the other options identified to date.

Initially, it is important that everyone be cognizant of the problem that now exists in the Act. AS 08.62.160 requires vessels to employ licensed pilots. AS 08.62.045, prior to being repealed effective June 30, 1994, required the Board of Marine Pilots to adopt a maximum tariff. Pilot organizations were not allowed to charge for services an amount that was in excess of the maximum tariff. While it was not explicit in the Act, one could conclude that if a pilot organization was charging at or below the maximum tariff, a vessel could not refuse to employ a pilot on the basis that the charges were unacceptable.

With the repeal of AS 08.62.145, there is no guidance under the Act as to what happens when a vessel and pilot organization are unable to agree on the appropriate charge for pilotage services. It is easy to envision a situation where a tanker, a passenger ship or another vessel requests a pilot, the pilot advises the vessel as to the rate to be charged, the vessel refuses to pay the requested charges and the ship sails without a pilot. If there is then a marine casualty involving that vessel, the public will wonder how it is possible that such a glaring problem was allowed to exist under the Act.

Industry is aware of only three available options at this time. First, we could return to the maximum tariff. All parties agree, however, that the Board of Marine Pilots performed at its worst when it came to establishing maximum tariffs. In addition, the

The Honorable Gary L. Davis
March 23, 1995
Page 2

process consumed valuable Board time and resources required to perform other functions. I believe all parties would concede that the Board has operated much more smoothly since the repeal of the maximum tariff. Having said this, industry would support a return to the maximum tariff if the Legislature views this as the preferred option.

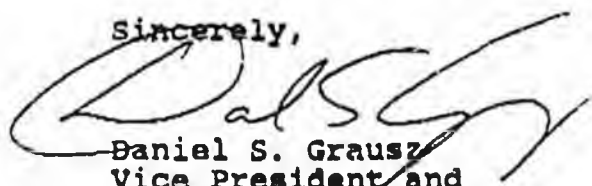
The second option would be to simply include a provision in the Act which requires pilots to provide pilotage services upon request of a vessel. While industry would be very supportive of this option, it would create a great uncertainty as to what happens when the pilot organization then tries to collect for those services absent a prior agreement with the vessel. Certain pilot organizations have testified that they would never refuse to dispatch a pilot. One has to assume, however, that this representation assumes payment would be forthcoming. Industry believes that it would be counterproductive to create an obligation on the part of pilots to work without any means available to determine an appropriate compensation for that work.

The final option is binding arbitration. Industry views this as the compromise position between the other two alternatives. It ensures that pilots will respond to a call for services and guarantees pilots that fair compensation will be paid for services rendered. We understand the reticence of legislators to adopt a system that has come under increasing attack in the public sector. The fact of the matter is, however, that the State of Alaska mandates the use of licensed pilots. It is incumbent upon the State to then take the next step and ensure that a system is in place that will give meaning to that mandate and enable it to be practically implemented.

This is not an issue of government regulation of free enterprise. While there is competition among pilot organizations, the fact remains that Alaska law requires vessels to utilize the services of a select group of people, all of whom are required by law to be members of recognized pilot organizations. At this time, there are two pilotage regions with only one recognized pilot organization and two regions with two recognized organizations. Under these circumstances, it is only a matter of time before a dispute over rates threatens the provision of pilotage services in the State. The Legislature needs to decide whether to deal with the problem before it occurs or wait for a dispute to occur with the possibility of a marine casualty being the consequences.

Holland America appreciates your consideration of this matter. If there are any questions regarding this letter, I would be glad to discuss this with you. My direct telephone number is 206-286-3490.

Sincerely,



Daniel S. Grausz
Vice President and
General Counsel

SOUTHWEST ALASKA PILOTS ASSOCIATION

TO: ALASKA STATE LEGISLATURE
FROM: SOUTHWEST ALASKA PILOTS ASSOCIATION
RE: TARIFF SETTING IN MARINE PILOTS LEGISLATION

April 18, 1995

This letter is to clarify the position of SWAPA regarding the setting of tariffs in pending marine pilotage legislation.

SWAPA supports binding arbitration on tariffs for pilotage regions in the state which have only one pilot association, if the parties are unable to reach an agreement through negotiations. This would allow us to conduct our business without the government getting involved in the setting of tariffs.

The board process is well suited to manage licensing issues, as is the case with other occupational licensing boards. But it is somewhat cumbersome when it comes to tariff issues and has raised conflict of interest issues and potential litigation.

If the legislature does charge the board with setting tariffs, we would prefer a maximum tariff rather than a fixed tariff in those regions where there is one pilot association.

Our lobbyist, Paul Fuhs, will be available to provide you with further information and you can reach him at 790-3030 or find him at the Capital.

HB

263

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

STATE CAPITOL, JUNEAU, AK 99801-1182
(907) 465-4954



SPONSOR STATEMENT HB 263

Should it become law, HB 263 would require the Department of Labor to develop guidelines governing hazardous waste certification programs. Such programs would be administered by employers, unions, contractors, vocational schools, and others.

Pursuant to HB 263, before an entity can undertake work at a hazardous waste site, three criteria must be satisfied. First, the entity must propose an employee certification program. Second, the Department must approve the program. Third, the entity must certify that each employee that will handle hazardous waste is adequately trained to do so in a safe manner.

It respectfully is submitted that handling hazardous waste is potentially dangerous, both to affected workers and to the general public. It therefore is very much in the interest of the state to promote the safe handling of these materials. This best can be accomplished through the education and certification of workers. I accordingly solicit your support for this bill.

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 21, 1995

SUBJECT: Sectional Analysis of HB 263 (Certification of Workers who Handle Hazardous Waste)

TO: Representative Pete Kott
Attn: George Dozier

FROM: Terri Lauterbach *TML*
Legislative Counsel

You have asked for a sectional analysis of HB 263. Since you have specified no particular questions about the bill, this analysis is brief. Please let me know if you have questions, and I will try to answer them.

Section 1.

Prohibits a person from employing individuals who will handle hazardous waste unless the individual has been certified in a program approved by the Department of Labor. Directs the department to develop guidelines for the training programs.

Sections 2 - 3.

These effective date sections make the prohibition effective January 1, 1996, but make the rest of the bill effective immediately so that the Department of Labor can begin the regulations process.

TML.pl:klb
95-066.plm

*Trans-Ak Environmental Services & Construction Corp.*

6670 Wes Way
Anchorage, Alaska 99518
(907) 582-4533 FAX (907) 562-4547



March 27, 1995

RE: HOUSE BILL NO. 263

To Whom It May Concern:

This letter is to express our support and agreement with House Bill 263. As an environmental contractor, I have been required and readily agree that all my employees will be certified and adequately trained in the asbestos field and feel that as a minimum, these same standards should be required in the Hazardous Waste Field.

There are inherent dangers throughout the environmental industry and feel that all phases of the industry should be regulated and overseen to insure the safety of all workers.

I appreciate your efforts in insuring the safety of all environmental workers and look forward to the success of the above referenced legislation.

Sincerely,

Bill Cobb
President



Post-It™ brand fax transmittal memo 7671		# of pages ▶ 2	
To	Pete Kott	From	d. Spinger
Co.	State Commerce	Co.	AGE
Dept.	House	Phone #	561-5354
Fax #	465-482	Fax #	

ASSOCIATED GENERAL CONTRACTORS of ALASKA

1115 STREET - ANCHORAGE, ALASKA 99501
 P.O. BOX 24821 - ANCHORAGE, ALASKA 99502
 (907) 562-8118 FAX (907) 562-8118

1. May 1995

To
 Labor and Commerce Committee
 House of Representatives
 Pete Kott - Chairman

Subject: HB 263 Certification for Hazardous Waste Workers

I am sorry that we are unable to participate in the hearing this afternoon, therefore, please enter these comments on this bill into the committee records and furnish a copy to the committee-members.

We agree, that this subject matter needs attention and we are not against this bill in principle. However, some details and thoughts follow:

1. In the light of the State's financial problems it should be examined, if a State agency like the Dept. of Labor is really necessary in the process. In most cases has the industry reacted with certifications and to establish and document competence on its own without the necessity of Government involvement. Examples are construction surveyors, traffic controllers, materials quality assurance technicians, safety inspectors etc. In all these cases it works well without any cost by the taxpayer for funding Governmental operations.
2. We need to assure that no monopoly situation arises by giving the Dept. of Labor the stated authority; this means that the listed groups need to be expanded to include "non-profit or for-profit service organizations, contractor associations".
3. There needs to be a time-period for refresher training; a person should not be required to get such training within one year of certification as a minimum.

p. 2 AGC to State House Labor and Commerce Comm., 5/1/95

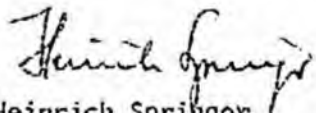
4. The qualifications of the instructor need to be established since this is a critical item in the program.

These are some of the concerns we have with the contents of the bill as it appears in the present.

Since this legislative session is coming to an end quite fast and it does not appear that this bill will get passed within the next 2 weeks, it would appear reasonable to work on these details during the interim.

If you need any further explanation of the points raised, please give me a call.

Sincerely,



Heinrich Springer
Executive Director.



HAZTEK

PHONE: 907-544-2400

Anchorage, AK 99524

FAX: 907-544-5228

907-248-9130

March 29, 1995

House Labor and Commerce Committee
State Capitol
Juneau, Alaska 99801

Committee Members:

Haztek conducts OSHA required Hazardous Material training in Alaska for both individuals and companies with employees working in the Hazardous Material industry. Please consider the following comments in relation to your 3:00 pm. hearing on HB 263 (Alaska certification of workers who work with Hazardous Material).

There are two areas of concern that continually come to the surface in relation to OSHA certification for Hazardous Material workers in Alaska. First is the lack of training program standards and knowledgeable oversight of training providers. This results in the lack of effective, applicable information provided to workers, and inconsistent information communicated from one training service to another. Second is the risk that an individual is not adequately trained for the specific circumstances that that person will be exposed to working in Alaska.

To address the first concern Haztek has chosen to align itself with EPA training standards by applying to become an external EPA training provider. EPA has very stringent guidelines from which an EPA provider can not deviate. EPA's program establishes training guidelines meeting the requirements for Site-Workers and Emergency Responders in line with safety standards established by the National Fire Protection Association. But providing training to these standards is expensive. If a person looking for work can receive a "40-Hour OSHA certification card" from any person willing to talk about regulations for a while, then the quality of all worker training comes into question. As the training industry currently stands, individuals do not have standards by which the quality of an OSHA certification program can be evaluated.

The second concern is apparent as we communicate with employers that are in the position of employing individuals that has obtained "OSHA certification" through a training organization in the lower 48. OSHA requires that worker training be site specific. A worker trained in Texas is not adequately trained to work in Alaska. Even those trained in Anchorage won't be prepared to work on the North Slope unless the training provided is for the specific area and substances in which that person will be working.

In order to ensure appropriate, effective training those individuals working with Hazardous Materials in Alaska, I urge you to establish HB 263 as law.

Sincerely,



P.J. Nedland

**LABORERS' INTERNATIONAL UNION
of NORTH AMERICA
LOCAL 341**

7501 Commercial Drive
Anchorage, Alaska 99501
PHONE (907) 272-4571
FAX (907) 274-0570



MIANO FREY
BUSINESS MANAGER
SECRETARY-TREASURER
ANDREW J. PEDARSKI
PRESIDENT
VICE PRESIDENT
DON WEBER

FIELD REPRESENTATIVES
ANDREW J. PEDARSKI
WILLIAM "BILL" MACFARLANE
MIKE GALLAGHER
BLAKE JOHNSON

Post-it Fax Note	7671	Date	No. of pages
To	Keith	From	
CurDest.		Co.	
Phone #		Phone #	
Fax #		Fax #	

HB 263 (An act relating to certification of workers who handle Hazardous Waste) has been scheduled for a hearing on Wednesday, March 29th, in Juneau, at 3:00 p.m.

Please fax a letter of support to House Labor and Commerce Committee at: 465-2819 and fax a copy to me at: 274-0570.

Please feel free to call me at 272-4571.

Thank you.

Blake Johnson
Blake Johnson
Business Agen.
Laborers' Local 341

Support



L & C SERVICES, Inc.

General Contractors

29 Mar 95

The Legislature of the State of Alaska
House Labor and Commerce Committee

RR: HB 263 (An act relating to certification of workers who handle Hazardous Waste)

Dear Committee Members,

This letter is in support of HB 263. As a member of Laborers, local 341 since 1970, I have observed the evolution of worker training. I currently hold State of Alaska, Asbestos Abatement Certification #0003, this certification is issued under 05.045. The asbestos program has been a total success since its inception. As a worker, I have gained the knowledge of how to protect myself, my family and those around my work space.

I am also, the President of L & C Services Inc. which is involved in Asbestos/Haz-Mat work. From this prospective I can only support the positive effects of the asbestos program. The employees are trained with a great understanding of the ramifications of asbestos work, efficiency levels are higher, quality levels are higher, and most importantly the work place is safer for all.

If, HB 263 is similar to the asbestos program, I strongly urge the positive consideration by the Committee.

Respectfully


Charles C Bowers
President

Corporate Headquarters
L & C Services, Inc.
2630 Carroll Place
Anchorage, Alaska 99500-0021
(907) 337-4884
FAX (907) 333-7445



ALASKA HEALTH PROJECT

Information and Advocacy on Occupational and Environmental Health

Subject: HOUSE BILL # 263

If it please the committee, I would like to take a small amount of your time to comment on the certification of workers handling hazardous waste.

The Health Project prides itself on 15 years of service to Alaskans, in both the form of training workers, and the provision of services dealing with environmental health education. These two issues are synonymous. To protect workers you must train them in systems that protect the environment. To protect the environment, as in HAZWOPER situations, you must train workers to protect themselves.

The only question remaining is the quality of the training that is provided to those workers.

History tells us that the certification of workers in the Asbestos Abatement industry has been successful, in as much as the training has explicit criteria, and each provider has been required to submit its training program to review, by qualified Industrial Hygienists, through the Department of Labor Division of Labor Standards and Safety.

Further The Department has a notification policy that allows for unscheduled, unannounced monitoring of the classes, at the discretion of the Department.

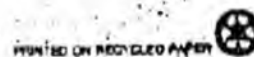
These two points of policy tend to keep the training providers at their best.

The Alaska Health Project uses a 40 hr. training program that was developed with funding from the National Institute of Environmental Health Sciences. This program has been reviewed nationally and is used nationally for the training of HAZMAT workers. One of the disclaimers reads "the subject is constantly evolving." This warning is to remind us that all training materials of this nature need to be updated from time to time, and also reiterates the need of the refresher on a yearly basis.

With fee schedules to offset the costs to the Department, The review process for training providers, and the liability of civil penalties, I believe this bill to be to the advantage of the workers of the State of Alaska.

Daniel Middaugh
Executive Director

1818 West Northern Lights Blvd., Suite 103, Anchorage, Alaska 99517
(907) 276 2864 Outside Anchorage (800) 478-2864 Fax (907) 279-3089



**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

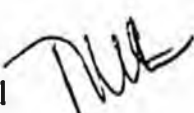
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 27, 1995

SUBJECT: Hazardous Waste Workers (CSHB 263(L&C))

TO: Representative Pete Kott
Attn: George Dozier

FROM: Terri Lauterbach 
Legislative Counsel

Enclosed is the draft CS you requested for this bill.

Because AS 18 doesn't have very many chapter numbers left for future use, the revisor of statutes thinks it is inadvisable to use up one of the remaining numbers for a one-section subject. In order to meet your desire to move the hazardous waste worker certification section to AS 18, he suggests that this new section be added to AS 18.63, which currently relates to hazardous painting certification. He would rename AS 18.63 to accommodate the new material and change the "chapter" references in AS 18.63.060, 18.63.070, 18.63.100, etc., upon enactment of this bill.

The enclosed draft reflects the revisor's codification suggestion and the substantive clarifications you requested. Please let me know if I can be of other assistance

TML:pl:glc
95-096.plm

Enclosure

HB 263 Testimony
House Labor and Commerce
April 28, 1995

Mr. Chairman and members of the committee. My name is Beverly Ward. I represent ARCO Alaska, Inc. Thank you for the opportunity to talk to you today about HB263. We oppose this bill because we believe it duplicates existing laws and regulations and will create more bureaucracy.

Let me describe the Hazardous Waste Operations and Emergency Response Training Requirements, known by the acronym HAZWOPER.

Description of Hazardous Waste Operations and Emergency Response Training Requirements (HAZWOPER)

HAZWOPER is the name given to a Federal OSHA regulation (29 CFR 1910.120) and adopted by the State of Alaska DOSH as Subchapter 10.0101. The regulation was designed to protect employees involved in three aspects of hazardous chemical exposures: 1) those cleaning up hazardous waste sites, as defined in the regulation, 2) those handling wastes at a specially designated Treatment, Storage and Disposal facility, and 3) those responding to chemical spills. The HB 263 addresses those employees involved in cleaning up hazardous waste sites.

The "general site workers," employees involved in most of the operations at a hazardous waste cleanup site, are presently required to have a 40 hour training class. The content of the class is specifically described in the regulation. The contents of the class must include (10.0101(e)(2):

- Names of personnel and alternates responsible for site safety and health,
- Safety and health and other hazards present on the site
- Use of personal protective equipment
- Work practices by which the employee can minimize risks from hazards
- Safe use of engineering controls and equipment on the site
- Medical surveillance requirements, including recognition of symptoms and signs which might indicate overexposure to hazards
- Contents of the site safety and health plan required by other sections of the regulation

These workers are also required to have three days actual field experience under the direct supervision of a trained, experienced supervisor.

Other workers, who may only occasionally be on the site, or who are located in areas away from the main, hazardous work, are required to have 24 hours of training similar to the training listed above. If they become general site workers, they have to obtain the extra 16 hours of training.

The workers need eight hours of annual refresher training each year.

The training group must provide a certificate to the employee acknowledging that the employee completed the course.

Discussion of the HB 263

This bill is redundant, considering hazardous waste workers already receive 40 hours of initial classroom training, as well as three days of supervised on the job training. They also receive eight hours of refresher training each year. The regulations specifically address what information will be presented to them. The employees also already receive a certificate which OSHA compliance personnel can review, so issuing a State certificate is superfluous.

The bill will have economic impacts. Each HAZWOPER cleanup certificate will cost a fee above the already expensive 40 hour class. The training providers will have to pay for the course review, and will have to raise their training rates to help defray the costs. The AK Occupational Safety and Health Division will have to absorb an extra burden of work to write the regulations, review the course contents and keep records of certified course providers. This will prove difficult, or impossible with the present staff. If State agencies are facing budget cuts, then adding redundant programs to their workload does not make good economic or legislative sense.

We urge you to not pass this legislation.

9-LS0901VK
Lauterbach
4/27/95

CS FOR HOUSE BILL NO. 263(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to certification of workers who work at hazardous waste sites;**
2 **and providing for an effective date."**

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

4 *** Section 1. AS 18.63 is amended by adding a new section to read:**

5 **ARTICLE 2. HAZARDOUS WASTE WORKER CERTIFICATION.**

6 **Sec. 18.63.110. CERTIFICATION OF HAZARDOUS WASTE WORKERS.**

7 **(a) The Department of Labor shall**

8 **(1) establish guidelines for employee training certification programs and**
9 **refresher courses, including respiratory and competency tests, to be completed**
10 **successfully, to ensure that a person who is employed to work at a hazardous waste**
11 **site, as defined in regulations adopted by the department, is adequately trained to**
12 **handle hazardous wastes in a safe and knowledgeable manner before the person is**
13 **allowed to engage in hazardous waste operations that could expose the person to**
14 **hazardous substances or other safety or health hazards;**

1 (2) review certification programs proposed by employers, contractors,
2 labor organizations, public and private vocational training programs, and others for
3 individuals who will be employed to work at a hazardous waste site;

4 (3) approve proposed certification programs that meet the department's
5 guidelines under this subsection;

6 (4) assist persons in meeting the certification guidelines if their
7 certification program proposals have been found unacceptable.

8 (b) Before a person may undertake work at a hazardous waste site, as defined
9 in regulations adopted by the department, the person shall

10 (1) propose to the department a plan for the certification of the person's
11 employees as adequately trained to handle hazardous waste in a safe and
12 knowledgeable way; the plan must include refresher training for previously certified
13 employees, if considered necessary by the department; if the person is an individual
14 employer or contractor who will handle the hazardous waste, certification or refresher
15 training of the person must also be included in the plan;

16 (2) receive approval from the department of that plan; and

17 (3) certify that each employee of the person who will work at the
18 hazardous waste site, and, if applicable, the person who is the employer or contractor,
19 is adequately trained to handle the waste in a safe and knowledgeable way.

20 (c) A person may not employ or contract with an individual or entity to work
21 at a hazardous waste site as defined in regulations adopted by the department unless
22 the individual and the individual's or entity's employees have been certified or have
23 received refresher training, as applicable, in a program approved by the department
24 under (b) of this section.

25 (d) A person who violates (b) or (c) of this section is subject to a civil penalty
26 not to exceed \$1,000, as determined by the commissioner of labor.

27 (e) A person who violates (b) of this section is guilty of a class A
28 misdemeanor.

29 (f) A person who violates (c) of this section is guilty of a class B
30 misdemeanor.

31 (g) The department shall adopt regulations to implement this section, including

1 regulations that set a fee schedule for

2 (1) review, approval, and certification of training certification programs
3 and plans under this section; and

4 (2) certification of a person employed to work at a hazardous work site.

5 (h) In this section, "department" means the Department of Labor.

6 * Sec. 2. AS 18.63.110(b) - (f), enacted by sec. 1 of this Act, take effect January 1, 1996.

7 * Sec. 3. Except as provided in sec. 2 of this Act, this Act takes effect immediately under
8 AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB263

Revision Date: _____
 Title: "An Act relating to certification of workers who
 handle hazardous wastes. . ."
 Sponsor: House Labor and Commerce Committee
 Requestor: House Labor and Commerce Committee

Department Affected: Environmental
 Conservation
 BRU: Spill Prevention and Response
 Component: Contaminated Sites

COMPONENT SERIAL NO. 1431

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipt	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Larry Jones
 Division: Director, Division of Administrative Services

Phone: 465-5010
 Date: 3/28/95

for/ Approved by Commissioner: Lawrence Jones
 Agency: Department of Environmental Conservation

Date: 3-29-95

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB263

Revision Date: _____
 Title: "An Act relating to certification of workers who
 handle hazardous wastes..."
 Sponsor: House Labor and Commerce Committee
 Requestor: House Labor and Commerce Committee

Department Affected: Environmental
 Conservation
 BRU: Environmental Quality
 Component: Solid & Hazardous Waste Mgt.

COMPONENT SERIAL NO. 1427

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipt	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Larry Jones
 Division: Director, Division of Administrative Services

Phone: 465-5010
 Date: 3/28/95

Approved by Commissioner: Larry Jones
 Agency: Department of Environmental Conservation

Date: 3-29-95

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB263

Revision Date: _____
 Title: "An Act relating to certification of workers who
 handle hazardous wastes. . ."
 Sponsor: House Labor and Commerce Committee
 Requestor: House Labor and Commerce Committee

Department Affected: Environmental
 Conservation
 BRU: Spill Prevention and Response
 Component: Government Preparedness and
 Response

COMPONENT SERIAL NO. 1923

Expenditures/Revenues:	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipt	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Larry Jones
 Division: Director, Division of Administrative Services

Phone: 465-5010
 Date: 3/28/95

Approved by Commissioner: Lawrence Jones
 Agency: Department of Environmental Conservation

Date: 3/28/95

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 263

Revision Date: 4/6/95
 Title: Certification of Hazardous Waste Workers
 Sponsor: House Labor and Commerce
 Requestor: House Labor and Commerce

Department Affected: Labor
 BRU: Labor Standards & Safety
 Component: Occupational Safety & Health
 COMPONENT SERIAL NO. 970

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	39.1	98.1	102.9	107.8	113.1	118.6
TRAVEL	0.0	6.9	7.3	7.7	8.1	8.5
CONTRACTUAL	12.4	21.4	19.1	20.0	22.6	24.2
SUPPLIES	0.2	0.6	0.6	0.7	0.7	0.8
EQUIPMENT	30.7	30.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	82.4	157.0	129.9	136.2	144.5	152.1
CAPITAL						
CHANGE IN REVENUE						
FUND SOURCE 1005	0.0	87.3	131.9	138.4	173.3	202.6

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	82.4	69.7	0.0	0.0	0.0	0.0
1005 GF/Program Receipt	0.0	87.3	129.9	136.2	144.5	152.1
1006 GF/MHTIA						
1007 I/A Receipts						
TOTAL	82.4	157.0	129.9	136.2	144.5	152.1

POSITIONS:

FULL-TIME	2.0	2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

Estimate of current year (FY95) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

This revised fiscal note assumes that program start up will begin 12/1/95 and continue through 8/31/96, with the first worker certifications issued 9/1/96. Because the revenue stream is extremely uncertain, it will be necessary to provide GF funds both in FY96 and FY97.

The analysis is based on statistics related to graduates of Hazardous Waste Operations and Emergency Response (HAZWOPER) training which currently is not exempt from oversight by the Alaska Postsecondary

Prepared by: John A. Abshire, Director Phone: 269-4914
 Division: Labor Standards and Safety Date: 4/6/95

Approved by Commissioner: Tom Cashen, Commissioner
 Agency: Department of Labor Date: 4/6/95

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Analysis:

Education Commission (the Commission) under 20 AAC 17.015. The primary HAZWOPER courses not regulated by the Commission are those provided by an employer to an employee, or those which are less than 40 hours and less than \$250 tuition. This fiscal note is understated by the cost to certify those individuals whose training is provided by an exempt organization. Inflation is assumed at 4.83% per year. Revenue stream begins in FY97.

In order to provide review, approval and certification of training programs, and certification of individuals taking the training, increased resources will be required. Based on our experience with the asbestos abatement certification program, we have estimated that a minimum of two additional staff will be needed, as well as additional equipment and support costs. Start up and on-going administration of this program will require significant professional time, as well as support staff time. In addition to developing and promulgating new regulations, training program standards will have to be written and distributed to would-be training establishments. Training programs would need to be reviewed (estimated 2-weeks per program), and audited on-site. Procedures for certification of workers would have to be developed, and for updating certificates with annual refresher course information. Processing of several thousand workers' certificates per year, cash flow controls, and data base controls all would have to be accommodated.

It is critical to note that costs in the first year and part of the second year cannot be funded by program receipts. If certification activity is as extensive as we have estimated, program receipts will be sufficient to fund the program from the third year forward, and any year in which excess program receipts are received additional revenue will be deposited to the general fund.

Please see attachment for analysis of numbers of program graduates and revenue stream.

FUNDING REQUIREMENTS

	FY96 Est	FY97 Est	FY98 Est
Line 100 - Personal Services			
PFT Industrial Hygienist (19A), Anchorage, 7 mo FY96, 12 mo FY97	36.3	63.9	67.0
PPT Administrative Clerk II (08A), Anchorage, 1 mo FY96, 12 mo FY97	2.8	34.2	35.9
TOTAL Line 100	39.1	98.1	102.9
Line 200 - Travel			
Industrial Hygienist Field Travel for Program Audits			
6 trips @ \$600 aver/trip (Prudoe, Kenai Peninsula, Valdez, Fairbanks, Juneau and Western Alaska)	0.0	3.8	4.0
4 trips x 6 days Per Diem x \$106/day	0.0	2.6	2.7
2 Trips x 2 days Per Diem x \$106/day		0.5	0.6
TOTAL Line 200	0.0	6.9	7.3
Line 300 - Contractual Services			
Professional Svcs-DP Programming (Initial, Photo ID Install, Maintenance)	6.0	6.0	2.0
Increased legal svcs - regulations promulgation (FY96-FY97 one-time)	1.5	1.5	0.0
Increased photo ID costs @ \$5.00 / card x 1010 (FY97); 1629 (FY98)	0.0	5.1	8.2
Space 200 sq ft at \$1.50/sq ft (100 sq ft FY96)	1.8	3.6	3.6
Long Distance, including additional incoming toll free calls	0.5	1.2	1.2
Telephone Base Costs	0.6	0.6	0.6
Telephone Installations	0.6	0.0	0.0
Printing - Forms, Notices, Letterhead, Program Brochures	0.2	0.9	0.9
DP Operations Overhead	1.2	2.5	2.6
TOTAL Line 300	12.4	21.4	19.1
Line 400 - Commodities			
Office and DP Supplies	0.2	0.6	0.6
Line 500 - Equipment			
Photo-ID station, camera, large board and software (1 FY96, 1 FY97)*	25.0	25.0	0.0
2 Work Stations (1 FY96, 1 FY97)	2.0	2.0	0.0
2 PCs and Software (1 FY96, 1 FY97)	2.5	2.5	0.0
2 Ergonomic Desk Chairs (1 FY96, 1 FY97)	0.5	0.5	0.0
1 bookcase	0.3	0.0	0.0
1 5-drawer file cabinet	0.4	0.0	0.0
TOTAL Line 500	30.7	30.0	0.0
* 1 Additional in Anchorage FY96, 1 additional in Fairbanks or Juneau in FY97			
TOTAL Fiscal Impact	82.4	157.0	129.9

ATTACHMENT to HB263 Fiscal Note (Rev. 4/6/95) HAZWOPER TRAINEE DATA UPDATED for 8 RESPONSES

1-year, 2-year, or 3-year Certificate Renewal Options*

Current data on HAZWOPER Trainees				Certification/Revenue Analysis Based on 1, 2, or 3-Year Renewal					
	40-hour Course	Refresher	Total	FY96	FY97	FY98	FY99	FY00	FY01
Company	Grads/Year	Grads/Year	Grads/Year	Impact	Impact	Impact	Impact	Impact	Impact
1	125	55	180	0	54	100	88	75	63
2	85	330	415	0	125	68	60	51	43
3	220	150	370	0	111	176	154	132	110
4	30	200	230	0	69	24	21	18	15
5	350	338	688	0	206	280	245	210	175
6	125	150	275	0	83	100	88	75	63
7	160	130	290	0	87	128	112	96	80
8	210	510	720	0	216	168	147	126	105
9	50	50	100	0	30	40	35	30	25
10	50	50	100	0	30	40	35	30	25
Total	1,405	1,963	3,368	0	1,010	1,124	984	843	703
Ave/Company	141	196	337	0	101	112	98	84	70
Est Total/Year	1,405	1,963	3,368	0	1,010	1,124	984	843	703
30%	1-yr @ \$40				303	489	442	385	328
30%	2-yr @ \$75				303	489	745	874	1,071
40%	3-yr @ \$100				404	652	589	918	1,087
					1,010	1,629	1,775	2,178	2,484
Revenue	\$40			0	12,125	19,550	17,667	15,416	13,055
Revenue	\$75			0	22,734	36,657	55,860	65,562	80,338
Revenue	\$100			0	40,416	65,168	58,890	91,803	108,684
Program Review	\$2,000			0	12,000	10,500	6,000	500	500
				0	87,275	131,875	138,417	173,282	202,577

* Under this scenario, the department would provide for individuals to choose their certificate renewal period, at least for the first few years of the program. This would allow the department to distribute some of the renewal workload, rather than to peak every two or three years. The percentage of persons opting for one renewal period or another has been chosen arbitrarily due to lack of hard data.

Assumptions:

1. The two providers who haven't responded are at the lowest end of the production scale.
2. Percentage of current graduates obtaining certification: FY97, 50%; FY98, 80%; FY99 70%; FY00, 60%; FY01, 50%
3. Of those obtaining licenses (certificates) the first year, 30% will opt for 1-year renewal, 30% will opt for 2-year renewal, and 40% will choose a 3-year renewal.
4. In the second year, 30% of the persons who renew their 1-yr renewal will renew for 1-yr, 30% will renew for 2-yrs, 40% will renew for 3-years. New certificate holders will choose renewal terms as outlined in assumption #3.

POSITION INFORMATION HAS BEEN UPDATED AND FUNDING HAS BEEN UPDATED.
04/03/95 Position Information Inquiry/Update

09:55:54

Position: 07-07#024 Project: 0 Salary Costs: 26,236.00
Component: 07-06-07-20-16-00 Region: Benefits Costs: 10,061.14
Scenario: 4 FY: 96 COLA % = 0.000 Total Costs: 36,297.14

Actuals not available (Status: UNKNOWN) | Retirement Code: A

00/00/00 Step: A for 7.0 months & Step: B for 0.0 months (total: 7.00)
0 Merit Data; use merit defaults? N (0.0 @ & 0.0 @)
Class/Sched Prefix: 2 Schedule: 2A (actual:)
Bargaining Unit: GG Range: 19 (actual:)
Location Code: EBA Place: ANCHORAGE
Job Class Code: P2425 Title: INDUSTRIAL HYGIENIST
Seasonal Indic.: F Type: -

Optional Override Salary Rates:

Monthly Rate: 0.00 for 0.0 months & rate of 0.00 for 0.0 months
Hourly Rate: 0.00 for 0.0 months Frozen at this rate? (Y/N): N

Press ENTER to update record; enter # or use PF key to go to another screen:
1=Premium pay info 2=Funding info 4=Code Translations 6=Calculations
7=MISC NEW POS DATA 8=Detail Report 12=Exit w/o update Selection: 0

PRESS ENTER TO CONTINUE

04/06/95 Personal Services Cost Calculations Detail

09:56:03

Position: 07-07#024 Project: 0 Salary Costs: 26,236.00
Component: 07-06-07-20-16-00 Region: Benefits Costs: 10,061.14
Scenario: 4 FY: 96 COLA %: 0.000 C.O.L.A. Costs: 0.00
Total Costs: 36,297.14

Schedule: 2A Range: 19 Step: A & Extra Step:
Monthly Base Rate: 3748.00 & Extra Rate: 0.00 (FROM SALARY SCHEDULE)
Base Hourly Rate @ 162.50 Hours Per Month: 23.06 (FROM SALARY SCHEDULE)

Salary:	for 7.0 months	+ COLA	& for 0.0 months	+ COLA	Total
Annual Pay=	26,236.00	0.00	0.00	0.00	26,236.00
Premium Pay=	0.00	0.00			0.00
Totals=	26,236.00	0.00	0.00	0.00	26,236.00

Benefits:	Est. cost	+ COLA	Seas. Ind.= F	Barg. Unit= GG	Ret. Code= A
SBS=	1,608.26	0.00	SBS rate= 0.06130 * salary;	max= 3861.90	
Medicare=	262.36	0.00	Med rate= 0.01000 * salary;	max= 99999.99	
Retirement=	3,694.02	0.00	Retirement rate	0.14080 * salary	
Variable=	1,463.96	0.00	Variable benefits rate	0.055800 * salary	
Short-term=	0.00	0.00	Nonperm benefits rate	0.000000 * salary	
Fixed Ben.=	3,032.54	N/A	7.0 months @ 433.220 &	0.0 @	0.000

04/06/95

Position Information Inquiry/Update

09:56:40

Position: 07-07#025 Project: 0 Salary Costs: 1,833.00
 Component: 07-06-07-20-16-00 Region: Benefits Costs: 924.27
 Scenario: 4 FY: 96 COLA % = 0.000 Total Costs: 2,757.27

Actuals not available (Status: UNKNOWN) | Retirement Code: A

00/00/00 Step: A for 1.0 months & Step: B for 0.0 months (total: 1.00)
 0 Merit Date; use merit defaults? N (0.0 @ & 0.0 @)
 Class/Sched Prefix: 2 Schedule: 2A (actual:)
 Bargaining Unit: GG Range: 08 (actual:)
 Location Code: EBA Place: ANCHORAGE
 Job Class Code: P1134 Title: ADMINISTRATIVE CLERK II
 Seasonal Indic.: F Type:

Optional Override Salary Rates:

Monthly Rate: 0.00 for 0.0 months & rate of 0.00 for 0.0 months
 Hourly Rate: 0.00 for 0.0 months Frozen at this rate? (Y/N): N

Press ENTER to update record; enter # or use PF key to go to another screen:
 1=Premium pay info 2=Funding info 4=Code Translations 6=Calculations
 7=MISC NEW POS DATA 8=Detail Report 12=Exit w/o update Selection: 0

PRESS ENTER TO CONTINUE

04/06/95

Personal Services Cost Calculations Detail

09:56:43

Position: 07-07#025 Project: 0 Salary Costs: 1,833.00
 Component: 07-06-07-20-16-00 Region: Benefits Costs: 924.27
 Scenario: 4 FY: 96 COLA % = 0.000 C.O.L.A. Costs: 0.00
 Total Costs: 2,757.27

Schedule: 2A Range: 8 Step: A & Extra Step:
 Monthly Base Rate: 1833.00 & Extra Rate: 0.00 (FROM SALARY SCHEDULE)
 Base Hourly Rate @ 162.50 Hours Per Month: 11.28 (FROM SALARY SCHEDULE)

Salary: for 1.0 months	+ COLA	& for 0.0 months	+ COLA	Total
Annual Pay= 1,833.00	0.00	0.00	0.00	1,833.00
Premium Pay= 0.00	0.00			0.00
Totals= 1,833.00	0.00	0.00	0.00	1,833.00

Benefits:	Est. cost	+ COLA	Seas. Ind.= F	Barg. Unit= GG	Ret. Code=
SBS=	112.36	0.00	SBS rate= 0.06130	* salary;	max= 3861.90
Medicare=	18.33	0.00	Med rate= 0.01000	* salary;	max= 99999.99
Retirement=	253.08	0.00	Retirement rate	0.14080	* salary
Variable=	102.28	0.00	Variable benefits rate	0.055800	* salary
Short-term=	0.00	0.00	Nonperm benefits rate	0.000000	* salary
Fixed Ben.=	433.22	N/A	1.0 months @	433.220	& 0.0 @ 0.000

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 263

Revision Date: _____
 Title: Certification of Hazardous Waste
Workers
 Sponsor: House Labor and Commerce
 Requestor: House Labor and Commerce

Department Affected: Labor
 BRU: Labor Standards & Safety
 Component: Occupational Safety &
Health
 COMPONENT SERIAL NO. 970

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	79.7	98.1	102.9	107.8	113.1	118.6
TRAVEL	6.5	6.9	7.3	7.7	8.1	8.5
CONTRACTUAL	19.2	36.6	19.2	19.6	30.2	25.0
SUPPLIES	0.5	0.6	0.6	0.7	0.7	0.8
EQUIPMENT	34.7	50.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	140.6	192.2	130.0	135.8	152.1	152.9

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

CHANGE IN REVENUE FUND SOURCE 1005		224.2	155.6	158.8	321.7	273.4
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FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	140.6	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipt	0.0	192.2	130.0	135.8	152.1	152.9
1006 GF/MHTIA						
1007 I/A Receipts						
TOTAL	140.6	192.2	130.0	135.8	152.1	152.9

POSITIONS:

FULL-TIME	2.0	2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

Estimate of current year (FY95) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

This analysis is based on statistics related to graduates of Hazardous Waste Operations and Emergency Response (HAZWOPER) training which currently is not exempt from oversight by the Alaska Postsecondary Education Commission (the Commission) under 20 AAC 17.015. The primary HAZWOPER courses not regulated by the Commission are those provided by an employer to an employee, or those which are less than 40 hours and less than \$250 tuition. This fiscal note is understated by the cost to certify those individuals whose training is provided by an exempt organization. Inflation is assumed at 4.83% per year. Revenue stream begins in FY97.

Prepared by: John A. Abshire, Director Phone: 269-4914
 Division: Labor Standards and Safety Date: 3/28/95

Approved by Commissioner: Tom Cashen, Commissioner
 Agency: Department of Labor Date: 3/28/95

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Analysis:

In order to provide review, approval and certification of training programs, and certification of individuals taking the training, increased resources will be required. Based on our experience with the asbestos abatement certification program, we have estimated that a minimum of two additional staff will be needed, as well as additional equipment and support costs. Start up and on-going administration of this program will require significant professional time, as well as support staff time. In addition to developing and promulgating new regulations, training program standards will have to be written and distributed to would-be training establishments. Training programs would need to be reviewed (estimated 2-weeks per program), and audited on-site. Procedures for certification of workers would have to be developed, and for updating certificates with annual refresher course information. Processing of several thousand workers' certificates per year, cash flow controls, and data base controls all would have to be accommodated.

It is critical to note that first year start up costs cannot be funded by program receipts. If certification activity is as extensive as we have estimated, program receipts will be sufficient to fund the program from the second year forward.

Please see attachment for analysis of numbers of program graduates and revenue stream.

FUNDING REQUIREMENTS

	FY96 Est	FY97 Est	FY98 Est
Line 100 - Personal Services			
PFT Industrial Hygienist (19A), Anchorage, 10 mo FY96, 12 mo FY97	51.9	63.9	67.0
PPT Administrative Clerk II (08A), Anchorage, 10 mo FY96, 12 mo FY97	27.8	34.2	35.9
TOTAL Line 100	79.7	98.1	102.9
Line 200 - Travel			
Industrial Hygienist Field Travel for Program Audits			
6 trips @ \$600 ave/trip (Prudoe, Kenai Peninsula, Valdez, Fairbanks, Juneau and Western Alaska)	3.6	3.8	4.0
4 trips x 6 days Per Diem x \$106/day	2.5	2.6	2.7
2 Trips x 2 days Per Diem x \$106/day	0.4	0.5	0.6
TOTAL Line 200	6.5	6.9	7.3
Line 300 - Contractual Services			
Professional Svcs-DP Programming (Initial, Photo ID Install, Maintenance)	7.0	12.0	2.0
Increased legal svcs - regulations promulgation (FY96 one-time)	3.0	0.0	0.0
Increased photo ID costs @ \$5.00 / card x 2798 (FY97); 1251 (FY98)	0.0	14.0	6.3
Space 200 sq ft at \$1.50/sq ft	3.6	3.6	3.6
Long Distance, including additional incoming toll free calls	2.4	3.6	3.8
Printing - Forms, Notices, Letterhead, Program Brochures	0.8	0.9	0.9
DP Operations Overhead	2.4	2.5	2.6
TOTAL Line 300	19.2	36.6	19.2
Line 400 - Commodities			
Office and DP Supplies	0.5	0.6	0.6
Line 500 - Equipment (FY96 one time)			
Photo-ID station, camera, targa board and software (1 FY96, 2 FY97)*	25.0	50.0	
2 Work Stations	4.0		
2 PCs and Software	4.0		
2 Ergonomic Desk Chairs	1.0		
1 bookcase	0.3		
1 5-drawer file cabinet	0.4		
TOTAL Line 500	34.7	50.0	0.0
* 1 Additional in Anchorage FY96, 1 each in Fairbanks/Juneau FY97			
TOTAL Fiscal Impact	140.6	192.2	130.0

HAZWOPER TRAINEE DATA UPDATED for 8 RESPONSES

1-year, 2-year, or 3-year Certificate Renewal Options*

Current data on HAZWOPER Trainees				Certification/Revenue Analysis Based on 1, 2, or 3-Year Renewal					
	40-hour Course	Refresher	Total	FY96	FY97	FY98	FY99	FY00	FY01
Company	Grads/Year	Grads/Year	Grads/Year	Impact	Impact	Impact	Impact	Impact	Impact
1	125	55	180	0	144	100	100	100	100
2	85	330	415	0	332	68	68	68	68
3	220	150	370	0	296	176	176	176	176
4	30	200	230	0	184	24	24	24	24
5	350	338	688	0	550	280	280	280	280
6	125	150	275	0	220	100	100	100	100
7	160	130	290	0	232	128	128	128	128
8	210	510	720	0	576	168	168	168	168
Est 9	50	50	100	0	80	40	40	40	40
Est 10	50	50	100	0	80	40	40	40	40
Total	1,405	1,963	3,368	0	2,694	1,124	1,124	1,124	1,124
Ave/Company	141	196	337	0	269	112	112	112	112
Est Total/Year	1,405	1,963	3,368	0	2,694	1,124	1,124	1,124	1,124
30%	1-yr @ \$40				808	580	511	491	484
10%	2-yr @ \$75				269	355	556	621	815
60%	3-yr @ \$100				1,617	998	906	2,495	1,868
					2,694	1,932	1,973	3,607	3,168
Revenue	\$40			0	32,333	23,188	20,444	19,621	19,374
Revenue	\$75			0	20,208	26,617	41,681	46,547	61,148
Revenue	\$100			0	161,664	99,773	90,628	249,548	186,834
Program Review	\$2,000			0	10,000	6,000	6,000	6,000	6,000
				0	224,205	155,578	158,753	321,717	273,357

* Under this scenario, the department would provide for individuals to choose their certificate renewal period, at least for the first few years of the program. This would allow the department to distribute some of the renewal workload, rather than to peak every two or three years. The percentage of persons opting for one renewal period or another has been chosen arbitrarily due to lack of hard data.

Assumptions:

1. The two providers who haven't responded are at the lowest end of the production scale.
2. 80% of current graduates will become licensed
3. Of those obtaining licenses (certificates) the first year, 30% will opt for 1-year renewal, 10% will opt for 2-year renewal, and 60% will choose a 3-year renewal.
4. In the second year, 30% of the persons who renew their 1-yr renewal will renew for 1-yr, 30% will renew for 2-yrs, 40% will renew for 3-years. New certificate holders will choose renewal terms as outlined in assumption #3.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 263

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to certification of workers who BRU: Legal Services
handle hazardous waste..." Component: Operations
 Sponsor: House Labor and Commerce Committee
 Requester: Representative Kott COMPONENT SERIAL NO. 0093

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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 EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill establishes an employee training certification program, within the Department of Labor, to ensure that a person employed to work on a hazardous waste site is adequately trained to handle hazardous waste in a safe manner before engaging in hazardous waste operations. The bill also provides civil and criminal penalties for persons who engage in hazardous waste operations without the required training, and it provides similar penalties for persons who employ or contract for individuals or entities to engage in hazardous waste operations who do not have the required training. The Department of Law, which would provide legal enforcement, does not anticipate that there will be a sufficient number of violations to warrant fiscal note costs.

Richard I. Peques

Prepared by: Richard I. Peques, Director
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: 3/30/95
 Date: 3/30/95

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HB

266

MEMORANDUM

State of Alaska
Department of Law

TO: William L. Hensley,
Commissioner
Dept. of Commerce & Economic
Development

DATE: April 21, 1995
FILE NO.: 651-95-0654
TEL NO.: 269-5200
SUBJECT: Opinion on Legality of
Preferred Provider
Organizations in Alaska

FROM: David G. Stebing *DES*
Assistant Attorney General
Commercial Section -- Anchorage

I. INTRODUCTION

This is in response to your memorandum dated April 13, 1995, by which you requested an opinion on the following question: "Are Preferred Provider Organizations (PPOs) legal in Alaska?" Our conclusion is that they are lawful, although there is no enabling legislation for PPOs in Alaska.

II. BACKGROUND

PPOs are a relatively recent development in the health care delivery arena. For much of this century, traditional indemnity insurance, whether through individual or group insurance policies, provided the primary means for health care reimbursement. In the last few decades, due in large part to the trend of disproportionately large increases in health care costs, alternatives to pure indemnity insurance evolved. Many of these alternatives fall under the rubric of managed care and have a primary purpose of cost containment. For instance, in the 1970s, statutory enabling laws for health maintenance organizations (HMOs) were created.¹ Alaska enacted its version of the HMO model law (AS 21.86) in 1990. However, to date there are no licensed HMOs in Alaska.

¹ See generally 42 U.S.C. § 300e *et seq.* (Federal Health Maintenance Organization Act of 1973); Health Maintenance Organization Model Act, Vol. II, NAIC Model Laws, Regulations and Guidelines, pp. 430-1 through 430-31 (adopted 1973).

William L. Hensley, Commissioner
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Development
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April 21, 1995
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In the 1980s, PPOs developed as a managed care device.² PPOs are a fee-for-service alternative to traditional health insurance. Due to their dramatic growth they soon became a central feature of health care financing and delivery reform.

The PPO, also referred to as a preferred provider arrangement (PPA),³ involves purchasers managing the cost of health care through contracting with a group of doctors or hospitals ("preferred" or "network" providers). The salient characteristics of the preferred provider arrangement are as follows. In exchange for discounted fees for services, the providers receive a guaranteed supply of patients and a commitment to quick turnaround on claims payments. Providers also typically agree to comply with utilization review procedures intended to reduce inappropriate or unnecessary care. Through a bulk purchase of medical services, purchasers have the advantage of being able to choose providers based on competitive pricing, hopefully resulting in cost savings. Patients are offered financial incentives such as reduced or eliminated copayments or deductibles if they use designated preferred providers. PPOs are formed by a wide variety of entities -- purchasers as well as providers -- including insurers, self insurers (employers), unions, physicians, hospitals, HMOs, service corporations, and third party administrators (often owned by insurers).⁴

At a recent hearing before the Senate Labor and Commerce Committee, a representative of the division of insurance was asked whether preferred provider organizations (PPOs) are legal in Alaska. The division's response that PPOs are not lawful has

² See Gabel, Ermann, Rice & de Lissovoy, The Emergence and Future of PPOs, Vol. 11, Journal of Health Politics, Policy and Law, 305 (1986); Preferred Provider Arrangements Act, Vol. I, NAIC Model Laws, Regulations and Guidelines, pp. 75-1 through 75-4, (adopted 1987).

³ A PPO is the group of providers whereas a PPA is the contractual arrangement between that group of providers and purchasers of health care. Your April 13, 1995 memorandum refers to PPOs. For the purpose of this opinion, the PPO and PPA mechanisms are interchangeable.

⁴ There are myriad forms of PPOs whose description is beyond the scope of this opinion. See generally Combe & Krugman, Design and Pricing of the PPO and HMO Products, Practicing Law Institute, Commercial Law and Practice Course Handbook Series, September 25, 1986.

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Dept. of Commerce & Economic
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created some controversy. The largest group disability⁵ insurer in the state (Aetna Life Insurance Co.) has been utilizing PPOs for years based in part on the division's approval of its insurance forms. The Division of Retirement and Benefits also has expressed concern regarding the use of PPOs in the state health plan. As a result, you have referred this question to the Department of Law for a legal opinion.

III. ANALYSIS

PPOs are lawful in Alaska. While there is no enabling legislation for PPOs, no provision of AS 21 on its face prohibits the formation of PPOs or contracting with such entities.

By way of background, and as previously indicated in this memorandum, there is a model law developed by the National Association of Insurance Commissioners (NAIC) entitled the "Preferred Provider Arrangements Act." Currently, over half of the states (29) have adopted some version of the PPO model either by legislation, regulation or bulletin.⁶ Alaska has not adopted a version of the model. Whether or not it should have is beyond the scope of this opinion.

It is noteworthy that states have been criticized for passing laws which impede the implementation of PPOs. Even before the creation of the model act, legislation was introduced in Congress in 1983 to prohibit states from restricting the operations of the already emerging PPO mechanism.⁷ The existence of PPOs in the absence of enabling legislation is also evidenced by a drafting note for Section 2 of the model (Purpose), which states: "The use of the term 'allowing' in this section is not intended to indicate that health care insurers are acting unlawfully in a state which

⁵ Alaska is in the clear minority of states that uses the term "disability insurance" to refer to what is commonly known as "health insurance." See AS 21.12.050 (disability insurance defined); AS 21.54.060 (group disability insurance defined). "Disability insurance" includes "disability income replacement insurance."

⁶ See Vol. I, NAIC Model Laws, Regulations and Guidelines, pp. 75-5 through 75-8 (1993).

⁷ See Rolph, Ginsburg & Hosek, The Regulation of Preferred Provider Arrangements, 6 Health Affairs, 32, 33 (Fall 1987).

William L. Hensley, Commissioner
Dept. of Commerce & Economic
Development
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April 21, 1995
Page 4

has not enacted a law allowing Preferred Provider Arrangements." ⁸

Although federal law recognizes the PPO mechanism, it does not answer the question whether PPOs are legal in Alaska. In a regulation implementing the Medicare program, the Department of Health and Human Services refers to health plans having "premium structure regulated under a State insurance statute or a State enabling statute governing health maintenance organizations or preferred provider organizations." 42 C.F.R. § 1001.952(1)(2). This regulation does not mandate the use of an enabling law for PPOs. The CHAMPUS program, which expressly authorizes federal officials to contract with PPOs, also does not require a state enabling statute. See 10 U.S.C. § 1095.

There are no published cases, state or federal, addressing whether PPOs are lawful in the absence of enabling legislation. One case implicitly acknowledges the validity of a state PPO enabling law. In Stuart Circle Hospital Corporation v. Aetna Health Management, 995 F.2d 500 (4th Cir. 1993), the court held that ERISA's savings clause exempted from federal preemption a Virginia enabling law for establishing PPOs. However, there is no federal mandate for an enabling law. Each state may regulate PPOs as it sees fit, in the absence of congressional direction. ⁹

Recognizing that there is no Alaska enabling law for PPOs, the division of insurance has previously taken the position that certain provisions of the insurance code prohibit the use of PPOs. We find this argument unpersuasive for the following reasons.

AS 21.54.020(a)

One of the provisions the division relies upon is a prohibition applicable to group disability insurers which provides in part: "The [group disability] policy may not contain a provision requiring that services be provided by a particular hospital or person, except as applicable to a health maintenance organization under AS 21.86." AS 21.54.020(a). This law does not prohibit the use of a PPO. To begin with, HMOs, which may contract

⁸ See id. p. 75-1. See also Statement of Commissioner Grode (Fa.), Report of Working Group on Preferred Providers, Vol. 1, NAIC Proceedings, p. 712 (1987) ("drafting note was added to clarify the possible ambiguity").

⁹ See generally 15 U.S.C. §§ 1011-12 (McCarran-Ferguson Act delegation of insurance regulatory authority to states).

William L. Hensley, Commissioner
Dept. of Commerce & Economic
Development
AGO File 661-95-0654

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with a PPO, are exempted. See id.; AS 21.86.060(a). In addition, the typical health plan utilizing a PPO gives covered individuals the choice of more than one provider, and often there is an option to use a non-preferred provider, albeit at higher cost. Only if the covered person is given no choice of provider would this provision be violated.

AS 21.36.090(b)

Another statute relied upon by the division as prohibiting PPOs is AS 21.36.090(b). It provides:

A person may not make or permit unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for a policy or contract of disability insurance or in the benefits payable, or in any of the terms or conditions of the contract, or in any other manner whatever.

This provision prohibits only disability (health) insurers from unfairly discriminating against covered individuals. It is part of the Unfair Trade Practices Act (UTPA) in Alaska's insurance code, enacted in 1966 and based upon an NAIC model. Although the legislative history for AS 21.36.090(b) is scant and has no bearing on the PPO issue, the model act is instructive. It was adopted in 1947, well before the emergence of PPOs and the managed care concept.¹⁰ The unfair discrimination provision at AS 21.36.090(b) is substantially the same as the corresponding provision of the model act [Section 4(G)(2)]. The legislative history for Section 4(G)(2) reveals that the primary concerns about unfair discrimination were in the contexts of race, sex, marital status, residence and national origin. More recently, redlining and blackballing underwriting practices have received attention. There is no discussion of PPOs in the legislative history of the model. Indeed, it would be illogical for the NAIC to adopt a PPO model act if PPOs were per se violative of the UTPA. It is true that a PPO could violate AS 21.36.090(b) if its conduct were unfairly discriminatory for any one of a variety of reasons. However, it is additionally possible that there would be no

¹⁰ See Vol. IV, Model Laws, Regulations and Guidelines, pp. 880-1 through 880-13 (1993). The NAIC's unfair trade practices model act was one of the initial efforts at developing uniform state legislation in response to the recently enacted McCarran-Ferguson Act. See NAIC Proceedings, pp. 142-43 (1946).

William L. Hensley, Commissioner
Dept. of Commerce & Economic
Development
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"unfair" discrimination if a PPO treated all individuals of the same class equally as to costs, benefits payable and other contractual terms. In conclusion, AS 21.36.090(b) does not prohibit the establishment of PPOs or contracting with them.

Hospital and Medical Service Corporations (AS 21.87)

Your memorandum also addresses hospital and medical service corporations. E.g., Blue Cross. These entities differ significantly from disability (health) insurers, and are not even considered insurers. Unlike traditional insurance companies, which are subject to the provisions of AS 21.09, service corporations are regulated by the provisions of AS 21.87. Service corporations are nonprofit, at least in theory, and pursuant to statute. See AS 21.87.070(3). In essence, a service corporation delivers health care coverage through the use of two contracts. In the first one, a service agreement, the service corporation and a participant provider (typically a hospital or physician) agree to exchange health care services for a set fee. See *id.* 21.87.140 -- .150. The second contract, called a subscriber contract, is between the service corporation and a recipient of care. See *id.* 21.87.160. It gives the subscriber access to health care services provided by the service contract.

Hospital and medical service corporations have statutory authority to contract with PPOs. See, e.g., AS 21.87.070(3), 21.87.150 (service agreements with participant hospitals authorized); AS 21.87.070(4), 21.87.140 (service agreements with participant providers authorized); 21.87.120(a)(2), 21.87.130(a)(2), 21.87.160(b)(1),(2) (indemnity for services by nonparticipant providers and hospitals allowed). These statutes were enacted in 1966, well before the emergence of PPOs. They effectively allow a different benefit to be provided to a subscriber by a participant hospital or participant provider than benefits the subscriber may access on an indemnity basis. Although none of the statutes explicitly reference PPOs, their language is broad enough to allow contracting with PPOs.

Exclusive Provider Arrangements

Finally, your memorandum addresses "exclusive provider arrangements," also referred to as "exclusive provider organizations" or EPOs. These entities are a subspecies of PPOs. As previously indicated, for group disability (health) insurance, AS 21.54.020(a) prohibits the use of an EPO where the covered individual has no choice of provider. Depending on the circumstances, an EPO may also violate provisions of AS 21.36.

William L. Hensley, Commissioner
Dept. of Commerce & Economic
Development
AGO File 661-95-0654

April 21, 1995
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CONCLUSION

Unlike most states, Alaska does not have an enabling law for establishing and using PPOs. For the reasons indicated in this memorandum, the Alaska insurance code nonetheless does not prohibit the creation of PPOs.

DGS:mh

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Juneau, Alaska 99801-2105

MEMORANDUM

September 26, 1995

SUBJECT: Sectional Summary of CSHB 266() (Work Order No. 9-LS0593\G)

TO: Representative Norman Rokeberg
Attn: Shirley

FROM: Michael F. Ford *MFF lmb*
Legislative Counsel

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

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

Section 1. Provides that the prohibition against unfair discrimination contained in AS 21.36.090(d) does not apply to the preferred provider program authorized under AS 21.42.315 created by sec. 2.

Section 2. Authorizes disability insurers to offer a preferred provider agreement to a health care provider or hospital licensed in this state. Provides that the program cannot prevent use of a gatekeeper or utilization review by an insurer, that the section does not apply to health care plans exempt by federal law, and that a person affected by a violation has a private cause of action for injunctive relief and for damages of not less than \$1,000, costs and attorney fees.

Section 3. Establishes that the preferred provider program is an exception to the prohibition against requiring services by a particular hospital or person.

Section 4. Provides that a hospital or medical service corporation can establish a preferred provider program. Provides that the program cannot prevent use of a gatekeeper or utilization review, and that a person affected by a violation has a private cause of action for injunctive relief and for damages of not less than \$1,000, costs and attorney fees.

Section 5. Applicability clause.

MFF:lmb
95-261.lmb

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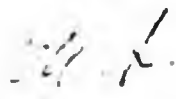
*130 Seward Street, Suite 409
Juneau, Alaska 99801-2105*

MEMORANDUM

March 27, 1995

SUBJECT: Sectional Summary of HB 266 (Work Order No. 9-LS0593\C)

TO: Representative Pete Kott
Attn: George

FROM: Michael F. Ford 
Legislative Counsel

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

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

Section 1 Allows a hospital or medical service corporation to offer a preferred provider service agreement to a health care provider or a hospital. Prohibits exclusion of a health care provider or hospital from being treated as a preferred provider if the health care provider or hospital agrees to the terms and conditions of the preferred provider agreement.

MFF:lmb:klb
95-153.lmb

CS FOR HOUSE BILL NO. 266(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to preferred provider agreements offered by hospital or medical**
2 **service corporations."**

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

4 *** Section 1. AS 21.87 is amended by adding a new section to read:**

5 **Sec. 21.87.135. PREFERRED PROVIDER PROGRAMS. (a) A hospital or**
6 **medical service corporation may**

7 **(1) offer a preferred provider service agreement to a provider or**
8 **hospital licensed in this state; and**

9 **(2) not refuse to offer a service agreement under AS 21.87.140 -**
10 **21.87.150 and a preferred provider arrangement to a provider or hospital willing to**
11 **meet the terms and conditions of the preferred provider service agreement.**

12 **(b) A subscriber's contract containing a preferred provider program must**
13 **provide for payment for a service provided by**

14 **(1) a participating nonpreferred provider or hospital;**

1
2
3
4
5

(2) a nonparticipating provider or hospital located outside the state when providing emergency care; and
(3) a nonparticipating provider or hospital located in this state when providing emergency care and a participating provider or hospital is not reasonably available.

9-LS0593AG

Ford

9/18/95

CS FOR HOUSE BILL NO. 266()

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to preferred provider agreements offered by an insurer or hospital**
2 **or medical service corporations."**

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

4 *** Section 1. AS 21.36.090(d) is amended to read:**

5 (d) Except to the extent necessary to comply with AS 21.42.315, 21.42.365,
6 [AS 21.42.365] and AS 21.56, a person may not practice or permit unfair discrimination
7 against a person who provides a service covered under a group disability policy that
8 extends coverage on an expense incurred basis, or under a group service or indemnity type
9 contract issued by a nonprofit corporation [,] if the service is within the scope of the
10 provider's occupational license. In this subsection, "provider" means a state licensed
11 physician, dentist, osteopath, optometrist, chiropractor, nurse midwife, advanced nurse
12 practitioner, naturopath, physical therapist, occupational therapist, psychologist,
13 psychological associate, or licensed clinical social worker, or certified direct-entry
14 midwife.

15 *** Sec. 2. AS 21.42 is amended by adding a new section to read:**

1 Sec. 21.42.315. PREFERRED PROVIDER PROGRAMS. (a) An insurer
2 authorized under AS 21.09 to offer, issue for delivery, deliver, or renew a disability
3 insurance policy in the state may offer a preferred provider agreement to a provider or
4 hospital licensed in this state. A provider or hospital willing to meet the terms and
5 conditions of the preferred provider agreement may not be excluded from treatment as a
6 preferred provider.

7 (b) This section may not be construed to prevent an insurer from instituting
8 measures designed to maintain quality and to control costs, including a gatekeeper system
9 or utilization review, provided that the measures are imposed equally on all providers or
10 hospitals in the same class. In this subsection,

11 (1) "gatekeeper system" means a system of administration used in a health
12 benefit plan in which a primary care provider furnishes basic patient care and coordinates
13 diagnostic testing, indicated treatment, and specialty referral for a person covered by the
14 health benefit plan;

15 (2) "utilization review" means a system to monitor, track, and verify
16 patterns of treatment by health care providers that assures that cost efficient and cost
17 effective care is provided within accepted medical standards without reducing the quality
18 of care.

19 (c) Notwithstanding the other provisions of this section, this section does not apply
20 to a self-funded or other health care plan that is exempt from regulation by the state under
21 29 U.S.C. 1001 - 1461 (Employee Retirement Income Security Act).

22 (d) A person adversely affected by a violation of this section may bring an action
23 in the appropriate court for injunctive relief and, if the person is the prevailing party, may
24 recover civil damages of not less than \$1,000 and costs and attorney fees allowed under
25 the Alaska Rules of Civil Procedure. A provision of a disability insurance policy that is
26 in violation of this section is void and may not be enforced.

27 * Sec. 3. AS 21.54.020(a) is amended to read:

28 (a) An insurer may, and upon written request of the covered person shall, within
29 30 working days after receiving a proof of loss statement, pay indemnities under a group
30 disability policy directly to the provider of the hospital, nursing, medical, dental, or
31 surgical services. The policy may not contain a provision requiring that services be
32 provided by a particular hospital or person, except as required under AS 21.42.315 or as

1 applicable to a health maintenance organization under AS 21.86. If the insurer pays
2 indemnities to the covered person after the covered person has given the insurer written
3 notice in the proof of loss statement of an election of direct payment of indemnities to the
4 provider of the service, the insurer shall also pay those indemnities to the provider of the
5 service.

6 * Sec. 4. AS 21.87 is amended by adding a new section to read:

7 Sec. 21.87.135. PREFERRED PROVIDER PROGRAMS. (a) A hospital or
8 medical service corporation

9 (1) may offer a preferred provider service agreement to a provider or
10 hospital licensed in this state; and

11 (2) may not refuse to offer a service agreement under AS 21.87.140 -
12 21.87.150 and a preferred provider arrangement to a provider or hospital willing to meet
13 the terms and conditions of the preferred provider service agreement.

14 (b) A subscriber's contract containing a preferred provider program must provide
15 for payment for a service provided by

16 (1) a participating nonpreferred provider or hospital;

17 (2) a nonparticipating provider or hospital located outside the state when
18 providing emergency care; and

19 (3) a nonparticipating provider or hospital located in this state when
20 providing emergency care and a participating provider or hospital is not reasonably
21 available.

22 (c) This section may not be construed to prevent a hospital or medical service
23 corporation from instituting measures designed to maintain quality and to control costs,
24 including a gatekeeper system or utilization review, provided that the measures are
25 imposed equally on all providers or hospitals in the same class. In this subsection,

26 (1) "gatekeeper system" means a system of administration used in a health
27 benefit plan in which a primary care provider furnishes basic patient care and coordinates
28 diagnostic testing, indicated treatment, and specialty referral for a person covered by the
29 health benefit plan;

30 (2) "utilization review" means a system to monitor, track, and verify
31 patterns of treatment by health care providers that assures that cost efficient and cost
32 effective care is provided within accepted medical standards without reducing the quality

1 of care.

2 (d) A person adversely affected by a violation of this section may bring an action
3 in the appropriate court for injunctive relief and, if the person is the prevailing party, may
4 recover civil damages of not less than \$1,000 and costs and attorney fees allowed under
5 the Alaska Rules of Civil Procedure. A provision of a service agreement or subscriber's
6 contract that is in violation of this section is void and may not be enforced.

7 * Sec. 5. APPLICABILITY. This Act applies to a disability insurance policy, service
8 agreement, or subscriber's contract that is entered into or renewed on or after the effective date of
9 this Act.

9-LS0662\O ✓

Bannister

4/24/95

**CS FOR HOUSE BILL NO. 251(L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION**

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES MOSES, MacLean, Williams

A BILL

FOR AN ACT ENTITLED

**1 "An Act relating to the meetings, shareholder proposals, and removal of directors
2 of Native corporations."**

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

4 * Section 1. AS 10.06.960 is amended by adding new subsections to read:

**5 (1) Notwithstanding AS 10.06.405 and 10.06.465(c), special meetings of the
6 shareholders of a corporation organized under the act may only be called by**

7 (1) the board;

8 (2) the chair of the board;

9 (3) the president;

**10 (4) a petition or other request of the holders of not less than 15 percent
11 of all the shares entitled to vote at the meeting, if the corporation has 500 or more
12 shareholder;;**

**13 (5) a petition or other request of the holders of not less than 25 percent
14 of all the shares entitled to vote at the meeting if the corporation does not have 500**

1 or more shareholders; or

2 (6) other persons as may be authorized in the articles of incorporation
3 or the bylaws.

4 (m) In addition to the other requirements of this chapter, a written notice of
5 a petition or other request for a special meeting of shareholders under (l) of this
6 section shall be filed with the corporation before a person solicits support for the
7 petition or request. The notice must state in detail the purpose of the special meeting
8 and include a copy of the petition or request and all materials to be used in connection
9 with the solicitation. A petition or request bearing the original signatures of the
10 holders of the requisite number of shares supporting the petition or request shall be
11 filed with the corporation within 180 days after the filing. If a petition or request
12 covered by this section does not comply with this subsection, the petition or request
13 is invalid.

14 (n) The provisions of AS 10.06.460 do not apply to a corporation organized
15 under the act, if the corporation has adopted articles that provide for classification of
16 directors under AS 10.06.455, or if the corporation is allowed by sec. 57, ch. 82, SLA
17 1989, to provide in its bylaws for the classification of directors.

18 (o) A corporation that is organized under the act is not required to consider or
19 to submit to a vote of the shareholders a shareholder proposal that deals substantially
20 with the same subject matter as a proposal that was submitted to a vote of the
21 shareholders within the preceding two years.

22 * Sec. 2. AS 45.55.990 is amended by adding a new paragraph to read:

23 (14) "proxy" includes a petition or other request for a special meeting
24 of shareholders under AS 10.06.960(m) and material distributed in connection with the
25 petition or request or with the solicitation of support for the petition or request

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: HB 266

1 Page 1, line 1, after "by":

2 Insert "an insurer or"

3 Page 1, after line 3:

4 Insert new bill sections to read:

5 ** Section 1. AS 21.36.090(d) is amended to read:

6 (d) Except to the extent necessary to comply with AS 21.42.315, 21.42.365,
7 [AS 21.42.365] and AS 21.56, a person may not practice or permit unfair
8 discrimination against a person who provides a service covered under a group
9 disability policy that extends coverage on an expense incurred basis, or under a group
10 service or indemnity type contract issued by a nonprofit corporation [,] if the service
11 is within the scope of the provider's occupational license. In this subsection,
12 "provider" means a state licensed physician, dentist, osteopath, optometrist,
13 chiropractor, nurse midwife, advanced nurse practitioner, naturopath, physical
14 therapist, occupational therapist, psychologist, psychological associate, or licensed
15 clinical social worker, or certified direct-entry midwife.

16 * Sec. 2. AS 21.42 is amended by adding a new section to read:

17 Sec. 21.42.315. PREFERRED PROVIDER PROGRAMS. An insurer
18 authorized under AS 21.09 to offer, issue for delivery, deliver, or renew a disability
19 insurance policy in the state may offer a preferred provider agreement to a provider
20 or hospital licensed in this state. A provider or hospital willing to meet the terms and
21 conditions of the preferred provider agreement may not be excluded from treatment
22 as a preferred provider.

23 * Sec. 3. AS 21.54.020(a) is amended to read:

24 (a) An insurer may, and upon written request of the covered person shall,

1 within 30 working days after receiving a proof of loss statement, pay indemnities
2 under a group disability policy directly to the provider of the hospital, nursing,
3 medical, dental, or surgical services. The policy may not contain a provision
4 requiring that services be provided by a particular hospital or person, except as
5 required under AS 21.42.315 or as applicable to a health maintenance organization
6 under AS 21.86. If the insurer pays indemnities to the covered person after the
7 covered person has given the insurer written notice in the proof of loss statement of
8 an election of direct payment of indemnities to the provider of the service, the insurer
9 shall also pay those indemnities to the provider of the service."

10 Page 1, line 4:

11 Delete "Section 1."

12 Insert "Sec. 4."

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 266

Revision Date: _____
Title: Health Care Preferred Provider Programs

Department: Commerce and Economic Development
BRU: Insurance
Component: Operations

Sponsor: House Labor & Commerce Committee by Request
Requestor: House Labor & Commerce Committee

COMPONENT SERIAL NO. _____ #354

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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 EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1001 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Joan Brown, Administrative Officer
Division: Insurance
Approved by Commissioner: William L. Hensley
Agency: Commerce and Economic Development

Phone: 465-2597
Date: 3/20/95
Date: 3/20/95

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 266

Revision Date: _____ Department: Commerce and Economic Development
 Title: Health Care Preferred Provider Programs BRU: Insurance
 Component: Operations
 Sponsor: House Labor & Commerce Committee by Request
 Requestor: House Labor & Commerce Committee COMPONENT SERIAL NO. #354

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
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 EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ 0.0

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

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

Prepared by: Joan Brown, Administrative Officer *Joan Brown* Phone: 465-2597
 Division: Insurance Date: 2/13/96
 Approved by Commissioner: William L. Hensley *William L. Hensley* Date: 2-13-96
 Agency: Commerce and Economic Development

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 266

Revision Date: _____
Title: Health Care Preferred Provider Programs

Department: Commerce and Economic Development
BRU: Insurance
Component: Operations

Sponsor: House Labor & Commerce Committee by Request
Requestor: House Labor & Commerce Committee

COMPONENT SERIAL NO. #354

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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 EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ 0.0

POSITIONS

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Joan Brown, Administrative Officer
Division: Insurance
Approved by Commissioner: William L. Hensley
Agency: Commerce and Economic Development

Phone: 465-2597
Date: 3/20/95
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**Denali Center
Fairbanks Memorial Hospital**

Denali Center
1949 Gillam Way
Fairbanks, AK 99701
(907) 452-1921
Fax (907) 452-4522

Fairbanks Memorial Hospital
1650 Cowles Street
Fairbanks, AK 99701-5998
(907) 452-8181
Fax (907) 458-5324

Position Statement - HB 266

“An Act relating to preferred provider agreements offered by hospital or medical service corporations.”

Fairbanks Memorial Hospital and Denali Center oppose HB 266. The bill appears to be anti competitive and not in the long term best interest of the health care consumer.

On the surface, this legislation appears to increase consumer choice. At a deeper level, however, the logic of the bill doesn't stand the test of time, volume, and risks, and in the long run , restricts consumer choice.

The legislation would effectively eliminate contracting by hospitals and medical services corporations by putting resources at risk in a contract, subject to another party piggy backing under the terms that were jointly negotiated. No rational company would risk its financial resources under that scenario. Consequently, few organizations are going to be interested in creating contracts.

Contracting is one of the most predominant ways that the health care industry has responded to control its costs. Contracting , allows a supplier to offer better prices and terms to customers. Similarly, managed care contracts - preferred provider agreements - will, in the longer term, offer better prices and terms to the public.

Alaska is starting to move in the direction of managed care contracts and this bill will deal a severe blow to it. We ask that you do not pass this bill out of committee.

MICHAEL D. MANUEL, M.D.

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5/5/95

FROM ANCHORAGE
DAILY NEWS
5/4/95

THIS IS THE MAJOR ORGANIZATION
LOBBYING AGAINST HB 266. THEY
BASE THEIR ARGUMENT ON THEIR

INABILITY TO
KEEP HEALTH
CARE COSTS
DOWN IF HB266
PASSES. SOUNDS
FISHY TO ME.

HELP PRESERVE
PATIENT &
PHYSICIAN CHOICE.

HELP PASS

HB 266

THANKS —

MManuel

Blue Cross fined \$19,000

OLYMPIA, Wash. The state insurance commissioner has fined Blue Cross of Washington and Alaska \$19,000 for a number of violations of the law governing nonprofit health insurers. The fine levied against Blue Cross was based on a number of corporate activities that run counter to the health insurer's charter as a nonprofit health care service contractor. Commissioner Deborah Senn said. State regulators found that Blue Cross improperly delayed or denied payment on some claims, did not pass on discounted hospital payments to subscribers, improperly advertised as a health maintenance organization and did not seek required approval from the insurance commissioner on corporate changes.



Member

AMERICAN SOCIETY OF PLASTIC AND RECONSTRUCTIVE SURGEONS, INC.

PAUL M. WORRELL, M.D.

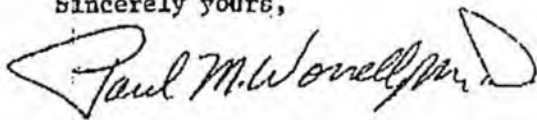
**INTERNAL MEDICINE
UNIVERSITY PROFESSIONAL CENTER
3050 LAKE OTIS PARKWAY
ANCHORAGE, ALASKA 99508
561-4402**

September 27, 1995

Dear Representative Rokeberg:

I think the legislation for Any Willing Provider is needed to give balance to the medical community. I can not come to the hearing on September 27. I certainly appreciate you holding a hearing on this bill and appreciate your efforts to continue to work for its passage.

Sincerely yours,



Paul M. Worrell, M.D.

pmw:pk