

ALASKA LEGISLATURE COMMITTEE FILES 1977-1978 0012

9321 HOUSE LABOR & COMMERCE

APR 21 1997



ALASKA VILLAGE ELECTRIC COOPERATIVE, INC.

April 15, 1997

Representative Norman Rokeberg
House of Representatives
State Capitol, Room 24
Juneau, Alaska 99801-1182

Re: HB235

Representative Rokeberg,

We support the passage of HB235 to help protect the small electric consumer. There is a downside to unbridled competition between electric utilities, and that is the little guy gets hurt. The large consumers like oil refineries, hotels and major institutions have the clout to get their way in the market place. The small consumer does not.

It is more likely than not that a large commercial power user could get its electric bill lowered by competitive bidding. It is also more likely than not that the captive small business and residential consumers would end up paying higher electric rates as a result.

The bill provides needed direction to the Alaska Public Utility Commission for ensuring that the best public interests are served by such competition.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Charles Y. Walls'.

Charles Y. Walls
President & CEO

WORK ORDER REQUEST FORM

APR 03 1997

W.O. [20] LS-0876

KEYWORDS: UTILITIES ASSIGNED: Cramer

REQUEST FOR: New Bill TAKEN BY: Cramer

SUBJECT: Electric Utilities: Service Areas

REQUESTED FOR: HC HL&C BY: Shirley PHONE: 465-4954

DELIVER TO: Rep. Rokeberg, Cap. 24

INSTRUCTIONS: Draft bill relating to regulation of electric utilities.
Use 20-LS0557\A 2/13/97. Tighter title.

<p>OBTAIN</p>	<p>SPECIAL DRAFTING INSTRUCTIONS ATTACHED [] AUTHORIZED TO CONFER WITH _____ _____ RETURN _____ _____ TO REQUESTOR APPROVED: <u>X</u> DIRECTOR, LEGAL SERVICES</p>
<p>REVIEWED _____ IN <u>04/03/97</u> DUE _____ TYPED: Draft _____ Date _____ Final _____ Date _____ PROOFED _____ DELIVERED _____</p>	<p>SPECIAL INSTRUCTIONS to TYPING/PROOFING _____ BY REQUEST _____ Request for FINAL</p>

APR 15 1997

COPPER VALLEY ELECTRIC ASSOCIATION, INC.

P.O. BOX 45, GLENNALLEN, ALASKA 99588
(907) 822-3211 FAX 822-5586 VALDEZ (907) 835-4301 FAX 835-4328

April 15, 1997

Representative Norman Rokeberg
Chairman, House Labor & Commerce Committee
House of Representatives
State Capitol
Mailstop 3100
Juneau, Alaska 99801

Dear Representative Rokeberg:

I have enclosed a copy of my written testimony to be presented April 16, 1997, regarding HB 235. I would appreciate it if the document can be provided to all members of the Committee.

Thank you.

Sincerely,



Robert A. Wilkin n
General Manager

Enclosure

\\glennserv\support\word\raw\97-125nh.doc

Serving the Copper River Basin and Valdez.

APR 15 1997

ROBERT A. WILKINSON
COPPER VALLEY ELECTRIC ASSOCIATION, INC.
TESTIMONY
HOUSE LABOR & COMMERCE COMMITTEE
HOUSE BILL 235

My name is Robert Wilkinson. I am the General Manager of Copper Valley Electric Association. I would like to thank the Committee for the opportunity to testify before you today on House Bill 235.

The electric utility industry has been undergoing catastrophic change in recent years. Deregulation, all in the interest of reducing the retail price of electricity through competition, is the name of the game. Competition in Alaska is also alive and well, and at CVEA it is intense.

We are presently under attack by three different independent power producers who are attempting to pirate large commercial and industrial customers.

CVEA is not philosophically opposed to competition. In fact, our current Strategic Plan is aimed squarely at beating the competition, and it is our intent and goal to become the energy provider of choice within our franchised service territory.

We are concerned, however, that a level-playing field be established whereby competitors of franchised-electric utilities are held to a reasonable and appropriate standard. We believe that standard should be a Commission finding of clear and convincing evidence that competitive electric service be in the public interest, and further, that the addition of competitive service should not adversely affect the quality of service or the rates provided by the existing retail electric utility.

The language proposed in HB 235 clarifies that standard and assures that the public interest is paramount in the Commission's decision-making process regarding issuances of certificates of public convenience and necessity.

I appreciate the opportunity to testify before you today on this very important issue, and I urge the Committee to approve HB 235.

Thank you.

APR 15 1997



Alaska

Rural

Electric

Cooperative

Association, Inc.

703 W. Tudor Rd., #200
Anchorage, AK 99503-6650
(907) 561-6103
FAX (907) 561-5547

Electric Service for 357,000 Alaskans

April 15, 1997

Representative Norm Rokeberg, Chairman
House Labor and Commerce Committee
State Capital Building
Juneau, Alaska 99801

Re: Support for HB 235, Electric Consumer/Service Area Protection

Dear Rep. Rokeberg,

Alaska Rural Electric Cooperative Association (ARECA) and its member utilities would like to go on record in strong support of HB 235, regarding protection of electric utility rate payers. As you know, virtually all of the electric utilities in Alaska are either cooperatively or municipally owned. As such, all of the benefits from joint ownership flow directly back to consumers in the certificated service area in which they reside. HB 235 would require that the Alaska Public Utilities Commission (APUC) must first find that there is "...clear and convincing evidence..." that it is in the best interests of all utility customers in a given service area before the APUC could grant a duplicate certificate of public convenience to a competing utility to serve any consumers in that service area.

In essence, HB 235 would preclude the practice of "cream skimming" or "cherry picking" the best customers in a given service area and consequently causing the rates to rise for all of the other customers. While this predatory practice may cause the electricity rates to go down for certain large commercial customers, the rates for residential and small users would almost surely go up. Eventually, because of the need to pay long term debt service on stranded plant investment, the original utility may experience financial difficulties or even be forced out of business. This would eventually lead to higher overall rates for all the consumers in that service area.

HB 235 clearly requires that APUC review the intentions of utility competitors and to make a determination in the public's best interest. The Alaska electric utility industry respectfully requests your support for this important legislation and urge you to act on the bill at your earliest convenience.

Sincerely,

Eric P. Yould
Executive Director

cc: Labor and Commerce Committee members



MEA

APR 16 1997 11:35 am
p

MEMORANDUM

DATE: April 16, 1997
TO: Representative Norman Rokeberg
FROM: Bruce D. Scott, Director
Member and Public Relations
SUBJECT: Testimony at Hearing on HB235

Page 1 of 5

Following is written testimony on behalf of the members of Matanuska Electric Association, Inc. that I would appreciate your committee reading as you consider passage of HB235.

Please call me if you have questions. My direct line is (907) 745-9215.

Thank you.


Bruce D. Scott, CREC



**Matanuska Electric
Association, Inc.**

APR 16 1997

P.O. Box 2929
Palmer, Alaska 99645-2929
Telephone: (907) 745-3231
Fax: (907) 745-9328

April 16, 1996

Written Testimony to the House Labor and Commerce Committee from Bruce D. Scott, CREC, Director of Member and Public Relations for Matanuska Electric Association, Inc.

Ladies and gentlemen, I thank you for this opportunity to comment on House Bill 235 to the House Labor and Commerce Committee. My name is Bruce Scott. I'm director of member and public relations for Matanuska Electric Association, Inc., called MEA by its members, and have held a similar position at MEA since August 1984.

Incorporated in 1941, MEA is a nonprofit electric cooperative that serves about 29,000 members in Southcentral Alaska. Our service area is 3,360 square miles, nearly the same size as the 2.2-million-acre Yellowstone National Park, twice the size of Delaware and three-fifths the size of Connecticut.

As of March 31 of this year, we had 33,126 active accounts and more than 2,782 miles of line. Last year, we built 65 miles of new line and 1,135 new services, or hookups, and look forward to continued growth in 1997.

MEA's revenue and patronage capital totaled \$47 million in 1996. Because we are a member-owned cooperative, our rates are designed so that each customer pays his or her "fair share" of our total costs -- no more, no less.

Each customer's fair share of costs includes four general types of costs:

1. The cost of running the system (i.e. operations, maintenance, general and administrative expenses);
2. The fixed costs of the physical plant in service (interest on debt and depreciation);
3. The wholesale cost -- what we pay to our supplier -- of the electricity a customer purchases; and
4. A contribution to our margin, or bottom line, which is a function of our interest expense on debt.

If we lose a customer, only one of these four types of costs -- the wholesale cost of energy -- goes down. Our remaining costs, including our margin requirement, stay the same. This means that these remaining costs must now be recovered through fewer units of sales, fewer kilowatt-hours, which translates into higher rates for our remaining customers.

Testimony by Bruce D. Scott, CREC
for Matanuska Electric Association, Inc.

Page 2

April 16, 1997

MEA is a rural electric cooperative with urban sectors. This means that although we serve three population centers -- Eagle River, Palmer and Wasilla -- we also serve customers in areas where there is comparatively very little population, areas such as Eklutna, Sutton, Sheep Mountain, Chickaloon, Butte, Willow, Talkeetna, Trapper Creek and some areas too small to claim a name. Consequently, the few large commercial customers that we do provide service to are very important to MEA and its members.

Our largest customer represents almost 3% of our total sales.

If MEA were to lose this one customer, its largest, the electric rates that our remaining customers pay would have to be increased by about 1.4% to cover the share of remaining expenses this large customer would no longer be paying.

Our six largest customers -- six customers out of more than 33,000 -- represent 10% of our total sales.

If MEA were to lose its six largest customers, our remaining customers' bills would have to be increased by almost 5% to cover remaining expenses.

All of our members have invested money over the years to build the infrastructure which serves these large customers. They also have built the infrastructure to serve new customers which might be attracted to MEA's service area. If there is some future commercial development in, for example, Hatcher Pass or Point MacKenzie, then all MEA members will benefit because the large new commercial customers will pick up a share of the fixed costs of providing electrical service.

If another company were to be able to "pick off" the large customers in MEA's service area, either the new ones or existing customers, the co-op's other members would be damaged in the form of higher rates.

We call this selective competition "cherry picking" and those who would engage in it "raiders" or, less politely, "predators." There has been a little talk, but no specifics, about possibly protecting cooperatives from this practice by establishing some sort of "wheeling" rate -- a fee the cherry-picker would pay the utility for transporting electricity over the utility's transmission and/or distribution lines. However, there is no way this rate could be high enough to make the original utility's members "whole" and still allow the predator to offer lower rates to the customer it is raiding.

The practice of "cherry picking" prime accounts at the retail level -- whether through predatory pricing by the major producers or other means -- serves no one's best interests. It means that revenues just get shuffled between utilities, to the huge detriment of the losing utilities and the minor benefit of the winners.

The most likely predators for MEA's customers are the two large Anchorage utilities with generation facilities.

Testimony by Bruce D. Scott, CREC
for Matanuska Electric Association, Inc.
Page 3
April 16, 1997

We are a "captive" market for one of these large utilities -- Chugach Electric Association, our wholesale supplier.

Imagine that the "Anchorage Daily News" did not own its own printing presses. Imagine, instead, that the printing presses were owned by its largest competitor. This is in fact the situation that existed in the early Eighties before McClatchy Newspapers Group purchased a majority interest in the "Daily News" from Ms. Kay Fanning. The "Anchorage Times" controlled when the presses ran, what the press operators were paid, bartered for newsprint and ink, and passed on the costs with a markup to the "Daily News." Under this arrangement, the "Daily News" had a difficult time existing, let alone competing with the "Times." Now, of course, the News has its own press and computers, its own advertising staff, and a lot of Outside capital from McClatchy-- and the "Times" is a half-page memory on the "Daily News" editorial page.

The situations are not strictly analogous. At MEA today, we're in a more restrictive production environment than the "Daily News" was in the early Eighties. Chugach Electric Association owns and/or controls several generating units and has flexibility in determining which units to use and when. MEA owns none. Some of these generating units are more efficient than others; some are less efficient and more costly. Chugach makes the call on which to use and whether to build more or repair aging ones -- and passes a substantial portion of the cost on to us, along with a markup.

Our wholesale supply contract requires us to purchase all of our power needs from Chugach through the year 2014. If this and the other wholesale power supply contracts were to be set aside, if Matanuska Electric Association and the other distribution cooperatives were free to negotiate for wholesale power in a competitive market, if there were also investor-owned utilities to compete for a share of the power supply market -- a situation that exists in all 49 of the other states, but not Southcentral Alaska -- the playing field would be closer to being a level one. Wide-open competition at the retail level might then make sense. But without competition at the generation and transmission level, non-power-generating utilities would be at a distinct disadvantage in competing for retail customers.

The other Anchorage utility with production resources is owned by the Municipality of Anchorage and is supported by the strength of the Anchorage Municipality.

It would be unfair and illogical to allow our supplier and/or a government-backed utility to compete head-to-head with us. The playing field is not level. This is not how we view the public interest.

How do we view the public interest? The Alaska Public Utilities Commission (APUC) has since early 1996 been investigating whether it should become involved in enforcing joint planning and operation of the production and transmission resources

Testimony by Bruce D. Scott, CREC
for Matanuska Electric Association, Inc.
Page 4
April 16, 1997

controlled by the various utilities.¹ This would result in the creation of a power pool to jointly manage the generating assets of the Railbelt utilities for the common good. This is where MEA believes the real money is to be saved.

Southcentral Alaska currently has a huge surplus of generation capacity, which is about to get even worse when the Healy Clean Coal Project in the Interior comes on line.

In written comments submitted last month to the Alaska Public Utilities Commission², Don Edwards, corporate counsel for Chugach Electric Association, stated that the peak electricity demand in the Railbelt in 1995 was projected to be 641 Megawatts (MW). Mr. Edwards said the installed electrical capacity in the Railbelt, after the Healy Clean Coal Project is completed, will be approximately 1,330 Megawatts. This means there will be 689 MW more than is needed -- 689 million "extra" Watts of installed capacity. Construction of the Healy project has been under way for more than a year. The Railbelt today has more than 100% excess generation capacity.

Why do the utilities have this excess capacity? Because each of the suppliers is pursuing its own interests, with little if any coordination between them. As a result, the costs of this excess generation capacity are built into the rates for electricity that everyone pays. Opening the floodgates to territorial "competition" will do little or nothing to address the need of the Railbelt's utilities to work together to achieve shared economies. If anything, it would discourage the utilities from cooperating on planning and dispatching electrical generation, and result in higher rates for all our customers.

In summation, Matanuska Electric Association requests that the Community and Regional Affairs Committee pass House Bill 235. Allow the utilities to preserve their retail loads and avoid counterproductive and unfair cherry picking.

Further, we encourage the Legislature in the future to focus on the real opportunity for savings -- coordinated planning and operation of generation facilities. We ask that you encourage the APUC to vigorously pursue the investigation it has opened in Docket R-96-1, to start work on reducing the excess of generation capacity. This is where the public interest lies. It is a relatively painless opportunity for everyone to realize significant savings.

Thank you for this opportunity to offer my comments.

qlcommunitypoliups\hb235

¹ Ref. APUC Docket R-96-1.

² APUC Docket R-96-1, Feb. 13, 1996, "In the Matter of the Consideration of Standards To Address a Coordinated Energy Resource Conservation and Efficiency Program for Regulated Electric Public Utilities".



Municipality of Anchorage
Rick Mystrom, Mayor



Municipal Light & Power

1200 East First Avenue
Anchorage, Alaska 99501-1685
Telephone: (907) 277-7671, Telecopiers: (907) 263-5804, 277-9272

October 10, 1997

Honorable Norman Rokeberg
716 W. 4th Ave., Suite 640
Anchorage, AK 99501-2133

Dear Representative Rokeberg:

You may have seen news coverage of an effort by Chugach Electric Association (CEA) to displace ML&P as provider of electric service to one of ML&P's current customers. Since the time of the news reports, ML&P has become aware of at least two more of its customers to whom CEA has offered electric service. In light of the relevance of this activity to legislative proposals which were introduced last year regarding electric utility service territories, it may be useful for you to be apprised of these events.

On September 23, ML&P was informed by letter that CEA intended, within a few weeks, to provide electrical service to several of ML&P's current customers. CEA further stated that it expected ML&P to transmit the CEA electricity over ML&P's facilities. In a separate letter, CEA informed ML&P that the first of ML&P's customers which CEA intends to serve is the Boardwalk Condominium Association. It is probably no coincidence that a current member of the CEA Board of Directors is a member of that Condominium Association.

With these actions, CEA is asserting a right to provide electric utility service to customers within the authorized service territory of another utility regardless of whether CEA itself has been authorized to serve that customer. This claim goes far beyond the arguable opinion of the staff of Alaska Public Utilities Commission (APUC) that it can establish retail competition by issuing overlapping certificates. In effect, CEA's actions imply that a certificate of public convenience and necessity is not necessary for the provision of electric utility service, and that the APUC therefore cannot prevent retail competition.

It has been the law and the policy of the State of Alaska at least since 1973 to treat electric utilities as regulated monopolies. While there is legitimate debate as to whether this is the best policy in 1997, we doubt that anybody outside CEA believes that the appropriate resolution is for utilities to simply disregard the requirements of current law and ignore the authority of the APUC, which was created expressly for the purpose of regulating electric and other utilities.

Because we at ML&P believe that this development is a matter of concern to all Alaska utilities, as well as to the State Legislature and the APUC, we have forwarded the enclosed materials to you.

Please do not hesitate to call me at 263 - 5202 if you would like further information on these developments.

Sincerely,

Hank Nikkels
Acting General Manager

Putting Energy into Anchorage for Over 60 years



Municipality of Anchorage
Rick Mysirom, Mayor



Municipal Light & Power

1200 East First Avenue
Anchorage, Alaska 99501-1685
Telephone: (907) 279-7671, Telecopiers: (907) 263-5804, 277-9272

September 29, 1997

Eugene N. Bjornstad
General Manager
Chugach Electric Association
P.O. Box 196300
Anchorage, AK 99519-6300

Re: Boardwalk Condominium Association

Dear Mr. Bjornstad:

This is to acknowledge receipt of your two letters dated September 19, 1997, one regarding CEA providing electric service to the Boardwalk Condominium Association at 201 Barrow Street and the other regarding CEA's proposal to serve unspecified customers in the ML&P certificated area. For reasons discussed below ML&P cannot cooperate with CEA in these proposed transactions, either by providing distribution access or by abandoning service to current ML&P retail customers.

As you well know, ML&P's currently effective tariff does not include rates for the retail wheeling services you are requesting. ML&P cannot legally charge for services provided except in strict compliance with its currently effective tariff. See, AS 42.05.371 and 3 AAC 48.320. Under AS 42.05.391(a), ML&P is also prohibited from providing CEA with the unreasonable advantage of access to ML&P's distribution facilities free of charge. ML&P does not foresee any purpose in filing a retail wheeling rate for inclusion in its approved tariff until such time as a utility has been authorized to use such rate pursuant to AS 42.05.221.

CEA is also aware that under AS 42.05.261(a), ML&P cannot discontinue provision of electric service to 201 Barrow Street without prior APUC approval. ML&P is separately contacting the Boardwalk Condominium Association to inform them of this fact.

Putting Energy into Anchorage for Over 60 years

Eugene N. Bjornstad
September 29, 1997
Page 2

To summarize: (1) ML&P cannot charge for services except in compliance with ML&P's currently effective tariff. (2) ML&P cannot legally discontinue providing electric service to any of ML&P's current retail customers unless first authorized to do so by the APUC. (3) ML&P believes that for CEA to provide electric service outside of CEA's certificated service territory would be illegal. ML&P will not knowingly become an accomplice to an illegal transaction.

For the reasons discussed above, ML&P must deny CEA's September 19, 1997 requests for access to ML&P's electric distribution system. If you have any questions, please call me at 263-5202.

Sincerely,



Hank Nikkels
Acting General Manager

cc: Sam Cotton, Chairman, Alaska Public Utilities Commission



Municipality of Anchorage

Rick Mysirom, Mayor



Municipal Light & Power

1200 East First Avenue

Anchorage, Alaska 99501-1685

Telephone: (907) 279-7671. Telecopiers: (907) 263-5804, 277-9272

September 29, 1997

Cynthia E. Aiken, President
Boardwalk Condominium Owners Association
201 Barrow Street, Apt. 203
Anchorage, AK 99501-2428

Re: Boardwalk Condominium Owners Association
Resolution dated September 18, 1997

Dear Ms. Aiken:

On September 23, 1997, ML&P received a copy of your Association's Resolution dated September 18, 1997. This Resolution was attached to a letter from Chugach Electric Association (CEA), in which CEA asserted that your Association had requested CEA to provide all electric service to 201 Barrow Street. A copy of CEA's letter is attached so that you can verify this assertion.

ML&P notes with interest that your Resolution is based upon the understandable interest your Association has in obtaining electric service at the lowest cost possible. Your Resolution authorizes CEA to provide service only to the condominium house meter, which is in a service class where CEA's published tariff rates are lower than ML&P's. However, CEA is seeking to provide all electric service to 201 Barrow Street. The individual condominium meters at this address all appear to be in service classes where ML&P's published tariffs are lower than CEA's. Thus, it is not clear that your individual Association members would receive any net economic benefit by switching from ML&P to CEA, even if such switch were possible.

In proposing to provide services to your Association, CEA apparently neglected to tell you that it cannot legally provide such service. Under the Alaska Statutes, CEA cannot provide service anywhere in Alaska without the approval of the Alaska Public Utilities Commission. CEA has not yet even filed a request to provide service at 201 Barrow Street with this Commission.

CEA also apparently neglected to inform you that it would be illegal for ML&P to discontinue providing electric service to 201 Barrow Street, until the Commission authorizes such discontinuance. ML&P is obligated by State statute to comply with Commission regulations and orders.

Putting Energy into Anchorage for Over 60 years

Cynthia E. Aiken
September 29, 1997
Page 2

The setting of electric service rates is a complex matter, with the factors on which such rates are set constantly changing. It appears that CEA allocates a lower proportion of its costs to its large customers than ML&P does. It may be that CEA is subsidizing its large customers by charging its smaller customers higher rates than are justified. On the other hand, CEA may well feel that ML&P subsidizes its smaller customers by charging larger customers higher rates than are justified. However, the Commission has approved both utilities' rates as being reasonable. If you feel that factors exist which would justify changing ML&P's existing service rates, you may wish to ask ML&P or the Commission to re-investigate ML&P's rates.

CEA apparently believes that the 1973 Commission order dividing service territories between CEA and ML&P should be revoked. However, rather than follow the logical and legal procedure of requesting Commission action authorizing direct competition, CEA is apparently opting to work outside the existing legal framework. This is an inefficient procedure which will only result in the expenditure of resources and time by all parties involved in the litigation to come. Until these legal matters are resolved, ML&P wishes to assure you that ML&P will continue to provide your Association with reliable electric services at the lowest cost possible, consistent with Commission approved allocation of costs to the various rate classes.

Sincerely,



Hank Nikkels
Acting General Manager

Attachment

cc: Sam Cotton, Chairman. Alaska Public Utilities Commission



CHUGACH ELECTRIC ASSOCIATION, INC.

EUGENE N. BJORNSTAD, P.E.
General Manager

September 19, 1997

09-23-97A11:13 RCVD

Hank Nikkels
Acting General Manager
Anchorage Municipal Light and Power
1200 East First Avenue
Anchorage, Alaska 99501

Dear Hank:

Boardwalk Condominiums has asked that Chugach Electric Association, Inc. supply all of its electric power at 201 Barrow which is within the area served by ML&P distribution facilities. Boardwalk Condominiums has also asked that Chugach act on Boardwalk Condominium's behalf to make all arrangements necessary to accomplish this change over of electric power suppliers. By this letter Boardwalk Condominiums requests that you discontinue providing electric power at the above address beginning with the next scheduled meter read date at that address so as to avoid an ML&P demand charge for less than a full month. Boardwalk Condominiums also asks that you make all arrangements with Chugach which might be necessary to facilitate this change without service interruption. Boardwalk Condominiums requests that you direct any communication relating to this transition to Donald W. Edwards at Chugach Electric at 762-4790.

By separate letter, Chugach has notified you that it will pay reasonable access charges to gain access over your distribution system and has proposed arrangements for new loads such as this to be added to Chugach's generation schedule and deleted from ML&P's. Chugach will rely on ML&P to provide all metering and related services necessary to service this load unless you indicate you do not wish to provide these services.

There is no reason Boardwalk Condominiums should experience any actual electrical service interruption resulting from this transition. If you disagree with this please notify Chugach at once and explain why you feel service interruption will or may occur. Any activities needed to facilitate this transition should be carefully coordinated with Chugach so as to minimize the inconvenience to Boardwalk Condominiums.

Your cooperation in this transition is greatly appreciated.

Sincerely,

A handwritten signature in black ink that reads "Eugene N. Bjornstad". The signature is written in a cursive style.

Eugene N. Bjornstad
General Manager

cc: Boardwalk Condominiums
The Honorable Mayor Rick Mystrom

Resolution

WHEREAS, Chugach Electric Association, Inc. (Chugach) has proposed to provide electric service to the Boardwalk Condominium Owners Association house meter;


WHEREAS, based on past usage using Chugach's currently Alaska Public Utilities Commission approved rates, Boardwalk Condominium Owners Association can reasonable expect savings for service to the house meter as compared to Anchorage Municipal Light and Power (ML&P) current rates;

NOW THEREFORE BE IT RESOLVED, that the Boardwalk Condominium Owners Association wishes to join Chugach so that it can purchase electric service from Chugach for the Boardwalk Condominium Association house meter at Chugach's current tariffed rates for Large General Service customers;

BE IT FURTHER RESOLVED, that to facilitate Chugach direct service to the Boardwalk Condominium Association, the Boardwalk Condominium Owners Association authorizes Chugach to act on its behalf to seek access over ML&P's system provided that Chugach assumes all costs associated with that access and any efforts necessary to obtain access. The President of the Boardwalk Condominium Owners Association or any other officer is authorized to sign communications, applications and other such documents as are necessary to accomplish the purposes of this resolution.

Adopted September 18, 1997

BOARDWALK CONDOMINIUM OWNERS ASSOCIATION


Cynthia Aiken,
President Board of Directors



CHUGACH ELECTRIC ASSOCIATION, INC.

EUGENE N. BJORNSTAD, P.E.
General Manager

September 19, 1997

09-23-97A11:12 RCVD

Hank Nikkels
Acting General Manager
Anchorage Municipal Light and Power
1200 East First Avenue
Anchorage, Alaska 99501

Dear Mr. Nikkels:

Chugach will begin to sell electric power to one or more customers in the area currently served by ML&P distribution facilities in the next several weeks. We will provide notice to ML&P by separate letter as to each customer which opts to purchase electric power from Chugach. We will appreciate your cooperation in making these transitions as efficient as possible.

Chugach is willing to pay a reasonable access charge to compensate ML&P for the costs of providing access to its distribution facilities. We have determined from examining ML&P's latest cost of service filing that a Distribution Access Charge of \$0.0288 per kWh is an appropriate interim charge pending establishment of a final rate by the Alaska Public Utilities Commission (APUC) and without waiving the right to propose reductions later. Attachment A to this letter is a schedule which details the calculation supporting this charge. This charge is intended to be full payment for access and neither Chugach nor any of its customers agree to pay any additional amounts to ML&P for any reason. The charge presumes that ML&P will provide all metering and related services. If ML&P does not wish to perform these services, please let us know as soon as possible so that we can arrange to provide those services ourselves. The above charge includes transmission costs because Chugach will use ML&P's transmission system to access customers in the area served by ML&P's distribution facilities.

We recognize that minor changes to this rate may be in order based on more precise cost data or updated test year information but changes are not likely to be large. Ideally, Chugach would like to reach agreement with ML&P on this access charge and, providing it does not delay service to the customer, we would prefer to meet with you to discuss our method and any adjustments you feel might be appropriate. We will leave it to ML&P to determine when and whether it wishes to file the rate with the APUC. Chugach will pay the amount lawfully determined by the APUC retroactive to the date that our deliveries of electric power begin.

Hank Nikkels, Acting General Manager

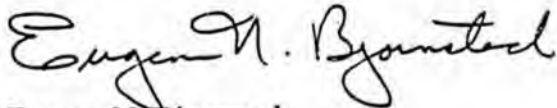
September 19, 1997

Page 2

Attachment B describes how Chugach proposes to schedule, operate and account for the interchange of power between Chugach and ML&P to supply Chugach customers located inside ML&P's control area once the aggregate customer demand increases to an average of 500 kW. Until such a demand level is realized, Chugach proposes on a monthly basis to increase the "on-peak inadvertent account owed to ML&P" by the sum of the customer(s)' monthly energy readings as adjusted for ML&P's average distribution losses. Chugach acknowledges that the customers would use some of the energy during off-peak periods but is willing to replace all of the energy "on-peak" until aggregate customer demand increases to an average of 500 kW. If ML&P would rather, we can allocate the energy between on-peak and off-peak periods. As you can see, it will be easy to allow customers a choice of suppliers with this proposed use of the same mechanism for handling inadvertent generation which we have used for many years.

Please let me know as soon as possible and in detail any reasons you believe these customers' choices cannot be accommodated.

Sincerely,



Eugene N. Bjornstad
General Manager

cc: Alaska Public Utilities Commission
The Honorable Mayor Rick Mystrom



Municipality of Anchorage
Rick Mystrom, Mayor



Municipal Light & Power

1200 East First Avenue
Anchorage, Alaska 99501-1685
Telephone: (907) 279-7671, Telecopiers: (907) 263-5804, 277-9272

October 7 1997

Alan Combs, Contracts Specialist
AT&T Alascom
210 E. Bluff Drive
Anchorage, AK 99501

Re: Chugach Electric Association

Dear Mr. Combs:

ML&P understands that Chugach Electric Association (CEA) has contacted Alascom about allowing CEA to provide Alascom's electric services. In proposing to provide services to Alascom, CEA apparently neglected to tell you that it cannot legally provide such service. Under Alaska Statute 42.05.221, CEA cannot provide service anywhere in Alaska without the approval of the Alaska Public Utilities Commission. CEA has not even filed a request with the Commission for authority to provide service at 200 and 210 E. Bluff Drive.


By Order of the Commission, direct retail competition between CEA and ML&P was ended with the establishment of mutually exclusive service territories. Attached is copy of Appendix A to Certificate of Public Convenience and Necessity No. 121 issued to ML&P by the Commission, which clearly states at paragraph 8 that 200 and 210 E. Bluff Drive is in the exclusive service territory of ML&P. Now that these Alascom sites in Township 13 North, Range 3 West, Section 7 are no longer on the military reservation, they are also located with the generally described exclusive service territory of ML&P listed in Appendix A. CEA has also apparently neglected to inform you that it would be illegal for ML&P to discontinue providing electric service to customers within the service territory assigned to ML&P by the Commission.

CEA and ML&P were specifically ordered to not acquire new customers within the exclusive service territory awarded by the Commission to the other utility. See, 1A APUC Reporter 29 (Order No. 19 in APUC Docket No. U-71-16). CEA apparently believes that the 1973 Commission order establishing exclusive service territories between CEA and ML&P should be revoked. However, rather than follow the logical and legal procedure of requesting Commission action authorizing direct competition, CEA is apparently opting to work outside the existing legal framework. This is an inefficient procedure which will only result in the expenditure of resources and time by all parties involved in the litigation to come.

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Until these legal matters are resolved, ML&P wishes to assure you that ML&P will continue to provide Alascom with reliable electric services at the lowest cost possible, consistent with Commission approved allocation of costs to the various rate classes. ML&P recognizes that Alascom is currently operating in a competitive environment, and that electric services is a substantial cost in the telecommunications industry. ML&P is always willing to meet with you to discuss any legally available options which could result in reducing Alascom's energy costs. If you have any questions, please call me at 263-5202.

Sincerely,



Hank Nikkels
Acting General Manager

Attachment

cc: Sam Cotton, Chairman, Alaska Public Utilities Commission

Certificate of Public Convenience
and Necessity No. 121 granted to

MUNICIPALITY OF ANCHORAGE d/b/a
MUNICIPAL LIGHT & POWER DEPARTMENT

DESCRIPTION OF SERVICE AREA:

- T13N R4W Sections: 13, that portion of 23 generally east of the centerline of the Alaska Railroad right of way, and 24
- T13N R3W Sections: Those portions of 6 through 10, and 12 not included within the boundaries of a military reservation; 15 through 22, and 27 through 30.
- T13N R2W Sections: That portion of 7 not included within the boundaries of a military reservation

(All the above with reference to the Seward Meridian)

In addition, the following customer locations are, exclusively, being served within the Government Hill and Elmendorf Air Force Base areas:

1. Municipality of Anchorage d/b/a Anchorage Water & Wastewater Utility Ship Creek Dam Waterline, from the Ship Creek Filtration Plant to the Ship Creek Dam
2. 716 Steel Road, State of Alaska Elmendorf Fish Hatchery
3. 2800 Post Road, Elmendorf Air Force Base Guard House
4. 3000 Post Road, Elmendorf Air Force Base Golf Course
5. 2751 Post Road, State of Alaska d/b/a Alaska Railroad Load Center
3301 Post Road, State of Alaska d/b/a Alaska Railroad Signal Light
6. 4005 McPhee Avenue, Anchorage School District Mountain View Elementary School
7. 5400 Davis Way, Federal Aviation Administration Air Traffic Control Facility
8. 200 East Bluff Drive, Alascom, Inc. South
210 East Bluff Drive, Alascom, Inc. North
9. 525 East Bluff Drive, Anchorage School District Government Hill Elementary School
10. 911-1509 Richardson Vista Drive and 1303-1347 East Bluff Drive, Richardson Vista Apartments (19 building complex)
11. Fort Richardson Bulk Power Sales
12. Elmendorf Air Force Base Bulk Power Sales
13. 9100 Centennial Drive, Cook Inlet Housing Authority Water Pump
14. 8701 Glenn Highway, State of Alaska Glenn Highway Lighting

The locations listed above are numbered to correspond with the numbered locations shown on the service area map ML&P has on file with the Alaska Public Utilities Commission.

CHRONOLOGY:

Conditional Temporary Certificate:	12/31/70 (U-70-063 (1))
Original Certificate granted:	07/28/72 (U-70-063 (3)), 08/03/72 (U-70-063 (3E))
First Revision:	09/27/73 (U-71-016 (19))
Second Revision	01/07/80 (U-71-016 (22))
Third Revision	08/27/84 (U-71-016 (37))
Fourth Revision	07/18/91 (U-90-006 (2))
Fifth Revision:	10/31/91 (U-90-006 (2))



Municipality of Anchorage
Rick Mystrom, Mayor



Municipal Light & Power

1200 East First Avenue
Anchorage, Alaska 99501-1685

Telephone: (907) 279-7671, Telecopiers: (907) 263-5804, 277-9272

October 7, 1997

Ernie Meier, President
Columbia Alaska Regional Hospital
P.O. Box 143889
Anchorage, AK 99514-3889

Re: Chugach Electric Association, Inc.

Dear Mr. Meier:

On October 2, 1997, ML&P received the attached letter from Chugach Electric Association (CEA), in which CEA asserted that Columbia Alaska Regional Hospital had requested CEA to provide all electric services to 2801 DeBarr Road. In proposing to provide services to Columbia Alaska, CEA apparently neglected to tell you that it cannot legally provide such service. Under the Alaska Statutes, CEA cannot provide service anywhere in Alaska without the approval of the Alaska Public Utilities Commission. CEA has not yet even filed a request to provide service at 2801 DeBarr Road with this Commission.

CEA also apparently neglected to inform you that it would be illegal for ML&P to discontinue providing electric service to 2801 DeBarr Road. ML&P does not know what promises CEA has made which would induce you to want CEA to provide your electric services. ML&P does recognize that for some customers in the particular class of customer that Columbia Alaska Regional Hospital belongs to, CEA's current published rates for electric service are lower than ML&P's current rates.

The setting of electric service rates is a complex matter, with the factors on which such rates are set constantly changing. It appears that CEA allocates a lower proportion of its costs to its large customers than ML&P does. It may be that CEA is subsidizing its large customers by charging its smaller customers higher rates than are justified. On the other hand, CEA may well feel that ML&P subsidizes its smaller customers by charging larger customers higher rates than are justified. However, the Commission has approved both utilities' rates as being reasonable. If you feel that factors exist which would justify changing ML&P's existing service rates, you may wish to ask ML&P or the Commission to re-investigate ML&P's rates.

By Order of the Commission, Columbia Alaska Regional Hospital is within the service territory assigned to ML&P. CEA apparently believes that the 1973 Commission order dividing service territories between CEA and ML&P should be revoked. However, rather than follow the logical and legal procedure of requesting Commission action authorizing direct competition, CEA is apparently

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Ernie Meier

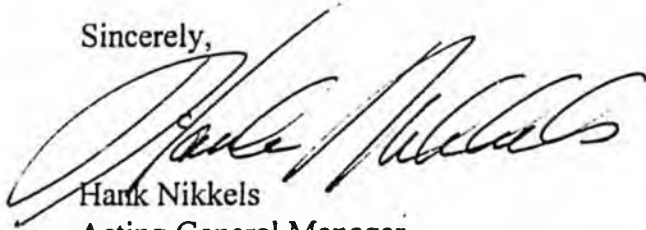
Re: Chugach Electric Assoc., Inc

Page 2

opting to work outside the existing legal framework. This is an inefficient procedure which will only result in the unnecessary expenditure of resources and time by all parties involved in the litigation to come.

Until these legal matters are resolved, ML&P wishes to assure you that ML&P will continue to provide Columbia Alaska with reliable electric services at the lowest cost possible, consistent with Commission approved allocation of costs to the various rate classes. ML&P recognizes that Columbia Alaska is currently operating in a competitive environment, and that electric services is a substantial cost of doing business as a Hospital. ML&P is certainly willing to meet with you to discuss options that are legally available at this time which could result in reducing Columbia Alaska's overall energy costs. If you have any questions, please call me at 263-5202.

Sincerely,



Hank Nikkels
Acting General Manager

Attachment

cc: Sam Cotton, Chairman, Alaska Public Utilities Commission



CHUGACH ELECTRIC ASSOCIATION, INC.

EUGENE N. BJORNSTAD, P.E.
General Manager

October 2, 1997

Hank Nikkels
Acting General Manager
Anchorage Municipal Light and Power
1200 East First Avenue
Anchorage, Alaska 99501



Dear Hank:

Columbia Alaska Regional Hospital has asked that Chugach Electric Association, Inc. supply all of its electric power at 2801 DeBarr Road which is within the area served by ML&P distribution facilities. Columbia Alaska Regional Hospital has also asked that Chugach act on Columbia Alaska Regional Hospital's behalf to make all arrangements necessary to accomplish this change over of electric power suppliers. By this letter Columbia Alaska Regional Hospital requests that you discontinue providing electric power at the above address beginning with the next scheduled meter read date at that address so as to avoid an ML&P demand charge for less than a full month. Columbia Alaska Regional Hospital also asks that you make all arrangements with Chugach which might be necessary to facilitate this change without service interruption. Columbia Alaska Regional Hospital requests that you direct any communication relating to this transition to Donald W. Edwards at Chugach Electric at 762-4790.

By separate letter, Chugach has notified you that it will pay reasonable access charges to gain access over your distribution system and has proposed arrangements for new loads such as this to be added to Chugach's generation schedule and deleted from ML&P's. Chugach will rely on ML&P to provide all metering and related services necessary to service this load unless you indicate you do not wish to provide these services.

There is no reason Columbia Alaska Regional Hospital should experience any actual electrical service interruption resulting from this transition. If you disagree with this please notify Chugach at once and explain why you feel service interruption will or may occur. Any activities needed to facilitate this transition should be carefully coordinated with Chugach so as to minimize the inconvenience to Columbia Alaska Regional Hospital.

Your cooperation in this transition is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Eugene N. Bjornstad".

Eugene N. Bjornstad
General Manager

cc: Columbia Alaska Regional Hospital
The Honorable Mayor Rick Mystrom
Alaska Public Utilities Commission



Municipality of Anchorage
Rick Mystrom, Mayor



Municipal Light & Power

1200 East First Avenue
Anchorage, Alaska 99501-1685
Telephone: (907) 279-7671, Telecopiers: (907) 263-5804, 277-9272

October 23, 1997

Honorable Norman Rokeberg,
716 W. 4th Ave., Suite 640
Anchorage, AK 99501-2133

Re: Update of our letter of October 10, 1997 regarding Chugach Electric Association's (CEA) marketing activities outside of its certificated service territory.

Dear Representative Rokeberg:

On October 10, 1997, ML&P sent you a letter advising you that CEA was attempting to provide electric service to Boardwalk Condominiums, AT&T Alascom, and Columbia Alaska Regional Hospital. It is ML&P's position that it would be a violation of AS 42.05.221 for CEA to provide this service without first seeking and obtaining a certificate of public convenience and necessity to serve those customers.

On October 13, 1997, ML&P filed a Complaint with the Alaska Public Utilities Commission alleging that CEA is attempting to violate AS 42.05.221 and asking the Commission for the following relief:

1. That the Commission open an investigatory docket into CEA's customer recruitment practices,
2. That the Commission order CEA to state publicly that it will not provide service to customers which it has contacted but has not been authorized to serve,
3. That the Commission prohibit CEA from offering electric service to customers outside of its service territory,
4. That the Commission put CEA on notice that provision of any electric service to customers outside of CEA's certificated service territory will constitute a willful violation of law,
5. That the Commission order CEA to pay ML&P's and the Commission's costs in this matter,
6. That the Commission order CEA to compensate ML&P by paying for goodwill advertising to counter the harm done to ML&P's relationship with its customers by CEA's activities, and
7. That the Commission grant any other relief which the Commission might deem appropriate.

We are sending you a copy of this complaint for your information, and will keep you up to date on developments in this matter. Please do not hesitate to call me at (907) 263-5202 if you have any questions.

Sincerely,

Hank Nikkels
Acting General Manager

Attachment

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STATE OF ALASKA

BEFORE THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners:

Sam Cotton, Chairman
Alyce A. Hanley
Dwight D. Ormquist
Tim Cook
James M. Posey

MUNICIPALITY OF ANCHORAGE)
d/b/a MUNICIPAL LIGHT & POWER.)
)
COMPLAINANT,)
)
CHUGACH ELECTRIC ASSOCIATION, INC.,)
)
RESPONDENT)

Docket No. U-97-201

COMPLAINT

The Municipality of Anchorage d/b/a Municipal Power & Light (ML&P), by and through its undersigned attorney, hereby Complains that Chugach Electric Association, Inc. (CEA) has, or is attempting to, violate the terms and conditions of Certificate of Public Convenience and Necessity No. 8, issued by the Alaska Public Utilities Commission. In particular, ML&P alleges that:

1. CEA is an Alaska public utility as defined in AS 42.05.990(4)(A) and is authorized to provide electric utility service in Alaska solely pursuant to Certificate of Public Convenience and Necessity No. 8. See, Re Chugach Electric Association, Inc., U-68-7, Tenth Supplemental Order, 1 AK PUC 122, (April 29, 1969)(Commission Finding No. 1 "Chugach Electric Association, Inc. is a public utility as defined in [former] AS 42.05.640 and is the holder of Certificate of Public Convenience and Necessity No. 8 issued by the Alaska Public Service Commission.")

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Facsimile: 343-4550

2. Under Certificate of Public Convenience and Necessity No. 8 (attached as Exhibit 1), and AS 42.05.141, CEA is subject to the regulatory authority of the Alaska Public Utilities Commission and must comply with all provisions of AS 42.05, all regulations promulgated thereunder, and all Orders of the Alaska Public Utilities Commission. See, Exhibit 1.

3. CEA is thus subject to the requirements of AS 42.05.221(a), which states in relevant part that: "A public utility may not operate and receive compensation for providing a commodity or service without first having obtained from the commission under this chapter a certificate declaring that public convenience and necessity require, or will require the service." See, Exhibit 1.

4. CEA has stated to the Alaska Public Utilities Commission that CEA is not prohibited from providing electric services to the public outside of the geographic area specified in Certificate of Public Convenience and Necessity No. 8. See, CEA's Petition To Intervene in Docket No. U-97-104, at 2 (copy attached as Exhibit 2)("There is no prohibition against either Chugach or ML&P serving loads outside the service territories listed in their Certificates of Public Convenience and Necessity")("There is no statutory support for the view that permission to market electric power outside the service territory is required.").

5. CEA has offered to illegally provide electric service to the Boardwalk Condominium Owners Association at 201 Barrow Street, which is a location outside of the geographic area within which CEA is authorized by this Commission to provide electric service for compensation. See, Exhibit 1 and Exhibit 3 (9/19/97 CEA letter 2). CEA has also apparently offered to illegally provide electric service to Columbia Alaska Regional Hospital at 2801 DeBarr Road, which is also located outside of the geographic area within which CEA is authorized by this

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COMPLAINT AGAINST CEA
Page 2 Of 5

Commission to provide electric service for compensation. See, Exhibit 1 and Exhibit 4 (October 2, 1997 CEA letter).

6. The Boardwalk Condominium Owners Association has accepted CEA's offer to illegally provide electric services outside of CEA's certificated territory. See, Exhibit 3. Columbia Alaska Regional Hospital has apparently accepted CEA's offer to illegally provide electric services outside of CEA's certificated territory. See, Exhibit 4.

7. CEA has requested that ML&P illegally discontinue providing electric service to 201 Barrow Street and 2801 DeBarr Road. See, Exhibits 3 and 4, and AS 42.05.261(a).

8. CEA has asserted that if ML&P does not cooperate with CEA in CEA's efforts to illegally provide electric services to the public for compensation within ML&P's certificated territory, CEA will undertake to arrange providing services to the public in ML&P's certificated service territory using facilities provided by CEA in violation of 3 AAC 52.120(a). See, Exhibit 5. (9/19/97 CEA letter 1)

9. CEA's actions, as evidenced by Exhibits 2, 3, 4 and 5, indicate a knowing intent to violate AS 42.05.221(a), and the willful taking of steps to carry out that intent.

WHEREFORE, ML&P respectfully prays for relief as follows as follows:

1. That this Commission exercise its authority pursuant to AS 42.05.141(a)(2) & (5) plus AS 42.05.511, and immediately open an investigatory docket into CEA's customer recruitment practices to determine if these practices are both reasonable and consistent with applicable statutes, regulations, and Commission Orders. In opening this investigatory docket, this Commission should require CEA to:

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Facsimile: 343-4550

COMPLAINT AGAINST CEA
Page 3 OF 5

a. Disclose to the Commission and all parties involved with this investigatory docket the names and service locations of all persons, or other entities, that CEA provides electric services of any nature to.

b. Identify to the Commission and all parties involved with this investigatory docket the names of all persons or other entities with service locations located outside the service territory specifically designated in Certificate of Public Convenience and Necessity No. 8, whom CEA has contacted regarding the possibility of CEA providing them electric services of any nature.

c. Disclose to the Commission and all parties involved with this investigatory docket the content of all communications with those persons or entities identified in paragraph b above.

2. That this Commission exercise its authority pursuant to AS 42.05.141(a)(3), to require just and fair practices by public utilities, through issuance of an Order requiring CEA to provide all persons or other entities identified in paragraph 1.b above with information in a format previously approved by this Commission, stating that CEA would not be providing those persons or other entities with electric services.

3. That this Commission exercise its authority pursuant to AS 42.05.141(a)(1) to regulate CEA operations as a public utility, through issuance of an Order prohibiting CEA from contacting any person or other entity about provision of electric services of any nature to a service location outside of the service territory specified in Certificate of Public Convenience and Necessity No. 8. This Order should remain in effect until such time as this Commission amends the Order pursuant to the procedures specified in AS 42.05.181.

4. That this Commission inform CEA in a formal Order that provision of any electric services by CEA to any service location outside of the service territory specifically identified in Certificate of Public Convenience and Necessity No. 8 would be a wilful failure of CEA to comply

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COMPLAINT AGAINST CEA
Page 4 Of 5

[45432-1]

with the provisions of Title 42 to the Alaska Statutes.

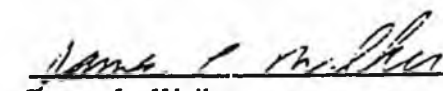
5. That this Commission exercise its authority pursuant to AS 42.05.651 and require CEA to pay all costs incurred by this Commission and ML&P related to the matters alleged in this Complaint.

6. That this Commission exercise its authority under AS 42.05.141 to do all things necessary or proper to carry out the purposes of Title 42, Chapter 5 of the Alaska Statutes, and Order CEA to pay for ML&P to conduct "goodwill advertising" as that term is defined in 3 AAC 50.500(c)(2) for a period of at least one year, with the cost of such advertising to not be recoverable by CEA through its rates, so as to compensate ML&P for the harm caused by CEA's illegal actions..

7. That this Commission exercise its authority under AS 42.05.141 to do all things necessary or proper to carry out the purposes of Title 42, Chapter 5 of the Alaska Statutes, and grant any other relief this Commission determines to be just, fair, and reasonable with regards to the matters alleged herein.

DATED at Anchorage, Alaska this 13th day of October, 1997.

MARY K. HUGHES
Municipal Attorney



James L. Walker
Assistant Municipal Attorney
Alaska Bar No. 9211106

MUNICIPALITY
OF
ANCHORAGE

OFFICE OF THE
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Facsimile: 343-4550

COMPLAINT AGAINST CEA
Page 5 Of 5

[45432-1]

Alaska Public Utilities Commission

Certificate
of
Public Convenience and Necessity
No. 8

Having found that the grantee of this certificate is fit, willing and able to provide the utility services applied for and that such services are required for the convenience and necessity of the public, the Alaska Public Utilities Commission, pursuant to the authority vested in it by AS 42.05, hereby issues this certificate of Public Convenience and Necessity to

CHUGACH ELECTRIC ASSOCIATION, INC.

authorizing it to operate a public utility, as defined by AS 42.05, 701 (2) (A) for the purpose of furnishing

ELECTRIC SERVICE

This Certificate is issued under, and subject to, the provisions of AS 42.05 and all rules, regulations and orders from time to time promulgated by the Commission governing the rates, charges, services, facilities, and practices of utility operations of the kind authorized herein.

The specific nature, scope, terms, conditions and limitations of the authority granted by this Certificate, as amended to date, are set forth in the appendix hereto and in the following order(s) of the Commission which, by this reference, are incorporated in and made a part hereof as though fully set forth herein.

Docket No. Date of Order
U-71-16 (37) August 27, 1964
(Chronology and service area description shown on
attached Appendix A)

IN WITNESS WHEREOF, the undersigned members of the Commission
have executed this Certificate of Public Convenience and Necessity at
Anchorage, Alaska on this 20th day of September 1964



Alaska Public Utilities Commission

James A. ...
CHAIRMAN
William ...
COMMISSIONER
...
COMMISSIONER
...
COMMISSIONER
...
COMMISSIONER

*See Appendix A

APPENDIX A

Certificate of Public Convenience
and Necessity No. 3 granted to

CHUGACH ELECTRIC ASSOCIATION, INC.

DESCRIPTION OF SERVICE AREA:

T10N	R10W	Sections: 22, 23, 26, 27, 34, and 35.
T10N	R1W	Sections: 20, 21, 22, that portion of 23 generally west of the centerline of the Alaska Railroad right of way, 25 through 29, and 31 through 36.
T10N	R3W	Sections: 13, 14, 23 through 26, and 31 through 35.
T10N	R12W	Sections: 24, 25, 26, 34, 35, and 36.
T10N	R11W	Sections: 1, 2, and 10 through 36.
T10N	R10W	Sections: 3 through 9, 16 through 20, 29, 30, and 31.
T10N	R5W	Sections: 1.
T12N	R4W	Sections: 1 through 15, 23, and 24.
T12N	R3W	Sections: 1 through 30, and 32 through 36.
T12N	R2W	Sections: 6, 7, 13, 19, and 29 through 33.
T11W	R12W	Sections: 1 through 4, and 7 through 30.
T11W	R11W	Sections: 1 through 19.
T11N	R10W	Sections: 6.
T11W	R3W	Sections: 1 through 4, 10 through 15, 23, 24, and 35.
T11N	R2W	Sections: 2, 10, 13, 19, 29, 30, and 32.
T11N	R1W	Sections: 3, 4, 5, 7, 11, 12, 13, 29, 30, 32, 33, and 34.
T10N	R2W	Sections: 1, 2, 3, 25 through 29, and 31 through 35.
T10N	R1W	Sections: 5, 6, 8, 9, 10, 14, 15, 23, 24, 25, and 29 through 34.
T10N	R1E	Sections: 19 through 24, 29, and 30.
T10N	R2E	Sections: 16 through 19, 23, 29, 30, 32, 33, and 34.
T9N	R2W	Sections: 1 through 6, 8, 9, 10, 13 through 17, 20 through 25, 27, 28, 29, 31, 32, 34, and 36.

T9M	R1W	Sections: 2, 3, 4, 9, 10, 11, 14, 15, 16, 19, 21, 22, 23, 25, 27, 28, 30, 31, 33, 34, and 35.
T9N	R2E	Sections: 2, 3, 4, 10 through 14, 23 through 27, 32, 33, 34, and 35.
T9N	R3E	Sections: 19, 20, and 29 through 32.
T9N	R2W	Sections: 1, 12, and 13.
T9N	R1W	Sections: 2, 3, 4, 5, 7, 9, 10, 14, 15, 16, 20 through 23, 25 through 29, 32, 33, 35, and 36.
T9N	R1E	Sections: 12, 13, 14, 23, 24, 26, 27, 31, 34, and 35.
T9N	R2E	Sections: 5, 6, and 7.
T9N	R3E	Sections: 2, 4, 5, and 9 through 14.
T7N	R1W	Sections: 4, 5, 8, 9, 15, 17, 20, 29, and 32.
T7N	R1E	Sections: 3 through 6.
T5W	R2W	Sections: 12, 13, 23 through 26, 34, and 35.
T6N	R1W	Sections: 5, 6, 7, and 13.
T5N	R4W	Sections: 15 through 36.
T5N	R3W	Sections: 25 through 36.
T5N	R2W	Sections: 3, 4, 8 through 20, 30, and 31.
T5N	R1W	Sections: 7, 16, 17, 18, 20 through 27, and 36.
T4N	R3W	Sections: 2, 3, 11, 12, 13, 24, and 36.
T4N	R2W	Sections: 19, 29, 30, 31, and 32.
T4N	R1W	Sections: 1, 12, 13, 24, and 25.
T4N	R1E	Sections: 10 and 31.

(All the above with reference to the Seward Meridian)

*AS 42.05.701 (2) (A) was renumbered and reorganized to alphabetize the defined terms, in 1993. It is now AS 42.05.720 (4) (A).

CHRONOLOGY:

Original Certificate granted 1/1/54
 First Revision 5/3/57 (U-56-22(1))
 Second Revision 12/9/67 (U-67-12(1))
 Third Revision 11/19/71 (U-71-37(1))
 Fourth Revision 11/2/72 (U-72-55(1))
 Fifth Revision 3/27/73 (U-71-16(16))
 Sixth Revision 3/27/74 (U-71-16(27))

DISTRIBUTION
 General Manager
 Rates & Tariff
 Finance Manager
 Chief Engineer
 Generation Mgr.
 Operation Mgr.
 Sys. & Com. Mgr.
 Property
 Power Mgr.
 Cust. Serv. Mgr.
 J.M. RRC

XXXXXXXXXXXX

7/23/97
[Signature]

[Signature]

RECEIVED

JUL 22 1997

MUNICIPAL LIGHT & POWER
 GENERATION

STATE OF ALASKA

Walker

THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners:

Sam Cotten, Chairman
 Alyce A. Hanley
 Dwight D. Ormquist
 Tim Cook
 James M. Posey

In the Matter of the Application Filed by)
 Municipal Light & Power (ML&P) to Amend)
 its Certificate of Public Convenience and)
 Necessity No. 121)

U-97-104

RECEIVED

JUL 23 1997

ML&P - Rates & Tariffs

PETITION TO INTERVENE
 (3 AAC 48.110)

1. Chugach Electric Association, Inc. ("Chugach") requests that it be permitted to intervene in the above captioned proceeding for the purpose of protecting its interests as a competitor of Anchorage Municipal Light and Power ("ML&P"). Chugach intends to explore in this proceeding whether the expansion of the ML&P service territory is necessary. If no new distribution plant installations are necessary, it is not clear why expansion is in the best interest of the public. Alternatively, if ML&P is able to make a showing that there is a need for construction of distribution plant and that it should have the exclusive right to build, own, operate and maintain those facilities, Chugach urges the Commission to explicitly state that, consistent with Alaska Statute and court cases interpreting state law,

CHUGACH ELECTRIC ASSOCIATION, INC.

General Counsel's Office
 5501 Minnesota Drive, P.O. Box 196344
 Anchorage, Alaska 99519-6300
 Phone 907/62-4790

EXHIBIT 2 12/4

certificated areas do not preclude competition for retail sales of electric power within those certificated territories. Furthermore, as a condition of any Commission authorization of ML&P to expand its distribution service territory, Chugach requests that the Commission establish an open access charge for distribution access over the ML&P system.

2. In Anchorage today, the only useful purpose to be served by certification of service territories, is to prevent undesirable duplication of Distribution facilities by competing sellers in areas of electric power sales competition. There is no prohibition against either Chugach or ML&P serving loads outside the service territories listed in their Certificates of Public Necessity and Convenience (CPCN). A.S. 42.05.221(d) clearly envisions competition among electric utilities and authorizes the Commission to step in to prevent competition only after it has made a finding that competition is not in the public interest. In the past competition between Chugach and ML&P resulted in duplication of distribution system plant. Under the current state of technology and with the Chugach and ML&P systems sufficiently interconnected, competition in the sale of electric power as a commodity no longer requires duplication of distribution facilities. The Commission-approved boundary settlement aimed at preventing undesirable duplication of distribution facilities. Neither the settlement nor the Commission's order determined that competing sales of electric power without duplication of plant was harmful.

3. ML&P's application is framed as if service territories are exclusive when they are not. See Chugach Electric Association v. City of Anchorage, 426 P.2d 1001 (Alaska 1967). There is no statutory support for the view that permission to market electric power outside the service territory is required. As a result, the application fails to show why ML&P

should have the proposed new areas included in its certificated area. It is not clear whether ML&P seeks the exclusive right to build distribution plant in the areas proposed for addition. The mere fact that a customer has requested retail service from a provider does not demonstrate that the requested provider should be given the exclusive right to provide distribution plant installation, operation and maintenance in a particular area. Indeed, in this circumstance, any addition to the exclusive distribution service area should proceed in accordance with 3 AAC 52.110 dealing with allocation of Facilities and Services Between Competing Electric Utilities.

4. Chugach does not object to ML&P selling to the customers referenced in its Application for Amended Certificate of Public Convenience and Necessity provided those customers understand that they have a choice and have freely chosen ML&P as their power supplier. Indeed, Chugach may wish to sell to these same customers in the future. Depending on the facts as they may be developed in this proceeding, Chugach also does not necessarily object to expansion of ML&P's rights to provide distribution infrastructure in the areas proposed for inclusion in the ML&P distribution service territory. If granted, however, the use of distribution facilities must be clearly open to competing sellers of electric power.

5. Although it is Chugach's view of the law that competition in power sales is permitted in Anchorage at this time without further action, the decision in this docket can clarify the availability of competition in power sales in Anchorage and thereby facilitate development of retail marketing competition which is likely to provide lower cost electric power to electric consumers. Granting ML&P's application as requested without

clarification would affect Chugach's interests by perpetuating confusion about the effect and function of service territory inclusions.

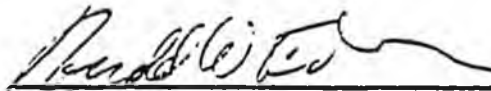
6. Chugach is not aware of the availability of other means by which Chugach's interests could be protected. No other party to this proceeding is familiar with Chugach's specific abilities and interests in competing to provide the best value to electric customers in the Anchorage area. No other party in this docket can effectively represent Chugach's interests.

7. Chugach's participation can reasonably be expected to assist in the development of a sound record regarding retail competition in Anchorage, by presenting information to the Commission concerning the opportunity for competition in retail electric power sales in Anchorage.

8. Chugach's participation should not broaden the issues or unreasonably delay the proceeding because the Commission must necessarily deal with the issues Chugach has identified in order to determine what action, if any, is appropriate.

DATED this 18th day of July, 1997, at Anchorage, Alaska.

CHUGACH ELECTRIC ASSOCIATION, INC.



Donald W. Edwards
General Counsel

Chugach Electric Association, Inc.
Anchorage, Alaska

Calculation of Transmission, Distribution and Customer Service Costs
Anchorage Municipal Light & Power
Test Year Ended: 12/31/93

Description	Total	Allocation	Residential	Small General	Large General (Secondary)	Large General (Primary)	Street & Area Lighting	Public Annually	Total
Transmission									
Assigned Cost	\$2,517,363	Actual Assigned	\$493,752	\$257,321	\$1,358,316	\$330,765	\$66,600	\$8,387	\$2,517,363
Average Cost (per kWh)	\$0.0031	—	\$0.0034	\$0.0034	\$0.0030	\$0.0029	\$0.0116	\$0.0006	\$0.0031
Distribution (Access)									
Assigned Cost	\$17,589,892	Actual Assigned	\$3,871,249	\$1,760,309	\$9,384,771	\$2,108,322	\$413,120	\$50,119	\$17,589,892
Average Cost (per kWh)	\$0.0216	—	\$0.0266	\$0.0234	\$0.0205	\$0.0183	\$0.0725	\$0.0037	\$0.0216
Customer Accounts (Service)									
Assigned Cost	\$3,273,662	Actual Assigned	\$1,829,796	\$632,264	\$614,358	\$77,799	\$91,909	\$7,535	\$3,273,662
Average Cost (per kWh)	\$0.0040	—	\$0.0126	\$0.0087	\$0.0083	\$0.0007	\$0.0161	\$0.0006	\$0.0040
Transmission & Distribution									
Assigned Cost	\$20,107,255	Actual Assigned	\$4,367,001	\$2,017,610	\$10,743,311	\$2,439,087	\$481,720	\$58,306	\$20,107,255
Average Cost (per kWh)	\$0.0247	—	\$0.0300	\$0.0268	\$0.0234	\$0.0212	\$0.0842	\$0.0043	\$0.0247
Transmission, Distribution & Customer Accounts (Service)									
Assigned Cost	\$23,380,917	Actual Assigned	\$6,196,797	\$2,609,893	\$11,357,669	\$2,516,886	\$573,629	\$66,041	\$23,380,917
Average Cost (per kWh)	\$0.0288	—	\$0.0126	\$0.0335	\$0.0248	\$0.0218	\$0.1003	\$0.0049	\$0.0288

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NOA OPERATIONS REG
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Chugach Electric Association, Inc.
Anchorage, Alaska

Calculation of Transmission, Distribution and Customer Service Costs
Anchorage Municipal Light & Power
Test Year Ended: 12/31/93

Description	Total	Allocation	Residential	Small General	Large General (Secondary)	Large General (Primary)	Street & Area Lighting	Public Authority	Total
Allocation of Transmission Expense									
Energy Costs:									
MAISA	\$141,238	Rate Base	\$29,384	\$14,581	\$75,532	\$17,533	\$3,595	\$613	\$141,238
Amort. Loss of Refunding	\$214,237	Rate Base	\$44,571	\$22,118	\$114,570	\$26,595	\$5,452	\$910	\$214,237
Return	\$1,084,641	Rate Base	\$225,657	\$111,979	\$580,048	\$134,646	\$27,603	\$1,707	\$1,084,641
Sub-total	\$1,440,116	---	\$299,612	\$148,678	\$770,150	\$178,774	\$36,652	\$6,250	\$1,440,116
Demand Costs:									
Transmission	\$1,085,770	Coincident Peak	\$202,208	\$111,654	\$603,987	\$155,612	\$12,308	\$0	\$1,085,770
Direct - Public Authority	\$2,264	Direct	\$0	\$0	\$0	\$0	\$0	\$2,264	\$2,264
4340-Transformer Rental	(\$2,981)	Rate Base	(\$537)	(\$266)	(\$1,380)	(\$320)	(\$66)	(\$11)	(\$2,981)
4340-Other	(\$5,217)	Rate Base	(\$1,084)	(\$539)	(\$2,790)	(\$648)	(\$133)	(\$23)	(\$5,217)
4140-Other Util Oper Income	(\$21,372)	Rate Base	(\$4,446)	(\$2,206)	(\$11,429)	(\$2,653)	(\$544)	(\$93)	(\$21,372)
Sub-total	\$1,058,864	---	-\$196,140	\$106,643	\$580,388	\$151,991	\$11,566	\$2,137	\$1,058,864
Customer Costs:									
Street Lighting	\$18,383	Direct	\$0	\$0	\$0	\$0	\$18,383	\$0	\$18,383
Total Transmission Costs	\$2,517,361	Actual Assigned	\$495,752	\$257,321	\$1,358,538	\$330,765	\$66,600	\$8,187	\$2,517,361
Total kWh Sales	813,204,367	Actual	145,354,429	75,172,542	458,157,673	115,240,580	5,221,937	13,349,206	813,204,367
Average Cost	\$0.0031	---	\$0.0034	\$0.0034	\$0.0030	\$0.0029	\$0.0116	\$0.0006	\$0.0031

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Chugach Electric Association, Inc.
Anchorage, Alaska

Calculation of Transmission, Distribution and Customer Service Costs
Anchorage Municipal Light & Power
Test Year Ended: 12/31/93

Description	Total	Allocation	Residential	Small Commercial	Large General (Secondary)	Large General (Primary)	Street & Area Lighting	Public Authority	Total
Allocation of Distribution (Access) Expense									
Energy Costs:									
MUSA	\$844,017	Rate Base	\$175,595	\$87,137	\$431,366	\$104,775	\$21,481	\$1,641	\$811,017
Annul. Loss of Refueling	\$1,280,249	Rate Base	\$266,353	\$132,174	\$684,636	\$158,928	\$32,383	\$5,556	\$1,280,249
Return	\$6,481,654	Rate Base	\$1,348,491	\$689,170	\$3,466,283	\$806,623	\$164,962	\$28,128	\$6,481,654
Sub-total	\$8,605,922	---	\$1,790,440	\$888,480	\$4,602,305	\$1,068,326	\$219,023	\$17,316	\$8,605,922
Demand Costs:									
Dist. Loss Line Trans & T Diposa	\$8,329,731	Non-coincident Peak	\$1,929,837	\$811,127	\$4,444,473	\$1,061,035	\$82,639	\$0	\$8,329,731
Line Transformers & T Diposa	\$703,171	T Allocator	\$187,238	\$78,698	\$431,215	\$0	\$8,070	\$0	\$703,171
Direct - Public Authority	\$13,330	Direct	\$0	\$0	\$0	\$0	\$0	\$13,330	\$13,330
4540-Transmission Return	(\$15,421)	Rate Base	(\$3,208)	(\$1,392)	(\$8,217)	(\$1,914)	(\$392)	(\$67)	(\$15,421)
4540-Other	(\$31,179)	Rate Base	(\$6,487)	(\$3,219)	(\$16,674)	(\$3,870)	(\$794)	(\$135)	(\$31,179)
4140-Other Bill Oper Income	(\$127,713)	Rate Base	(\$26,370)	(\$12,145)	(\$68,299)	(\$15,854)	(\$3,250)	(\$531)	(\$127,713)
Sub-total	\$8,874,118	---	\$2,080,810	\$871,879	\$4,782,468	\$1,039,996	\$16,243	\$12,773	\$8,874,118
Customer Costs:									
Street Lighting	\$109,832	Direct	\$0	\$0	\$0	\$0	\$109,832	\$0	\$109,832
Total Distribution Costs	\$17,389,892	Actual Assigned	\$3,871,249	\$1,760,309	\$9,384,773	\$2,108,322	\$415,120	\$30,119	\$17,389,892
Total kWh Sales	813,204,367	Actual	143,334,429	73,173,542	438,137,673	113,148,310	5,721,917	13,549,206	813,204,367
Average Cost	\$0.0216	---	\$0.0266	\$0.0234	\$0.0205	\$0.0183	\$0.0725	\$0.0077	\$0.0216

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Chugach Electric Association, Inc.
Anchorage, Alaska

Calculation of Transmission, Distribution and Customer Service Costs
Anchorage Municipal Light & Power
Test Year Ended: 12/31/93

Description	Total	Allocation	Residential	Small General	Large General (Secondary)	Large General (Primary)	Street & Area Lighting	Public Authority	Total
Allocation of Customer Accounts (Service) Expense									
Energy Costs:									
MIRBA	\$0	Rate Base	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Amount Loss of Refueling	\$0	Rate Base	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Return	\$0	Rate Base	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Uncollectible Accounts	\$118,626	Revenue	\$24,957	\$12,629	\$63,164	\$19,930	\$1,977	\$969	\$118,626
Meters - Depreciation Expense	\$188,425	Meter Costs	\$43,601	\$33,935	\$18,313	\$11,739	\$0	\$632	\$188,425
Sub-total	\$227,051	---	\$68,561	\$46,564	\$81,679	\$26,669	\$1,977	\$1,601	\$227,051
Demand Costs:									
Direct - Public Authority	\$0	Direct	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4510-Transformer Rental	\$0	Rate Base	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4510-Other	\$0	Rate Base	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4140-Other Bill Oper Income	\$0	Rate Base	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Sub-total	\$0	---	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Customer Costs:									
Customer Installations	\$19,050	No. Customers	\$13,285	\$2,819	\$702	\$26	\$176	\$1	\$19,050
Meters Less Depreciation	\$340,517	Meter Costs	\$136,942	\$106,576	\$38,148	\$36,867	\$0	\$1,984	\$340,517
Meter Reading	\$608,213	Meter Read	\$432,183	\$121,278	\$19,406	\$1,497	\$0	\$1,650	\$608,213
Billing & Collection	\$2,392,166	Billing & Collection	\$1,423,977	\$400,153	\$458,204	\$17,281	\$90,448	\$301	\$2,392,366
Street Lighting	\$0	Direct	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Misc. Service Revenue	(\$146,037)	Direct	(\$137,713)	(\$7,330)	(\$994)	\$0	\$0	\$0	(\$146,037)
NSP Fees & Penalties	(\$149,174)	Direct	(\$100,517)	(\$14,770)	(\$29,477)	(\$4,410)	\$0	\$0	(\$149,174)
Order	(\$18,324)	Billing & Collection	(\$10,922)	(\$3,065)	(\$3,310)	(\$132)	(\$693)	(\$7)	(\$18,324)
Sub-total	\$1,046,611	---	\$1,761,233	\$605,701	\$532,679	\$51,130	\$89,932	\$5,934	\$1,046,611
Total Accounts Costs	\$1,273,662	Acctd Assigned	\$1,829,796	\$652,264	\$614,358	\$77,799	\$91,909	\$7,535	\$1,273,662
Total kWh Sales	813,204,387	Actual	143,354,429	75,172,542	458,157,673	113,248,580	3,721,937	13,549,206	813,204,387
Average Cost	\$0.0010	---	\$0.0126	\$0.0087	\$0.0013	\$0.0007	\$0.0161	\$0.0006	\$0.0010

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Attachment B
Retail Power Delivery Across Control Area Boundaries

Background

In accordance with NERC standards, interchange of power between control areas is scheduled in even increments of 1,000 kW (1 MW). The automatic generation control systems adjust the generation within each control area to make the actual interchange between control areas match the scheduled interchange, neglecting frequency errors and time error correction. Each control area maintains an inadvertent account with adjacent control areas to balance interchange control errors and to pay back power to the appropriate control area. This mechanism insures that a control area actually gets the interchange power that it schedules.

Retail Scheduling

For large customers, over 2 MW at a single site, a RTU should be installed at the customer's site. Instantaneous power demand, biased for distribution system losses, would be telemetered to both control area dispatch centers where the load is electronically transferred from one control area to the other. In this manner, as the customer load increases generation in the supplying control area is ramped up and is subtracted from load in the delivering control area.

For medium customers, large general service with demand between 100 kW and 2 MW, a remotely readable, recording meter (similar to those used for load research) should be installed. Prior to 1500 each day a projected demand profile for the next day is generated for each customer based on previous history, weather and known factors and adjusted for distribution system losses. The schedules for all such customers are then summed for each hour, rounded to the nearest MW with any difference carried forward to the next hour. This interchange schedule is transmitted to both control area dispatch centers and incorporated along with other interchange schedules between the areas (firm and non-firm purchases and sales) into the operating schedule for the next day. The projected or pre-scheduled power will be supplied by the selling control area into the delivering control area. The day after the delivery, the hourly readings for each customer need to be compared with the pre-scheduled amount and the difference is included as an adjustment in the following days inter-control area schedule. Thus any difference between schedule and actual will be repaid in 48 hours.

For small customers, residential and small commercial with less than 100 kW of demand, regular meters can be used. Prior to 1500 each day a projected demand profile for the next day is generated using historical customer class load profiles and adjusted for distribution system losses. The schedules for all such customers are then summed for each hour, rounded to the nearest MW with any difference carried forward to the next hour. This interchange schedule is transmitted to both control area dispatch centers and incorporated along with other interchange schedules. Monthly the meters are read and a difference is calculated between the energy associated with the load profile and actual usage. The sum of differences for all customers is allocated over the next month based

on the load profile shape as an adjustment to the schedule. Any difference between schedule and actual will be repaid within a month. The customer meter readings do not have to be coincident with month end but each customer's read must be compared with the same period of the load profile.

Example

Large customers are not scheduled as the transfer between load areas is done dynamically. Spread sheet examples of medium and small customer scheduling is attached. Sheets for the first three days of operation are shown using hypothetical values. The first two lines show the load profile for residential and small commercial customers. Next the number of residential and small commercial customers is shown. The pre-schedule or projected load is the product of the number of customers times the load profile for that hour. Three medium size customers are shown with individual hour load projections. These loads are totaled. "Adjustment-Med" is provided to adjust for the difference between the pre-schedule and the energy actually delivered. This adjustment is made 48 hours after the delivery and can be seen on the "Day Three" sheet. "Adjustment-Small" is provided to correct for differences between the pre-scheduled energy for small customers and the periodic (monthly) meter readings. All of these customer energy values would be the customer meter reading plus an adjustment for distribution system losses. The TOTAL of pre-schedule and adjustments is rounded to the nearest MW (1,000 kW) for interchange scheduling between control areas. The "Brought Forward" which is the "Carry Forward" from the prior day ensures proper treatment for the fractions of MW. For day one the pre-schedule is 17,892 kWh and the interchange schedule is 18 MW leaving a carry forward of 108 kWh. The sheets are current as of the afternoon of July 2 when the schedule for July 3 is being prepared. Actual deliveries to medium customers are entered on the bottom of the day one sheet, an "Adjustment Difference" is calculated and is transferred to the "Adjustment-Med" line on day three. On the first day the medium customers were estimated to require 14,827 kWh but in fact only used 14,487 kWh. This means that the supplying control area delivered an excess of 340 kWh above the requirement which results in a reduction in the schedule for day three. In this example the loads are identical for all three days. The energy scheduled and delivered from one control area to the other is 18 MW on the first day, 17 MW on the second day and 18 MW on the third day.

HB

237

FISCAL NOTE

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STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 237

Revision Date: _____
 Title: Minimum Wage for Tipped Employees
 Sponsor: House L&C
 Requestor: House L&C

Department Affected: Labor
 BRU: Labor Standards & Safety
 Component: Wage & Hour
 COMPONENT SERIAL NO. 345

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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						
----------------	--	--	--	--	--	--

CHANGE IN REVENUE						
FUND SOURCE #						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY97) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)
 This bill would set the minimum wage to be paid to tipped employees at \$5.25 per hour. The bill would also allow employers to include tips received by an employee to be counted toward compliance with the state minimum wage law as set in AS 23.10.065 (a).

Prepared by: Alan W. Dwyer, Director *for [Signature]* Phone: 465-4855
 Division: Labor Standards & Safety Date: 4/11/97
 Approved by Commissioner: Tom Cashen, Commissioner
 Agency: Department of Labor Date: 4/11/97

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(7)
Date Referred to Committee: April 7, 1997

FURTHER REFERRALS:

Date of Committee Action: 4-14-97

The LABOR AND COMMERCE Committee considered:

HB 237

HOUSE BILL NO. 237

MINIMUM WAGE FOR TIPPED EMPLOYEES

"An Act relating to payment of minimum wages to tipped employees; and providing for an effective date."

recommends it be replaced with the following committee substitute _____ the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) _____ fiscal note(s) _____

zero fiscal note(s) LABOR zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Ann Ralston</i>	✓			
<i>John Anderson</i>	✓			
<i>Doug Sanders</i>	✓		✓	
<i>Mark Bishop</i>			✓	
<i>Joe Ryan</i>	✓			
<i>Bill Hudson</i>			✓	

CHAIR'S SIGNATURE

Ann Ralston 4-14-97



SIX HUNDRED TWENTY SEVEN
WEST THIRD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE: 278-2133 or 277-MARX
FAX: 258-MARX

APR 10 1997

HAND DELIVERED

April 10, 1997

The Honorable Norman Rokeberg
Chairman, House Labor and Commerce Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801

RE: HB 237, "An Act relating to payment of minimum wages to tipped employees; and providing for an effective date."

Chairman Rokeberg:

Thank you again for introducing HB 237, "An Act relating to payment of minimum wages to tipped employees; and providing for an effective date," a proposal which is very important to the restaurant industry in Alaska.

As I mentioned when we met in Anchorage to discuss the need for this legislation, with the coming \$.40 increase in the federal minimum wage, Alaska must adopt a federally approved tip credit this year to ensure the continued viability of the restaurant industry in the state.

Although a \$.40 increase in the minimum wage may not seem like much, without a tip credit -- a proposal which will not change the amount of cash wage received by tipped employees -- that \$.40 increase will have a significant effect on all restaurant operators in the state. As you are probably aware, restaurants typically operate on slim margins, generally between five and ten percent. Considering that small margin, one of the larger operators in the state -- who expects to pay an additional \$40,000.00 per year in staff wages with the \$.40 increase in the minimum wage -- will have to gross almost another \$400,000.00 per year just to cover increased wage costs. The state's small population base, together with the seasonal nature of the tourist industry, makes bringing-in that kind of money no small matter for any restaurant. Therefore, we are seeking this reasonable relief from the Legislature.

The tip credit legislation offered by the House Labor and Commerce Committee is modest. If enacted, this legislation would allow employers to apply a certain amount of tips that waiters and waitresses receive toward the state's minimum wage requirement.

4/10/97 L&C Committee letter
Re: Tip Credit Legislation, p. 2

Following is an example of how our the tip credit would work when the minimum wage is raised to \$5.65 an hour in September:

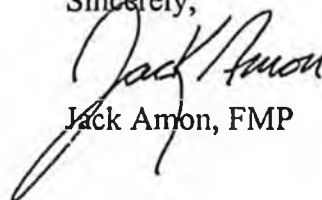
A waiter would be paid a cash wage of \$5.25 by his employer (the current minimum wage) with a credit of \$.40 in tips received by the waiter being applied toward the remaining minimum wage requirement of \$5.65. The proportion of compensation paid to tipped employees by the employer (in this example \$5.25) is called the "cash wage." The remaining difference between the cash wage and minimum wage requirement is called the "tip credit." In the above example, \$.40 of the waiter's tips would be the tip credit.

The most important thing to understand about the proposed tip credit is that the employee will always receive at least the state's minimum wage for each hour worked. The only question is where will the additional monies above \$5.25 an hour come from. Using the example above where the state's minimum wage is \$5.65, if the waiter earns \$10.00 an hour in tips, his employer will be required to pay him only the \$5.25 an hour cash wage. If, however, the waiter for some reason receives no tips, his employer will be required to pay him not only the \$5.25 cash wage, but an additional \$.40 to make-up the difference between the cash wage and the state's minimum wage. In other words, under this proposal, a tipped employee will never earn less than the state's minimum wage, whatever that might be in the future.

I am available to meet with you at your convenience to discuss this legislation. I look forward to working with you and the members of the House Labor and Commerce Committee on this legislation.

Thank you for your continued support.

Sincerely,

A handwritten signature in cursive script that reads "Jack Armon". The signature is written in dark ink and is positioned above the printed name.

Jack Armon, FMP

Definition of "supervisory" in the Alaska Administrative Code, that the term as used in this section means a person who directs the activities of other employees and who does not perform duties which are regularly performed by the em-

ployees supervised, except for brief periods of time not to exceed more than eight hours in the supervisor's workweek, is reasonable and not arbitrary. *Alaska Int'l Indus., Inc. v. Musarra*, 602 P.2d 1240 (Alaska 1979).

Sec. 23.10.065. Minimum wages. (a) Except as provided under (b) of this section, an employer shall pay to each employee wages at a rate of not less than 50 cents an hour greater than the prevailing Federal Minimum Wage Law for hours worked in a pay period, whether the work is measured by time, piece, commission or otherwise. An employer may not apply tips or gratuities bestowed upon employees as a credit toward payment of the minimum hourly wage required by this section. Tip credit as defined by the Fair Labor Standards Act of 1938 as amended does not apply to the minimum wage established by this section.

(b) Subject to the limitation under (c) of this section, an employer shall pay to each person employed as a public school bus driver wages at a rate of not less than two times the minimum wage established under (a) of this section, for hours worked in a pay period, whether work is measured by time, commission, or otherwise. An employer may not apply fringe benefits as a credit toward payment of the minimum wage established under this subsection.

(c) Notwithstanding (b) of this section, an employer who contracts with the Department of Education, a school district, or a regional educational attendance area to provide school bus transportation services is not required to adjust school bus driver wages under (b) of this section, except when entering into or renewing the contract. (§ 4 ch 171 SLA 1959; am § 2 ch 2 SLA 1962; am § 1 ch 41 SLA 1974; am §§ 3, 4 ch 12 SLA 1990)

Cross references. — For the Fair Labor Standards Act of 1938, see 29 U.S.C. 201-219.

Effect of amendments. — The 1990 amendment, effective September 1, 1990,

added the exception at the beginning and deleted "or \$2.60 an hour, whichever is greater" after "Federal Minimum Wage Law" in the first sentence of subsection (a); and added subsections (b) and (c).

NOTES TO DECISIONS

This section is based on the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219, and the terms used in the Alaska Statute are defined in the same way as in the federal act. *McGinnis v. Stevens*, 543 P.2d 1221 (Alaska 1975) decided prior to the 1978 amendment to AS 23.10.055(5).

Prisoners as employees of the state. — See *McGinnis v. Stevens*, 543 P.2d 1221 (Alaska 1975) decided prior to the 1978 amendment to AS 23.10.055(5).

Article not void. — The Alaska Wage and Hour Act merely requires higher minimum and overtime pay than the Fair Labor Standards Act, 29 U.S.C. §§ 201-219. Although compliance with both is more expensive than compliance with the federal act, it is not, in any sense, impossible so as to make the Alaska law void. *Webster v. Bechtel, Inc.*, 621 P.2d 890 (Alaska 1980).

Concurrent coverage of minimum wage claims is not preempted by the

Federal Fair Labor Standards Act. It appears that 29 U.S.C. § 218(a) was intended to allow the recovery of additional amounts under more protective state laws. It is logical that Congress contemplated that the state would allow for an action as to the whole claim, not just the increment, and, further, that Congress intended that the claims would be brought together, where possible, so that enforce-

ment would not be costly. *Webster v. Bechtel, Inc.*, 621 P.2d 890 (Alaska 1980).

Applied in *Alaska Int'l Indus., Inc. v. Musarra*, 602 P.2d 1240 (Alaska 1979).

Cited in *Dresser Indus., Inc. v. Alaska Dep't of Labor*, 633 P.2d 998 (Alaska 1981), cert. denied, 455 U.S. 1019, 102 S. Ct. 1716, 72 L. Ed. 2d 137 (1982); *Jeffcoat v. State, Dep't of Labor*, 732 P.2d 1073 (Alaska 1987).

Collateral references. — Validity of minimum wage statutes relating to private employment. 39 ALR2d 740.

Sec. 23.10.070. Exemptions from minimum wage. To the extent necessary to prevent curtailment of opportunities of employment, the commissioner may by regulations or orders provide for the employment at wages lower than the minimum wage prescribed in AS 23.10.050 — 23.10.150 of

(1) an individual whose earning capacity is impaired by physical or mental deficiency, age, or injury, at the wages and subject to the restrictions and for the period of time that are fixed by the commissioner; and

(2) an apprentice at the wages that are approved by the commissioner; or

(3) a learner at the wages and subject to the restrictions and for the periods of time that are fixed by the commissioner. (§ 5 ch 171 SLA 1959; am § 3 ch 2 SLA 1962)

Sec. 23.10.071. Wages for work therapy. (a) For work therapy, as defined in AS 47.37.270, a participant in a residential drug abuse or alcoholism treatment program designed to extend more than 120 days may be paid less than the minimum wage prescribed in AS 23.10.050 — 23.10.150 if the rate has been approved by the commissioner under this section and is in compliance with federal law.

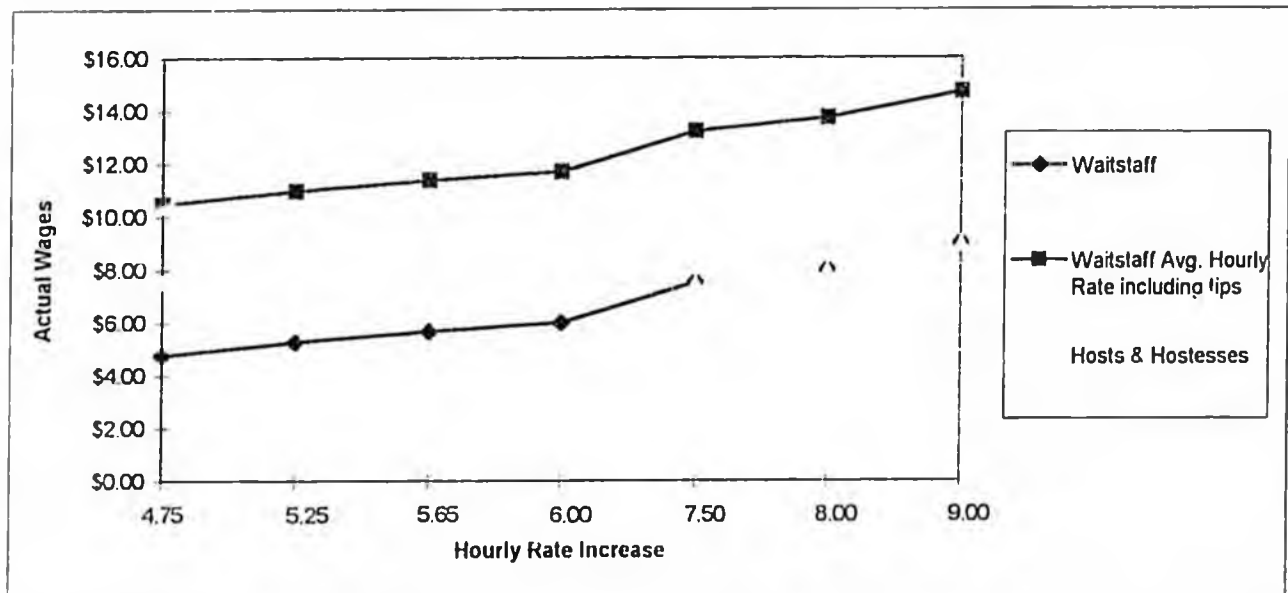
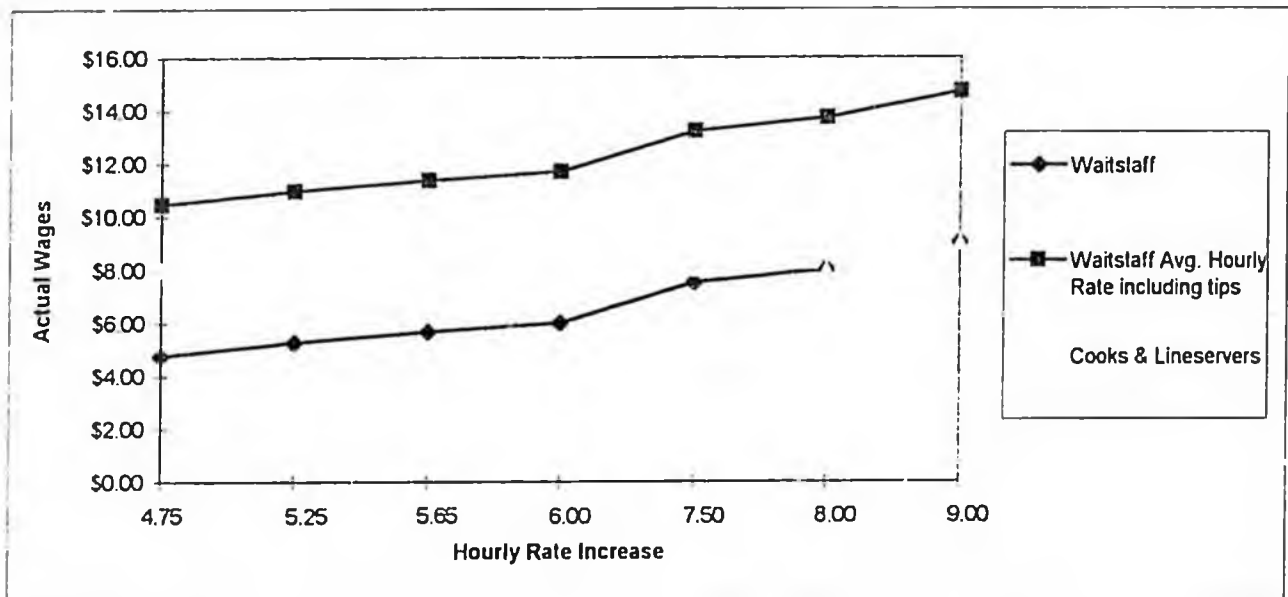
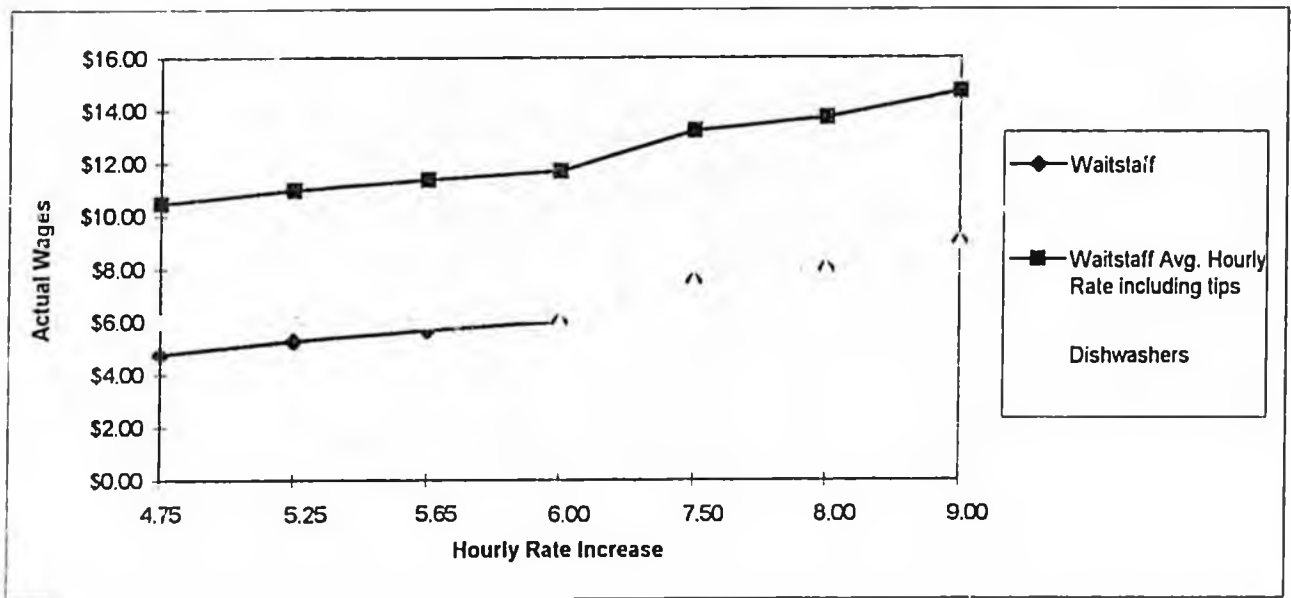
(b) The commissioner shall adopt regulations regarding the payment of wages for work therapy. In adopting the regulations, the commissioner shall consider whether the work performed by the patient

(1) is solely for the benefit of the patient and is that which is ordinarily carried on by patients in a residential treatment program;

(2) would ordinarily be performed by full-time employees of the program;

(3) is work that may produce income to the patient, other than wages;

Tip Credit Graphs



Tip Credit Spreadsheet

Job description	Hourly Rate						
	<u>\$4.75</u>	<u>\$5.25</u>	<u>\$5.65</u>	<u>\$6.00</u>	<u>\$7.50</u>	<u>\$8.00</u>	<u>\$9.00</u>
Waitstaff							
cash wages	166.25	183.75	197.75	210.00	262.50	280.00	315.00
avg declared tips	<u>200.00</u>	<u>200.00</u>	<u>200.00</u>	<u>200.00</u>	<u>200.00</u>	<u>200.00</u>	<u>200.00</u>
TOTAL GROSS WAGES	\$366.25	\$383.75	\$397.75	\$410.00	\$462.50	\$480.00	\$515.00
AVG HOURLY RATE	\$10.46	\$10.96	\$11.36	\$11.71	\$13.21	\$13.71	\$14.71
Busser							
cash wages	166.25	183.75	197.75	210.00	262.50	280.00	315.00
avg declared tips	100.00	100.00	100.00	100.00	100.00	100.00	100.00
TOTAL GROSS WAGES	266.25	283.75	297.75	310.00	362.50	380.00	415.00
AVG HOURLY RATE	\$7.61	\$8.11	\$8.51	\$8.86	\$10.36	\$10.86	\$11.86
* Cooks/line servers AT \$8.00							
cash wages PER HR	280.00	280.00	280.00	280.00	280.00	280.00	315.00
TOTAL GROSS WAGES	280.00	280.00	280.00	280.00	280.00	280.00	315.00
AVG HOURLY RATE	\$8.00	\$8.00	\$8.00	\$8.00	\$8.00	\$8.00	\$9.00
* Dishwashers							
cash wages	210.00	210.00	210.00	210.00	262.50	280.00	315.00
avg declared tips	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL GROSS WAGES	210.00	210.00	210.00	210.00	262.50	280.00	315.00
AVG HOURLY RATE	\$6.00	\$6.00	\$6.00	\$6.00	\$7.50	\$8.00	\$9.00
Dishwashers							
Bartenders							
cash wages ((\$7.50hr))	262.50	262.50	262.50	262.50	262.50	280.00	315.00
avg declared tips	145.00	145.00	145.00	145.00	145.00	145.00	145.00
TOTAL GROSS WAGES	407.50	407.50	407.50	407.50	407.50	425.00	460.00
AVG HOURLY RATE	\$11.64	\$11.64	\$11.64	\$11.64	\$11.64	\$12.14	\$13.14
* Host/hostess							
cash wages	262.50	262.50	262.50	262.50	262.50	280.00	315.00
avg declared tips	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL GROSS WAGES	262.50	262.50	262.50	262.50	262.50	280.00	315.00
AVG HOURLY RATE	\$7.50	\$7.50	\$7.50	\$7.50	\$7.50	\$8.00	\$9.00

* non tipped



Department of the Treasury
Internal Revenue Service

Publication 15

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**Circular E,
Employer's
Tax Guide**



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- 7) The use of on-premises athletic facilities if substantially all the use is by employees, their spouses, and their dependent children.
- 8) Qualified tuition reduction, which an educational organization provides its employees for education. For more information see Pub. 520, Scholarships and Fellowships.

However, do not exclude the following fringe benefits from the income of highly compensated employees unless the benefit is available to employees on a nondiscriminatory basis.

- No-additional-cost services (item 1).
- Qualified employee discounts (item 2).
- Meals provided at an employer operated eating facility (included in item 4).
- Reduced tuition for education (item 8).

For more information, including the definition of a highly compensated employee, see Pub. 535.

When fringe benefits are treated as paid.— You may choose to treat certain noncash fringe benefits as paid by the pay period, or by the quarter, or on any other basis you choose as long as you treat the benefits as paid at least as often as once a year. You do not have to make a formal choice of payment dates or notify the IRS of the dates you choose. You do not have to make this choice for all employees. You may change methods as often as you like, as long as you treat all benefits provided in a calendar year as paid by December 31 of the calendar year. See Pub. 535 for more information, including a discussion of the special accounting rule for fringe benefits provided during November and December.

Valuation of fringe benefits.— Generally, you must determine the value of fringe benefits no later than January 31 of the next year. Prior to January 31, you may reasonably estimate the value of the fringe benefits for purposes of withholding and depositing on time.

Withholding on fringe benefits.— You may add the value of fringe benefits to regular wages for a payroll period and figure withholding taxes on the total, or you may withhold Federal income tax on the value of the fringe benefits at the flat 28% supplemental wage rate.

You may choose not to withhold income tax on the value of an employee's personal use of a vehicle you provide. You must, however, withhold social security, Medicare, or railroad retirement taxes on the use of the vehicle. Get Pub. 15-A for more information on this election.

Depositing taxes on fringe benefits.— Once you choose payment dates for fringe benefits (discussed above), you must deposit taxes in the same deposit period you treat the fringe benefits as paid. To avoid a penalty, deposit the taxes following the general deposit rules for that deposit period.

If you determine by January 31 that you overestimated the value of a fringe benefit at the time you withheld and deposited for it, you may claim a refund for the overpayment or have it applied to your next employment tax return (see **Valuation of fringe benefits** above). If you underestimated the value and deposited too little, you may be subject to the failure to deposit penalty. See section 11 for information on deposit penalties.

If you deposited the required amount of taxes but withheld a lesser amount from the employee, you can recover from the employee the social security, Medicare, or income taxes you deposited on his or her behalf, and included in the employee's Form W-2. However, you must recover the income taxes before April 1 of the following year.

Sick pay.— In general, sick pay is any amount you pay, under a plan you take part in, to an employee because of sickness or injury. These amounts are sometimes paid by a third party, such as an insurance company or employees' trust. In either case, these payments are subject to social security, Medicare, or railroad retirement taxes, and Federal unemployment (FUTA) taxes. Sick pay becomes exempt from these taxes after the end of 6 calendar months after the calendar month the employee last worked for the employer. The payments are also subject to income tax. See Pub. 15-A for more information.

6. Tips

Tips your employee receives are generally subject to withholding. Your employee must report cash tips to you by the 10th of the month after the month the tips are received. The report should include tips you paid over to the employee for charge customers and tips the employee received directly from customers. No report is required for months when tips are less than \$20. Your employee reports the tips on **Form 4070, Employee's Report of Tips to Employer**, or on a similar statement. The statement must be signed by the employee and must show the following:

- The employee's name, address, and SSN.
- Your name and address.
- The month or period the report covers.
- The total tips.

Both Forms 4070 and 4070-A, **Employee's Daily Record of Tips**, are included in Pub. 1244, **Employee's Daily Record of Tips and Report to Employer**.

You must collect income tax, employee social security tax, and employee Medicare tax on the employee's tips. You can collect these taxes from the employee's wages or from other funds he or she makes available. (See **Tips treated as supplemental wages** in section 7 for further information.) Stop collecting the employee social security tax when his or her wages and tips for tax

year 1997 reach \$65,400; collect the income and employee Medicare taxes for the whole year on all wages and tips.

You are responsible for the employer social security tax on wages and tips until the wages (including tips) reach the limit. You are responsible for the employer Medicare tax for the whole year on all wages and tips.

File Form 941 to report withholding on tips. If, by the 10th of the month after the month you received an employee's report on tips, you don't have enough employee funds available to deduct the employee tax, you no longer have to collect it. Show any uncollected social security and Medicare taxes on Form W-2, on lines 6b and 7 of Form 941, and as an adjustment on line 9, Form 941. (See the instructions for Forms W-2 and 941.)

If an employee reports to you in writing \$20 or more of tips in a month, they are subject to FUTA tax.

Allocated tips.— If you operate a large food or beverage establishment, you must report allocated tips under certain circumstances. However, do not withhold income, social security, or Medicare taxes on allocated tips.

A large food or beverage establishment is one that provides food or beverages for consumption on the premises, where tipping is customary, and where there are normally more than 10 employees on a typical business day during the preceding year.

The tips may be allocated by one of three methods— hours worked, gross receipts, or good faith agreement. For information about these allocation methods, including the requirement to file Forms 8027 on magnetic media if 250 or more forms are filed, see the separate Instructions for Form 8027.

7. Supplemental Wages

Supplemental wages are compensation paid in addition to the employee's regular wages. They include, but are not limited to, bonuses, commissions, overtime pay, accumulated sick leave, severance pay, awards, prizes, backpay and retroactive pay increases for current employees, and payments for nondeductible moving expenses. Other payments subject to the supplemental wage rules include taxable fringe benefits and expense allowances paid under a nonaccountable plan.

If you pay supplemental wages with regular wages but do not specify the amount of each, withhold income tax as if the total were a single payment for a regular payroll period.

If you pay supplemental wages separately (or combine them in a single payment and specify the amount of each), the income tax withholding method depends partly on whether or not you withhold income tax from your employee's regular wages:

- If you **withhold** income tax from an employee's regular wages, you can use one of the following methods for the supplemental wages:

- 1) Withhold a flat 28% (no other percentage allowed).
- 2) Add the supplemental and regular wages for the most recent payroll period this year. Then figure the income tax withholding as if the total were a single payment. Subtract the tax already withheld from the regular wages. Withhold the remaining tax from the supplemental wages.

- If you **did not withhold** income tax from the employee's regular wages, use method 2. (This would occur, for example, when the value of the employee's withholding allowances claimed on Form W-4 is more than the wages.)

Regardless of the method you use to withhold income tax on supplemental wages, they are subject to social security and Medicare taxes.

Tips treated as supplemental wages.— Withhold the income tax on tips from wages or from other funds the employee makes available. If an employee receives regular wages and reports tips, figure income tax as if the tips were supplemental wages. If you have not withheld income tax from the regular wages, add the tips to the regular wages. Then withhold income tax on the total. If you withheld income tax from the regular wages, you can withhold on the tips by method 1 or 2 above.

Vacation pay.— Vacation pay is subject to withholding as if it were a regular wage payment. When vacation pay is in addition to regular wages for the vacation period, treat it as a supplemental wage payment. If the vacation pay is for a time longer than your usual payroll period, spread it over the pay periods for which you pay it.

8. Payroll Period

The payroll period is a period of service for which you usually pay wages. When you have a regular payroll period, withhold income tax for that time period even if your employee does not work the full period.

When you don't have a payroll period, withhold the tax as if you paid wages on a daily or miscellaneous payroll period. Figure the number of days (including Sundays and holidays) in the period covered by the wage payment. If the wages are unrelated to a specific length of time (e.g., commissions paid on completion of a sale), count back the number of days from the payment period to the latest of:

- 1) The last wage payment made during the same calendar year,

RMI

APR 09 1997

RESTAURANT MANAGEMENT, INC.

4450 CORDOVA STREET, SUITE 200 • ANCHORAGE, AK 99503
TELEPHONE (907) 501-2345 FAX (907) 501-2525

April 2, 1997

The Honorable Norman Rokeberg
Alaska State Legislature
State Capitol
Juneau, AK 99801

Dear Norm,

This letter is written in support of the Tip Credit proposal now being discussed in the Legislature. We employ several hundred Team Members in both Red Robin restaurants, Border Grill and the newly opened Islands Beach Café in downtown Anchorage.

All of our minimum wage Team Members are servers who make a very good living from their combined income of wages and tips. By way of concrete illustration, I am attaching an excerpt from our payroll records that show our servers making from \$3.75 to \$8.09 per hour in tips in addition to their minimum wage income. This is the dollar amount that is reported to us by each of the servers. Using a \$5.25 per hour minimum wage, this means that the servers make between \$9.00 and \$13.34 per hour.

The Tip Credit proposal is extremely fair to the employee and allows the employer to provide support for the rest of the Team Members that do not benefit from the extra tip income. This proposal "levels the playing field" for the people that do not benefit from tip income. In addition, Alaska is one of very few states that does not allow for some kind of Tip Credit.

I urge you and your fellow legislators to support this very fair proposal so that all can benefit as opposed to just a few.

Thank you for your consideration.

Sincerely,

RESTAURANT MANAGEMENT, INC.



Fred Rosenberg
President

TIME WORKED EDIT LIST

Dept	Emp#	Name	Soc-sec-#	Type	Wage-acct	Salary Freq	Hours			Vacn Sick	Vac wks	Temp-ded/earn Desc	Type	Amount	-Accrued-		Wks wrk	Work units
							Regular	Special	Overtime						Vacn-hrs	Sick-hrs		
0020	578	SONIA M.		H	6020-010	.00	63.75	.00	.00	.00	.00	TIPS	T	300.00	.000	2.00		
						B	.25	.00	.00	.00					.000			
<p><i>HOOURS WORK 50</i></p> <p><i>471 hr</i></p> <p>Distribution: Type ACCT-# Hrs/% Rate</p> <p>O 6030-010 WAGES - BAR .25 8.091</p> <p>R 6020-010 WAGES - DINING ROOM 22.50 5.250</p> <p>R 6030-010 WAGES - BAR 41.25 5.500</p>																		
598		DANIEL		H	6020-010	.00	44.00	.00	.00	.00	.00	TIPS	T	318.71	.000	2.00		
						B	.00	.00	.00	.00					.000			
<p><i>724 hr</i></p> <p>Distribution: Type ACCT-# Hrs/% Rate</p> <p>R 6020-010 WAGES - DINING ROOM 44.00 5.250</p>																		
619		AMY A.		H	6020-010	.00	40.25	.00	.00	.00	.00	TIPS	T	325.75	.000	2.00		
						B	.00	.00	.00	.00					.000			
<p><i>802 hr.</i></p> <p>Distribution: Type ACCT-# Hrs/% Rate</p> <p>R 6020-010 WAGES - DINING ROOM 40.25 5.250</p>																		
620		DIANA D.		H	6020-010	.00	40.00	.00	.00	.00	.00	TIPS	T	150.00	.000	2.00		
						B	.00	.00	.00	.00					.000			
<p><i>375 hr.</i></p> <p>Distribution: Type ACCT-# Hrs/% Rate</p> <p>R 6020-010 WAGES - DINING ROOM 40.00 5.250</p>																		
628		SIC		H	6020-010	.00	34.50	.00	.00	.00	.00	TIPS	T	200.00	.000	2.00		
						B	.00	.00	.00	.00					.000			
<p><i>580 hr</i></p> <p>Distribution: Type ACCT-# Hrs/% Rate</p> <p>R 6020-010 WAGES - DINING ROOM 34.50 5.250</p>																		
645		TENNIS L.		H	6020-010	.00	36.00	.00	.00	.00	.00	TIPS	T	250.00	.000	2.00		
						B	.00	.00	.00	.00					.000			
<p><i>694 hr</i></p> <p>Distribution: Type ACCT-# Hrs/% Rate</p> <p>R 6020-010 WAGES - DINING ROOM 28.50 5.250</p> <p>R 6030-010 WAGES - BAR 7.50 5.500</p>																		
711		DANNY F.		H	6020-010	.00	30.75	.00	.00	.00	.00	TIPS	T	250.00	.000	2.00		
						B	.00	.00	.00	.00		UNIFORM	D	6.60	.000			
<p><i>645 hr.</i></p> <p>Distribution: Type ACCT-# Hrs/% Rate</p> <p>R 6020-010 WAGES - DINING ROOM 30.75 5.250</p>																		
742		FERRITHA A.		H	6020-010	.00	23.75	.00	.00	.00	.00	TIPS	T	57.00	.000	2.00		
						B	.00	.00	.00	.00					.000			

TIME WORKED EDIT LIST

Dept	Emp#	Name	Salary Freq	Hours			Vacn Sick	Vac wks	Temp-ded/earn Desc	Accrued		Wks wrk	Work units
				Type	Wage-acct	Regular				Special Overtime	Holiday		
Distribution: Type ACCT-H Hrs/% Rate													
		R	6020-010	WAGES - DINING ROOM		51.50		5.250					
		R	6050-010	SALARIES - MANAGEMENT		6.25		8.000					
799		DANIEL L.	.00		59.00	.00	.00		TIPS	T	350.00	.000	2.00
		H	6020-010		.25	.00	.00				593 hr	.000	
Distribution: Type ACCT-H Hrs/% Rate													
		O	6020-010	WAGES - DINING ROOM		.25		7.875					
		R	6020-010	WAGES - DINING ROOM		59.00		5.250					
803		REED	.00		43.25	.00	.00					.000	2.00
		H	6020-010		.00	.00	.00					.000	
Distribution: Type ACCT-H Hrs/% Rate													
		R	6020-010	WAGES - DINING ROOM		43.25		5.250					
804		CHAMELA LEE	.00		51.75	.00	.00		TIPS	T	250.00	.000	2.00
		H	6020-010		.00	.00	.00				483 hr	.000	
Distribution: Type ACCT-H Hrs/% Rate													
		R	6020-010	WAGES - DINING ROOM		51.75		5.250					
830		MICKY Z.	.00		57.75	.00	.00		TIPS	T	348.35	.000	2.00
		H	6020-010		1.75	.00	.00				603 hr	.000	
Distribution: Type ACCT-H Hrs/% Rate													
		O	6020-010	WAGES - DINING ROOM		1.75		7.875					
		R	6020-010	WAGES - DINING ROOM		57.75		5.250					
834		EVERLY A.	.00		50.25	.00	.00		TIPS	T	236.00	.000	2.00
		H	6020-010		.00	.00	.00				470 hr	.000	
Distribution: Type ACCT-H Hrs/% Rate													
		R	6020-010	WAGES - DINING ROOM		50.25		5.250					
839		ROBERT S.	.00		54.50	.00	.00		TIPS	T	227.00	.000	2.00
		H	6020-010		.00	.00	.00				417 hr	.000	
Distribution: Type ACCT-H Hrs/% Rate													
		R	6020-010	WAGES - DINING ROOM		53.00		5.250					
		R	6040-010	WAGES - TRAINING FOH		1.50		5.250					
845		MATTHEW N.	.00		45.25	.00	.00		TIPS	T	320.00	.000	2.00
		H	6020-010		.00	.00	.00		TIPS	T	300.00	.000	
Distribution: Type ACCT-H Hrs/% Rate													
		R	6020-010	WAGES - DINING ROOM		45.25		5.250					



Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage

APR 15 1997

By Jonathan Grossman*

*When he felt the time was ripe,
President Roosevelt asked
Secretary of Labor Perkins,
'What happened to that
nice unconstitutional bill
you had tucked away?'*

On Saturday, June 25, 1938, to avoid pocket vetoes 9 days after Congress had adjourned, President Franklin D. Roosevelt signed 121 bills. Among these bills was a landmark law in the Nation's social and economic development -- Fair Labor Standards Act of 1938 (FLSA). Against a history of judicial opposition, the depression-born FLSA had survived, not unscathed, more than a year of Congressional altercation. In its final form, the act applied to industries whose combined employment represented only about one-fifth of the labor force. In these industries, it banned oppressive child labor and set the minimum hourly wage at 25 cents, and the maximum workweek at 44 hours.¹

Forty years later, a distinguished news commentator asked incredulously: "My God! 25 cents an hour! Why all the fuss?" President Roosevelt expressed a similar sentiment in a "fireside chat" the night before the signing. He warned: "Do not let any calamity-howling executive with an income of \$1,000 a day, ...tell you...that a wage of \$11 a week is going to have a disastrous effect on all American industry."² In light of the social legislation of 1978, Americans today may be astonished that a law with such moderate standards could have been thought so revolutionary.

Courting disaster

The Supreme Court had been one of the major obstacles to wage-hour and child-labor laws. Among notable cases is the 1918 case of *Hammer v. Dagenhart* in which the Court by one vote held unconstitutional a Federal child-labor law. Similarly in *Adkins v. Children's Hospital* in 1923, the Court by a narrow margin voided the District of Columbia law that set minimum wages for women. During the 1930's, the Court's action on social legislation was even more devastating.³

New Deal promise. In 1933, under the "New Deal" program, Roosevelt's advisers developed a National Industrial Recovery Act (NRA).⁴ The act suspended antitrust laws so that industries could enforce fair-trade codes resulting in less competition and higher wages. On signing the bill, the President stated: "History will probably record the National Industrial Recovery Act as the most important and far-reaching legislation ever enacted by the American Congress." The law was popular, and one family in Darby, Penn., christened a newborn daughter Nira to honor it.⁵

As an early step of the NRA, Roosevelt promulgated a President's Reemployment Agreement "to raise wages, create employment, and thus restore business." Employers signed more than 2.3 million agreements, covering 16.3 million employees. Signers agreed to a workweek between 35 and 40 hours and a minimum wage of \$12 to \$15 a week and undertook, with some exceptions, not to employ youths under 16 years of age. Employers who signed the agreement displayed a "badge of honor," a blue eagle over the motto "We do our part." Patriotic Americans were expected to buy only from "Blue Eagle" business concerns.⁶

In the meantime, various industries developed more complete codes. The Cotton Textile Code was the first of these and one of the most important. It provided for a 40-hour workweek, set a minimum weekly wage of \$13 in the North and \$12 in the South, and abolished child labor. The President said this code made him "happier than any other one thing...since I have come to Washington, for the code abolished child labor in the textile industry." He added: "After years of fruitless effort and discussion, this ancient atrocity went out in a day."⁷

A crushing blow. On "Black Monday," May 27, 1935, the Supreme Court disarmed the NRA as the major depression-fighting weapon of the New Deal. The 1935 case of *Schechter Corp. v. United States* tested the constitutionality of the NRA by questioning a code to improve the sordid conditions under which chickens were slaughtered and sold to retail kosher butchers.⁸ All nine justices agreed that the act was an unconstitutional delegation of government power to private interests. Even the liberal Benjamin Cardozo thought it was "delegation running riot." Though the "sick chicken" decision seems an absurd case upon which to decide the fate of so sweeping a policy, it invalidated not only the restrictive trade practices set by the NRA-authorized codes, but the codes' progressive labor

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provisions as well.⁹

As if to head off further attempts at labor reform, the Supreme Court, in a series of decisions, invalidated both State and Federal labor laws. Most notorious was the 1936 case of Joseph Tipaldo.¹⁰ The manager of a Brooklyn, N.Y., laundry, Tipaldo had been paying nine laundry women only \$10 a week, in violation of the New York State minimum wage law. When forced to pay his workers \$14.88, Tipaldo coerced them to kick back the difference. When Tipaldo was jailed on charges of violating the State law, forgery, and conspiracy, his lawyers sought a writ of habeas corpus on grounds the New York law was unconstitutional. The Supreme Court, by a 5-to-4 majority voided the law as a violation of liberty of contract.¹¹

The Tipaldo decision was among the most unpopular ever rendered by the Supreme Court. Even bitter foes of President Roosevelt and the New Deal criticized the Court. Ex-President Herbert Hoover said the Court had gone to extremes. Conservative Republican Congressman Hamilton Fish called it a "new Dred Scott decision" condemning 3 million women and children to economic slavery.¹²

A switch in time. Wage-hour legislation was a campaign issue in the 1936 Presidential race. The Democratic platform called for higher labor standards, and, in his campaign, Roosevelt promised to seek some constitutional way of protecting workers. He tried to pave the way for such legislation in his speeches and new conferences in which he spoke of the breakdown of child labor provisions, minimum wages, and maximum hour standards after the demise of the NRA codes.

When Roosevelt won the 1936 election by 523 electoral votes to 8, he interpreted his landslide victory as support for the New Deal and was determined to overcome the obstacle of Supreme Court opposition as soon as possible. In February 1937, he struck back at the "nine old men" of the Bench: He proposed to "pack" the Court by adding up to six extra judges, one for each judge who did not retire at age 70. Roosevelt further voiced his disappointment with the Court at the victory dinner for his second inauguration, saying if the "three-horse team [of the executive, legislative, and judicial branches] pulls as one, the field will be ploughed," but that the field will not be ploughed if one horse lies down in the traces or plunges off in another direction.¹³

However, Roosevelt's metaphorical maverick fell in step. On "White Monday," March 29, 1937, the Court reversed its course when it decided the case of *West Coast Hotel Company v. Parrish*.¹⁴ Elsie Parrish, a former chambermaid at the Cascadian Hotel in Wenatchee, Wash., sued for \$216.19 in back wages, charging that the hotel had paid her less than the State minimum wage. In an unexpected turn-around, Justice Owen Roberts voted with the four-man liberal minority to uphold the Washington minimum wage law.

As other close decisions continued to validate social and economic legislation, support for Roosevelt's Court "reorganization" faded. Meanwhile, Justice Roberts felt called upon to deny that he had switched sides to ward off Roosevelt's court-packing plan. He claimed valid legal distinctions between the Tipaldo case and the Parrish case. Nevertheless, many historians subscribe to the contemporary view of Robert's vote, that "a switch in time saved nine."¹⁵

A young worker's plea

While President Franklin Roosevelt was in Bedford, Mass., campaigning for reelection, a young girl tried to pass him an envelope. But a policeman threw her back into the crowd. Roosevelt told an aide, "Get the note from the girl." Her note read,

I wish you could do something to help us girls.... We have been working in a sewing factory.... and up to a few months ago we were getting our minimum pay of \$11 a week.. Today the 200 of us girls have been cut down to \$4 and \$5 and \$6 a week

To a reporter's question, the President replied, "Something has to be done about the elimination of child labor and long hours and starvation wages."

-FRANKLIN D. ROOSEVELT
Public Papers and Addresses, Vol. V
New York, Random House, 1936), pp. 624-25.

Back to the drawing board

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Justice Roberts' "Big Switch" is an important event in American legal history. It is also a turning point in American social history, for it marked a new legal attitude toward labor standards. To be sure, validating a single State law was a far cry from upholding general Federal legislation, but the Parrish decision encouraged advocates of fair labor standards to work all the harder to develop a bill that might be upheld by the Supreme Court.

An ardent advocate. No top government official worked more ardently to develop legislation to help underpaid workers and exploited child laborers than Secretary Frances Perkins. Almost all her working life, Perkins fought for pro-labor legislation. To avoid the sometime pitfall of judicial review, she consulted legal experts in forming legislation. Her autobiographical account of her relations with President Roosevelt is filled with the names of lawyers with whom she discussed legislation: Felix Frankfurter, Thomas Corcoran, Gerard Reilly, Benjamin Cohen, Charles Wyzanski, and many others both within and outside Government.

When, in 1933, President Roosevelt asked Frances Perkins to become Secretary of Labor, she told him that she would accept if she could advocate a law to put a floor under wages and a ceiling over hours of work and to abolish abuses of child labor. When Roosevelt heartily agreed, Perkins asked him, "Have you considered that to launch such a program... might be considered unconstitutional?" Roosevelt retorted, "Well, we can work out something when the time comes."¹⁶

During the constitutional crisis over the NRA, Secretary Perkins asked lawyers at the Department of Labor to draw up two wage-hour and child-labor bills which might survive Supreme Court review. She then told Roosevelt, "I have something up my sleeve....I've got two bills ...locked in the lower left-hand drawer of my desk against an emergency." Roosevelt laughed and said, "There's New England caution for you.... You're pretty unconstitutional, aren't you?"¹⁷

Earlier Government groundwork. One of the bills that Perkins had "locked" in the bottom drawer of her desk was used before the 1937 "Big Switch." The bill proposed using the purchasing power of the Government as an instrument for improving labor standards. Under the bill Government contractors would have to agree to pay the "prevailing wage" and meet other labor standards. The idea had been tried in World War I to woo worker support for the war. Then, President Hoover reincarnated the "prevailing wage" and fair standards criteria as conditions for bidding for the construction of public buildings. This act — the Davis-Bacon Act — in expanded form stands as a bulwark of labor standards in the construction industry.

Roosevelt and Perkins tried to make model employers of government contractors in all fields, not just construction. They were dismayed to find that, except in public construction, the Federal Government actually encouraged employers to exploit labor because the Government had to award every contract to the lowest bidder. In 1935, approximately 40 percent of government contractors, employing 1.5 million workers, cut wages below and stretched hours above the standards developed under the NRA.

The Roosevelt-Perkins remedial initiative resulted in the Public Contracts Act of 1936 (Walsh-Healey). The act required most government contractors to adopt an 8-hour day and a 40-hour week, to employ only those over 16 years of age if they were boys or 18 years of age if they were girls, and to pay a "prevailing minimum wage" to be determined by the Secretary of Labor. The bill had been hotly contested and much diluted before it passed Congress on June 30, 1936. Though limited to government supply contracts and weakened by amendments and court interpretations, the Walsh-Healey Public Contracts Act was hailed as a token of good faith by the Federal Government — that it intended to lead the way to better pay and working conditions.¹⁸

A broader bill is born

President Roosevelt had postponed action on a fair labor standards law because of his fight to "pack" the Court. After the "switch in time," when he felt the time was ripe, he asked Frances Perkins, "What happened to that nice unconstitutional bill you tucked away?"

The bill — the second that Perkins had "tucked" away — was a general fair labor standards act. To cope with the danger of judicial review, Perkins' lawyers had taken several constitutional approaches so that, if one or two legal principles were invalidated, the bill might still be accepted. The bill provided for minimum-wage boards which would determine, after public hearing and consideration of cost-of-living figures from the Bureau of Labor Statistics, whether wages in particular industries were below subsistence levels.

Perkins sent her draft to the White House where Thomas Corcoran and Benjamin Cohen, two trusted legal advisers of the President, with the Supreme Court in mind, added new provisions to the already lengthy measure. "Ben Cohen and I worked on the bill and the political effort behind it for nearly 4 years with Senator Black and Sidney Hillman," Corcoran noted.¹⁹

An early form of the bill being readied for Congress affected only wages and hours. To that version Roosevelt added a child-labor provision based on the political judgment that adding a clause banning goods in interstate commerce produced by children under 16 years of age would increase the chance of getting a wage-hour measure through both

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Houses, because child-labor limitations were popular in Congress.²⁰

Congress-round I

On May 24, 1937, President Roosevelt sent the bill to Congress with a message that America should be able to give "all our able-bodied working men and women a fair day's pay for a fair day's work." He continued: "A self-supporting and self-respecting democracy can plead no justification for the existence of child labor, no economic reason for chiseling worker's wages or stretching workers' hours." Though States had the right to set standards within their own borders, he said, goods produced under "conditions that do not meet rudimentary standards of decency should be regarded as contraband and ought not to be allowed to pollute the channels of interstate trade." He asked Congress to pass applicable legislation "at this session."²¹

Senator Hugo Black of Alabama, a champion of a 30-hour workweek, agreed to sponsor the Administration bill on this subject in the Senate, while Representative William P. Connery of Massachusetts introduced corresponding legislation in the House. The Black-Connery bill had wide Public support, and its path seemed smoothed by arrangements for a joint hearing by the labor committees of both Houses.

Generally, the bill provided for a 40-cent-an-hour minimum wage, a 40-hour maximum workweek, and a minimum working age of 16 except in certain industries outside of mining and manufacturing. The bill also proposed a five-member labor standards board which could authorize still higher wages and shorter hours after review of certain cases.

Proponents of the bill stressed the need to fulfill the President's promise to correct conditions under which "one-third of the population" were "ill-nourished, ill-clad, and ill-housed." They pointed out that, in industries which produced products for interstate commerce, the bill would end oppressive child labor and "unnecessarily long hours which wear out part of the working population while they keep the rest from having work to do." Shortening hours, they argued, would "create new jobs...for millions of our unskilled unemployed," and minimum wages would "underpin the whole wage structure...at a point from which collective bargaining could take over."²²

Advocates of higher labor standards described the conditions of sweated labor. For example, a survey by the Labor Department's Children's Bureau of a cross section of 449 children in several States showed nearly one-fourth of them working 60 hours or longer a week and only one-third working 40 hours or less a week. The median wage was slightly over \$4 a week.²³

One advocate, Commissioner of Labor Statistics Isador Lubin, explained to the joint Senate-House committee that during depressions the ability to overwork employees, rather than efficiency, determined business success. The economy, he reported, had deteriorated to the chaotic stage where employers with high standards were forced by cut-throat competition to exploit labor in order to survive. "The outstanding feature of the proposed legislation," Lubin said, is that "it aims to establish by law a plane of competition far above that which could be maintained in the absence of government edict."²⁴

Opponents of the bill charged that, although the President might damn them as "economic royalists and sweaters of labor," the Black-Connery bill was "a bad bill badly drawn" which would lead the country to a "tyrannical industrial dictatorship." They said New Deal rhetoric, like "the smoke screen of the cuttle fish," diverted attention from what amounted to socialist planning. Prosperity, they insisted, depended on the "genius" of American business, but how could business "find any time left to provide jobs if we are to persist in loading upon it these everlastingly multiplying governmental mandates and delivering it to the mercies of multiplying and hampering Federal bureaucracy?"²⁵

Organized labor supported the bill but was split on how strong it should be. Some leaders, such as Sidney Hillman of the Amalgamated Clothing Workers Union and David Dubinsky of the International Ladies' Garment Workers' Union, supported a strong bill. In fact, when Southern congressmen asked for the setting of lower pay for their region, Dubinsky's union suggested lower pay for Southern congressmen. But William Green of the American Federation of Labor (AFL) and John L. Lewis of the Congress of Industrial Organization (CIO), on one of the rare occasions when they agreed, both favored a bill which would limit labor standards to low-paid and essentially unorganized workers. Based on some past experiences, many union leaders feared that a minimum wage might become a maximum and that wage boards would intervene in areas which they wanted reserved for labor-management negotiations. They were satisfied when the bill was amended to exclude work covered by collective bargaining.

The weakened bill passed the Senate July 31, 1937, by a vote of 56 to 28 and would have easily passed the House if it had been put to a vote. But a coalition of Republicans and conservative Democrats bottled it up in the House Rules Committee. After a long hot summer, Congress adjourned without House action on fair labor standards.²⁶

Congress-round II

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An angry President Roosevelt decided to press again for passage of the Black-Connery bill. Having lost popularity and split the Democratic Party in his battle to "pack" the Supreme Court, Roosevelt felt that attacking abuses of child labor and sweatshop wages and hours was a popular cause that might reunite the party. A wage-hour, child-labor law promised to be a happy marriage of high idealism and practical politics.

On October 12, 1937, Roosevelt called a special session of Congress to convene on November 15. The public interest, he said, required immediate Congressional action: "The exploitation of child labor and the undercutting of wages and the stretching of the hours of the poorest paid workers in periods of business recession has a serious effect on buying power".²⁷

Despite White House and business pressure, the conservative alliance of Republicans and Southern Democrats that controlled the House Rules Committee refused to discharge the bill as it stood. Congresswoman Mary Norton of New Jersey, now chairing the House Labor Committee, made a valiant attempt to shake the bill loose.²⁸ Many representatives had told her that they agreed with the principles of the bill but that they objected to a five-man wage board with broad powers. Therefore, Norton told the House of Representatives that the Labor Committee would offer an amendment to change the administration of the bill from a five-man board to an administrator under the Department of Labor. Urging representatives to sign a petition to jar the bill out of committee, Norton appealed:

I now hope and urge that these Members will keep faith with me, as I have kept faith with them, and sign the petition . . . we are approaching Thanksgiving Day, . . . I do not see how any Member of this House can enjoy his Thanksgiving dinner tomorrow if he fails to put his name to that petition this afternoon.

Though Norton missed her Thanksgiving Day dead-line, by December 2, the bill's supporters had rounded up enough signers to give the petition the 218 signatures necessary to bring the bill to a vote on the House floor.²⁹

With victory within grasp, the bill became a battle-ground in the war raging between the AFL and the CIO. The AFL accused the Roosevelt Administration of favoring industrial over craft unions and opposed wage-board determination of labor standards for specific industries. Accordingly, the AFL fought for a substitute bill with a flat 40-cent-an-hour minimum wage and a maximum 40-hour week.

In the ensuing confusion, shortly, before the Christmas holiday of 1937, the House by a vote of 218 to 198 unexpectedly sent the bill back to the Labor Committee.³⁰ In her memoir of President Roosevelt, Frances Perkins wrote:

This was the first time that a major administration bill had been defeated on the floor of the House. The press took the view that this was the death knell of wage-hour legislation as well as a decisive blow to the President's prestige.³¹

Roosevelt tries again

Again, Roosevelt returned to the fray. In his annual message to Congress on January 3, 1938, he said he was seeking "legislation to end starvation wages and intolerable hours." He paid deference to the South by saying that "no reasonable person seeks a complete uniformity in wages." He also made peace overtures to business by pointing out that he was forgoing "drastic" change, and he appeased organized labor, saying that "more desirable wages are and should continue to be the product of collective bargaining."³²

The day following Roosevelt's message, Representative Lister Hill, a strong Roosevelt supporter, won an Alabama election primary for the Senate by an almost 2-to-1 majority over an anti-New Deal congressman. The victory was significant because much of the opposition to wage-hour laws came from Southern congressmen. In February, a national public opinion poll showed that 67 percent of the populace favored the wage-hour law, with even the South showing a substantial plurality of support for higher standards.³³

Reworking the bill. In the meantime, Department of Labor lawyers worked on a new bill. Privately, Roosevelt had told Perkins that the length and complexity of the bill caused some of its difficulties. "Can't it be boiled down to two pages?" he asked. Lawyers trying to simplify the bill faced the problem that, although legal language makes legislation difficult to understand, bills written in simple English are often difficult for the courts to enforce. And because the wage-hour, child-labor bill had been drafted with the Supreme Court in mind, Solicitor Labor Gerard Reilly could not meet the President's two-page goal; however, he succeeded in cutting the bill from 40 to 10 pages.

In late January 1938, Reilly and Perkins brought the revision to President Roosevelt. He approved it, and the new bill went to Congress.³⁴

Roosevelt and Perkins prepared for rugged opposition. Roosevelt put pressure on Congressmen who had ridden his coattails to election victory in 1936 and who then knifed New Deal legislation. Perkins added to her staff Rufus Pole, a young lawyer, to follow the bill through Congress. Pole worked resourcefully pinpointed the issues that bothered some

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Congressmen, and identified a large number of Senators and Representatives who could be counted on to vote favorably.

Norton appointed Representative Robert Ramspeck of Georgia to head a subcommittee to bridge the gap between various proposals. The subcommittee's efforts resulted in the Ramspeck compromise which Perkins felt "contained the bare essentials she could support."³⁵ The compromise retained the 40-cent minimum hourly wage and the 40-hour maximum workweek. It did not provide for an administrator as had the previous bill which had been voted back to the committee by the House. Instead, the compromise allowed for a five-member wage board which would be less powerful than those proposed by the Black-Connery bill.

Congress-the final round

The House Labor Committee voted down the Ramspeck compromise, but, by a 10-to-4 vote, approved an even more "barebones" bill presented by Norton. Her bill following the AFL proposal, provided for a 40-cent hourly minimum wage, replaced the wage boards proposed by the Ramspeck compromise with an administrator and advising commission, and allowed for procedures for investigation into certain cases.³⁶

A message from the voters. Again, the House Rules Committee (under Rep. John J. O'Connor of New York, whom Roosevelt called an "obstructionist" who "pickled" New Deal programs) prevented discussion of the bill on the House floor by a vote of 8 to 6.³⁷ The President then put his prestige on the line. On April 30, 1938, for the sixth time since taking office, he communicated with Congress over wages and hours through a letter to Mrs. Norton. He said he had no right whatsoever as President to criticize the rules but suggested as an ex-legislator and as a friend that "the whole membership of the legislative body should be given full and free opportunity to discuss [exceptional measures] which are of undoubted national importance because they relate to major policies of Government and affect the lives of millions of people." He avoided judgement of the bill but noted that the Rules Committee, by a narrow vote, had prevented 435 members from "discussing, amending, recommending, defeating or passing some kind of a bill." He concluded: "I still hope that the House as a whole can vote on a wage and hour bill. ...I hope that the democratic processes of legislation will continue."³⁸

Three days later, May 3, 1938, Congressman Claude Pepper won a resounding victory over anti-New Dealer J. Mark Wilcox in the Florida Senate primary. Wilcox had made New Deal programs the major issue and had labeled Pepper "Roosevelt rubber stamp."

Nothing impresses Congressmen more than election returns. The January and May victories of New Deal advocated in the South brought home to Southern Congressmen the message of how their constituents felt about fair labor standards. A petition to discharge the bill from the Rules Committee was placed on the desk of the Speaker of the House on May 6, at 12 noon. In 2 hours and 20 minutes, 218 members has signed it, and additional members were waiting in the aisles.³⁹

Braving the floor battle. Proponents of the wage-hour, child-labor bill pressed the attack. They continued to point to "horror stories." One Congressman quoted a magazine article entitled "All Work and No Pay" which told how, in a company that paid wages in scrip for use in the company store, pay envelopes contained nothing for a full week's work after the deduction of store charges.

The most bitter controversy raged over labor standards in the South. "There are in the State of Georgia," one Indiana Congressman declaimed, "canning factories working ... women 10 hours a day for \$4.50 a week. Can the canning factories of Indiana and Connecticut of New York continue to exist and meet such competitive labor costs?"⁴⁰ Southern Congressmen, in turn, challenged the Northern "monopolists" who hypocritically "loll on their tongues" words like "slave labor" and "sweat-shops" and support bills which sentence Southern industry to death. Some Southern employers told the Department of Labor that they could not live with a 25-cent-an-hour minimum wage. They would have to fire all their people, they said. Adapting a biblical quotation, Representative John McClellan of Arkansas rhetorically asked, "What profiteth the laborer of the South if he gain the enactment of a wage and hour law - 40 cents per hour and 40 hours per week - if he then lose the opportunity to work?"⁴¹

Partly because of Southern protests, provisions of the act were altered so that the minimum wage was reduced to 25 cents an hour for the first year of the act. Southerners gained additional concessions, such as a requirement that wage administrators consider lower costs of living and higher freight rates in the South before recommending wages above the minimum.

Though the revised bill had reduced substantially the administrative machinery provided for in earlier drafts, several Congressmen singled out Secretary Perkins for personal attack. One Perkins detractor noted that, although Congress had "overwhelmingly rebelled" against delegation of power,

We delegate to Madam Perkins the authority and power to 'issue an order declaring such industry to be an industry affecting commerce.' Now section 9 is ...one of the 'snooping' sections of the bill. Imagine the feeling of the merchant or the industry up in your district when a 'designated representative'...of Mme.

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Perkins' enter and inspect such places and such records'...I know no previous law going quite so far.⁴²

A resulting compromise modified the authority of the administrator in the Department of Labor.

The bill was voted upon May 24, 1938, with a 314-to-97 majority. After the House had passed the bill, the Senate-House Conference Committee made still more changes to reconcile differences. During the legislative battles over fair labor standards, members of Congress had proposed 72 amendments. Almost every change sought exemptions, narrowed coverage, lowered standards, weakened administration, limited investigation, or in some other way worked to weaken the bill.

The surviving proposal as approved by the conference committee finally passed the House on June 13, 1938, by a vote of 291 to 89. Shortly there-after, the Senate approved it without a record of the votes. Congress then sent the bill to the President. On June 25, 1938, the President signed the Fair Labor Standards Act to become effective on October 24, 1938.
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⁴²At the time this article was first published, Jonathan Grossman was the historian of the U.S. Department of Labor. Henry Guzda, formally of the historian's office, provided research assistance. This is a reprint from *Monthly Labor Review* of June 1978.

<1> *The New York Times*, June 27, 28, 1938; Harry S. Kantor, "Two Decades of the Fair Labor Standards Act," *Monthly Labor Review*, October 1958, pp. 1097-98.

<2> Franklin Roosevelt, *Public Papers and Address*, Vol. VII (New York, Random House, 1937), p.392.

<3> *Hammer v. Dagenhart*, 247 U.S. 251 (1918); *Adkins v. Children's Hospital*, 262 U.S. 525 (1923).

<4> The proper initials for the Law are NIRA. The initials for the National Recovery Administration created by the act as NRA. Following a common practice, the initials NRA are used here for both the law and the administration.

<5> Roosevelt, *Public Papers*, II (June 16, 1933), p.246.

<6> Roosevelt, *Public Papers*, II (July 24 and 27, 1933), pp. 301, 308-12.

<7> Roosevelt, *Public Papers*, II (July 9 and 24, 1933), pp. 275, 99; Frances Perkins, *The Roosevelt I Knew* (New York, Viking Press, 1946); pp. 204-08.

<8> *Schechter Corp. v. United States*, 295 U.S. 495(1935).

<9> Arthur M. Schlesinger, *The Age of Roosevelt* (Boston, Mass., Houghton-Mifflin Co., 1960), pp. 277-83; Roosevelt, *Public Papers*, IV (May 29, 1935), pp. 198-221; John W. Chambers, "The Big Switch: Justice Roberts and the Minimum-Wage Cases," *Labor History*, Vol. X, Winter 1969, pp.49-52.

<10> *Morehead v. Tipaldo*, 298 U.S. 587 (1936).

<11> Ironically, like the four Schechter brothers in the NRA case who went broke, Tipaldo also suffered financially. "My customers wouldn't give my drivers their wash," he lamented. Columnist Heywood Brown quipped. "Those who live by the chisel will die under the hammer." Chambers, "Big Switch," p. 57.

<12> Chambers, "Big Switch," pp. 54-58.

<13> Roosevelt, *Public Papers*, VI (Feb. 5 1937), pp. 51-59; VI (Mar. 4, 1937), p. 116; George Martin, *Madam Secretary Frances Perkins*(Boston Mass., Houghton-Mifflin Co., 1976), pp. 388-90.

<14> *West Coast Hotel Company v. Parrish*, 300 U.S. 379 (1937).

<15> Chambers, "Big Switch," pp. 44, 73; Robert P. Ingalls, "New York and the Minimum-Wage Movement, 1933-1937," *Labor History*, Vol. XV, Spring 1974, pp. 191-97.

<16> Perkins, Roosevelt, p. 152

<17> Perkins, Roosevelt, pp. 248-49, 252-53; Roosevelt, *Public Papers*, V(Jan. 3, 1936), p. 15; Jonathan Grossman with Gerard D. Reilly, Solicitor of Labor, Oct. 22, 1965.

<18> *25th Annual Report, Fiscal Year 1937* (U.S. Department of Labor), pp. 34-35; Herbert C. Morton, *Public Contracts and Private Wages: Experience Under the Walsh-Healey Act*(Washington, D.C., The Brookings Institution,

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1965), pp. 7-10; *The Department of Labor* (New York, Praeger Publishers, 1973), pp. 19-20, 211-13.

<19> Letter from Thomas Corcoran to Jonathan Grossman, Ap. 10, 1978.

<20> Perkins, *Roosevelt*, pp. 254-57; Roosevelt, *Public Papers*, V(Jan. 7, 1937); Jeremy P. Felt, "The Child Labor Provisions of the Fair Labor Standards Act," *Labor History*, Vol. XI, Fall 1970, pp. 474-75; Interview, Jonathan Grossman with Gerard D. Reilly, Solicitor of Labor, Oct. 22, 1965.

<21> Roosevelt, *Public Papers*, VI(May 24, 1937), pp. 209-14.

<22> *Record of the Discussion before the U.S. Congress on the FLSA of 1938*, 1.(U.S. Department of Labor, Bureau of Labor Statistics)(Washington, GAO, 1938), pp.20-21.

<23> *Hearings to Provide for the Establishment of Fair Labor Standards in Employments in and Affecting Interstate Commerce and for Other Purposes*, Vol. V.(1937). (U.S. Congress, Joint Committee on Education and Labor, 75th Cong., 1st sess), pp. 383-84.

<24> Isador Lubin, Testimony, *Hearings to Provide Fair Labor Standards*(1937), pp.309-10.

<25> *Record of Discussion of FLSA of 1938*, I(U.S. Department of Labor), pp.38, 115, 124.

<26>Perkins, *Roosevelt*, pp. 257-59; Paul Douglas and Joseph Hackman, "Fair Labor Standards Act, I," *Political Science Quarterly* Vol. LIII, December 1938, pp. 500-03, 508; *The New York Times*, Aug. 18, 1937.

<27> Roosevelt, *Public Papers*, VI (Oct. 4, 1937, Oct. 12, 1937, Nov. 15, 1937), pp. 404, 428-29, 496

<28> Mrs.Norton replaced Representative Connery as chair of the House Labor Committee after his death.

<29> *Record of Discussion of FLSA of 1938*. (U.S. Department of Labor), (1937), p. 415.

<30> *The New York Times*, Dec. 13, 1937; Douglas and Hackman, "FLSA," pp.508-11.

<31> Perkins, *Roosevelt*, p. 261.

<32>Roosevelt, *Public Papers*, VII (Jan. 3, 1938),p.6.

<33> *The New York Times*, Jan. 5, Feb. 16, May 9, 1938.

<34> Perkins, *Roosevelt*, p. 261.

<35> Roosevelt, *public Papers*, VII (Aug. 6, 1938). pp. 488-89; Perking, *Roosevelt*, pp. 262-63.

<36> Roosevelt, *Public Papers*, VI(May 24, 1937), pp. 215; Perking, *Roosevelt* pp. 262-63.

<37>Perking, *Roosevelt*, p.263; Roosevelt, *Public Papers*, VII (Aug. 16, 1938), p.489.

<38> Roosevelt, *Public Papers*, VII(Apr. 30, 1938), pp.333-34.




<39>*The New York Times*, May 6, 7, 1938; Perking, *Roosevelt*, pp.263-64 (Perking makes an error in the date of Lister Hill's primary victory); Jonathan Grossman and James Anderson, interview with Clara Beyer, Nov. 5, 1965.

<40> *Record of Discussion of FLSA of 1938*. V (U.S. Department of Labor), p. 873.

<41> "Interview with Clara Beyer, No. 25, 1965; *U.S. Record of Discussion of FLSA of 1938*. V (U.S. Department of Labor), pp. 873, 915, 929.

<42> *Record of Discussion of FLSA of 1938*. V (U.S. Department of Labor), p. 902.

<43>Roosevelt, *Public Papers*, VI (May 24, 1937), pp. 214-16.

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HISTORY OF CHANGES TO THE FLSA

Adapted from *Minimum Wage and Maximum Hours Standards Under the Fair Labor Standards Act, 1988 Report to the Congress under Section 4(d)(1) of the FLSA.*

Early in the administration of the FLSA, it became apparent that application of the statutory minimum wage was likely to produce undesirable effects upon the economies of Puerto Rico and the Virgin Islands if applied to all of their covered industries. Consequently on June 26, 1940, an amendment was enacted prescribing the establishment of special industry committees to determine, and issue through wage orders, the minimum wage levels applicable in Puerto Rico and the Virgin Islands. The rates established by industry committees could be less than the statutory rates applicable elsewhere in the United States.

On May 14, 1947, the FLSA was amended by the Portal-to-Portal Act. This legislation was significant because it resolved some issues as to what constitutes compensable hours worked under FLSA. Matters involving underground travel in coal mines and make-ready practices in factories had been decided earlier in a number of U.S. Supreme Court decisions.

Subsequent amendments to the FLSA have extended the law's coverage to additional employees and raised the level of the minimum wage. In 1949, the minimum wage was raised from 40 cents an hour to 75 cents an hour for all workers and minimum wage coverage was expanded to include workers in the air transport industry. The 1949 amendments also eliminated industry committees except in Puerto Rico and the Virgin Islands. A specific section was added granting the Wage and Hour Administrator in the U.S. Department of Labor authorization to control the incidence of exploitative industrial homework. A 1955 amendment increased the minimum wage to \$1.00 an hour with no changes in coverage.

The 1961 amendments greatly expanded the FLSA's scope in the retail trade sector and increased the minimum for previously covered workers to \$1.15 an hour effective September 1961 and to \$1.25 an hour in September 1963. The minimum for workers newly subject to the Act was set at \$1.00 an hour effective September 1961, \$1.15 an hour in September 1964, and \$1.25 an hour in September 1965. Retail and service establishments were allowed to employ full-time students at wages of no more than 15 percent below the minimum with proper certification from the Department of Labor. The amendments extended coverage to employees of retail trade enterprises with sales exceeding \$1 million annually, although individual establishments within those covered enterprises were exempt if their annual sales fell below \$250,000. The concept of enterprise coverage was introduced by the 1961 amendments. Those amendments extended coverage in the retail trade industry from an established 250,000 workers to 2.2 million.

Congress further broadened coverage with amendments in 1966 by lowering the enterprise sales volume test to \$500,000, effective February 1967, with a further cut to \$250,000 effective February 1969. The 1966 amendments also extended coverage to public schools, nursing homes, laundries, and the entire construction industry. Farms were subject to coverage for the first time if their employment reached 500 or more man-days of labor in the previous year's peak quarter. The minimum wage went to \$1.00 an hour effective February 1967 for newly covered non-farm workers, \$1.15 in February 1968, \$1.30 in February 1969, \$1.45 in February 1970, and \$1.60 in February 1971. Increases for newly subject farm workers stopped at \$1.30. The 1966 amendments extended the full-time student certification program to covered agricultural employers and to institutions of higher learning.

In 1974, Congress included under the FLSA all nonsupervisory employees of Federal, State, and local governments and many domestic workers. (Subsequently, in 1976, in *National League of Cities v. Usery*, the Supreme Court held that the minimum wage and overtime provisions of the FLSA could not constitutionally apply to State and local government employees engaged in traditional government functions.) The minimum wage increased to \$2.00 an hour in 1974, \$2.10 in 1975, and \$2.30 in 1976 for all except farm workers, whose minimum initially rose to \$1.60. Parity with nonfarm workers was reached at \$2.30 with the 1977 amendments.

The 1977 amendments, by eliminating the separate lower minimum for large agricultural employers (although retaining the over-time exemption), set a new uniform wage schedule for all covered workers. The minimum went to \$2.65 an hour in January 1978, \$2.90 in January 1979, \$3.10 in January 1980, and \$3.35 in January 1981. The amendments eased the provisions for establishments permitted to employ students at the lower wage rate and allowed special waivers for children 10-to-11 years old to work in agriculture. The overtime exemption for employees in hotels, motels, and restaurants was eliminated. To allow for the effects of inflation, the \$250,000 dollar volume of sales coverage test for retail trade and service enterprises was increased in stages to \$362,500 after December 31, 1981.

As a result of the Supreme Court's 1985 decision in *Garcia v. San Antonio Metropolitan Transit Authority et al.*,




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Congress passed amendments changing the application of FLSA to public sector employees. Specifically, these amendments permit State and local governments to compensate their employees for overtime hours worked with compensatory time-off in lieu of overtime pay, at a rate of 1 1/2 hours for each hour of overtime worked.

Finally, the 1989 amendments established a single annual dollar volume test of \$500,000 for enterprise coverage of both retail and non-retail businesses. At the same time, the amendments eliminated the minimum wage and overtime pay exemption for small retail firms. Thus, employees of small retail businesses became subject to minimum wage and overtime pay in any workweek in which they engage in commerce or the production of goods for commerce. The minimum wage was raised to \$3.80 an hour beginning April 1, 1990, and to \$4.25 an hour beginning April 1, 1991. The amendments also established a training wage provision (at 85% of the minimum wage, but not less than \$3.35 an hour) for employees under the age of twenty, a provision that expired in 1993. Finally, the amendments established an overtime exception for time spent by employees in remedial education and civil money penalties for willful or repeated violations of the minimum wage or overtime pay requirements of the law¹.

¹ In 1990, the Congress enacted legislation under which the Department of Labor issued regulations that provide a special overtime exemption for certain professionals in the computer field who receive not less than 6 and one-half times the applicable minimum wage.

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ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE MEMBERS:

REPRESENTATIVE NORMAN ROKEBERG, CHAIRMAN
REPRESENTATIVE JOHN COWDERY, VICE CHAIRMAN
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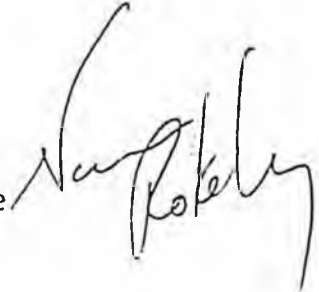
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Labor and Commerce Committee

MEMORANDUM

TO: The Honorable Pete Kott
Chairman, House Rules Committee

FROM: Representative Norman Rokeberg
Chairman, House Labor & Commerce Committee 

DATE: April 16, 1997

RE: House Bill 237

Thank you for scheduling House Bill 237 for floor action in the near future.

I am attaching the following information for the floor packets:

- a. Sponsor Statement
- b. April 10, 1997 letter from Jack Amon, Marx Bros Cafe
- c. State Wage Laws as of April 1, 1997
- d. Alaska Statutes 23.10.065 and 23.10.070
- e. Tip Credit Graphs and Spreadsheet
- f. April 2, 1997 letter from Fred Rosenberg of Restaurant Management, Inc.

Thank you for your assistance.

ALASKA STATE LEGISLATURE

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Labor and Commerce Committee

SPONSOR STATEMENT HOUSE BILL 237

House Bill 237 - An Act relating to payment of minimum wages to tipped employees; and providing for an effective date.

House Bill 237 will allow employers to apply a certain amount of tips that tipped employees receive toward the state's minimum wage requirement. It is important to remember that this bill provides that:

- a tipped employee will never earn less than the minimum wage.

Forty-three states and the federal statute allow tip credits. On September 1, 1997, an additional \$0.40 per hour will be added to the \$0.50 increase of October 1, 1996 for a total of an 18.9% raise in the minimum wage in eleven months. Adoption of HB 237 will ensure the continued viability of a large number of small Alaskan businesses.

Currently the federal minimum wage is \$4.75 per hour and Alaska's minimum wage is \$5.25 per hour. This bill provides that any difference between \$5.25 an hour and the Alaska minimum wage will be a tip credit. For example, this fall, the federal minimum wage goes to \$5.15 per hour and Alaska's minimum wage goes to \$5.65 per hour. The 40 cents difference will be the tip credit allowed under this bill. Therefore, a tipped employee would be paid \$5.25 in cash wages with a credit of \$.40 in tips received being applied toward the remaining minimum wage requirement of \$5.65.

If a tipped employee, for example, earns \$10.00 an hour in tips, the employer would be required to pay that employee cash wages of \$5.25, for a total of \$15.25 per hour. If a tipped employee receives no tips, then the employer would be required to pay that employee the cash wage of \$5.25 and the difference between that and the prevailing minimum wage. It is important to realize that an employee will never earn less than the minimum wage.

Your support of this bill would be appreciated.

STATE WAGE LAWS

As of April 1, 1997

The federal minimum wage law is known as the Fair Labor Standards Act (FLSA) of 1938. The interplay between federal and state minimum wage laws is complex, and so you should seek the advice of your attorney as to specific questions about your state law.

Generally, the FLSA covers employees in enterprises with annual sales of \$500,000 or more and any employee who works in interstate commerce regardless of the level of his or her employer's annual sales.

If you meet either of the above criteria you are required to pay the federal minimum wage and federal cash wage to your employees, unless your state minimum wage or state cash wage is higher.

Thus, if a state has a minimum wage of \$5.00 per hour (i.e. higher than the current federal minimum wage of \$4.75) the employees in that state subject to the federal law must be paid \$5.00 per hour.

	MINIMUM WAGE	TIP CREDIT	CASH WAGE
FEDERAL	\$4.75 per hour	\$2.62	\$2.13 per hour
ALABAMA	No applicable law	No applicable law	
ALASKA	must be 50 cents above federal wage (\$5.25)	None	\$5.25 per hour
ARIZONA	No applicable law	No applicable law	
ARKANSAS	\$4.25 per hour, exempts those covered by FLSA ¹	50%	\$2.13 per hour
CALIFORNIA	tied to federal wage (\$5.00) ²	None	\$5.00 per hour
COLORADO	\$4.75 per hour	\$2.62	\$2.13 per hour
CONNECTICUT	must be .5% above federal wage (\$4.77)	23%	\$3.67 per hour
DELAWARE	tied to fed if higher than state wage (\$5.00) ³	same percentage as federal	\$2.23 per hour

	MINIMUM WAGE	TIP CREDIT	CASH WAGE
DISTRICT OF COLUMBIA	must be \$1 above federal wage (\$5.75)	55%	\$2.59 per hour
FLORIDA	No applicable law	No applicable law	
GEORGIA	\$5.25 per hour, exempts those covered by FLSA	No applicable law	
HAWAII	\$5.25 per hour	20¢	\$5.05 per hour
IDAHO	\$4.75 per hour ⁴	33%	\$3.19 per hour
ILLINOIS	tied to federal wage (\$4.75)	40%	\$2.85 per hour
INDIANA	\$3.35 per hour, exempts those covered by FLSA	40%	\$2.01 per hour
IOWA	tied to fed if higher than state wage (\$4.75)	40%	\$2.85 per hour
KANSAS	\$2.65 per hour, exempts those covered by FLSA	40%	\$1.59 per hour
KENTUCKY	\$4.25 per hour	50%	\$2.13 per hour
LOUISIANA	No applicable law	No applicable law	
MAINE	tied to federal wage up to \$5.15 (\$4.75)	50%	\$2.38 per hour
MARYLAND	tied to federal wage (\$4.75)	50%	\$2.38 per hour
MASSACHUSETTS	\$5.25 per hour ⁵	50%	\$2.63 per hour
MICHIGAN	\$3.35 per hour ⁴	25%	\$2.65 per hour
MINNESOTA	\$4.25 per hour ⁷	None	\$4.25 per hour
MISSISSIPPI	No applicable law	No applicable law	
MISSOURI	tied to fed if higher than state wage (\$4.75), exempts those covered by FLSA	50%	\$2.38 per hour
MONTANA	tied to federal wage if	None	\$4.75 per hour

	MINIMUM WAGE	TIP CREDIT	CASH WAGE
	grossing \$110,000 or more (\$4.75)		
NEBRASKA	\$4.25 per hour	\$2.12	\$2.13 per hour
NEVADA	tied to federal wage (\$4.75)	None	\$4.75 per hour
NEW HAMPSHIRE	tied to federal wage (\$4.75)	50%	\$2.38 per hour
NEW JERSEY	\$5.05 per hour	100%	\$0.00 per hour ⁸
NEW MEXICO	\$4.25 per hour	50%	\$2.13 per hour
NEW YORK	\$4.25 per hour	Tip credit varies ⁹	
NORTH CAROLINA	\$4.25 per hour, exempts those covered by FLSA	50%	\$2.13 per hour
NORTH DAKOTA	\$4.75 per hour	33%	\$3.18 per hour
OHIO	\$4.25 per hour ¹³	50% ¹⁰	\$2.13 per hour ¹⁰
OKLAHOMA	tied to federal wage (\$4.75), exempts those covered by FLSA	tied to FLSA (\$2.62)	\$2.13 per hour
OREGON	\$5.50 per hour ¹¹	None	\$5.50 per hour
PENNSYLVANIA	tied to federal wage (\$4.75)	45%	\$2.61 per hour
RHODE ISLAND	\$5.15 per hour ¹²	50%	\$2.89 per hour
SOUTH CAROLINA	No applicable law	No applicable law	
SOUTH DAKOTA	\$4.25 per hour ¹³	50%	\$2.13 per hour
TENNESSEE	No applicable law	No applicable law	
TEXAS	\$3.35 per hour, exempts those covered by FLSA	50%	\$1.68 per hour
UTAH	\$4.25 per hour, exempts those covered by FLSA	50%	\$2.13 per hour
VERMONT	tied to fed if higher than the state wage	47%	\$2.65 per hour

	MINIMUM WAGE	TIP CREDIT	CASH WAGE
	(\$.00) ¹⁴		
VIRGINIA	tied to federal wage, exempts those covered by FLSA (\$4.75)	no applicable law (federal guidelines recommended)	\$2.13 per hour
WASHINGTON	\$4.90 per hour	None	\$4.90 per hour
WEST VIRGINIA	\$4.25 per hour, exempts those covered by FLSA	20%	\$3.40 per hour
WISCONSIN	\$4.75 per hour	\$2.42	\$2.33 per hour
WYOMING	\$1.60 per hour	50%	\$1.80 per hour

Information provided by the National Restaurant Association. For more information call the State Relations and Political Outreach Division at (800) 241-3422.

1. Arkansas's minimum wage will increase to \$4.75 on 7/1/97 and to \$5.15 on 10/1/97, but the tip credit will remain at 50 percent so the cash wage will be \$2.58 and \$2.58.
2. Due to a ballot initiative that passed 11/5/96 California's minimum wage increased to \$5.00 3/1/97 and will go to \$5.75 on 3/1/98. (On September 1, 1997, the minimum wage will increase to \$5.15 per hour, reflecting the federal wage increase.)
3. Delaware's minimum wage increased to \$5.00 on 1/1/97.
4. Idaho's minimum wage increased to \$4.75 on 4/1/97, with a tip credit increase to 33 percent, effectively freezing the cash wage at \$3.19. On 9/1/97, the wage will increase to \$5.15 with a 35 percent tip credit.
5. Massachusetts' minimum wage increased to \$5.25 on 1/1/97.
6. Michigan's cash wage rose to \$2.65 on 3/12/97. The minimum wage will increase to \$4.75 on 5/1/97 and to \$5.15 on 9/1/97.
7. For employers grossing more than \$362,500/year, minimum wage is \$4.25 per hour. For employers grossing less than \$362,500/year, minimum wage is \$4.00 per hour.
8. Under the New Jersey statute tips are defined as wages and presumably a 100% tip credit would be permitted if the employee was making at least \$5.05 an hour in tips. The New Jersey Department of Labor, Wage and Hour Division, issued a recommendation that a cash wage of \$3.03 be paid. However, the New Jersey Restaurant Association successfully challenged the recommendation in court on the basis that the recommendation was in conflict with the statute. However, in order to comply with federal law, employers should be paying a cash wage of \$2.13.
9. A 95¢ allowance may be taken if tips average between 95¢ and \$1.35 per hour. A \$1.35 allowance may be taken if tip average is \$1.35 or more.
10. Businesses grossing under \$500,000 per year may pay a minimum wage of \$3.35/hour. Businesses

grossing under \$150,000 per year may pay a minimum wage of \$2.80/hour. Also, for businesses grossing under \$500,000 per year, tipped employees may be paid \$2.01 per hour. For businesses grossing over \$500,000 per year, tipped employees may be paid \$2.13 per hour.

11. Due to a ballot initiative that passed 11/5/96, Oregon's minimum wage increased to \$5.50 on 1/1/97. It will increase to \$6.00 1/1/98 and then to \$6.50 on 1/1/99.
12. Rhode Island's minimum wage increased to \$5.15 on 1/1/97. The state tip credit also increased to 50 percent, but the cash wage can't fall below \$2.89.
13. South Dakota's minimum wage will increase to \$4.75 on 4/1/97 and then to \$5.15, but the cash wage is frozen at \$2.13.
14. Vermont's minimum wage increased to \$5.00 1/1/97 and \$5.15 1/1/98. The tip credit increased to 47 percent with a cash wage of \$2.65 and will increase to 48 percent with a cash wage of \$2.68 after 12/31/97.

04/14/97

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

15:41:05

PARTICIPANT LIST (ALL PARTICIPANTS)

BY:ANC

TCN:70608

SCHEDULED FOR:04/14/97 15:15 TO 17:15

FOR:ANC

PUBLIC HEARING

HOUSE LABOR & COMMERCE

LOCATION:ANCHORAGE

HB 217	RON	COWAN	DHSS/AFL&C	TESTIFY
HB 217	PAT	DOOLEY		TESTIFY
HB 217	MARY	WEISS	<i>self</i> <i>Lillian mother pass</i>	TESTIFY
HB 237	THERESA	PEREZ		TESTIFY
HB 237	ROBERT	GILL		TESTIFY
HB 237	ANGELINA	CHRISTIANSSEN		TESTIFY
HB 237	FRED	ROSENBERG	RED ROBIN	TESTIFY



Official Business

COMMITTEE:

HOUSE LABOR AND COMMERCE

DATE: April 14, 1997

SIGN-IN

Subject of meeting:

HB 297 - MINIMUM WAGE FOR TIPPED EMPLOYEES

PLEASE PRINT!

NAME ADDRESS (MAILING) & (ZIP) PHONE REPRESENTING DO YOU WANT TO TESTIFY?

William J Cullinane	455 S. FRANKLIN	586 2050	Summit RESTAURANT Inn @ the WASEGAWA	YES
Jack Anon				Yes
Triva Johnson				Yes
Chris Anderson				Yes
Dwight PERKINS		465-2700	DEPT OF LABOR	yes



APR 17 1997

3400 Spenard Road, Suite #9 • Anchorage, Alaska 99503 • Phone (907) 274-8133 • Fax (907) 274-8640
Toll Free In Alaska 1-800-478-2427

April 17, 1997

The Honorable Norman Rokeberg
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Representative Rokeberg,

The Anchorage Restaurant and Beverage Association (ARBA) completely supports the tip credit legislation, HB 237.

All Anchorage restaurant operators with tipped employees will benefit greatly with the passage of HB 237. The recent and future increase in the federal minimum wage creates additional operation cost for Anchorage restaurants. The passage of HB 237 will help ensure lower operation cost and a prosperous future for the Anchorage restaurant industry.

We appreciate your support and consideration of this vital legislation.

Sincerely,

Mary Beth Whitehurst
Interim Director
CHARR

Tip Credit Legislation – Pros and Cons

Pros

- The bill guarantees that tipped employees will make at least the minimum wage.
- The bill does not decrease the wage of any employee. The amendments do not undermine the intent of the minimum wage. They continue to ensure that every hourly employee attains, at the very least, a minimum level of compensation.
- The bill recognizes through a tip credit, the burden of employers to pay FICA and other taxes on tips as well as on cash wages.
- The bill recognizes that tips are part of compensation for tipped employees -- with tips often exceeding \$10 an hour -- and that a minimum wage increase is not intended to raise the compensation of employees already making \$10 an hour or more.
- Proponents maintain that the minimum wage should be increased to \$5.15 to better provide a "living wage" for minimum wage employees. However, tipped employees already make far more than minimum wage, anywhere from \$8 per hour to \$16 per hour and more, clearly exceeding the proposed increase.
- Congress first recognized the need for equity in providing a tip credit to employers during the Johnson Administration – it is just as valid to have a tip credit today as it was then.
- Employers contribute to the ability of tipped employees to earn more in tips through training, uniforms, good food and ambience.
- Tipped employees are frequently the only ones paid minimum wage in a restaurant. With tips, they earn far in excess of the minimum wage. Increasing their wage forces employers to reduce hours and shifts for all employees including non-tipped employees.

Cons

- The tip credit would exclude more than half of those working for minimum wage from receiving an increase.

Response: [The only employees who are excluded are those who already receive total compensation that is equal to or greater than the new minimum wage – we're talking about employees who make up to \$16 per hour and more. The language guarantees that these employees will receive total compensation of at least the minimum wage.]

- The language would prevent tipped minimum wage employees from ever benefiting from a minimum wage increase.

Response: [The language assures that tipped employees will always make at least the minimum wage, though most, if not all, will make considerably more. As menu prices increase following inflation, tipped employees will see an increase in tips as a percentage of the increased menu prices.]

- The bill is one more example of the federal government usurping states rights.

Response: [Federal preemption is consistent with the federal role in mandating minimum wage standards for states — a role that was intended to provide a national standard that would be consistent in every state. It is necessary to assure that the minimum wage law accomplishes what it is intended to do, which is to address the minimum compensation an employee should receive. It is also consistent with the federal role in mandating that employers pay FICA and unemployment taxes on employees' tips.]

Questions and Answers

If the federal minimum wage increases, how much of the increase will apply to tip credit if these amendments pass?

All of it. The entire minimum wage increase would apply to a tip credit as long as the sum of the cash wage and tips is equal to or greater than the new minimum wage.

Would the cash wage for a tipped employee increase if minimum wage increases?

No. All of the increase would be applied to the tip credit since they already make far more than minimum wage when you factor in their tips.

Which states benefit from these amendments?

All fifty states and the District of Columbia would benefit because any increase in minimum wage will be treated as tip credit, regardless of state law.

What happens to the tip credit if the state minimum wage is increased to an amount greater than the federal minimum wage?

If these amendments pass, any increase in either the state or federal minimum wage would be treated as a tip credit for tipped employees.

If my state already has a tip credit, will these amendments cause me to lose my current tip credit?

No. These amendments would set the cash wage for tipped employees at its current level, and would only allow your tip credit to increase from where it is now. This means that your state would not be allowed to ever reduce or eliminate the tip credit you have today.

Under these amendments, can the state legislature change the tip credit provided by federal law?

No. The second amendment we support would cause the federal law to preempt any state or local laws regarding tip credit.

If the second amendment is not enacted, will the cash wage locked in by the first amendment remain locked-in if a state increases its minimum wage?

This is uncertain because state enforcement agencies may construe the Fair Labor Standards Act to allow a more beneficial state law to apply to tipped employees. The second amendment is critical for clarity.