

**ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672**

**9617 SENATE LABOR & COMMERCE**

# *Helmbrecht Dental*

MICHAEL J. HELMBRECHT, D.D.S.

421 Third Street Fairbanks, Alaska 99701

(907) 456-1237 FAX (907) 452-4778

February 23, 1998

Senator Robin Taylor  
State Capital  
Juneau, AK 99801

Dear Senator Taylor,

Once again I want to thank you for affording me the opportunity to respond to the Department's claims regarding dental x-rays.

This time, however, I am in agreement with most of the information they sent you. The body of scientific literature we have today concerning dental x-rays seems to agree that there could be a cancer risk on the order of one in a million associated with a full series of dental x-rays just as I reported to you in my last letter to you. It should be pointed out, however, that there has never been a case of cancer diagnosed that could be attributed to dental x-rays. Let me explain:

#### Background Information:

Cancer was not regarded as a population risk from sublethal radiation doses until excess leukemia began to appear in Japanese war survivors in the late 1940's. Since then, epidemiologic studies have shown excess lung cancers in uranium miners. Numerous studies since have shown increased cancers in populations using very high therapeutic doses of radiation to treat various anomalies in the late 1940's and 1950's. Some of these therapeutic modalities required the patient to endure up to 400 treatments with extremely high doses of radiation.

All of the studies of cancer risk from small (diagnostic) doses of radiation have had to extrapolate from the data acquired on the high dose cases since there has never been any study which could show a link between diagnostic doses and cancer. Obviously there are many problems in the estimation of cancer risk from small radiation doses using the extrapolation technique. Consider for a moment, a study of liver cirrhosis on Second Avenue (Fourth Avenue if you live in Anchorage). Can we accurately extrapolate to show the risk of liver cirrhosis to the person who has one glass of champagne a year on New Years Eve from data showing the incidence of liver cirrhosis in a population that drinks to excess on a daily basis?

Noone has yet proven we can, so to be on the safe side lets assume the cancer risk from dental x-rays to be one in a million even though we get more radiation from traveling in an airplane for 6000 miles (JADA, vol. 105).

As I've mentioned in previous correspondence, the risk of getting cancer from dental x-rays would then be the same as the risk of dying in an accident if you spent six minutes in a canoe (JADA, vol, 105). What dentistry has done in acknowledging this potential risk is to put outriggers on the canoe. Through the various safety measures (eg. collumnation, lead aprons, high speed film, filtration, use of film holders, etc...) we have minimized this risk.

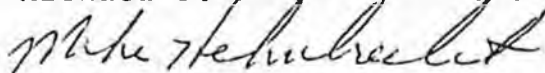
As the Department's article states, "the risk is small because of the efforts by the dental community, manufactures, and state radiation control programs."

S.B. 160 would not change any of this. What it would do is change the way the state is administering its control program in that the Board of Dental Examiners would be in charge. Through this change dentistry would be held to routine and predictable inspections and calibrations of equipment, not just the hit and miss "inspections" as they are done now. This would then relieve the Department of over 50% of their case load and give them the opportunity to concentrate their inspections on the more potentially hazardous machines used in medicine, veterinary, chiropractic, and industry without any budget increases.

I hope this letter will clarify not only the risks, but what we are doing to lessen them even more. Please contact me if there are any further questions. I am enclosing several up-to-date articles from the current literature available on dental radiation risks.

Sincerely,

Michael J. Helmbrecht D.D.S



enclosure/MH/bb

*Helmbrecht Dental*

MICHAEL J. HELMBRECHT, D.D.S.

421 Third Street Fairbanks, Alaska 99701

(907) 456-1237 FAX (907) 452-4778

March 6, 1997

Senator Robin Taylor  
State Capitol  
Juneau, Alaska 99801-1182

Dear Senator Taylor,

I have received a copy of the letter sent to your office by Dr. Peter Nakamura of the Department of Health and Social Services. I am certainly grateful for this opportunity to reply.

I firmly believe we can modernize x-ray inspection techniques to reflect the current technology used in x-ray equipment and film processing while maintaining the same high standards for public safety that the dentists in this state have always had. At the same time we can cut the unneeded expense and bureaucracy that has been a burr in the saddle of dentistry since inspections began in 1988.

The following text dissects each of Dr. Nakamura's paragraphs to point out the ambiguities in his claims which may lead the uninformed to the wrong conclusion.

Paragraph #1

In the first paragraph of Dr. Nakamura's letter he has made an attempt to demonstrate that Alaska's x-ray inspection fees are commensurate with other states in the Northwest. Each of these figures he sites is either wrong or misleading.

Here is the correct breakdown:

1) ALASKA:

As we know, the fee we pay in Alaska is \$50.00/x-ray source/year. To compare accurately, lets see what our office with eleven x-ray sources would pay in each state.

Currently we pay \$550.00 /year to Alaska

2) WASHINGTON:

Dr. Nakamura reported the fee accurately for Washington, however, he told you it was an annual fee when in fact it is a bi-annual fee. This in effect cuts the cost in half.

Cost for our office: \$255.00/year

3) OREGON:

Here Dr. Nakamura reports an 87.00/control panel/two years fee. Of course the layman would not distinguish between "control panel" and "x-ray source". In actuality one control panel can control up to four x-ray sources. Our office has three control panels. Most dental offices have one control panel.

Cost for our office: \$261.00/year

4) MONTANA:

Dr. Nakamura reports a \$100/tube/year fee for Montana. With a little checking, one finds that Montana has no routine inspection nor do they have an annual fee. They will inspect a newly installed x-ray head before it is put in service. The fee for this is a one-time fee of \$100.00.

Cost for our office: \$000.00/yr

I'd like to know where Dr. Nakamura is getting his data.

## Paragraph #2

This paragraph from Dr. Nakamura's letter basically deals with two different topics. The first is Ms. Coleman's educational qualifications. Dr. Nakamura states that Ms. Coleman exceeds the qualifications necessary for her job, but he falls short of giving us her qualifications. Recruitment Bulletin #122-94 for the State of Alaska lists minimum educational qualifications for a Radiological Health Specialist as: Bachelor's degree or the equivalent in radiological health, health physics, physics, chemistry, environmental science, or closely related field. The state would not provide us with Ms. Coleman's curriculum vitae, but we are reasonably sure she holds a degree in "environmental science". In checking with several universities, we found that this is a liberal arts degree with a curriculum emphasis in humanities. It should be noted that Ms. Coleman's predecessor, Syd Hydersdorff, is a radiological physicist. It certainly would be preferable to have an inspector who has a thorough scientific background in radiology, not one who has been educated in ravages of pollution and man's desecration of the earth. Its kind of like having the IRS prepare your taxes in that interpretation of regulations becomes a point of contention. Perhaps it would be advisable to make some changes in the minimum qualifications for the position of Radiological Health Specialist if we are to maintain state-sponsored x-ray inspections.

The second topic in paragraph #2 deals with Ms. Coleman's presentation to the Alaska Dental Society meeting in August (see enclosed minutes). Although she did not directly speak of an imminent fee increase, the minutes reflect the current planned expansion of her office to include a full-time inspector for the Anchorage area. Also, Ms. Coleman reported that there hasn't been a consistent pattern of inspection for the last six years since Dr. Hydersdorff left. Naturally the question becomes how does she plan on meeting her objectives without additional funding. The current fees provide her office with \$72,000 - \$75,000 per year and this supports Ms. Coleman, a second inspector, and a clerk. Instead of helping build another bureaucratic dynasty with their dental fees, I think the citizens of Alaska deserve a safer more predictable and efficient means of x-ray inspection.

## Paragraph #3

The third paragraph in Dr. Nakamura's letter deals with an x-ray inspection of our office in 1993. I mistakenly reported no inspection for at least ten years in an earlier letter. In fact an inspector visited while we were at a continuing education course in August of 1993. Our biomedical equipment technician, Dan Anderson, handled the "items of non-compliance" as stated in the September 10, 1993 report. Since Mr. Anderson couldn't find any "unattached chords" or "drifting tube heads" as the report indicated, he responded that no corrective measures could be taken. The matter was never brought to my attention and thus the inaccurate report in my first letter for which I apologize. It should be noted that the inspection described above cost my patients \$2750.00 if we assume one inspection every five years.

## Paragraph #4

This paragraph is misleading because it doesn't adequately define the term "overexposure". X-ray dose equivalents are measured in rems. Currently the federal government standards allow for an individual to receive 5 rems per year with no harmful effects. Most "overexposures" are measured in mrem (millirems). If one millirem is used to expose a film more than is necessary, then an "overexposure" has occurred. However, it would take more than 5000 of these millirems just to receive the dose equivalent allowed by the federal government. So we are talking about extremely small amounts of radiation here. In fact, the amount of x-radiation a patient receives for a full mouth series of x-rays (20 films) has been compared to the amount of x-radiation received by standing outside on a sunny day with ones shirt removed. According to the head design engineer at Gendex (the leading manufacture of dental x-ray equipment) the types of x-ray sources used in dental offices are incapable of emitting harmful doses of radiation. This is also according to the strict performance standards set by the FDA.

Also in this paragraph Dr. Nakamura lumped dental x-rays with medical x-rays. The graph he provided speaks only to medical x-rays. It should be noted that x-ray dosage for diagnosis is tiny compared to that used for therapeutics (eg: treating leukemia). In dentistry, we only use x-rays for diagnosis (very small doses).

Dr. Nakamura goes on to state that the over exposure potential in Alaska is "extreme" since we lack regulation requiring dentists to post proper x-ray technique guidelines in our offices. The State of Alaska already tests each dentist on their knowledge and skill in dentistry when we take the State Dental Board Examination. Since each participating dentist in this state have passed the exam, there should be no need to duplicate the function of the exam with further regulations and inspections. Proper technique in taking x-rays is the only way to get a good result so it is in our best interest as well as the patients to follow proper procedure. To date, not one instance of any adverse reaction to dental x-rays has been reported in the state of Alaska before or after x-ray inspection was began in 1986. In fact if there was a risk it would be to the dental office personnel who are around dental x-rays everyday. The National Council on Radiation Protection and Measurements (NSRP) currently recommends a maximum permissible dose equivalent from occupational sources of 5 rem per year as described earlier. When 231 dental personnel in 72 private offices were studied, a mean one month exposure of .01rem (range of .005 to .06 rem) was reported in the study. This means it would take approximately 100 to 5000 months to exceed the current annual 12 month federal standard of 5 rems if you worked in a dental office. It should be noted that this study was done before Alaska even had a dental inspection program. I remain curious as to the problem that the bureaucracy was trying to fix.

Clearly there is ample evidence of adverse effects of radiation in sufficient doses. There is at present no proof of such effects from doses employed in dental practice. Most experts now agree that there may be a small, difficult to quantify risk of cancer or genetic mutation from diagnostic exposure during work. Prudence dictates acceptance of this position until proof to the contrary is available. However, these risks are not "extreme" as Dr. Nakamura suggests. Recent analysis suggest that cancer risk to a patient from a dental radiographic examination is on the order of one in a million; the genetic risk is substantially less, about one in a billion. So lets look at other things people do in their daily life that have an order of magnitude of risk similar to a series of dental x-rays.

Table 8 - Situations in which a person has a one in a million risk of dying.\*

Risk situation	Cause of fatality
Being a man, age 50, for 26 minutes	Cardiovascular disease, cancer
Living in New York for two days	Air pollution
Living in Denver for two months	Cosmic radiation
Living in a stone building for two months	Natural radioactivity
Drinking water in Miami for one year	Carcinogens
Living near a polyvinyl chloride plant for ten years	Carcinogens
Riding in a canoe for six minutes	Accident
Riding a bicycle for ten miles	Accident
Riding in a car for 100 miles	Accident
Traveling by airplane for 1,000 miles	Accident
Traveling by airplane for 8,000 miles	Cosmic radiation
Working in a coal mine for one hour	Black lung
Working in a coal mine for three hours	Accident
Working in a typical factory for two days	Accident
Smoking cigarettes, 1.4	Cardiovascular disease, cancer
Drinking wine, 500 cc	Cholesterol
Drinking diet soft, 30 cans	Carcinogens

\*Data from Poche<sup>1</sup> and Wilcox.<sup>2</sup>

#### Paragraph #5

Here Dr. Nakamura is again less than accurate when he describes the maintenance capabilities of technicians typically hired to work on dental equipment. Dan Anderson is the biomedical equipment technician I referred to earlier. He runs a very small operation compared to most but he uses a \$3000.00 meter capable of 2% resolution on kV measurements that he uses on our x-ray equipment. According to Dan, he doesn't know of any equipment technician who doesn't have instrumentation for measuring kVP as Dr. Nakamura states.

Also, Dr. Nakamura leads one to believe that a dentist would intentionally alter his x-ray equipment to perform differently than the stringent federal requirements I eluded to earlier. This simply does not happen. There is not one case to support this claim. A dentist would have no reason to alter his x-ray equipment nor would most dentists be technically capable of altering x-ray equipment.

To address quality assurance for x-ray film processing, these days its all automatic with state-of the -art processors that maintain proper temperature and replenish solutions automatically. These processors on occasion require some service in which case dentists typically rely on a biomedical technician never an environmental scientist.

#### Paragraph 6

The following is a direct quote from the conclusion of Dr. Nakamura's letter which the author presents to justify bureaucratic fees for x-ray inspection. However I feel that it supports my case much better than it supports his.

"Presuming that one million x-ray procedures are performed each year in Alaska and as a result of state inspection each exposure is reduced by 10 millirem (.01 rem): then 10,000 rem are saved each year, the equivalent of one theoretical life. The question becomes how much is it worth to save a life? Fifty dollars per tube soon becomes a very insignificant investment."

Certainly you can understand dentistry's frustration when we are dealing with this type of reasoning. Basically what he is saying is that if 10,000 mosquito bites could kill you, and the average person receives six mosquito bites on an average evening in Alaska, then we should have a bureaucrat fly around the state picking one mosquito off of the 10,000 Alaskans to save one

"theoretical life." Also the fifty dollar cost he refers to translates into \$2750.00 per inspection for our office, or \$2,250.00 for the dental patients in Alaska to pay during my practicing career.

**CONCLUSION:**

There has got to be a reasonable solution to our problem - there is. Current federal guidelines require each x-ray machine be registered by the state in which it is used. If you recall, Montana has a one time \$100.00 on site inspection to register a newly installed x-ray machine. This would solve both dentistry's problem and governments problem and everyone would be satisfied.

If the concept of periodic inspections is too difficult for government to give up, a biomedical equipment technician could do it in a fraction of the time and cost every five years just as we redo our CPR training every two years. The technician is on site from time to time anyway. He could just fill out a form and mail it to a clerk.

If some folks in government still need "government inspection" there is a thermoluminescent device (TLD) which California mails to its dentists every 5 years. It is then exposed and returned to the government agency for inspection.

Respectfully Yours,

Michael J. Helmbrecht, DDS

To: Mel

**erroneous** Alaska state dental x-ray inspections are comparable in cost to those in the Pacific Northwest

**accurate** Alaska state dental x-ray inspections are much costlier than their counterparts in the Pacific Northwest

**erroneous** Medical and Dental x-rays account for 11% of of x-rays received by Alaskans

**accurate** Dental x-ray dosages are insignificant when compared to x-rays from other sources (eg. Cosmic)

**erroneous** The state needs to expand its x-ray inspection bureaucracy

**accurate** The state needs to rid itself of this highly unnecessary expense.

**erroneous** The state saves the equivalent of one " theoretical life" per year with x-ray inspections

**accurate** State dental x-ray inspections serve no purpose

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

P.O. BOX 110610  
JUNEAU, ALASKA 99811-0610  
PHONE: (907) 465-3090  
FAX: (907) 586-1877

February 4, 1997

The Honorable Robin Taylor  
Alaska State Legislature  
State Capitol, Room 30  
Juneau, AK 99801

Dear Senator Taylor:

I received a copy of the letter Michael Helmbrecht, DDS wrote to you regarding the Agency's x-ray inspection program. I am grateful for this opportunity to provide details about this program.

As Dr. Helmbrecht stated x-ray registration fees were raised in 1993. They were raised to be commiserate with the costs associated with inspecting x-ray facilities in Alaska. The fees are conservative considering the vast distances that must be traveled to conduct on site inspections in Alaska. By comparison, this is a sampling of the fees currently charged by other states:

- Washington charges \$89 to register plus \$90 for the first tube plus \$42 for each additional tube/yearly
- Oregon charges \$87 per control panel per two years
- Montana charges \$100 per tube/yearly
- California charges \$53.54 per tube/yearly

Enclosed is a copy of the qualifications required for those applying for positions in the radiological health series. Our current Radiological Health Specialist exceeds these qualifications and we are very fortunate to have her. I checked with Ms. Coleman regarding her presentation to the Executive Board of the Dental Society in August. She did not suggest during the presentation any plans for fee increases nor does the Agency have any plans at this time.

Enclosed is the inspection report from Dr. Helmbrecht's last inspection in 1993. Five years is the average interval for dental inspections among states in the United States.

Regarding Dr. Helmbrecht's dentistry concerns: Overexposures are extremely common in dentistry. The U.S. Food and Drug Administration (US FDA) estimates that 30 percent of unnecessary exposures are due to faulty technique and inadequate processing. Based

on calculations from the National Council on Radiation Protection and Measurements, dental and medical x-rays comprise eleven percent of the total radiation exposure to humans. Clearly this is the largest contributor of radiation dose from anthropogenic sources (note enclosure). The over exposure potential in Alaska is extreme as there are no regulations requiring that technique factors be posted and followed by x-ray operators. There are also no educational requirements for the x-ray operators and in most office's no quality assurance program for film processing. Frequently, to improve film quality, an inexperienced operator will increase the x-ray exposure to the patient in an attempt to improve the image quality rather than the appropriate attention to film processing.

Dental supply companies do not perform inspections, they install and calibrate equipment. They do not measure radiation output nor typically have instrumentation for measuring kVp (a key factor in controlling unnecessary radiation). Manufacturers and installers adhere to stringent federal requirements which are adequate until the equipment is intentionally altered or changes through routine use. State inspections include more than machine performance tests. These additional parameters include operator protection, patient safety, as well as quality assurance for film processing.

Dr. Ron Kathren, President Emeritus of the Health Physics Society and Professor at Washington State University, states that state x-ray programs are the most cost effective solution to save the public from unnecessary radiation exposure. Presuming that one million x-ray procedures are performed each year in Alaska and as a result of the state inspection each exposure is reduced by 10 millirem; then 10,000 rem are saved each year, the equivalent of one theoretical life. The question becomes how much is it worth to save a life? Fifty dollars per tube soon becomes a very insignificant investment.

If additional information would be useful, please contact me at 465-3090.

Sincerely,



Peter M. Nakamura, MD, MPH  
Director

Enclosures

cc: Commissioner Karen Perdue, DHSS  
Deputy Commissioner Russ Webb, DHSS  
Elmer Lindstrom, Special Assistant, DHSS

**SB**

**162**

04/15/97

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

13:37:22

PARTICIPANT LIST (ALL PARTICIPANTS)

BY:FBX

TCN:70641 SCHEDULED FOR:04/15/97 13:30 TO 15:00

FOR:FBX

PUBLIC HEARING

SENATE LABOR & COMMERCE

LOCATION:FAIRBANKS

SB 162

MR.

JOHN

BROWN

TESTIFY

AMENDMENT

# 1

OFFERED IN THE SENATE  
BY SENATOR LEMAN

TO: Senate Bill 162

Page 2, Line 3:

DELETE [\$5.25]

Insert \$5.65

Page 2, Line 8:

DELETE Sec. 5.

Insert new Sec. 5.

\*Sec. 5. This Act takes effect December 31, 1997.

Pending AM's sent w-  
SB 162 back to (S)RIS.

A M E N D M E N T

#2

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: SB 162

- 1 Page 1, line 1, following ";":
- 2       Insert "increasing the state minimum wage;"
  
- 3 Page 1, line 4, following "the":
- 4       Insert "Minimum Wage and"
  
- 5 Page 1, line 7:
- 6       Delete "50 cents"
- 7       Insert "\$1 [50 CENTS]"

A M E N D M E N T

# 3

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: SB 162

1 Page 1, line 1, following ";":

2 Insert "requiring overtime compensation for work over 10 hours a day;"

3 Page 1, line 4, following "the":

4 Insert "Overtime Compensation and"

5 Page 1, following line 4:

6 Insert new bill sections to read:

7 **\*\* Sec. 2.** AS 23.10.060(d) is amended to read:

8 (d) Except as provided in (e) of this section, this [THIS] section does not  
9 apply with respect to

10 (1) an employee employed by an employer employing less than four  
11 employees in the regular course of business, as "regular course of business" is defined  
12 by regulations of the commissioner;

13 (2) an employee employed in handling, packing, storing, pasteurizing,  
14 drying, preparing in their raw or natural state, or canning agricultural or horticultural  
15 commodities for market, or in making cheese or butter or other dairy products;

16 (3) an employee of an employer engaged in small mining operations  
17 where not more than 12 employees are employed if the employee is employed not in  
18 excess of 12 hours a day or 56 hours a week during a period or periods of not more  
19 than 14 workweeks in the aggregate in a calendar year during the mining season, as  
20 the season is defined by the commissioner;

21 (4) an employee engaged in agriculture;

22 (5) an employee employed in connection with the publication of a  
23 weekly, semiweekly, or daily newspaper with a circulation of less than 1,000;

1 (6) a switchboard operator employed in a public telephone exchange  
2 that has fewer than 750 stations;

3 (7) an employee in an otherwise exempted employment or proprietor  
4 in a retail or service establishment engaged in handling telegraphic, telephone, or  
5 radio messages for the public under an agency or contract arrangement with a  
6 telegraph or communications company where the telegraph message or  
7 communications revenue of the agency does not exceed \$500 a month;

8 (8) an employee employed as a seaman;

9 (9) an employee employed in planting or tending trees, cruising, or  
10 surveying, or bucking, or felling timber, or in preparing or transporting logs or other  
11 forestry products to the mill, processing plant, railroad, or other transportation  
12 terminal if the number of employees employed by the employer in the forestry or  
13 lumbering operations does not exceed 12;

14 (10) an individual employed as an outside buyer of poultry, eggs,  
15 cream, or milk in their raw or natural state;

16 (11) casual employees as may be liberally defined by regulations of  
17 the commissioner;

18 (12) an employee of a hospital whose employment includes the  
19 provision of medical services;

20 (13) work performed by an employee under a flexible work hour plan  
21 if the plan is included as part of a collective bargaining agreement;

22 (14) work performed by an employee under a voluntary flexible work  
23 hour plan if

24 (A) the employee and the employer have signed a written  
25 agreement and the written agreement has been filed with the department; and

26 (B) the department has issued a certificate approving the plan  
27 that states the work is for 40 hours a week and not more than 10 hours a day;  
28 for work over 40 hours a week or 10 hours a day under a flexible work hour  
29 plan not included as part of a collective bargaining agreement, compensation  
30 at the rate of one and one-half times the regular rate of pay shall be paid for  
31 the overtime;

32 (15) an individual employed as a line haul truck driver for a trip that

1 exceeds 100 road miles one way if the compensation system under which the truck  
2 driver is paid includes overtime pay for work in excess of 40 hours a week or for  
3 more than eight hours a day and the compensation system requires a rate of pay  
4 comparable to the rate of pay required by this section;

5 (16) an individual employed as a community health aide by a local or  
6 regional health organization as those terms are defined in AS 18.28.100.

7 \* Sec. 3. AS 23.10.060 is amended by adding a new subsection to read:

8 (e) Except as provided in (d)(15) of this section, an individual whose  
9 employment is exempted under (d) of this section is entitled to overtime compensation  
10 at the rate of one and one-half times the regular rate of pay for hours worked in  
11 excess of 10 hours in a day."

12 Renumber the following bill sections accordingly.

A M E N D M E N T

#4

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: SB 162

1 Page 1, line 1, following ";":

2 Insert "relating to eligibility for overtime compensation for certain employees  
3 dealing with agricultural or horticultural commodities or dairy products and for  
4 employees engaged in agriculture;"

5 Page 1, line 4:

6 Delete all material.

7 Page 1, line 5:

8 Delete "\* Sec. 2."

9 Insert "\* Section 1."

10 Renumber the following bill sections accordingly.

11 Page 2, following line 6:

12 Insert a new bill section to read:

13 "\* Sec. 3. AS 23.10.060(d)(2) and 23.10.060(d)(4) are repealed."

14 Renumber the following bill sections accordingly.

#5

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: SB 162

1 Page 2, lines 2 - 6:

2 Delete all material and insert:

3 "(d) An employer (1) whose employees receive tips that average, over the  
4 course of a month, at least \$10 an hour for each employee in a position that receives  
5 tips, and (2) who makes legally required payments for employment security and  
6 workers' compensation for those tips, shall pay each employee employed in a position  
7 that is eligible to receive tips, during the two calendar months following the month  
8 in which the requirements of (1) and (2) of this subsection were satisfied, at a rate of  
9 not less than the minimum wage under 29 U.S.C. 206."

A M E N D M E N T

# 10

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: SB 162

1 Page 1, line 1, following ";;":

2 Insert "requiring overtime compensation for work over <sup>12</sup>~~10~~ hours a day;"

3 Page 1, line 4, following "the":

4 Insert "Overtime Compensation and"

5 Page 1, following line 4:

6 Insert new bill sections to read:

7 "\* Sec. 2. AS 23.10.060(d) is amended to read:

8 (d) Except as provided in (e) of this section, this [THIS] section does not  
9 apply with respect to

10 (1) an employee employed by an employer employing less than four  
11 employees in the regular course of business, as "regular course of business" is defined  
12 by regulations of the commissioner;

13 (2) an employee employed in handling, packing, storing, pasteurizing,  
14 drying, preparing in their raw or natural state, or canning agricultural or horticultural  
15 commodities for market, or in making cheese or butter or other dairy products;

16 (3) an employee of an employer engaged in small mining operations  
17 where not more than 12 employees are employed if the employee is employed not in  
18 excess of 12 hours a day or 56 hours a week during a period or periods of not more  
19 than 14 workweeks in the aggregate in a calendar year during the mining season, as  
20 the season is defined by the commissioner;

21 (4) an employee engaged in agriculture;

22 (5) an employee employed in connection with the publication of a  
23 weekly, semiweekly, or daily newspaper with a circulation of less than 1,000;

1 (6) a switchboard operator employed in a public telephone exchange  
2 that has fewer than 750 stations;

3 (7) an employee in an otherwise exempted employment or proprietor  
4 in a retail or service establishment engaged in handling telegraphic, telephone, or  
5 radio messages for the public under an agency or contract arrangement with a  
6 telegraph or communications company where the telegraph message or  
7 communications revenue of the agency does not exceed \$500 a month;

8 (8) an employee employed as a seaman;

9 (9) an employee employed in planting or tending trees, cruising, or  
10 surveying, or bucking, or felling timber, or in preparing or transporting logs or other  
11 forestry products to the mill, processing plant, railroad, or other transportation  
12 terminal if the number of employees employed by the employer in the forestry or  
13 lumbering operations does not exceed 12;

14 (10) an individual employed as an outside buyer of poultry, eggs,  
15 cream, or milk in their raw or natural state;

16 (11) casual employees as may be liberally defined by regulations of  
17 the commissioner;

18 (12) an employee of a hospital whose employment includes the  
19 provision of medical services;

20 (13) work performed by an employee under a flexible work hour plan  
21 if the plan is included as part of a collective bargaining agreement;

22 (14) work performed by an employee under a voluntary flexible work  
23 hour plan if

24 (A) the employee and the employer have signed a written  
25 agreement and the written agreement has been filed with the department; and

26 (B) the department has issued a certificate approving the plan  
27 that states the work is for 40 hours a week and not more than 10 hours a day;  
28 for work over 40 hours a week or 10 hours a day under a flexible work hour  
29 plan not included as part of a collective bargaining agreement, compensation  
30 at the rate of one and one-half times the regular rate of pay shall be paid for  
31 the overtime;

32 (15) an individual employed as a line haul truck driver for a trip that

1 exceeds 100 road miles one way if the compensation system under which the truck  
2 driver is paid includes overtime pay for work in excess of 40 hours a week or for  
3 more than eight hours a day and the compensation system requires a rate of pay  
4 comparable to the rate of pay required by this section;

5 (16) an individual employed as a community health aide by a local or  
6 regional health organization as those terms are defined in AS 18.28.100.

7 \* Sec. 3. AS 23.10.060 is amended by adding a new subsection to read:

8 (e) Except as provided in (d)(15) of this section, an individual whose  
9 employment is exempted under (d) of this section is entitled to overtime compensation  
10 at the rate of one and one-half times the regular rate of pay for hours worked in  
11 excess of <sup>12</sup>~~10~~ hours in a day."

12 Renumber the following bill sections accordingly.

SENATE AMENDMENT

#7

BY: Sen Donley

TO: SB 162 SENATE BILL NO. \_\_\_\_\_

TO: \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

Add new section

AS 23.10.145 is amended by adding a new subsection to read:

- (b) In AS 23.10.050 - 23.10.150,
  - (1) "day" means 24 consecutive hours;
  - (2) "workweek" or "week" means the period of time from a Sunday at 12:01 a.m. to the following Saturday at 12:00 midnight.

## FLOOR NOTES AMENDED SB 162

Still puts into Alaska law a tip credit, something 43 other states and the federal government allow.

Retains the \$.50 Alaska minimum wage increment.

A tipped employee will never earn less than the state's minimum wage.

Helps correct the disparity between nontipped employees in the "back of the house" and tipped employees who are earning above minimum wage.

**SENATE COMMITTEE REPORT**  
**First Committee of Referral**

DATE: 4/4/97

FURTHER:

Date of 5-Day Notice: 4-3-97  
 (in accordance with Uniform Rule 23)

DATE TURNED  
 IN TO OFFICE: 4-16-97

Labor and Commerce Committee considered

SENATE BILL NO. 162

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

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ ( )
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ ( )
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:**  
 same title  
 new title  
**House Bill:**  
 same title  
 technical title  
 new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>Tim Kelly</i>	✓		
		<i>[Signature]</i>	✓		
CHAIR: <i>Loren A. Simon</i>	✓	CHAIR:			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal
<i>Labor</i>	<i>4/8/97</i>	✓	

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

\*Include fiscal notes accompanying Governor's bill

# Alaska State Legislature

## Senate



Official Business

State Capitol  
Juneau, AK. 99801-1182

### Sponsor Statement

#### SB 162: Minimum Wage for Tipped Employees

Introduced by the Senate Labor & Commerce Committee by Request

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SB 162 allows employers to apply a tip credit toward wages due employees.

With the September increase in the federal minimum wage, Alaska restaurant operators face significant employee costs. Without the tip credit legislation, employers may be forced to reduce hours and shifts for tipped employees, as well as additional benefits for all employees.

The federal government and 43 other states allow for a tip credit. Alaska is one of seven states to specifically exclude a tip credit.

Alaska statute requires employers pay tipped employees 50 cents more than the federal minimum wage, whatever that minimum wage is. SB 162 does not change that.

Alaska's current minimum wage (\$4.75 + .50) is \$5.25. A second phase federal minimum wage increase will take effect in September bumping the minimum wage to \$5.65.

After September, under SB 162, a waiter would be paid a CASH wage of \$5.25 by his employer with a credit of \$.40 in tips received by the waiter applied toward the remaining minimum wage requirement of \$5.65. SB 162 caps the CASH wage, not the MINIMUM WAGE. Whatever difference exists between the cash wage and the minimum wage is the tip credit.

If a waiter doesn't earn the \$.40 difference between the cash and minimum wages, the employer will be required to pay that difference. A tipped employee will never earn less than the state's minimum wage.

## 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 <sup>1</sup>	50%	\$2.13 per hour
CALIFORNIA	tied to federal wage (\$5.00) <sup>2</sup>	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) <sup>1</sup>	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 *	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 <sup>1</sup>	50%	\$2.63 per hour
MICHIGAN	\$3.35 per hour <sup>2</sup>	25%	\$2.65 per hour
MINNESOTA	\$4.25 per hour <sup>1</sup>	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 <sup>8</sup>
NEW MEXICO	\$4.25 per hour	50%	\$2.13 per hour
NEW YORK	\$4.25 per hour	Tip credit varies <sup>9</sup>	
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 <sup>13</sup>	50% <sup>10</sup>	\$2.13 per hour <sup>10</sup>
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 <sup>11</sup>	None	\$5.50 per hour
PENNSYLVANIA	tied to federal wage (\$4.75)	45%	\$2.61 per hour
RHODE ISLAND	\$5.15 per hour <sup>12</sup>	50%	\$2.85 per hour
SOUTH CAROLINA	No applicable law	No applicable law	
SOUTH DAKOTA	\$4.25 per hour <sup>13</sup>	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
	(\$5.00) <sup>14</sup>		
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%	\$3.80 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 \$2.38 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 \$2.30/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.

23.10.415. (§ 43-2-13 ACLA 1949; added by § 1 ch 23 SLA 1957; am § 1 ch 111 SLA 1959; am § 10 ch 2 SLA 1964)

**Sec. 23.10.047. Employee's lien.** (a) If an employer agrees with an employee or group of employees to make payment to a medical, health, hospital, welfare, or pension fund or such other fund for the benefit of the employees, or has entered into a collective bargaining agreement providing for the payments, but fails to make the payments when due, a lien is created in favor of each affected employee on the earnings of the employer and on all property of the employer used in the operation of the employer's business to the extent of the money, plus penalties due to be paid on the employee's behalf to qualify the employee for participation in the fund and for expenses incurred by the employee for which the employee would have been entitled to reimbursement under the fund if the required payments had been made.

(b) The lien claimant, a representative of the claimant, or the trustee of the fund on behalf of the claimant must record a notice of claim within 60 days after the employer's payment is due with the recorder of the recording district in which the employer's place of business is located or in which the claimant resides. The notice contains

- (1) the name of employee;
- (2) the name of the employer and the name of the person employing the claimant if known;
- (3) a statement of the pertinent terms and conditions of the employee benefit plan;
- (4) the date when the payments are due and were to have been paid; and
- (5) a statement of the demand including the amounts due to the claimant if expenses have been incurred.

(c) The notice of claim of lien is served on the employer in the same manner as a summons and complaint in civil actions or mailed to the employer by registered mail.

(d) The lien created by the recording of the notice of claim of lien is enforced within the same time and in the same manner as a mechanic's lien is foreclosed if the lien is on real property, or as a chattel lien is enforced if the lien is on personal property. The court may allow, as part of the costs of the action, the recording fees for the notice of claim, reasonable attorney's fees, and court costs.

(e) The lien created under (a) of this section is preferred and superior to an encumbrance that attaches after the employer's payments became due, and is also preferred and superior to an encumbrance that has attached previously, but that was not recorded and of which the lien claimant had no notice. (§ 43-2-14 ACLA 1949; added by § 1 ch 145 SLA 1962)

*Revisor's notes.* — Minor word changes related to the recording of documents were made in subsections (b), (d), and (e) of this section in 1988 under § 42, ch. 161, SLA 1988.

### Article 3. Alaska Wage and Hour Act.

Section	Section
50. Public policy	105. Posting summary required
55. Exemptions	110. Remedies of employee; attorney fees; offers of judgment; settlement; waiver
60. Payment for overtime	115. Enforcement by injunction
65. Minimum wages	120. Enforcement of subpoenas
70. Exemptions from minimum wage	125. Collective bargaining
71. Wages for work therapy	130. Statute of limitations
75. Labor standards and safety division	135. Violations
80. Powers and duties of division	140. Penalty
85. Scope of administrative regulations	145. Definitions
90. Administrative procedures	150. Short title
95. Adoption of federal regulations	
100. Employer to keep records	

## NOTES TO DECISIONS

Based on Fair Labor Standards Act. — AS 23.10.050 — 23.10.150, enacted in 1959, have similar purposes to the federal Fair Labor Standards Act, 29 U.S.C. §§ 201-219, and are based upon it. Webster v. Bechtel, Inc., 621 P.2d 890 (Alaska 1980); Nolan v. Sea Airmotive, Inc., 627 P.2d 1035 (Alaska 1981).

The federal Fair Labor Standards Act, 29 U.S.C. §§ 201-219, and AS 23.10.050 — 23.10.150 were both enacted for the same purposes: to establish minimum wage, maximum workweek, and overtime compensation standards which are adequate to maintain the health, efficiency and general well-being of workers.

Webster v. Bechtel, Inc., 621 P.2d 890 (Alaska 1980).

Origins of AS 23.10.050 — 23.10.150. — See Nolan v. Sea Airmotive, Inc., 627 P.2d 1035 (Alaska 1981).

AS 23.10.050 — 23.10.150 are not preempted by the federal Fair Labor Standards Act, 29 U.S.C. §§ 201-219. Webster v. Bechtel, Inc., 621 P.2d 890 (Alaska 1980).

Punitive damages may not be awarded for a willful violation of the Alaska Wage and Hour Act. Gore v. Schlumberger Ltd., 703 P.2d 1165 (Alaska 1985).

Collateral references. — 53 Am. Jur. 2d, Master and Servant, §§ 71-96.

51B C.J.S., Labor Relations, §§ 1141-1145, 1166, 1172-1174.

"Right to work" laws. 92 ALR2d 598.

Vacation pay rights of private employees not covered by collective labor contract. 33 ALR4th 264.

Excessiveness or inadequacy of attorney's fees in matters involving commercial and general business activities. 23 ALR5th 241.

**Sec. 23.10.050. Public policy.** It is the public policy of the state to

(1) establish minimum wage and overtime compensation standards for workers at levels consistent with their health, efficiency, and general well-being, and

(2) safeguard existing minimum wage and overtime compensation standards that are adequate to maintain the health, efficiency, and general well-being of workers against the unfair competition of wage and hour standards that do not provide adequate standards of living. (§ 1 ch 171 SLA 1959)

## NOTES TO DECISIONS

Wage and Hour Act not unconstitutional. — The Alaska Wage and Hour Act does not violate the Commerce Clause as Alaska's strong interest in protecting the health and efficiency of its work force outweighs the incidental burden on interstate commerce imposed by the required keeping of records for Alaska employees. Dayhoff v. Temco Helicopters, Inc., 848 P.2d 1367 (Alaska 1993).

Based on Fair Labor Standards Act. — See notes under same catchline under article analysis. Webster v. Bechtel, Inc., 621 P.2d 890 (Alaska 1980).

AS 23.10.050 — 23.10.150 are directed toward a situation distinct from that of the Equal Pay for Women Act. Brown v. Wood, 575 P.2d 760 (Alaska 1978), modified on rehearing on other grounds, 592 P.2d 1250 (Alaska 1979).

Purpose of the overtime statutes are to compensate those who labored in excess of the statutory maximum number of hours for the wear and tear of extra work and to spread employment through inducing employers to shorten hours because of the pressure of extra cost. James v. Oms Eng'g Corp., 757 P.2d 50 (Alaska 1988).

Applied 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).

Cited in O'Dell v. Alyeska Pipeline Serv. Co., 856 F.2d 1452 (9th Cir. 1988); Moore v. State, DOT & Pub. Facilities, 875 P.2d 765 (Alaska 1994).

**Sec. 23.10.055. Exemptions.** The provisions of AS 23.10.050 — 23.10.150 do not apply to

(1) an individual employed in agriculture, which includes farming in all its branches and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices, including forestry and lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with the farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market;

- (2) an individual employed in the catching, trapping, cultivating or farming, netting or taking of any kind of fish, shellfish, or other aquatic forms of animal and vegetable life;
- (3) an individual employed in the hand picking of shrimp;
- (4) an individual employed in domestic service, including a baby-sitter, in or about a private home;
- (5) an individual employed by the United States or by the state or political subdivision of the state, except as provided in AS 23.10.065(b), including prisoners not on furlough detained or confined in prison facilities;
- (6) an individual engaged in the activities of a nonprofit religious, charitable, cemetery, or educational organization where the employer-employee relationship does not, in fact, exist, and where services rendered to the organization are on a voluntary basis;
- (7) an employee engaged in the delivery of newspapers to the consumer;
- (8) an individual employed solely as a watchman or caretaker of a plant or property that is not in productive use for a period of four months or more;
- (9) an individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of an outside salesman or a salesman who is employed on a straight commission basis;
- (10) an individual employed in the search for placer or hard rock minerals;
- (11) an individual under 18 years of age employed on a part-time basis not more than 30 hours in a week;
- (12) employment by a nonprofit educational or child care facility to serve as a parent of children while the children are in residence at the facility if the employment requires residence at the facility and is compensated on a cash basis exclusive of room and board at an annual rate of not less than
- (A) \$10,000 for an unmarried person; or
- (B) \$15,000 for a married couple;
- (13) an individual who drives a taxicab, is compensated for taxicab services exclusively by customers of the service, whose written contractual arrangements with owners of taxicab vehicles, taxicab permits, or radio dispatch services are based upon flat contractual rates and not based on a percentage share of the individual's receipts from customers, and whose written contract with owners of taxicab vehicles, taxicab permits, or radio dispatch services specifically provides that the contract places no restrictions on hours worked by the individual or on areas in which the individual may work except to comply with local ordinances;
- (14) a person who holds a license under AS 08.54 and who is employed by a registered guide or master guide licensed under AS 08.54, for the first 60 work days in which the person is employed by the registered guide or master guide during a calendar year; or
- (15) [See effect of amendments note.] an individual engaged in activities for a nonprofit religious, charitable, civic, cemetery, recreational, or educational organization where the employer-employee relationship does not, in fact, exist, and where services are rendered to the organization under a work activity requirement of AS 47.27 (Alaska temporary assistance program). (§ 2(1) ch 171 SLA 1959; am § 1 ch 2 SLA 1962; am § 1 ch 50 SLA 1972; am § 2 ch 124 SLA 1978; am § 1 ch 115 SLA 1982; am § 2 ch 12 SLA 1990; am § 2 ch 13 SLA 1993; am § 10 ch 33 SLA 1996; am § 9 ch 107 SLA 1996)

**Revisor's notes.** — Paragraph (15) was enacted as (14). Renumbered in 1996.

**Cross references.** — For legislative purpose in enacting paragraph (13), see § 1, ch. 13, SLA 1993 in the Temporary and Special Acts.

**Effect of amendments.** — The 1993 amendment, effective May 8, 1993, added paragraph (13).

The first 1996 amendment, effective May 23, 1996, added paragraph (14).

The second 1996 amendment added paragraph (15). Under § 59, ch. 107, SLA 1996, the addition of para-

graph (15) takes effect "October 1, 1996, except that if the federal law providing for the aid to families with dependent children program has not been repealed by that date," paragraph (15) takes effect "on the first day after October 1, 1996, that the repeal of the federal aid to families with dependent children program is effective." Under P.L. 104-193, the repeal of the federal aid to families with dependent children program is to be effective July 1, 1997, although there are provisions for changing that date as to individual states under certain circumstances, and so the exact effective date

of paragraph (15) could not be known at the time instructions for ch. 107, SLA 1996 were sent to the publisher.

#### NOTES TO DECISIONS

**Employees covered by and exempt from Fair Labor Standards Act.** — AS 23.10.050 — 23.10.150 apply to both employees covered by the Fair Labor Standards Act, 29 U.S.C. §§ 201-219, and those who are, because of insufficient connections to interstate commerce, exempt from the Fair Labor Standard's Act. *Webster v. Bechtel, Inc.*, 621 P.2d 890 (Alaska 1980).

**Helicopter pilot not classified as professional.** — A commercial helicopter pilot is not a professional for purposes of the Alaska Wage and Hour Act. *Dayhoff v. Temsco Helicopters, Inc.*, 848 P.2d 1367 (Alaska 1993).

**Prisoners excluded from operation of chapter.** — See *McGinnis v. Stevens*, 543 P.2d 1221 (Alaska 1975).

**Restaurant managers.** — Partial summary judgment for plaintiffs was improper where superior court was obliged to consider district manager's testimony that restaurant managers such as plaintiffs spent less

than 10 percent of their time performing tasks otherwise performed by hourly employees; a genuine issue of material fact existed as to whether plaintiffs spent more than 20 percent of their time on duties not directly and closely related to management of the restaurant. *American Restaurant Group v. Clark*, 889 P.2d 595 (Alaska 1995).

**Retail manager not exempt.** — Although the retail store manager supervised employees and made more than \$600 per week, he was not exempt from the Alaska Wage and Hour Act since he spent more than 20% of his time in retail sales, an activity normally performed by nonmanagerial employees. *Grimes v. Kinney Shoe Corp.*, 902 F. Supp. 1070 (D. Alaska 1995).

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

Cited in *Dresser Indus., Inc. v. Alaska Dept of Labor*, 633 P.2d 998 (Alaska 1981), cert. denied, 455 U.S. 1019, 102 S. Ct. 1716, 72 L. Ed. 2d 137 (1982).

**Collateral references.** — Who is employed in "executive or administrative capacity" within exemption from minimum wage and maximum hours provisions of Fair Labor Standards Act. 40 ALR2d 332; 124 ALR Fed. 1.

Who is employed in "professional capacity," within

exemption, under 29 USCS § 213(a)(1), from minimum wage and maximum hours provisions of Fair Labor Standards Act. 77 ALR Fed. 331.

Employee training time as exempt from minimum wage and overtime requirements of Fair Labor Standards Act. 50 ALR Fed. 246.

**Sec. 23.10.060. Payment for overtime.** (a) An employer who employs employees engaged in commerce or other business, or in the production of goods or materials in the state may not employ an employee for a workweek longer than 40 hours or for more than eight hours a day. This section does not apply to the employment of a person acting in a supervisory capacity.

(b) If an employer finds it necessary to employ an employee in excess of 40 hours a week or eight hours a day, compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid.

(c) This section is considered included in all contracts of employment.

(d) This section does not apply with respect to

(1) an employee employed by an employer employing less than four employees in the regular course of business, as "regular course of business" is defined by regulations of the commissioner;

(2) an employee employed in handling, packing, storing, pasteurizing, drying, preparing in their raw or natural state, or canning agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products;

(3) an employee of an employer engaged in small mining operations where not more than 12 employees are employed if the employee is employed not in excess of 12 hours a day or 56 hours a week during a period or periods of not more than 14 workweeks in the aggregate in a calendar year during the mining season, as the season is defined by the commissioner;

(4) an employee engaged in agriculture;

(5) an employee employed in connection with the publication of a weekly, semiweekly, or daily newspaper with a circulation of less than 1,000;

(6) a switchboard operator employed in a public telephone exchange that has fewer than 750 stations;

(7) an employee in an otherwise exempted employment or proprietor in a retail or service establishment engaged in handling telegraphic, telephone, or radio messages for the public under an agency or contract arrangement with a telegraph or communications company where the telegraph message or communications revenue of the agency does not exceed \$500 a month;

(8) an employee employed as a seaman;

(9) an employee employed in planting or tending trees, cruising, or surveying, or bucking, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed 12;

(10) an individual employed as an outside buyer of poultry, eggs, cream, or milk in their raw or natural state;

(11) casual employees as may be liberally defined by regulations of the commissioner;

(12) an employee of a hospital whose employment includes the provision of medical services;

(13) work performed by an employee under a flexible work hour plan if the plan is included as part of a collective bargaining agreement;

(14) work performed by an employee under a voluntary flexible work hour plan if

(A) the employee and the employer have signed a written agreement and the written agreement has been filed with the department; and

(B) the department has issued a certificate approving the plan that states the work is for 40 hours a week and not more than 10 hours a day; for work over 40 hours a week or 10 hours a day under a flexible work hour plan not included as part of a collective bargaining agreement, compensation at the rate of one and one-half times the regular rate of pay shall be paid for the overtime;

(15) an individual employed as a line haul truck driver for a trip that exceeds 100 road miles one way if the compensation system under which the truck driver is paid includes overtime pay for work in excess of 40 hours a week or for more than eight hours a day and the compensation system requires a rate of pay comparable to the rate of pay required by this section;

(16) an individual employed as a community health aide by a local or regional health organization as those terms are defined in AS 18.28.100. (§ 3 ch 171 SLA 1959; am § 1 ch 3 SLA 1962; am § 1 ch 243 SLA 1970; am § 1 ch 45 SLA 1972; am § 33 ch 127 SLA 1974; am § 1 ch 31 SLA 1980; am § 3 ch 47 SLA 1983; am § 1 ch 160 SLA 1990; am § 1 ch 103 SLA 1992; am § 5 ch 13 SLA 1993)

Revisor's notes. — The paragraphs of (d) of this section were renumbered in 1990 and 1996 to reflect the deletion of repealed paragraphs.

Effect of amendments. — The 1992 amendment, effective September 18, 1992, in subsection (d), added paragraph (16) and made stylistic changes.

The 1993 amendment, effective May 8, 1993 repealed former paragraph (dX7).

Opinions of attorney general. — The Fair Labor Standards Act, 29 U.S.C. §§ 201-219 does not expressly preempt the AS 23.10.050 — 23.10.150 on the question of whether airline employees are excluded from the mandatory overtime directive of this section. April 15, 1980, Op. Att'y Gen.

In the case of pilots, flight crews, and other interstate air carrier employees whose activities are directly and substantially related to the transportation activities of the carrier, and who are covered by a valid existing collective bargaining agreement or agreements with the carrier, the state is precluded from applying its overtime laws due to the preemptive nature of the Railway Labor Act, 45 U.S.C. §§ 151-

188. April 15, 1980, Op. Att'y Gen.

In instances where no collective bargaining agreements apply, crews of interstate air carriers are nonetheless beyond the jurisdiction of state overtime law because of certain commerce clause implications. April 15, 1980, Op. Att'y Gen.

Nonflight personnel of interstate carriers who are not covered by valid existing collective bargaining agreements are not exempt from state law, and as to those individuals the provisions of state overtime law apply. April 15, 1980, Op. Att'y Gen.

Air carriers operating solely intrastate would not seem to fall under the exclusionary scope of either the Railway Labor Act, 45 U.S.C. §§ 151-188, or of the commerce clause absent unusual fact situations. Accordingly, the protections of AS 23.10.050 — 23.10.150 dealing with overtime extend to those individuals. April 15, 1980, Op. Att'y Gen.

An administrative regulation which would require an employer to include underground travel time as part of the "workweek" for calculating wages and overtime under this section might raise the issue of

federal preemption but would survive such a challenge, since Congress did not intend to preclude state regulation and there is no actual conflict between such

a regulation and federal law. February 22, 1989 Op. Att'y Gen.

## NOTES TO DECISIONS

**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).

**Or preempted.** — Since, under the Alaska Wage and Hour Act, the number of hours required for the overtime rate is less than that under the Fair Labor Standards Act, the Alaska act provides for a lower maximum workweek within the meaning of 29 U.S.C. § 218(a) and consequently, comes within the express saving clause so as not to be preempted by the federal law. *Webster v. Bechtel, Inc.*, 621 P.2d 890 (Alaska 1980).

**Article compatible with Federal Aviation Act.** — This article provides for mandatory overtime compensation, not the regulation of maximum hours, and it is therefore neither preempted by, nor in direct conflict with, the Federal Aviation Act. *Dayhoff v. Temco Helicopters, Inc.*, 848 P.2d 1367 (Alaska 1993).

**Purpose of the overtime statutes are to compensate those who labored in excess of the statutory maximum number of hours for the wear and tear of extra work and to spread employment through inducing employers to shorten hours because of the pressure of extra cost.** *James v. Otis Eng'g Corp.*, 757 P.2d 50 (Alaska 1988).

**State not bound to federal regulatory defini-**

**tions.** — See *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).

**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 employees 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).

**Bookkeeper in separate company held to be employee.** — An employee of a real estate company who handled the bookkeeping for a storage company was considered to be an employee of the storage company since the relationship was of a permanent nature, the bookkeeper received a flat management fee regardless of profits, and since bookkeeping is an integral part of a business. *Bobich v. Stewart*, 843 P.2d 1232 (Alaska 1992).

**Partner considered as employee.** — Where a partnership agreement provides regular compensation, untied to profits, for a partner's services, such a compensated partner shall be considered to be both an owner and an employee. To do otherwise would permit employers to defeat the Alaska Wage and Hour Act's remedial purposes by simply calling paid employees "partners." *Bobich v. Stewart*, 843 P.2d 1232 (Alaska 1992).

**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.

## 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 enforcement 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;
- (4) produces goods or services the proceeds of which will economically or otherwise benefit the owners, operators, or businesses of the rehabilitation program; and
- (5) creates an unfair competition with private enterprise because of lower wage standards. (§ 1 ch 58 SLA 1983)

**Sec. 23.10.075. Labor standards and safety division.** There is established in the department the division of labor standards and safety. The director of the division is responsible to the commissioner. The director shall administer AS 18.60.010 — 18.60.105 and AS 23.10.050 — 23.10.160. (§ 6(1) ch 171 SLA 1959; am E.O. No. 52, § 4 (1982))

**Sec. 23.10.080. Powers and duties of division.** The director, or an authorized representative of the director, shall

(1) investigate and ascertain the wages and related conditions and standards of employment of any employee in the state;

(2) enter the place of business or employment of an employer at reasonable times for the purpose of inspecting payroll records that relate to the question of wages paid or hours worked;

(3) require and subpoena from an employer a statement in writing, when the director or the representative considers it necessary, of hours worked by and the wages paid to a person in the employ of the employer, and the commissioner may require the employer to make the statement under oath;

(4) question an employee in a place of employment during work hours with respect to the wages paid and the hours worked by the employees;

(5) compel the attendance of witnesses and the production of books, papers, and documents by subpoena when necessary for the purpose of a hearing or investigation provided for in AS 23.10.050 — 23.10.150. (§ 6(2) ch 171 SLA 1959)

**Sec. 23.10.085. Scope of administrative regulations.** (a) The director may adopt, amend, or rescind administrative regulations not inconsistent with the purposes and provisions of AS 23.10.050 — 23.10.150 that are necessary for the administration of AS 23.10.050 — 23.10.150.

(b) The regulations may, without limiting the generality of (a) of this section, define terms used in AS 23.10.050 — 23.10.150, and restrict or prohibit industrial homework or other acts or practices that the director finds appropriate to carry out the purpose of AS 23.10.050 — 23.10.150, or to prevent the circumvention or evasion of AS 23.10.050 — 23.10.150.

(c) The regulations may permit deductions by an employer from the minimum wage applicable under AS 23.10.050 — 23.10.150 to employees for the reasonable cost, as determined by the director on an occupation basis, of furnishing board or lodging if board or lodging is customarily furnished by the employer and used by the employee. (§ 6(3) ch 171 SLA 1959)

#### NOTES TO DECISIONS

This section and AS 23.10.095 constitute a delegation of authority from the legislature to the agency to formulate policies, leaving to the agency's discretion the issue whether federal definitions of "regular rate of pay" and other terms can be applied consistently with AS 23.10.050 — 23.10.150. 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).

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

**Sec. 23.10.090. Administrative procedures.** Regulations adopted or hearings conducted under AS 23.10.050 — 23.10.150 shall be adopted or conducted and be subject to judicial review in accordance with AS 44.62 (Administrative Procedure Act). (§ 6(4) ch 171 SLA 1959)

#### NOTES TO DECISIONS

Cited in Dayhoff v. Temsco Helicopters, Inc., 772 P.2d 1085 (Alaska 1989).

**Sec. 23.10.095. Adoption of federal regulations.** The commissioner may adopt regulations and interpretations that are made by the administrator of the Wage and Hour Division of the federal Department of Labor and that are not inconsistent with AS 23.10.050 — 23.10.150. (§ 6(5) ch 171 SLA 1959)

## NOTES TO DECISIONS

This section and AS 23.10.085 constitute a delegation of authority from the legislature to the agency to formulate policies, leaving to the agency's discretion the issue whether federal definitions of "regular rate of pay" and other terms can be applied

consistently with Alaska's Wage and Hour Act. *Dresser Indus., Inc. v. Alaska Dept of Labor*, 633 P.2d 998 (Alaska 1981), cert. denied, 455 U.S. 1019, 102 S. Ct. 1716, 72 L. Ed. 2d 137 (1982).

**Sec. 23.10.100. Employer to keep records.** (a) An employer shall keep for a period of at least three years at the place where an employee is employed a record of the name, address, and occupation of each employee, the rate of pay and the amount paid each pay period to each employee, the hours worked each day and each workweek by each employee, and other payroll information that the commissioner may require.

(b) The commissioner or an authorized representative of the commissioner may copy the employer's records at any reasonable time. An employer shall furnish to the commissioner or the representative on demand a sworn statement of the employer's records, and the commissioner may require that the sworn statement be made upon forms the commissioner has prescribed or approved. (§ 7 ch 171 SLA 1959)

## NOTES TO DECISIONS

**Public policy interest and burden of proof.** — If an employee produces sufficient evidence to show the amount and extent of the work for which the employee was improperly compensated, the burden shifts to the employer to come forward with evidence sufficient to negate the reasonableness of the inference drawn from the employee's evidence. Although this burden of proof in an action under the Alaska Wage and Hour Act is not binding on a bankruptcy court in a proceeding to determine the validity of a

claim, it is indicative of the public policy interest that proper records be kept by an employer and that an employee be properly compensated for any overtime worked. *In re Equipment Servs., Ltd.*, 36 Bankr. 241 (Bankr. D. Alaska 1983).

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

Stated in *Noian v. Sea Airotive, Inc.*, 627 P.2d 1035 (Alaska 1981).

**Sec. 23.10.105. Posting summary required.** An employer subject to AS 23.10.050 — 23.10.150 shall keep a summary or abstract of these sections, approved by the commissioner, posted in a conspicuous location at the place where a person subject to them is employed. An employer shall be furnished copies of a summary by the state on request without charge. (§ 8 ch 171 SLA 1959)

**Sec. 23.10.110. Remedies of employee; attorney fees; offers of judgment; settlement; waiver.** (a) An employer who violates a provision of AS 23.10.060 or 23.10.065 is liable to an employee affected in the amount of unpaid minimum wages, or unpaid overtime compensation, as the case may be, and, except as provided in (d) of this section, in an additional equal amount as liquidated damages.

(b) An action to recover from the employer the wages and damages for which the employer is liable may be maintained in a competent court by an employee personally and for other employees similarly situated, or an employee may individually designate in writing an agent or representative to maintain an action for the employee. The consent shall be filed in the court in which the action is brought. At the request of a person paid less than the amount to which the person is entitled under AS 23.10.050 — 23.10.150, the commissioner may take an assignment in trust for the employee of the full amount to which the employee is entitled under this section and may bring any legal action necessary to collect the claim.

(c) The court in an action brought under this section shall, in addition to a judgment awarded to the plaintiff, allow costs of the action and, except as provided in (e) — (h) of this section, reasonable attorney fees to be paid by the defendant. The attorney fees in the case of actions brought under this section by the commissioner shall be remitted by the commissioner to the Department of Revenue. The commissioner may not be required to pay the filing fee or other costs. The commissioner in case of suit has power to join various claimants against the same employer in one cause of action.

(d) In an action under (a) of this section to recover unpaid overtime compensation or liquidated damages for unpaid overtime, if the defendant shows by clear and convincing evidence that the act or omission giving rise to the action was made in good faith and that the employer had reasonable grounds for believing that the act or omission was not in violation of AS 23.10.060, the court may decline to award liquidated damages or may award an amount of liquidated damages less than the amount set out in (a) of this section.

(e) If the plaintiff prevails in an action for unpaid overtime compensation under (a) of this section, the court shall award reasonable attorney fees to the plaintiff unless the defendant shows by clear and convincing evidence that the act or omission giving rise to the action was made in good faith and that the defendant had reasonable grounds for believing that the act or omission was not in violation of AS 23.10.060, in which case

(1) the court may award attorney fees to the plaintiff in accordance with court rules; or

(2) if the defendant would be entitled to attorney fees if the action were subject to the standards under court rule offers of judgment, the court may not award attorney fees to either the plaintiff or the defendant.

(f) If the defendant prevails in an action for unpaid overtime compensation under (a) of this section and had previously made an offer of judgment to the plaintiff, the court shall award attorney fees to the defendant unless the plaintiff proves to the satisfaction of the court that the action was both brought and prosecuted in good faith and that the plaintiff had reasonable grounds for believing that the act or omission was in violation of AS 23.10.060. If the court awards attorney fees to the defendant, the award shall be made in accordance with court rule.

(g) Failure to inquire into Alaska law is not consistent with a claim of good faith under this subsection.

(h) Subsections (d) — (g) of this section do not apply to an action brought under this section by the commissioner.

(i) The commissioner may supervise the payment of the unpaid overtime compensation owing to an employee under AS 23.10.060. Payment in full in accordance with an agreement by an employee to settle a claim for unpaid overtime compensation or liquidated damages for unpaid overtime compensation constitutes a waiver of any right as to this claim the employee may have under (a) of this section to unpaid overtime compensation or liquidated damages for unpaid overtime compensation.

(j) In a settlement for unpaid overtime compensation that is not supervised by the department or the court, an employee is entitled to liquidated damages under (a) of this section unless the employee and the employer enter into a written settlement agreement in which the employee expressly waives the right to receive liquidated damages. A private written settlement agreement under this subsection is not valid unless submitted to the department for review. The department shall review the agreement and approve it if it is fair to the parties. The department shall approve or deny an agreement within 30 days of receipt. A waiver of liquidated damages may not be a condition of employment. (§ 9(3) ch. 171 SLA 1959; am §§ 1 — 3 ch 37 SLA 1995)

**Effect of amendments.** — The 1995 amendment, effective August 22, 1995, inserted "except as provided in (d) of this section," in subsection (a); inserted "except as provided in (e)-(h) of this section," in subsection (c); and added subsections (d)-(j).

**Editor's notes.** — Under § 4, ch. 37, SLA 1995, subsection (i) applies to "agreements entered into on

or after August 22, 1995"; subsection (j) applies to "written agreements entered into on or after August 22, 1995"; and the amendments to subsections (a) and (c) made by ch. 37, SLA 1995 and the provisions of subsections (d)-(h) apply "to wages earned for hours worked on or after August 22, 1995."

#### NOTES TO DECISIONS

Liquidated damages as mandatory and punitive. — See Alaska Int'l Indus., Inc. v. Musarra, 602

P.2d 1240 (Alaska 1979); *McKeown v. Kinney Shoe Corp.*, 220 P.2d 1068 (Alaska 1991) (decided prior to

the 1995 amendment, which added subsections (d) through (j)).

**No conflict with 29 U.S.C. §§ 216(b) and 260.** — This section, which grants mandatory liquidated damages, does not conflict with 29 U.S.C. §§ 216(b) and 260, which make such awards discretionary if the employer shows he acted in good faith. *Webster v. Bechtel, Inc.*, 621 P.2d 890 (Alaska 1980) (decided prior to the 1995 amendment, which among other things, added subsection (d)).

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

**Revival of agent or representative action.** — The legislature plainly determined to revive the agent or representative action, where the employee individually designates in writing an agent or representative to maintain an action for him. *Nolan v. Sea Airmotive,*

*Inc.*, 627 P.2d 1035 (Alaska 1981).

**Class action procedures.** — See *Webster v. Bechtel, Inc.*, 621 P.2d 890 (Alaska 1980).

**Offsetting of award.** — If suits are filed under both the federal Fair Labor Standards Act, 29 U.S.C. §§ 201-219, and the Alaska Wage and Hour Act, AS 23.10.050 — 23.10.150, the Alaska award must be offset by any recovery under the federal act. *Webster v. Bechtel, Inc.*, 621 P.2d 890 (Alaska 1980).

**Prejudgment interest for liquidated damages.** — Because a plaintiff has no right to use liquidated damages before they are actually awarded, an award of prejudgment interest would compensate her for a nonexistent loss. Therefore, as a matter of public policy, under the Alaska Wage and Hour Act, an employee may not recover prejudgment interest for liquidated damages. *Bobich v. Stewart*, 843 P.2d 1232 (Alaska 1992).

**Attorney's fees.** — Trial court's award of attorney's fees was not an abuse of discretion. *Bobich v. Stewart*, 843 P.2d 1232 (Alaska 1992).

Quoted in *Gore v. Schlumberger Ltd.*, 703 P.2d 1165 (Alaska 1985); *Jeffcoat v. State, Dep't of Labor*, 732 P.2d 1073 (Alaska 1987).

Cited in *Dayhoff v. Temsco Helicopters, Inc.*, 772 P.2d 1085 (Alaska 1989).

**Sec. 23.10.115. Enforcement by injunction.** If it appears to the commissioner that an employer is engaged in an act or practice that violates or will violate a provision of AS 23.10.050 — 23.10.150 or of a regulation adopted under these sections, the commissioner may bring an action in a competent court to enjoin the act or practice, and to enforce compliance with AS 23.10.050 — 23.10.150 or with the regulation. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond. (§ 9(4) ch 171 SLA 1959)

#### NOTES TO DECISIONS

Quoted in *Gore v. Schlumberger Ltd.*, 703 P.2d 1165 (Alaska 1985).

Cited in *Dayhoff v. Temsco Helicopters, Inc.*, 772 P.2d 1085 (Alaska 1989).

**Sec. 23.10.120. Enforcement of subpoenas.** If a person fails to comply with a subpoena issued under AS 23.10.080, or if a witness refuses to produce evidence or to testify to a matter regarding which the witness may be lawfully interrogated, a competent court shall, upon application of the commissioner or an authorized representative, compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued by the court or a refusal to testify before it. (§ 9(5) ch 171 SLA 1959)

**Sec. 23.10.125. Collective bargaining.** AS 23.10.050 — 23.10.150 do not limit the right of employees to bargain collectively through representatives of their own choosing to establish wages or conditions of work in excess of the applicable minimum under AS 23.10.050 — 23.10.150 or to establish hours of work shorter than the applicable maximum under AS 23.10.050 — 23.10.150. (§ 10 ch 171 SLA 1959)

**Sec. 23.10.130. Statute of limitations.** An action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages under AS 23.10.050 — 23.10.150 is forever barred unless it is started within two years after the cause of action accrues. For the purposes of this section an action is considered to be started on the date when the complaint is filed. (§§ 11, 12 ch 171 SLA 1959; am § 57 ch 59 SLA 1982)

## NOTES TO DECISIONS

Wage claim tolls statute. — Department of labor proceedings are a form of quasi-judicial relief; therefore, filing a statutory wage claim with the department equitably tolls the statute of limitations if the

other requirements of that doctrine are established. *Dayhoff v. Temsco Helicopters, Inc.*, 772 P.2d 1085 (Alaska 1989).

**Sec. 23.10.135. Violations.** An employer violates AS 23.10.050 — 23.10.150 if the employer (1) hinders or delays the commissioner or an authorized representative of the commissioner in the performance of their duties in the enforcement of AS 23.10.050 — 23.10.150; (2) refuses to admit the commissioner or an authorized representative to any place of employment; (3) fails to keep or falsifies a record required under the provisions of AS 23.10.050 — 23.10.150; (4) refuses to make a record accessible, or to furnish a sworn statement of the record, or to give information required for the enforcement of AS 23.10.050 — 23.10.150, upon demand, to the commissioner or an authorized representative; (5) fails to post an abstract of AS 23.10.050 — 23.10.150 as required by AS 23.10.105; (6) discharges or in any other manner discriminates against an employee because the employee has filed a complaint, or has instituted or caused to be instituted any proceeding under or related to AS 23.10.050 — 23.10.150, or has testified or is about to testify in such a proceeding. (§ 9(1) ch 171 SLA 1959)

**Sec. 23.10.140. Penalty.** An employer who violates a provision of AS 23.10.050 — 23.10.150, or of any regulation or order of the commissioner issued under it, upon conviction is punishable by a fine of not less than \$100 nor more than \$2,000, or by imprisonment for not less than 10 nor more than 90 days, or by both. Each day a violation occurs constitutes a separate offense. (§ 9(2) ch 171 SLA 1959; am § 1 ch 113 SLA 1972)

## NOTES TO DECISIONS

Quoted in *Gore v. Schlumberger Ltd.*, 703 P.2d 1165 (Alaska 1985).

**Sec. 23.10.145. Definitions.** If not defined in this title or in regulations adopted under this title, terms used in AS 23.10.050 — 23.10.150 shall be defined as they are defined in the federal Fair Labor Standards Act of 1938, as amended, or the regulations adopted under it. (§ 2(2) ch 171 SLA 1959; am § 4 ch 47 SLA 1983)

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

## NOTES TO DECISIONS

**Applicability of federal regulatory definitions.** — This section directs the courts to apply federal regulatory definitions "where applicable," and such definitions are "applicable" only when the state director of the wage and hour division and the commissioner of labor have refrained from defining terms in the state regulations, pursuant to their discretionary authority under AS 23.10.085 and 23.10.095. *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).

A prisoner is not an "employee" of the state under the federal act, and therefore is not so by virtue of AS 23.10.065. *McGinnis v. Stevens*, 543 P.2d 1221 (Alaska 1975).

**Sec. 23.10.150. Short title.** AS 23.10.050 — 23.10.150 may be cited as the Alaska Wage and Hour Act. (§ 1 ch 171 SLA 1959)

— *Secs. 23.10.155 — 23.10.320. Equal pay for women, discrimination in employment, and age discrimination. [Repealed, § 8 ch 117. SLA 1965, § 5 ch 125 SLA 1980. For present provisions, see AS 18.80.220.]*

# FISCAL NOTE

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

**BILL NO.** SB 162

Revision Date: \_\_\_\_\_  
 Title: Minimum Wage for Tipped Employees  
 Sponsor: Senate L&C  
 Requestor: Senate 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL</b>						
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<b>CHANGE IN REVENUE FUND SOURCE #</b>						
--	--	--	--	--	--	--

**FUNDING:** (Thousands of Dollars)

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

**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 Phone: 465-4855

Division: Labor Standards & Safety Date: 4/8/97

Approved by Commissioner: Tom Cashen, Commissioner

Agency: Department of Labor Date: 4/8/97

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# RMI

## RESTAURANT MANAGEMENT, INC.

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4450 CORDOVA STREET, SUITE 200 • ANCHORAGE, AK 99503  
TELEPHONE (907) 561-2345 FAX (907) 561-2525

April 2, 1997

Senator Loren Leman  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801

Dear Senator Leman,

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	Emph	Name	Soc-sec-#	Typ	Wage-acct	Salary Freq	Hours				Temp-ded/earn			Accrued		Work units
							Regular	Overtime	Special Holiday	Vacn Sick	Vac wks	Desc	Type	Amount	Vacn-hrs Sick-hrs	
Distribution: Type		ACCT-H			Hrs/%	Rate										
	R	6020-010	WAGES - DINING ROOM		51.50	5.250										
	R	6050-010	SALARIES - MANAGEMENT		6.25	0.000										
799		DANIEL L.			.00	59.00	.00	.00	.00	.00	.00	TIPS	T	350.00	.000	2.00
	H	6020-010			B	.25	.00	.00	.00	.00				593 hr	.000	
Distribution: Type		ACCT-H			Hrs/%	Rate										
	D	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	.00	.00	.00			.000	.000	2.00
	H	6020-010			B	.00	.00	.00	.00	.00				.000		
Distribution: Type		ACCT-H			Hrs/%	Rate										
	R	6020-010	WAGES - DINING ROOM		43.25	5.250										
804		CHAMELE LEE			.00	51.75	.00	.00	.00	.00	TIPS	T	250.00	.000	.000	2.00
	H	6020-010			B	.00	.00	.00	.00	.00				483 hr	.000	
Distribution: Type		ACCT-H			Hrs/%	Rate										
	R	6020-010	WAGES - DINING ROOM		51.75	5.250										
838		MICKEY Z.			.00	57.75	.00	.00	.00	.00	TIPS	T	348.35	.000	.000	2.00
	H	6020-010			B	1.75	.00	.00	.00	.00				603 hr	.000	
Distribution: Type		ACCT-H			Hrs/%	Rate										
	D	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	.00	.00	TIPS	T	236.00	.000	.000	2.00
	H	6020-010			B	.00	.00	.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	.00	.00	TIPS	T	227.00	.000	.000	2.00
	H	6020-010			B	.00	.00	.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	.00	.00	TIPS	T	320.00	.000	.000	2.00
	H	6020-010			B	.00	.00	.00	.00	.00	TIPS	T	300.00	.000		
Distribution: Type		ACCT-H			Hrs/%	Rate										
	R	6020-010	WAGES - DINING ROOM		45.25	5.250										



# ALASKA VISITORS ASSOCIATION

3201 C Street, Suite 403 • Anchorage, Alaska 99503

Tel: (907) 561-5733 • Fax: (907) 561-5727

1996-97

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Michi Usibelli

Sourdough Cabins

Brad Walker

Alaska Airlines

Tina Lindgren

Executive Director

April 18, 1997

Senator Mike Miller  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Senator Miller:

The Alaska Visitors Association (AVA) joins the Alaska Hotel & Motel Association and the Alaska Cabaret Hotel, Restaurant & Retailers Association in supporting companion Tip Credit bills SB 162 and HB 237. As the statewide trade organization representing the common interests of all segments of Alaska's tourism industry, AVA strongly encourages legislation, regulations and other government actions that create an environment in which Alaskan entrepreneurs can thrive.

We believe the Tip Credit bills correct an inequity which would otherwise place an unreasonable burden on establishments whose employees receive tips in addition to wages. Without such statute amendments, the upcoming 50-cent raise in minimum wage will make survival more difficult for many small businesses whose profit margins are already slim.

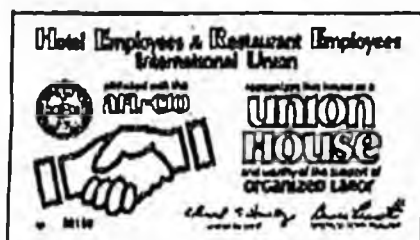
Current Alaska statutes consider tips as wages for tax purposes, yet not for minimum wage purposes. Under this scenario, Alaskan employers in several sectors of the tourism industry are paying thousands of dollars in the form of Unemployment and Social Security taxes on all tip income, but are not able to use the tip credit provided by federal law. This is inconsistent and unfair, especially in light of the fact that Alaska's minimum wage is the highest of the 50 states, and yet it is one of only seven states that does not allow for a tip credit.

We encourage you to support passage of SB 162 and HB 237. If you have questions, please don't hesitate to call me at (907) 561-5733.

Sincerely,

Tina Lindgren  
Executive Director

VISIT ALASKA - IT'S AN AMERICAN ADVENTURE



## HOTEL EMPLOYEES, RESTAURANT EMPLOYEES UNION LOCAL 878

530 E. 4th Avenue • P.O. Box 100584 • Anchorage, Alaska 99510  
 (907) 272-6581 • 1-800-478-HERE • FAX: (907) 277-8585  
 Health / Pension / Legal Information: call collect (907) 561-5119 or 561-5276

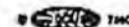
Juneau area office:  
 (907) 780-4844

Kenai/Soldotna area office:  
 (907) 283-2803

Ketchikan area office:  
 (907) 225-4508

Kodiak area office:  
 (907) 486-4561

Valdez area office:  
 (907) 835-2391



### OPPOSITION STATEMENT SB 162 MINIMUM WAGE FOR TIPPED EMPLOYEES.

Introduced by the Senate labor and Commerce Committee

Local 878 represents almost 2000 people in the Hotel and Restaurant Industry. We vigorously oppose SB 162 the tip credit bill that is being introduced by Jack Amon of the Marx Brothers Cafe in Anchorage.

Many Servers in this industry are single mothers who must support a family. They do not make \$40,000 and \$50,000 as you have been led to believe. Most servers make between \$20,00-\$30,000 per year if they are lucky.

Income statistics from the Alaska Department of Labor show that a 3 person family that makes \$25,000 is very low income. \$32,000 is considered low income and qualified for many government need based programs.

We are trying to get people off the welfare rolls. This bill hurts working people, single mothers and young children. Servers would have their cash wages reduced 40 cents per hour as of October 1, 1997. Then their wages would be frozen at \$5.25 per hour for the foreseeable future.

Please kill this bill. \$.40, Forty cents per hour equates to \$800 per year. How many diapers, meals and school clothes does that equate for children? Do the right thing for Alaska's children. Kill this bill.

Very truly yours,

*Bob Gill*  
 Bob Gill  
 Sec-Treas.

TIPPED EMPLOYEES COMPENSATION - DINNER SHIFT

	SERVER		BUSSER 3 per shift	LEAD HOST 1 per shift	AST HOST 2 per shift	BAR SERVER	BARTENDER
Sales	800.00		0.00	0.00	0.00	700.00	400.00
Tips	120.00	15%	30.00 From 3 servers	64.00 From 8 servers	16.00	105.00 15%	60.00 15%
less	10.00	1.25% to busser	0.00	32.00 To Ast Host	0.00	14.00 2.0% to Bartender	104.00 From 8 servers & 4 Bar servers
	8.00	1.0% to Front desk				3.50 0.5% to Busser	16.40 10% of pool to barback
	6.00	0.75% to Bartenders				3.50 0.5% to Expediter	8.20 5% of pool to runner/busser
	4.00	0.5% to Expediter					69.70 split balance with other bartender
Net Tips	92.00		30.00	32.00	16.00	84.00	69.70
Hrs per shift	7.00		7.00	8.50	5.00	7.00	8.00
Tips per hour	13.14		4.29	4.92	3.20	12.00	8.71
Wage	5.25		5.25	9.00	5.25	5.25	9.00
Total Cash Compensation	18.39		9.54	13.92	8.46	17.25	17.71

NON-TIPPED EMPLOYEES COMPENSATION

	KITCHEN SUPERVISOR	LEAD COOK	LINE COOK HIGH END	LINE COOK ENTRY LEVEL	PREP COOK	DISH MACHINE OPERATOR
Wage	13.00	12.50	12.00	8.00	9.00	7.00

TIPPED EMPLOYEES COMPENSATION - LUNCH SHIFT

	SERVER		BUSSER 3 per shift	LEAD HOST 1 per shift	AST HOST 2 per shift	BARTENDER
Sales	350.00		0.00	0.00	0.00	100.00
Tips	52.50	15%	13.13 From 3 servers	38.50 From 11 servers	9.83	15.00 15%
less	4.38	1.25% to busser	0.00	19.25 To Ast Host	0.00	28.80 From 11 servers
	3.50	1.0% to Front desk				
	2.63	0.75% to Bartenders				
	1.75	0.5% to Expediter				2.19 5% of pool to runner/busser
Net Tips	40.25		13.13	19.25	9.83	41.68
Hrs per shift	5.50		4.50	8.50	4.00	8.00
Tips per hour	7.32		2.92	2.96	2.41	5.21
Wage	5.25		6.00	9.00	6.00	9.00
Total Cash Compensation	12.57		8.92	11.96	8.41	14.21

April 10, 1997

TO: Senate Labor and Commerce Committee  
RE: SB162

I am Rose Staggenborg and am offering testimony today as a private citizen. However, the basis of my opinions have been formulated through my work with the public as an Employment Security Specialist for the State of Alaska, Department of Labor.

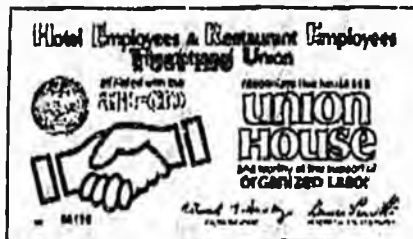
It is my belief that SB 162 is a disservice to tipped employees. It is hard enough for these folks to exist on their current minimum wage salaries plus tips. It will impose a hardship on them to try to exist on a reduced minimum wage plus tips because the employer is only having to "make up the difference" instead of paying a salary.

The only entity to benefit from this bill will be the employers who will no longer pay a wage because the wage and salary will be paid by the patron. The amount of income currently being taxed will be reduced by this action since the employer currently pays the wage and the taxes and the employee pays the taxes on the tips. By reducing the minimum wage by the tipped amounts it relieves the employer from his rightful duty of paying wages for services offered. When I pay a tip it is a gift for good service, it is not for wages, wages are the responsibility of the employer.

Having taken many job orders from local merchants I can tell you that predominately the job orders we are taking are for part time minimum wage jobs with no benefits. It is extremely difficult for folks to make a living wage, now you are wanting to single out a group of workers and further reduce their income. These type actions are causing a wide gulf in economic classes of workers the rich (employers) continue to get richer and the poor (workers) continue to get poorer. We are the stewards of the public trust, this action does nothing to enhance their well being. Please do not pass this bill out of committee.

Rose Staggenborg

VISIT ALASKA - IT'S AN AMERICAN ADVENTURE



## HOTEL EMPLOYEES, RESTAURANT EMPLOYEES UNION LOCAL 878

530 E. 4th Avenue • P.O. Box 100564 • Anchorage, Alaska 99510  
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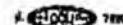
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 (907) 283-2503

Ketchikan area office:  
 (907) 225-4508

Kodiak area office:  
 (907) 488-4561

Valdez area office:  
 (907) 835-2391



April 8, 1997

Senator Loren Leman  
 716 4th Avenue  
 Anchorage, AK 99501

Juneau Tel: 465-2098

Anchorage Tel: 258-2189

Juneau Fax 465-3310

RE: House Bill # 162 Tip credit law.

Dear Senator Leman:

I am a working person in the Hotel and Restaurant industry. I oppose the bill that is currently being introduced by Jack Amon of the Marx Brothers Cafe in Anchorage. I represent over 1800 union members statewide as their Secretary-Treasurer.

Many servers in this industry are single mothers who must support a family. They do not make \$40,000 and \$50,000 as you have been led to believe. Most servers make between \$20,000-30000 per year if they are lucky.

Income statistics from the Alaska Department of Labor show that a 3 person family that makes \$25,000 is very low income. \$32,000 is considered low income and qualified for many government need based programs.

Please kill this bill. It hurts working people and single mothers especially.

Sincerely,

*Bob Gill*  
 Bob Gill  
 Sec-Treas.

STATE: ALASKA  
 PREPARED: 12-10-94

PROGRAM

-----I N C O M E L I M I T S-----  
 1 PERSON 2 PERSON 3 PERSON 4 PERSON 5 PERSON 6 PERSON 7 PERSON 8 PERSON

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
MSA : Anchorage, AK FY 1995 MEDIAN FAMILY INCOME: 85700 VERY LOW-INCOME LOW-INCOME	19800 28150	22300 32150	24050 36200	27850 40200	30100 43400	32300 46650	34550 48850	36750 53050
DISTRICT : Aleutians East Borough FY 1995 MEDIAN FAMILY INCOME: 82000 VERY LOW-INCOME LOW-INCOME	18200 28150	20800 32150	22400 36200	23000 40200	28100 43400	30150 46650	32250 48850	34300 53050
DISTRICT : Aleutians West Census Ar. FY 1995 MEDIAN FAMILY INCOME: 39000 VERY LOW-INCOME LOW-INCOME	17000 27150	19400 31050	21800 34900	24250 38800	26200 41900	28150 45000	30050 48100	32000 51200
DISTRICT : Bethel Census Area FY 1995 MEDIAN FAMILY INCOME: 28500 VERY LOW-INCOME LOW-INCOME	20550 28150	22500 32150	24400 36200	26350 40200	28700 43400	30450 46650	32400 48850	34750 53050
DISTRICT : Bristol Bay Borough FY 1995 MEDIAN FAMILY INCOME: 82400 VERY LOW-INCOME LOW-INCOME	22200 28150	25350 32150	28550 36200	31700 40200	34250 43400	36750 46650	39300 49850	41850 53050
DISTRICT : Dillingham Census Area FY 1995 MEDIAN FAMILY INCOME: 35000 VERY LOW-INCOME LOW-INCOME	17000 27150	19400 31050	21800 34900	24250 38800	26200 41900	28150 45000	30050 48100	32000 51200
DISTRICT : Fairbanks North Star Bor FY 1995 MEDIAN FAMILY INCOME: 48000 VERY LOW-INCOME LOW-INCOME	17000 27150	19400 31050	21800 34900	24250 38800	26200 41900	28150 45000	30050 48100	32000 51200
DISTRICT : Haines Borough FY 1995 MEDIAN FAMILY INCOME: 48400 VERY LOW-INCOME LOW-INCOME	17000 27200	19450 31100	21850 35000	24300 38900	26250 42000	28200 45100	30150 48200	32100 51300
DISTRICT : Juneau Borough FY 1995 MEDIAN FAMILY INCOME: 60600 VERY LOW-INCOME LOW-INCOME	21100 28150	24250 32150	27250 36200	30300 40200	32700 43400	35150 46650	37550 49850	40000 53050
DISTRICT : Kenai Peninsula Borough FY 1995 MEDIAN FAMILY INCOME: 53200 VERY LOW-INCOME LOW-INCOME	19650 28150	21200 32150	24000 36200	26850 40200	28800 43400	30900 46650	33050 48850	35200 53050
DISTRICT : Ketchikan Gateway Borough FY 1995 MEDIAN FAMILY INCOME: 59800 VERY LOW-INCOME LOW-INCOME	30950 28150	32900 32150	34900 36200	36900 40200	38900 43400	40700 46650	42700 49850	44450 53050
DISTRICT : Kodiak Island Borough FY 1995 MEDIAN FAMILY INCOME: 82500 VERY LOW-INCOME LOW-INCOME	19250 28150	22000 32150	24750 36200	27500 40200	29700 43400	31900 46650	34100 49850	36300 53050

Post-It Fax Note 7871

To: <i>McCall</i>	Date: <i>12/10/94</i>
Co./Dept: <i>McCall</i>	From: <i>Neal</i>
Phone #	Co.
Fax # <i>337-2015</i>	Phone # <i>269-4561</i>
	Fax #

*Neal Fried*

4/10/97

TO: Senator Loren Leman

FAX# 465-3816

FROM: Tammie Mallory  
Westmark Juneau Banquet Coordinator

I am and have been a server in the hospitality industry for more than 15 years. I would like to express my opinion on the bill that is being suggested by Jack Amon of the Marx Brothers Cafe in Anchorage. I've been elected by my peers to write this letter with our direct opposition of this bill:

I have worked in and been a customer of many fine dining establishments throughout my years. These establishments where tipable employees are making very generous gratuities, are not as common as the type of restaurants that most people in this field are employed. In my years of service I have never made more than \$22,000 dollars in any year. I am a single person with no dependants, and I still struggle with the wage I'm making at this time. I couldn't imagine being a single mother working below standard minimum wage, with no guarantee of a gratuity. Most people in this industry choose to wait tables because of the cash on a day to day basis, their is never a guaranteed tip, therefore your income fluxuates continuously.

I, as well as the people I'm representing, do claim my tip income per IRS laws. In my opinion this is the lawful and understanding way to insure that tipable employees are taxed on their gratuities. It seems to me that Bill #162 is not necessary, with tip laws set up the way that they are the IRS is doing a fine job of making it clear that tips are part of your gross income, and they must be claimed on your taxes as part of your gross income. It is the individuals responsibility to abide by these laws.

Please consider this and help us kill this bill, the majority of us are struggling to get by with the wage we are at now. This will be detrimental to alot of the working people in Alaska.

Thank you for your time,

*Tammie S. Mallory*  
Tammie Mallory  
Banq. Coordinastor

Westmark Juneau Hotel

Attached is a list of signatures from other Hospitality employees that have the same opinion on this matter.

I OPPOSE HOUSE BILL #162 TIP CREDIT LAW

Pamella G. Butler

Westmark Juneau

Maria M. Haslam

" "

John Dwyer

Hanger

Guillermo Acosta Minor

"

Paul M. Moore

El Sombrero

Dave Eckerson

"

"

~~\_\_\_\_\_~~  
Karen Zeller

Baranof Hotel

Maida E. James

"

Karen Saalich

"

~~\_\_\_\_\_~~

"

~~\_\_\_\_\_~~

"

~~\_\_\_\_\_~~  
Lynn C. Minto

"

"

Susan Mahony

Fernando's

Armen

El Sombrero

Unfortunately I only had 40 min notice to gain signatures

April 8, 1997

Senator Loren Leman  
716 4th Avenue  
Anchorage, AK 99501

Juneau Tel: 465-2098

Anchorage Tel: 258-2109

Juneau Fax 465-3816

RE: House Bill # 162 Tip credit law.

Dear Senator Leman:

I am a working person in the Hotel and Restaurant industry. I oppose <sup>new</sup> that is currently being introduced by Jack Amon of the Marx Brothers Cafe in Anchorage.

Many servers in this industry are single mothers who must support a family. They do not make \$40,000 and \$50,000 as you have been led to believe. Most servers make between \$20,000-30000 per year if they are lucky.

Income statistics from the Alaska Department of Labor show that a 3 person family that makes \$25,000 is very low income. \$32,000 is considered low income and qualified for many government need based programs.

Please kill this bill. It hurts working people and single mothers especially.

Sincerely,

*Daniel M. Vogel*

Daniel M. Vogel

April 8, 1997

Senator Loren Leman  
716 4th Avenue  
Anchorage, AK 99501

Juneau Tel: 465-2098

Anchorage Tel: 258-2189

Juneau Fax 465-3816

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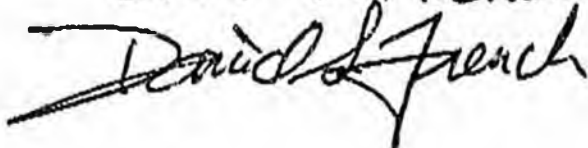
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Sincerely,

DAVID S. FRENCH



April 8, 1997

Senator Loren Lemam  
716 4th Avenue  
Anchorage, AK 99501

Juneau Tel: 465-2098

Anchorage Tel: 258-2189

Juneau Fax 465-3816

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Sincerely,

Callan Taylor

April 8, 1997

Senator Loren Leman  
716 4th Avenue  
Anchorage, AK 99501

Juneau Tel: 465-2098

Anchorage Tel: 258-2189

Juneau Fax 465-3816

RE: House Bill # 162 Tip credit law.

Dear Senator Leman:

I am a working person in the Hotel and Restaurant industry. I oppose <sup>the bill</sup> that is currently being introduced by Jack Amon of the Marx Brothers Cafe in Anchorage.

Many servers in this industry are single mothers who must support a family. They do not make \$40,000 and \$50,000 as you have been led to believe. Most servers make between \$20,000-30000 per year if they are lucky.

Income statistics from the Alaska Department of Labor show that a 3 person family that makes \$25,000 is very low income. \$32,000 is considered low income and qualified for many government need based programs.

Please kill this bill. It hurts working people and single mothers especially.

Sincerely,

A handwritten signature in cursive script that reads "Dennis J. Jorgensen". The signature is written in black ink and is positioned below the typed name "Dennis J. Jorgensen".

April 8, 1997

Senator Loren Leman  
716 4th Avenue  
Anchorage, AK 99501

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Please kill this bill. It hurts working people and single mothers especially.

Sincerely,

Your name

*Sara Pullen*



Anchorage - Star of the North  
Chamber of Commerce

April 18, 1997

Senator Loren Leman  
Alaska State Legislature  
State Capitol  
Juneau, Alaska  
Fax: 1-907-465-3810

Dear Senator Leman:

This fall the Anchorage Chamber of Commerce Board of Directors passed on to the Alaska State Chamber of Commerce our recommendations for 1997 Legislative Priorities. Among our recommendations was the issue of "tip credit." We feel that the changes to Alaska Statute regarding "tip credit" makes good business sense. These changes will allow the treatment of tips to be the same for both tax and wage purposes.

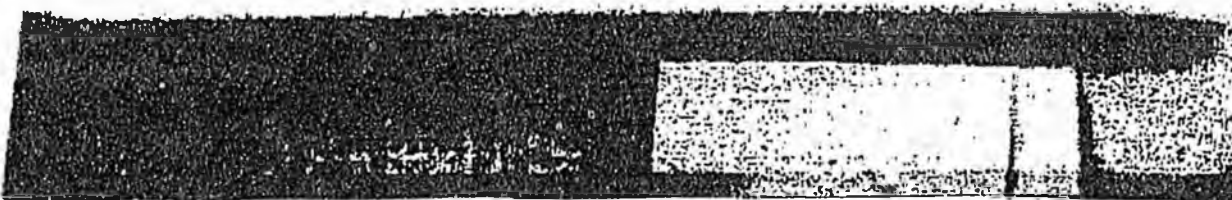
We hope that you will support these changes through passage of the necessary changes to the Alaska Statutes.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Carol Heyman".

Carol Heyman  
President



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FAIR LABOR STANDARDS

29 § 203

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Ch. 8

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FAIR LABOR STANDARDS

29 § 203

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Aide



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

**HAND DELIVERED**

April 16, 1997

The Honorable Jerry Ward  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801

RE: SB 162, Proposed Tip Credit Legislation

Dear Senator Ward:

Thank you for taking the time to meet with me this week while I was in Juneau. I appreciate you allowing me to share with you our position on the tip credit legislation offered by the Senate Labor and Commerce Committees (SB 162), a proposal which is very important to the restaurant industry in Alaska.

As I mentioned when we met, 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 fair and reasonable relief from the Legislature.

The tip credit legislation offered by the Senate Labor and Commerce Committee (copy attached) 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. Following is an example of how the tip credit would work when the minimum wage is raised to \$5.65 an hour in September:

4/16/97 Senator Ward letter  
Re: SB 162, Tip Credit Legislation, p. 2

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.

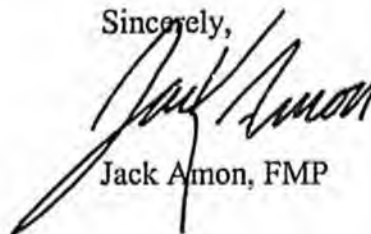
The most important thing to understand about the proposed legislation is that adoption of a tip credit in no way caps the minimum wage for tipped employees, and that those employees will always receive at least the state's prevailing minimum wage for each hour worked. The only question is where the additional monies above \$5.25 an hour will 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 does not receive at least \$.40 per hour in tips (the difference between the cash wage and the minimum wage), his employer will be required to pay him not only the \$5.25 cash wage, but the additional amount necessary 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.

As I mentioned above, with the coming \$.40 increase in the minimum wage, passage of tip credit legislation this session is critical to the continued viability of the restaurant industry in the state, and we in the restaurant industry would appreciate anything you might be able to do to assist us in moving this legislation forward quickly.

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 Senate on this legislation.

Thank you for your continued support.

Sincerely,



Jack Amon, FMP

**SB**

**163**

# FISCAL NOTE

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

**BILL NO. SB 163**

Revision Date: \_\_\_\_\_  
 Title: An Act regulating chemical dependency counselors;  
and providing for an effective date.  
 Sponsor: Senate Labor & Commerce  
 Requestor: Senate Labor & Commerce

Department: Commerce and Economic Development  
 BRU: Occupational Licensing  
 Component: Operations  
 COMPONENT SERIAL NO. 1844

**Expenditures/Revenues (Thousands of Dollars)**

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	69.7	69.7	69.7	69.7	69.7	69.7
TRAVEL	9.1	9.1	5.4	5.4	5.4	5.4
CONTRACTUAL	118.3	43.3	43.3	43.3	43.3	43.3
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	14.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>213.1</b>	<b>124.1</b>	<b>120.4</b>	<b>120.4</b>	<b>120.4</b>	<b>120.4</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES</b>	<b>386.5</b>	<b>0.0</b>	<b>290.1</b>	<b>0.0</b>	<b>290.1</b>	<b>0.0</b>
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1091 Designated PR	213.1	124.1	120.4	120.4	120.4	120.4
<b>TOTAL</b>	<b>213.1</b>	<b>124.1</b>	<b>120.4</b>	<b>120.4</b>	<b>120.4</b>	<b>120.4</b>

Estimate of any current year (FY 97) cost: \$ 0.0

**POSITIONS**

FULL-TIME	1	1	1	1	1	1
PART-TIME	1	1	1	1	1	1
TEMPORARY						

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

SB 163 creates a new five member Board of Chemical Dependency Counseling Examiners to license the practice of chemical dependency counselors in four categories. 1) Counselor associate; 2) Counselor I; 3) Counselor II; and 4) Clinical Supervisor. The costs identified in this fiscal note assumes there will be approximately 700 potential licensees.

See attached for further explanation.

Prepared by: Jennifer Strickler, Administrative Manager  
 Division: Occupational Licensing  
 Approved by Commissioner: William L. Hensley  
 Agency: Commerce and Economic Development

Phone: 465-2144  
 Date: 4/21/97  
 Date: 4-21-97

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# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO.: SB 163

ANALYSIS: (Continued)

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT FISCAL NOTE CALCULATIONS

### PERSONAL SERVICES

\$ 69.7

- ◆ Permanent Full-Time Occupational Licensing Examiner I, Range 12 staff the Board of Chemical Dependency Counseling Examiners and support the licensing program. \$41.4
- ◆ Permanent Part-Time Investigator III, Range 18 to enforce the licensing statutes. \$28.3

### TRAVEL

\$ 9.1

Travel is based on two meetings each year as required by Sec. 08.19.020(4), assuming one meeting is held in Anchorage, and in Juneau. Also, travel is based on the assumption that members of the board will be appointed from the following areas: 2-Anchorage; 1-Fairbanks; and 2-Juneau; plus, the Licensing Examiner from Juneau.

Since the board will only meet twice each year, board meetings in the first two years are based on the assumption that the meetings will last four days each, with two travel days attached to each meeting. After start-up of the licensing program begins, the length of board meetings will be reduced to two days each, plus travel.

- ◆ 1 - Anchorage Meeting 3.8
- ◆ 1 - Juneau Meeting 3.3
- ◆ Travel and Per Diem for the Investigator III to conduct field work throughout the State 2.0

### CONTRACTUAL SERVICES

\$ 118.3

- ◆ Regulation Costs - based on at least four projects:
  - Ad Orders @ \$600 per project x 4 2.4
  - Postage for reg. notices @ .32 x 700 notices x 4 projects 2\$3.3
- ◆ Contractual-related costs for the two positions (telephone, postage, courier, etc.), misc. case related costs (copies of records), expert witnesses, depositions, etc. 6.0
- ◆ Facility rentals for examinations @ \$200 per administration and assuming the exams will be administered at least four times each year 0.8

**SB 163, continued**

- ◆ Examination Development (one-time costs) for the following levels:  
Counselor associate; Counselor I; Clinical Supervisor  
@ \$25.0 per exam 75.0
- ◆ Examination costs assuming exam costs are \$53 per candidate and  
that approx. 325 individuals will be tested each year 17.2
- ◆ Examination Proctors: at least two proctors per  
exam @ \$10 per hour x 8 hours x 4 exams 0.6
- ◆ Legal services in preparing for litigation. The funding  
provides 120 hours of legal services (10 hours per month  
x 12) at \$85 per hour. 10.2
- ◆ Office space costs for the Occupational Licensing Examiner I and  
Investigator III positions at \$2.6 per position annually. 5.2

SUPPLIES

- ◆ Daily operating supplies for the program (paper, pens, etc.)

\$ 2.0

EQUIPMENT (One-time Costs)

- ◆ Workstation \$3.0
- ◆ Computer (Gateway) 2.0
- ◆ Telephone: 1.1
  - M2008 Base Unit
  - Voice Mail
  - Line (dial tone)
- ◆ 5-dwr. Lateral file cabinet  $\frac{2}{\$7.0 \times 2}$

\$ 14.0

**DIRECT Program Costs:**

**\$ 213.1**

**DIVISION INDIRECT:** Licensees within this program will also be assessed a share of division indirect costs based on the number of licensees within the program. Assuming this program will have approximately 900 licensees, the program is estimated to be assessed 1.96% of division indirect costs (700 divided by 35,666 total division licensees). Using FY 96 division indirect costs for example, and assuming these costs remain relatively the same, the program would be assessed \$24,633 annually for division indirect.

**REVENUE:** Licenses are based on a two-year cycle and *designated program receipts* from licensing fees are used to fund the program. Therefore, each licensee will be expected to pay a share of Direct and Indirect costs covering the first two years. These costs consists of: Direct Costs (\$213,100 *first year* + \$124,100 *second year* = \$337,200) divided by 700 = \$481.72; and Division Indirect Costs (\$24,633 x 2 = \$49,266) divided by 700 = \$70.38. The biennial license fee for each licensee is estimated to be:

Direct Cost: \$ 481.72  
 Indirect Cost: 70.38  
**\$ 552.10 Licensing Fee for the first Biennial**

Prior to the first licensing renewal fees would be adjusted for the next two-years based on actual expenses recorded in the first two years.