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542

FIRST COMMITTEE OF REFERRAL

DATE: 4/3/90

FURTHER: Finance

Date of 5-Day Notice: 4/5/90
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 5/10/90

L & C

Committee considered

SB 542

Including employment of officials at certain amateur sports events for coverage under the Employment Security Act; efd.

and recommended:

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

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) _____

zero fiscal note(s) _____

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

[Handwritten signatures]

OTHER RECOMMENDATIONS:

[Handwritten signature]
Chair: Signature and Recommendation

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SB 542
 PUBLISH DATE: 4/3/90

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
 Title: "An Act including employment of
officials at amateur sports events for coverage..." BRU: Employment Security
 Sponsor: Rules Committee Components: Employment Services
 Requestor: Governor Youth Employment Services
Unemployment Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Note: There is no fiscal impact in FY90.

(see attached)

Prepared by: Judy Knight, Deputy Director Phone: 465-2711
 Division: Employment Security Date: 4/2/90
 Approved by Commissioner: Jim Sampson Date: 4/2/90
 Agency: Department of Labor

Distribution (by preparer) :
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Fiscal Note Analysis
for

"An Act including employment of officials at amateur sports events..."

AS 23.20.526(a)(23) excludes sports officials at amateur sporting events from coverage under the Employment Security Act for unemployment insurance. This exclusion presents an issue with the requirements of section 3304(a)(6)(A) of the Federal Unemployment Tax Act.

Conformity proceedings against Alaska are presently pending. A final ruling by the U.S. Department of Labor that Alaska's law is out of conformity with federal law carries the penalty of loss of FUTA credit to all Alaska's employers (5.4 percent of the first \$7,000 of wages for each employee). Additional sanctions would be the loss of federal administrative funds for Employment Services (including Youth Employment Services) and Unemployment Insurance programs as well as federal program funds for Title III, Job Training Partnership Act.

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 3, 1990

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that removes the exclusion of officials at amateur sports events from unemployment insurance.

In the final hours of the 1989 legislative session, SCS CSHB 147(L&C) was amended to exclude those officials from unemployment insurance. (Ch. 100, SLA 1989.) Section 26 of the final bill amended AS 23.20.526(a) by adding a new paragraph (23) to the list of exclusions. The U.S. Department of Labor (USDOL) subsequently advised the Alaska Department of Labor that this provision creates an issue of conformity with federal law.

The Federal Unemployment Tax Act (FUTA) requires that all employees of government entities and nonprofit organizations be covered for unemployment insurance. Therefore, the exclusion of sports officials working for a government or nonprofit entity presents an issue of noncompliance with the requirements of sec. 3304(a)(6)(A) of FUTA.

Conformity proceedings against Alaska are presently pending. A final ruling by the USDOL that Alaska's law is out of conformity with FUTA carries the penalty of loss of FUTA credit to all Alaska's employers (5.4 percent of the first \$7,000 of wages), plus the loss of administrative money for our employment security division (which is federal money) and Job Training Partnership Act, Title III money. To avoid these punitive measures, I recommend repeal of the 1989 provision that excludes sports officials from unemployment insurance coverage, and I urge your early passage of this bill.

Sincerely,

A handwritten signature in dark ink, appearing to read "Steve Cowper", written over the typed name.

Steve Cowper
Governor

SENATE BILL 542 - SPORTS OFFICIAL - U.I. BENEFITS

Senate Bill 542, introduced at the request of the Governor, repeals a provision that excludes sports officials from unemployment insurance coverage.

In the final hours of the 1989 legislative session, legislation was amended to exclude those officials from unemployment insurance. The U.S. Department of Labor subsequently advised the Alaska Department of Labor that this provision creates an issue ^{of} conformity with federal law.

The Federal Unemployment Tax Act (FUTA) requires that all employees of government entities and nonprofit organizations be covered for unemployment insurance. Therefore, the exclusion of sports officials working for a government or nonprofit entity presents an issue of noncompliance with the requirements of FUTA.

Conformity proceedings against Alaska are presently pending. A final ruling that Alaska's law is out of conformity with FUTA carries severe penalties. To avoid these punitive measures, it is necessary to repeal the 1989 provision which excludes sports officials from unemployment insurance coverage. I recommend passage of SB 542.

ADDITIONAL INFORMATION

1. The possible penalty includes ---
 - a) loss of FUTA credit to all Alaska's employers (5.4 percent of the first \$7,000 of wages)
 - b) loss of administrative money for our employment security division
 - c) loss of administrative money for the Job Training Partnership Act, Title III money

Sec. 23.20.526. Exclusions from definition of "employment".

(a) In this chapter, unless the context otherwise requires, "employment" does not include

(1) domestic service in a private home, except as provided in AS 23.20.525(a)(15);

(2) newsboys' services in selling or distributing newspapers on the street or from house to house;

(3) service not in the course of the employing unit's trade or business performed in a calendar quarter by an individual, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employing unit to perform the service; an individual is here considered to be regularly employed to perform service not in the course of an employing unit's trade or business during a calendar quarter only if the individual performs the service for some portion of the day on each of some 24 days during the quarter or during the preceding calendar quarter.

(4) service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child under the age of 18 in the employ of the child's father or mother;

(5) service with respect to which unemployment insurance is payable under an unemployment insurance program established by an Act of Congress;

(6) service performed in the employ of a foreign government including service as a consular or other officer or employee or a nondiplomatic representative;

(7) service performed in the employ of an instrumentality wholly owned by a foreign government if

(A) the service is of a character similar to that performed in foreign countries by employees of the United States government or its instrumentalities; and

(B) the department finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and its instrumentalities;

(8) service performed by an insurance agent, insurance solicitor, a real estate broker, a real estate salesman or a securities salesman to the extent the person is compensated by commission, unless the service is required to be covered under the Federal Unemployment Tax Act as amended.

(9) notwithstanding AS 23.20.525(a)(11), service performed by an officer or member of the crew of an American vessel on or in connection with the vessel, if the operating office, from which the operations of the vessel operating on navigable waters inside or inside and out-

side the United States are ordinarily and regularly supervised, managed, directed and controlled, is outside this state;

(10) service performed on or in connection with a vessel not an American vessel by an individual if the individual performed service on and in connection with the vessel when outside the United States;

(11) service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this chapter, except that to the extent that the Congress of the United States permits states to require an instrumentality of the United States to make payments into an unemployment fund under a state employment security law, all of the provisions of this chapter apply to the instrumentalities, and to service performed for the instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and service; however, if this state is not certified for any year by the Secretary of Labor under 26 U.S.C. 3304(c) (Federal Unemployment Tax Act, Internal Revenue Code), the payments required of the instrumentalities with respect to the year shall be refunded by the department from the fund in the same manner and within the same period as is provided in AS 23.20.225 with respect to contributions erroneously collected;

(12) service performed in the employ of another state, or political subdivision of another state, or an instrumentality of another state or political subdivision which is wholly owned by another state or its political subdivision, or a service performed in the employ of an instrumentality of another state or its political subdivisions to the extent that the instrumentality is, with respect to the service, exempt under the Constitution of the United States from the tax imposed by 26 U.S.C. 3301 (Federal Unemployment Tax Act, Internal Revenue Code);

(13) service performed in the employ of an international organization;

(14) service covered by an election approved by the agency charged with the administration of any other state or federal employment security law, in accordance with an arrangement under AS 23.20.090(a) during the effective period of the election;

(15) service performed by an individual in agricultural labor, except as provided in AS 23.20.525(a)(16); the term "agricultural labor" means remunerated service

(A) on a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(B) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, im-

provement, or maintenance of the farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of the service is performed on a farm;

(C) in connection with the production or harvesting of any commodity defined as an agricultural commodity in 12 U.S.C. 1141j (§ 15(g), Agricultural Marketing Act), as amended, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(D) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if the operator produced more than one-half of the commodity with respect to which the service is performed except as stated in (b) of this section;

(E) in the employ of a group of operators of farms, or a cooperative organization of which the operators are members, in the performance of service described in (D) of this paragraph, but only if the operators produced more than one-half of the commodity with respect to which the service is performed;

(F) on a farm operated for profit if the service is not in the course of the employer's trade or business;

(16) *[Repealed, § 25 ch 122 SLA 1977.]*

(17) service performed after December 31, 1971, by nurses, technicians, and other professional employees of hospitals no part of the net earnings of which inures to the benefit of a private shareholder or individual, unless the service is required to be covered under the Federal Unemployment Tax Act;

(18) *[Repealed, § 25 ch 122 SLA 1977.]*

(19) *[Repealed, § 80 ch 9 SLA 1980.]*

(20) service performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of that boat under which

(A) that individual does not receive any cash remuneration except as provided in (B) of this paragraph;

(B) that individual receives a share of the boat's, or the boats' in the case of a fishing operation involving more than one boat, catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of that catch; and

(C) the amount of that individual's share depends on the amount of the boat's, or the boats' in the case of a fishing operation involving more than one boat, catch of fish or other forms of aquatic animal life; but only if the operating crew of that boat, or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat, is normally made up of fewer than 10 individuals;

(21) service performed as a prospective or impaneled juror in a court;

(22) service performed for a corporation by an employee of the corporation if

(A) the corporation is incorporated under AS 10.06;

(B) the corporation is not a government corporation; and

(C) the employee is an executive officer of the corporation;

(23) service performed as an official at an amateur sports event.

(b) Notwithstanding any other provision of this section, the provisions of (a)(15)(D) and (E) of this section are not applicable to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(c) In (a)(15) of this section, "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(d) For the purposes of AS 23.20.525(a)(4) — (6) and (14), the term "employment" does not apply to service performed

(1) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the person's ministry or by a member of a religious order in the exercise of duties required by the order;

(2) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving the rehabilitation or remunerative work;

(3) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or any agency of a state or political subdivision of the state, by an individual receiving work relief or work training;

(4) for a state hospital by an inmate of a prison or correctional institution;

(5) in the employ of a school, college, or university, if the service is performed by a student who is enrolled and is regularly attending classes at the school, college or university;

(6) by an individual under the age of 22 who is enrolled at a non-profit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution, which combines academic instruc-