

**HB**

**490**





# LEGAL SERVICES

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## MEMORANDUM

April 12, 2004

**SUBJECT:** Change to CSHB 490(JUD) (Work Order No. 23-GH2070\D)

**TO:** Representative Lesil McGuire,  
Chair of House Judiciary Committee  
Attn: Vanessa Tondini

**FROM:** Barbara R. Craver   
Legislative Counsel

Enclosed is a final of CSHB 490(JUD). The version contains some technical changes that were apparently overlooked by the governor's drafting attorneys. Three sections were added to deal with a contingent repeal of AS 23.20.520(10) contained in section 33, chapter 122 of the 1977 session laws. These three sections, bill sections 10, 15, and 16, will operate only if the contingency described in the 1977 Act occurs. Also, in the title, "admissibility" was changed to "binding effect" to reflect the amendment in sec. 8 more accurately.

If I may be of further assistance, please advise.

BRC:med  
04-391.med

Enclosure

# ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair  
Rep. Tom Anderson, Vice-Chair  
Rep. Jim Holm  
Rep. Dan Ogg  
Rep. Ralph Samuels  
Rep. Les Gara  
Rep. Max Gruenberg



State Capitol, Room 120  
Juneau, AK 99801-1182  
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Fax (907) 465-6592

## House Judiciary Committee

### Memorandum

**To:** Leg. Legal  
**From:** Vanessa Tondini, Committee Aide  
House Judiciary Committee  
**Date:** April 7, 2004  
**Re:** CS Request

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Please create a final draft House Judiciary Committee Substitute for work order # 23-GH2070\A, HB 490, incorporating the attached conceptual amendment. The bill was passed out of committee today.

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

HB 490

Conceptual Amendment #1 - PASSED

by Rep. McGuire

Page 2, Line 24; Page 2, Line 31; Page 3, Line 1 (and any other necessary place)

Amend to ensure that any reference to "partnership" includes all types of partnerships (partnerships, limited partnerships, and limited liability partnerships).

# STATE OF ALASKA

**DEPARTMENT OF LAW**  
*OFFICE OF THE ATTORNEY GENERAL*

*Frank H. Murkowski, Governor*

P.O. BOX 110300  
JUNEAU, ALASKA 99811-0300  
PHONE: (907)465-3600  
FAX: (907)465-2075

March 25, 2004

Representative Lesil McGuire  
Chair, House Judiciary Committee  
Alaska State Legislature  
State Capitol, Room 118  
Juneau, Alaska 99801

Re: HB 490 - "An Act relating to the release of employment security records, to the admissibility of determinations and decisions regarding unemployment compensation benefits, and to contributions, interest, penalties, and payments under the Alaska Employment Security Act; providing that property under the Alaska Employment Security Act is not subject to the Uniform Unclaimed Property Act; and providing for an effective date."

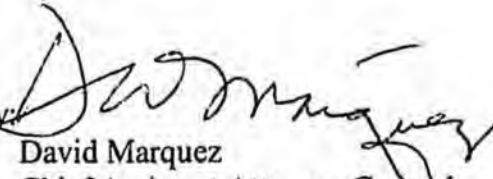
Dear Representative McGuire:

I am writing this letter to request that you schedule the above bill for a hearing at your earliest convenience.

If you have any questions, please feel free to contact me.

Sincerely,

GREGG D. RENKES  
ATTORNEY GENERAL

By:   
David Marquez  
Chief Assistant Attorney General

DWM/lcc

cc: Mike Tibbles, Legislative Director, Office of the Governor  
Deborah Behr, Legislation and Regulations Attorney, Department of Law



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STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 13, 2004

The Honorable Pete Kott  
Speaker of the House  
Alaska State Legislature  
State Capitol, Room 208  
Juneau, AK 99801-1182

Dear Speaker Kott:

Under the authority of article III, section 18, of the Alaska Constitution, I am transmitting a bill relating to the: (1) the release of employment security records for law enforcement purposes; (2) administrative hearing decisions on unemployment benefits; and (3) federal compliance and other technical corrections to the Alaska Employment Security Act.

This bill would allow the Department of Labor (DOL) to release employment security records to a state district attorney, a municipal attorney, a United States attorney, and the Federal Bureau of Investigation for use in criminal investigations and prosecutions. Under current law, employment security records are confidential for criminal investigation and prosecution purposes.

This bill would codify the Alaska Supreme Court's decision in Manning v. Alaska Railroad Corporation, 853 P.2d 1120 (Alaska 1993). In that case, the court held that the commissioner of DOL's decision granting the plaintiff unemployment benefits did not automatically require a finding of wrongful termination in a later court case. Unemployment claims rarely provide an incentive for the employer to participate, much less spend a significant amount of time and money investigating the facts and bringing those facts to the attention of the hearing officer. Employers have little incentive to participate in an unemployment benefits claim hearing since their bottom line is only marginally affected by the outcome. This gives an employee the opportunity to receive a favorable decision in an uncontested unemployment benefits claim and unfairly leverage that decision against the employer in a later court case.

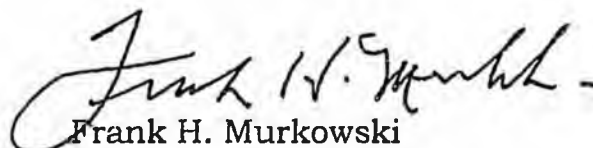
Finally, the bill makes a number of changes to bring Alaska law into compliance with federal law, resolves conflicts in Alaska statutes and makes other technical amendments. Other changes include provisions dealing with payment and collection of unemployment taxes by DOL from employers, expanding the ability of DOL to collect overpayments of unemployment

The Honorable Pete Kott  
February 13, 2004  
Page 2

compensation benefits on behalf of other states, clarifying which health professionals are excluded from the Alaska Employment Security Act, and clarifying that the definition of "wages" does not include education assistance. Of these, the principal change would remove the requirement that unemployment compensation be deposited into the unclaimed property fund. Federal law requires such funds to be deposited into the unemployment insurance trust fund.

I urge your prompt and favorable action on this measure.

Sincerely yours,

  
Frank H. Murkowski  
Governor

Enclosure

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 490  
 (H) Publish Date: 2/16/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Department: Labor and Workforce Development  
 Title: "An Act relating to... RDU: Employment Security  
the Alaska Employment Security Act..." Component: Unemployment Insurance  
 Sponsor: \_\_\_\_\_  
 Requester: \_\_\_\_\_ Component Number: 2276

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

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<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>

Estimate of any current year (FY2004) cost: None  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This technical legislation will have no fiscal impact on the department.

Prepared by: Thomas W. Nelson, Director Phone 465-5933  
 Division: Employment Security Division Date/Time 12/29/03 3:34 PM  
 Approved by: Greg O'Claray, Commissioner Date 12/29/2003  
 Agency: Department of Labor and Workforce Development

**HOUSE BILL 490**

**“AN ACT RELATING TO THE RELEASE OF EMPLOYMENT SECURITY RECORDS, TO THE ADMISSIBILITY OF DETERMINATIONS AND DECISIONS REGARDING UNEMPLOYMENT COMPENSATION BENEFITS, AND TO CONTRIBUTIONS, INTEREST, PENALTIES, AND PAYMENTS UNDER THE ALASKA EMPLOYMENT SECURITY ACT; PROVIDING THAT PROPERTY UNDER THE ALASKA EMPLOYMENT SECURITY ACT IS NOT SUBJECT TO THE UNIFORM UNCLAIMED PROPERTY ACT; AND PROVIDING FOR AN EFFECTIVE DATE.”**

**SECTIONAL ANALYSIS  
OFFICE OF THE ATTORNEY GENERAL**

**Section 1:** Currently under AS 23.20.110(g), when the Employment Security Division (“ESD”) provides employment security records to officers and employees of another state agency or a federal agency, the officers and employees must keep employment security records confidential. This section would amend AS 23.20.110(g) to add that when ESD provides employment security records to officers or employees of a municipal agency, the municipal officers and employees must also keep the records confidential. This amendment is necessary because under section 2 of the bill, ESD will be providing employment security records to municipal attorneys when they need them for criminal investigations and prosecutions.

**Section 2:** This section will allow ESD to release employment security records for criminal investigations and prosecutions. ESD periodically receives requests for employment security records from the U.S. Attorney’s Office, the District Attorney’s Office, municipalities, and the FBI for purposes related to criminal investigations and prosecutions. Under AS 23.20.110, employment security records are confidential and does not allow the release of these records for criminal investigations or prosecutions purposes, except for employment security fraud cases. The U.S. Department of Labor has approved the amendment to allow ESD to release confidential employment security records for criminal investigation and prosecution purposes. Other states have allowed the release of these records for criminal investigation and prosecution purposes.

- Section 3:** This section would amend AS 23.20.115. AS 23.20.115 provides that it is a class B misdemeanor for an officer or employee of the state or a federal agency to make an unauthorized disclosure of employment security records. The amendment to AS 23.20.115 adds that it is a class B misdemeanor for an officer or employee of a municipality to make an unauthorized disclosure of employment security records.
- Section 4:** This section amends AS 23.20.225(e) to remove reference to the provisions of Department of Revenue law regarding disposal of abandoned property and authorizes the Department of Labor and Workforce Development to adopt regulations providing for the distribution of unclaimed excess contributions. Federal law requires that unclaimed excess contributions be deposited back to the UI Trust Fund rather than the state's general fund. Consequently, unclaimed excess contributions do not fall under the provisions of AS 34.45.110 – AS 34.45.430.
- Section 5:** Under the Employment Security Act, officers and employees of a corporation may be liable for employment security taxes if the corporation fails to pay the taxes. This section will add that members, managers and employees of a limited liability company ("LLC") may be liable for employment security taxes if the LLC fails to pay the taxes.
- Section 6:** This section will allow a member, manager, or employee of a LLC to appeal a determination of tax liability.
- Section 7:** Currently under AS 23.20.390(e), ESD can only recover, on behalf of another state, unemployment compensation benefits that a person fraudulently obtained. This bill would amend AS 23.20.390(e) to allow ESD to collect, on behalf of another state, any benefits to which a person was not entitled, even those that were not fraudulently obtained. This bill would bring Alaska into conformity with the Interstate Reciprocal Overpayment Recovery Arrangement.
- Section 8:** AS 23.20.497 currently provides that unemployment compensation decisions are not admissible in another action or proceeding. This amendment will clarify that under AS 23.20.497 unemployment compensation decisions are not admissible in an arbitration proceeding.

- Section 9:** This section would amend AS 23.20.520(10), which defines “employing unit,” to include a limited liability company.
- Section 10:** This section defines “municipal agency.”
- Section 11:** This section will bring the Employment Security Act into alignment with the Federal Unemployment Tax Act (“FUTA”) by clarifying which health professionals are excluded from the definition of employment. Under FUTA, employed student nurses and medical interns are exempt from FUTA. This section would amend AS 23.20.526(a)(16) to similarly provide that student nurses and medical interns are exempt from the Employment Security Act. Therefore employers will not have to pay employment security taxes for these employees and these employees will not be able to collect unemployment benefits.
- Section 12:** This section would amend AS 23.20.530(b) by adding a new paragraph that provides an exclusion from the definition of wages of payments or benefits provided by an employer under a plan to provide educational assistance to its employees. FUTA already provides for this exclusion from its definition of wages so this section brings the Employment Security Act into alignment with FUTA.
- Section 13:** This section provides a conforming amendment to section 4. The proposed amendment to AS 34.45.760(14) provides that for purposes of the Uniform Unclaimed Property Act, “property” does not include unclaimed excess contributions under the Employment Security Act.
- Section 14:** The Act would take effect immediately under AS 01.10.070(c).

HB 490/SB 342

**Mr. Chairman, members of the committee:** My name is Tom Nelson, I am the Director of the Employment Security Division, Alaska Department of Labor and Workforce Development. I will be speaking to sections 4-7, 9, & 11-13 of House Bill 490, and I understand representatives of the Department of Law will be addressing the other sections of this legislation.

**The proposed statute changes** are largely housekeeping and clarification of existing statute. The changes provide Alaska language alignment with federal law and will bring us into compliance with the unemployment insurance overpayment arrangement we have with other states.

**Section 4** authorizes the department to adopt regulations providing for the distribution of unclaimed excess contributions.

**Sections 5, 6, & 9** clarifies statute by adding the terms manager and limited liability company to existing definitions.

**Section 7** brings Alaska into conformity with the Interstate Reciprocal Overpayment Recovery Arrangement (IRORA) and provides the Employment Security Division the ability to collect unemployment insurance overpayments on behalf of other states caused by reasons other than fraud. States participating in this agreement already provide this service to Alaska.

**Section 11** aligns Alaska language with federal law by clarifying which health professionals are excluded from the definition of employment. Only student nurses and medical interns are excluded and this clears up existing language.

**Section 12** clarifies language that provides an exclusion from the definition of wages of payments or benefits provided by an employer for purposes of educational assistance to its employees. Federal law already provides this exclusion from their definition of wages.

**Section 13** removes reference to the provisions of Department of Revenue law regarding disposal of abandoned property. Federal law requires that unclaimed excess contributions be deposited back into the Trust Fund.

**Thank you for the opportunity to testify. I will be happy to answer any questions.**