ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

3707 HSTA HB 537 - HB 539

583

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9/11/89
Date

02-519 (REV 8/78)

HB
537

COMMITTEE

HOUSE
COMMITTEE REPORT

C &RA

(7)
Date referred: 2/?/86

FURTHER REFERRALS: FINANCE

DATE: 4/2/86

The STATE AFFAIRS Committee has considered HB 537

"An Act relating to participation of municipalities and political subdivisions in the Public Employment Relations Act."

and recommends:

[✓] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with _____ [ ] same title
[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[✓] first fiscal note w/analysis
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

O.C. Brooks

Bette Cato

Katie Hurley

SIGNING OTHER RECOMMENDATIONS:

NO REC

Roger Jackson No Rec.

Katie Hurley
Chairman

Bill No. House Bill 537

Title "An Act relating to participation of municipalities and political subdivisions in the Public Employment Relations Act."

Date April 2, 1986

Contact: Robert J. Bacolas
465-4870

Eileen Plate
465-2700

House Bill 537 would require political subdivisions in the state to either adopt a local ordinance which provides collective bargaining for its employees or be covered by the Public Employment Relations Act (PERA). Under current law, political subdivisions are not required to bargain collectively with their employees and they may simply opt not to be covered by PERA.

Currently, of the 30,600 local government employees in the state, 3,200 are covered by PERA (City of Fairbanks, Fairbanks North Star Borough, Petersburg, City of Ketchikan, and Unalaska). Another 10,700 work for the City of Anchorage and the City and Borough of Juneau which provide collective bargaining and labor relations activities by local ordinance. An additional 4,500 have various loose knit forms of employee representation with the employer's consent, but their collective bargaining activities are not subject to labor relations oversight (Kenai Peninsula Borough, City and Borough of Kodiak, Valdez/Cordova and the Mat-su Borough.

This leaves approximately 12,200 local government employees who presently are not provided an opportunity to bargain collectively with their employers, and who would have this right extended to them under the provisions of House Bill 537.

If House Bill 537 were enacted, the department projects that the employers of about 25% of these employees would opt for local control and, therefore, would adopt local ordinances to permit collective bargaining. Under this assumption the remaining 9,100 employees would be served by the Department of Labor's Labor Relations Agency.

The Department of Labor supports the concept of extending to employees of political subdivisions the opportunity to bargain collectively as provided in this bill. As permitted under the present law, nearly 40% of the employees who work for political subdivisions in the state have been denied the opportunity to be represented for collective bargaining purposes.

The Department's fiscal note is attached.

APPROVED:

Jim Robison, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 537
Title : ...participation of municipalities and political subdivisions in the Public Employment Relations Act
Sponsor : Koponen, Boucher, et. al.
Requestor : House State Affairs
Date of Request : 3/26/86

FISCAL DETAIL

Agency Affected : Labor
BRU : Labor Standards and Safety
Components : Wage & Hour

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		72.5	72.5	72.5	72.5	72.5
TRAVEL		12.5	13.0	8.1	8.4	8.7
CONTRACTUAL		31.3	32.6	15.5	16.1	16.8
SUPPLIES		3.0	3.1	3.2	3.4	3.6
EQUIPMENT		2.8	-	-	-	-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS		-				
TOTAL OPERATING		122.1	121.2	99.3	100.4	101.6
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		122.1	121.2	99.3	100.4	101.6
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		2	2	2	2	2
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See Attached

Prepared by : RB Robert J. Bacolas
Division : Labor Standards & Safety
Phone : 465-4870
Date : 3/28/86

Approved by Commissioner : RB Jim Robison Jim Robison
Agency : Labor
Date : 3/28/86

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

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 537

Under the provisions of this bill the department would be required to provide labor relations services to approximately 9,100 local government employees under the Public Employment Relations Act (PERA). Two new employees, a Wage and Hour Investigator I and a Clerk Typist III, both located in Anchorage, would be necessary to handle the increase in workload. Additionally, a contractual hearing officer would be required to perform adjudication functions when necessary. The anticipated costs for the first two years are summarized as follows:

	FY 87	FY 88
Personal Services		
Two new employees	72.5	72.5
Travel		
New Wage & Hour Investigator	7.5	7.8
Contractual Hearing Officers	5.0	5.2
S/T	12.5	13.0
Contractual Services		
Communications/Postage	6.7	7.0
Printing	5.6	5.8
Hearing Officer	10.0	10.4
Transcription Service	3.0	3.1
Legal Services	2.0	2.1
Miscellaneous	4.0	4.2
S/T	31.3	32.6
Commodities	3.0	3.1
Equipment	2.8	-0-
TOTAL:	122.1	121.2

After the first two years we anticipate most of the organizational activity in the communities will be complete. Thus, in FY 89 and beyond the program should be able to be handled by the two new positions. The hearing officers and related costs would therefore be eliminated.

Assumptions:

1) Of approximately 30,600 local government employees in Alaska, 21,500 are currently covered by some form of collective bargaining and would fall within the group currently covered by the Public Employees Relations Act or work for an employer who would most likely opt for a local ordinance. This leaves approximately 9,100 employees in the state for the department's Labor Relations Agency to oversee. These employees are predominantly in the rural areas of the State.

2) An effective date of July 1, 1986.

3) Inflation of 4% per year in FY's 88-91 in non-personal service items.

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Wage and Hour Investigator	1	16A	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.
PFT	12		Anchorage		1

Type of Expenditure		Amount
1	2	3
Salary	33,660	
Benefits	10,775	
Premium Pay		
Other		
Total Personal Services		44,435
Travel		7,500
Contractual		2,000
Commodities		1,000
Equipment		1,400
Other		
Total Cost		56,335

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	56,335
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

This position will perform a variety of labor relations duties. The person will investigate petitions for collective bargaining, investigate complaints of unfair labor practice, provide informal resolution to unfair labor practice complaints, and investigate challenges to elections. The position will also conduct elections, certify elections, and provide education and information on the Public Employee Retirement Act to employees and employers.

Travel costs are for travel to the various locations around the State where public employee labor relations activity would be required.

Contractual and commodity costs are average per-employee costs. Equipment would be a one-time expense for desk, chair, cabinets, etc.

Request For New Position

Agency: Labor
BRU: Labor Standards and Safety
Component: Wage and Hour

Page of
Revised Date

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Clerk Typist III	1	8A	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.		
PFT	12		Anchorage				

Type of Expenditure		Amount
1	2	3
Salary	20,316	
Benefits	7,702	
Premium Pay	-	
Other	-	
Total Personal Services		28,018
Travel		0
Contractual		2,000
Commodities		2,000
Equipment		1,400
Other		
Total Cost		33,418

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	33,418
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number ____ - ____ - ____ - ____ - ____

Justification

This position will function as the clerical member of the Department of Labor's Labor Relations Agency. The position will be responsible for preparing and typing correspondence, and maintaining collective bargaining records as they apply to petitions, certification/decertification of bargaining units, and complaints of unfair labor practices. Also, the position will act as recorder for the Labor Relations Agency Board during board proceedings.

Costs associated with this position are average per-position costs, plus one-time equipment expense of $1,400 for a desk, chair, etc.

Request For New Position

Agency: Labor
BRU: Labor Standards and Safety
Component: Wage and Hour

Page of
Revised Date

FY 87

NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

ANCHORAGE REGIONAL OFFICE
1411 W. 33RD
ANCHORAGE, ALASKA 99503
(907) 274-0536

JUNEAU OFFICE
147 S. FRANKLIN #207
JUNEAU, ALASKA 99801
(907) 586-3090

FAIRBANKS REGIONAL OFFICE
211S CUSHMAN STREET
FAIRBANKS, ALASKA 99701
(907) 456-4435

March 25, 1986

TO: Representative Katie Hurley, Chair
Members; House State Affairs Committee

RE: HB 537; "An Act relating to participation of municipalities and political subdivisions in the Public Employment Relations Act."

NEA-Alaska supports and encourages favorable action by the House State Affairs Committee on HB 537.

It is important that all public employees have the right, by statute or local ordinance, to participate in a meaningful way in the decision making process as it pertains to their wages and terms and conditions of employment.

As the Legislature has stated in its policy regarding the Public Employment Relations Act government is more effective and employees are more responsive when they are afforded the opportunity to share decision making and exchange ideas and information on operations.

We urge your favorable consideration of HB 537.

Respectfully submitted:

Robert Manners
Executive Secretary

B6:39

Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

TO: Representative Katie Hurley, Chair
Members of the House State Affairs Committee

FROM: Scott A. Burgess, Executive Director

DATE: March 26, 1986

SUBJECT: HB 537 - Mandatory PERA for Municipalities

The Alaska Municipal League opposes HB 537 based on the language cited below from the AML 1986 Policy Statement (page 19), adopted by the membership at the 1985 annual meeting in Fairbanks in November:

> "Alaska Public Employees Labor Relations Act: The League strongly opposes any legislation which would force municipalities to be subject to the provisions of the Alaska Public Employees Labor Relations Act. The League opposes, just as strongly, any legislative efforts to dictate the provisions of local public employees labor relations ordinances. The League supports legislation to allow each municipality at any time to reject or withdraw from the terms of the Alaska Public Employees Relations Act."

I have attached copies of several letters, resolutions etc. I have received on HB 537. Other correspondence in opposition to similar legislation proposed in the past is also available to the Committee, if requested. Clearly, the position of the League, which represents, directly, 117 municipalities around the State, is in opposition to HB 537. The attached information addresses specific reasons and opposition to HB 537; however, I have summarized below some of the major reasons for our opposition to the legislation for the Committee:

1. Municipalities are generally opposed to State mandates on local governments which remove local control and increase cost.

2. Mandating PERA, or the adoption of ordinances with the same effect, removes the power of the elected representatives at the local level to set policy and budgets by balancing the resources and needs of the whole community rather than one segment - public employees.

3. Public employees have recourse through their elected officials to address specific concerns.

4. Public employees may seek to put collective bargaining before the local voters and the assembly or council through the initiative and referendum process.

5. The public sector is different from the private sector in terms of the services provided, civil service protections, and their access to, and the responsibility of, the elected officials.

The League strongly opposes HB 537. Thank you.

City and Borough of Sitka

304 LAKE STREET. SITKA, ALASKA. 99835

February 11, 1986

Scott Burgess, Executive Director
Alaska Municipal League
105 Municipal Way
Juneau, Alaska 99801

Dear Scott:

Concerning your request for comments on H.B.537, I am quite certain that you realize existing laws do not prevent municipalities from being covered under PERA if they so choose.

My point is that the state should leave the question addressed in H.B.537 up to the local citizens. I have enclosed past correspondence on this subject. You can see that we have been consistent in our thinking for very good reasons.

Sincerely yours,

Richard Anderson
Administrator

cc: Ben Grussendorf
Dick Eliason

331.1

City and Borough of Sitka

P.O. BOX 79 · SITKA, ALASKA · 99835

January 30, 1984

Representative Ben Grussendorf
Alaska State Legislature
Pouch V
Juneau, Alaska 99811 M/S 3100

Dear Ben,

In a letter dated March 8, 1983, Rocky expressed to you the opposition of the City and Borough of Sitka to S.B. 154 which would bring all public employees under the provision of the Public Employment Relations Act. I now see that there is also H.B. 441 which would accomplish the same thing.

Sitka opposes these bills as we elected not to be covered by PERA some years back. As Rocky expressed last March, "As a bottom line, the question of whether or not the provisions of PERA should apply to all public employees could be better addressed by putting the question to the electorate of each municipality."

Sincerely,

Richard Anderson
Acting Administrator

331.2

City and Borough of Sitka

P.O. BOX 79 · SITKA, ALASKA · 99835

February 17, 1984

Senator Richard Eliason
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Dick:

SUBJECT: SB 154

I have seen a copy of your letter of February 8, 1984 to Rick Anderson concerning the proposal to bring Sitka under the provisions of the Public Employment Relations Act.

I am sure you are concerned with public employees being treated fairly and paid adequately.

The potential problem as I see it is that "collective bargaining" is a legal term of art and if mandatorily applied to governments, it gives local governmental employees advantages far beyond those existing in the private sector. This is because public employees also have the power to exercise political influence over those whom they bargain with.

This unique aspect of bargaining in the public sector has been fully recognized by the Alaska Supreme Court in a continuing line of cases. The latest case is City and Borough of Sitka v. I.B.E.W. (653 P2d 332).

I am enclosing a complete copy of that decision and of particular interest are the comments on pages 336 and 337.

Sitka spent over five years in litigation before winning that case. We litigated not out of any desire to mistreat employees, but rather to keep a reasonable balance as the administration attempts to represent the voting public.

A time surely existed when public employees were paid less than the private sector, but that is very different today.

CITY AND BOROUGH OF SITKA, Appellant,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1547, Appellee.

No. 6116.

Supreme Court of Alaska.

Oct. 22, 1982.

City appealed from an order of the Superior Court, First Judicial District, Sitka, Thomas B. Stewart, J., requiring it to recognize and negotiate with its electrical department employees' elected representative. The Supreme Court, Compton, J., held that: (1) city ordinance exempting city from requirements of Public Employment Relations Act was valid, and (2) city violated its city charter requirement to recognize employee organizations by establishing employees' negotiating committee and declining to recognize employees' representative.

Affirmed in part, reversed in part, and remanded.

Rabinowitz, J., dissented and filed opinion.

1. Labor Relations ⇐48

City's exemption from requirements of Public Employment Relations Act was effective where, although its electrical department employees had signed union authorization cards before exemption ordinance was passed, there was no evidence of any organizational activities occurring between effective date of Act and passage of exemption ordinance and where city's intent in enacting exemption ordinance was to control its own public labor relations and not to frustrate employee rights. Laws 1972, c. 113, § 4.

2. Municipal Corporations ⇐58

In construction of municipal charters, Supreme Court is guided by rules of statutory construction.

3. Statutes ⇐217.4

Although starting point in construing statute is language of statute itself, reference to legislative history may provide insight that is helpful in determining statute's meaning.

4. Labor Relations ⇐179

Collective bargaining is term of art in labor law that harbors concomitant duty to bargain in good faith. AS 23.40.250(1).

5. Labor Relations ⇐52

It is only when legislative enactment expressly and unambiguously announces decision requiring public employers to undertake collective bargaining that court should find that government entity has bound itself to such course of dealing.

6. Labor Relations ⇐177

City charter provision requiring city assembly to adopt ordinances with provisions recognizing employee organizations did not require city to engage in collective bargaining with employee organizations but only imposed less stringent obligation to meet and confer with recognized employee organizations.

7. Labor Relations ⇐177

City's establishment of employees' negotiating committee did not satisfy its charter obligation to recognize employee organizations as bargaining representative of its employees.

Helpers of America, Independent Local 959 v. City of Fairbanks, 582 P.2d 150 (Alaska 1978). What is unclear from the plan summary is whether there is any "administrative remedy" by which Deveney could obtain something equivalent to a declaratory judgment as to the meaning of the plan from the Trust. The only way in which the plan summary provides for final decisions by the Trustees is in the context of an application for benefits; until the divorce is final the question to which Deveney wanted an answer cannot be formally raised. We leave this issue for further consideration by the superior court in light of the wording of the plan itself.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

331.2

City and Borough of Sitka

P.O. BOX 79 · SITKA, ALASKA · 99835

February 17, 1984

Senator Richard Eliason
Alaska State Legislature
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Juneau, Alaska 99811

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A time surely existed when public employees were paid less than the private sector, but that is very different today.

I would use as a specific example the Public Employees Retirement Act which covers both legislators like yourself and Sitka employees like me. Not only do the benefits far outstrip anything available to the private sector (ask any ALP employee) but they mandate huge hidden governmental expense. The average employee contributes 4½% of their salary and Sitka currently contributes an additional 16.68%.

The way the retirement statute is written, Sitka may not bargain with the employee to have the employee pay a more equitable portion. Sitka's only option is to absorb the cost or drop out of the plan. In the past ten years the employee contribution percentage has been frozen legislatively, but Sitka's contribution has risen from 7% to the present 16.68%.

This also illustrates the problems we have when trying to adapt a statewide scheme to Sitka's local situation. Essentially, local government employment is a local concern of the local taxpayers. It is a problem the Alaska Legislature could well leave with the local assemblies. There are many political pressures which employees can apply on a local level if they wish. If employees believe that the Sitka administration does not represent the wishes of the man on the street, there is always the possibility of a local referendum petition on the question of collective bargaining.

I don't wish you to get the impression that Sitka does not listen to its employees. Our wage discussions for this year with municipal employees begin next week.

Finally, both you and your committee are invited to hold hearings in Sitka on this bill and to find out first-hand how Sitka municipal wages compare with the private sector here.

Sincerely,

Peter S. Hallgren
Municipal Attorney

enclosure

cc: R. Anderson

CITY AND BOROUGH OF SITKA, Appellant,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1547, Appellee.

No. 6116.

Supreme Court of Alaska.

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8. Labor Relations ⇨177

City could not be directed to recognize and negotiate with whatever agency was elected by majority of its electrical department employees as their representative despite its violation of its charter obligation to recognize employee organizations since charter only required recognition of employee organizations and did not require recognition of agents.

Peter Hallgren, Sitka, for appellant.

Paul S. Wilcox and M. Gregory Oczkus, Law Office of Paul S. Wilcox, Anchorage, for appellee.

OPINION

Before RABINOWITZ, CONNOR, MATTHEWS and COMPTON, JJ., and DIMOND, Senior Justice.*

COMPTON, Justice.

This appeal raises the issue of whether the refusal of the City and Borough of Sitka (Sitka) to recognize the union selected as a bargaining agent by its electrical department employees violates Alaska's Public Employment Relations Act (PERA) and Sitka's Municipal Charter. The superior court ruled that Sitka failed to effectively opt out of PERA and that Sitka's personnel policy ordinance violated its Charter. The court ordered Sitka to recognize and negotiate with the electrical department's elected representative. We hold that Sitka validly opted out of PERA, but violated its Charter.

* Dimond, Senior Justice, sitting by assignment made pursuant to article IV, section 11, of the Constitution of Alaska, and Alaska R.Admin.P. 23(a).

I. FACTUAL AND PROCEDURAL BACKGROUND

The facts in this case are essentially undisputed. In June 1972, the State of Alaska enacted the Public Employment Relations Act (PERA). AS 23.40.070.–.260. PERA confers upon public employees the right to organize and to bargain collectively with their employers. Section 4 of PERA permits the legislative body of any political subdivision of the state to reject the Act, thereby preventing its application to the public employees of that subdivision.[1] PERA became effective on September 5, 1972.

In December 1971, appellant Sitka was unified as a single home rule municipality. At that time, a charter was adopted that included a section requiring the Sitka Assembly to "adopt by ordinance an administrative code which shall include provisions for ... recognizing employee organizations."[2]

Pursuant to the Charter, Sitka enacted a personnel policy ordinance in May of 1972.[3] The ordinance established an employees' negotiating committee. Essentially, each municipal department elects one representative to the committee. The employees' negotiating committee meets with a management committee to discuss various subjects including work conditions, benefits and salaries. On July 10, 1973, the Sitka Assembly passed Ordinance 73-93, which purports to exempt the municipality from PERA pursuant to section 4 of the Act.

Appellee is a labor organization affiliated with the International Brotherhood of Electrical Workers, AFL-CIO (IBEW). Organizational efforts by the IBEW on behalf of

1. Section 4 reads: "This Act is applicable to organized boroughs and political subdivisions of the state, home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply." Ch. 113, § 4, SLA 1972.

2. Sitka, Alaska, Charter § 3.05 provides in full:

> The Assembly shall adopt by ordinance an administrative code which shall include provisions for establishing qualifications for employment and a merit system; establishing a pay plan for all municipal positions; permitting appeal; recognizing employee organizations; protecting municipal employees from arbitrary discharge and safeguarding against nepotism.

3. Sitka, Alaska, Ordinance No. 72-13 (May 9, 1972).

the Sitka electrical department employees extend back to the early 1960's. Thereafter, the employees were periodically in contact with the union, which in turn approached city leaders on several occasions for the purpose of obtaining union recognition. Sometime in 1972, all the electrical department employees signed union authorization cards.[4] Sitka officials were aware of the electrical employees' desire and intent to have the IBEW represent them for purposes of collective bargaining prior to July 10, 1973. Sitka has consistently refused, however, to recognize the IBEW as a bargaining agent for the Sitka electrical department employees.

On August 24, 1977, the IBEW filed a suit alleging that Sitka Ordinance 73-93 is invalid and that Sitka Charter section 3.05 requires recognition of the union as the bargaining representative of Sitka's electrical department employees. Sitka's answer denied the allegations and raised four affirmative defenses. After the IBEW's motion for summary judgment was denied, the case proceeded to trial on August 28, 1979. The superior court ruled in favor of the IBEW, granting them the right to engage in organizational activities with the employees of the electrical department and requiring the City to recognize and negotiate with the representative elected by a majority of the electrical department employees.

Sitka appeals from this decision.

II. PERA REJECTION

[1] We first address whether Sitka Ordinance 73-93 effectively rejected PERA. The superior court, citing *State v. City of Petersburg*, 538 P.2d 263 (Alaska 1975), held that Sitka's PERA exemption was ineffective because it was enacted too late and thus interfered with substantial organizational activities by the electrical department employees.

In *Petersburg*, we held that the City could not exempt itself from PERA after becoming aware of the fact that all municipal power plant employees had authorized a particular union to represent them.[5] "[T]he substantiality of the organizational activities undertaken by the employees and the extent of the City's awareness of those activities" identify "[t]he critical point beyond which the right and power of the City to reject the Act become subordinated to the rights of the employees." 538 P.2d at 267.

We have warned, however, that the *Petersburg* rule is limited to its factual setting. *Anchorage Municipal Employees Association v. Municipality of Anchorage*, 618 P.2d 575, 579 (Alaska 1980). To ascertain whether a PERA exemption is motivated by proper considerations, we examine the purpose and intent of actions taken by the employees and by the municipality. *See City of Fairbanks v. Fairbanks Firefighters Union*, 623 P.2d 339 (Alaska 1981); *City of Fairbanks v. Fairbanks AFL-CIO Crafts Council*, 623 P.2d 321 (Alaska 1981); *Anchorage Municipal Employees Association v. Municipality of Anchorage*, 618 P.2d 575 (Alaska 1980).

It is uncontroverted that Sitka was aware of the IBEW's organizational attempts prior to passage of the exemption ordinance. Contrary to the position advocated by the IBEW, such knowledge is not in itself sufficient to invoke the *Petersburg* rule. In *City of Fairbanks v. Fairbanks AFL-CIO Crafts Council*, we interpreted *Petersburg* as holding that "a public employer may not

4. The record is uncertain as to exactly when the union authorization cards were signed. At the trial the most precise time estimate came from the electrical department superintendent. He testified that the union cards were signed in the spring of 1972. This evidence indicates that the cards were probably signed prior to PERA's enactment in July of 1972.

5. The facts in *Petersburg* are as follows: Employees of the City's light and power plant signed cards authorizing the IBEW to act as their collective bargaining agent in March of 1973. All preliminary discussions concerning the possibility of unionization had taken place earlier in the same year, thus occurring after the effective date of PERA. Five days later, the Petersburg City Council held a special meeting at which it passed a resolution purporting to exempt the City from the provisions of PERA. The council was aware of the power plant employees' union activities prior to passing the resolution. 538 P.2d at 264-65.

opt out of PERA in order to avoid negotiating with certain unions once its employees have commenced organizational activities in reliance on the rights granted to them by the Act." 623 P.2d at 325. The timing of the organizational activities of the Petersburg power plant employees indicated a reliance on PERA rights. The situation here, however, is different. The Sitka electrical department employees had pursued unionization since the early 1960's, long before the enactment of PERA. Although the superior court found that all the electrical department employees signed union authorization cards sometime in 1972, there is no evidence in the record of any organizational activities occurring between PERA's effective date, September 5, 1972, and the passage of the exemption ordinance, July 10, 1973. Thus, in contrast to *Petersburg*, the employees in Sitka were not acting in reliance on rights granted them by PERA.

Nor is the *Petersburg* rule invoked when a municipality rejects PERA "solely for the purpose of retaining local control over their labor relations, and with the clear intent of continuing collective bargaining rather than to interfere with established employee rights." *Anchorage Municipal Employees Association v. Municipality of Anchorage*, 618 P.2d at 579. This provides an additional ground for distinguishing the present case from *Petersburg*. In contrast to the *Petersburg* factual setting,[6] there are no factual findings in the present case that the Sitka PERA exemption ordinance was passed with an intent to frustrate employee rights. Sitka has consistently refused to recognize the IBEW, both before and after PERA. Passage of the personnel policy in May of 1972 reveals Sitka's intent to control its own public labor relations. Sitka's purpose in opting out of PERA was to retain local control through its personnel policy rather than to interfere with employee rights.[7]

We hold that Sitka Ordinance 73-93 validly exempted Sitka from the requirements of PERA.[8]

III. SITKA CHARTER

The second issue is whether the creation of an employees' negotiating committee satisfies the mandate set forth in Sitka Charter section 3.05 of "recognizing employee organizations." The personnel policy ordinance defines the structure of the negotiating committee, but also affords municipal employees the opportunity to elect a department representative. Sitka argues that by enacting the personnel policy ordinance, it fulfilled its Charter obligation. In contrast, the IBEW argues that the Charter requires Sitka to recognize the IBEW as bargaining agent for the municipality's electrical department. In our view, the dispositive question centers on the intentions of the framers of the Sitka Charter in using the word "recognizing."

[2, 3] In the construction of municipal charters, we are guided by the rules of

6. In *Petersburg*, there was no indication that the City Council passed the PERA exemption ordinance in order to retain local control over labor relations. Nor was there any evidence that collective bargaining had ever transpired between the City and the power plant workers. The fact that the City Council's exemption ordinance was passed within five days after union authorization cards were signed evidenced an intent to interfere with the rights of employees. 638 P.2d at 264-67.

7. Sitka, Alaska, Ordinance No. 73-93 (July 10, 1973) provides in part:

3. *Purpose*

(a) This municipality already carries out collective bargaining procedures with its public employees.

(b) The collective bargaining procedures have proved to be workable and satisfactory.

(c) This municipality has, by ordinance, provided personnel rules and regulations under which merit system principles are maintained among its public employees.

8. The fact that Sitka's PERA exemption ordinance was passed three months after Petersburg's unsuccessful attempt does not affect our holding. *Petersburg* does not set a limited time period within which rejection of PERA must take place. Instead, the circumstances of each case must be examined individually. *Anchorage Municipal Employees Ass'n v. Municipality of Anchorage*, 618 P.2d at 581.

statutory construction.[9] Although the starting point in construing a statute is the language of the statute itself, reference to legislative history may provide insight that is helpful in determining the statute's meaning. *North Slope Borough v. Sohio Petroleum Corp.*, 585 P.2d 534, 540 (Alaska 1978).[10] We, therefore, consider the relevant history of Sitka Charter section 3.05.[11]

The legislative history surrounding the adoption of Sitka Charter section 3.05 is quite sparse. Section 3.05 was apparently modeled after a similar provision in a 1970 proposed version of the Anchorage Municipal Charter. Among other changes, the Sitka Charter Commission substituted the phrase "recognizing employee organizations" for the phrase "recognizing collective bargaining." There is no reference in the tapes of the meetings of the Charter Commission to explain what was intended by this particular revision. When drafting another charter provision, relating to the status of employees during the transition to a home rule municipality, the Charter Commission considered a section in the proposed Anchorage Municipal Code that referred to collective bargaining and, again, the Commission deleted the reference to collective bargaining in the Charter. The tapes of the July 15, 1977, meeting of the Charter Commission indicate that the deletion was not because of any hostility toward the prospect of collective bargaining in the future. Rather, the Charter Commission determined that it was unnecessary to include the reference to maintain any collective bargaining agreements during the transitional period because at that time there were no collective bargaining agreements in effect. When discussing the matter, the Charter Commission addressed the relationship between "benefit bargaining" and a provision in the administrative code that apparently required the City to recognize an employee organization:

> Shuler: You don't have a bargain agreement, unless you have a signed agreement with someone.
>
> Wright: Not necessarily.
>
> (Voice): Are you thinking of bargaining rights?
>
> Wright: Yes.
>
> Fager: Our administrative code doesn't say, except just to say recognize an organization, it doesn't say anything about benefit bargaining.
>
> Grussendorf: *That's all you have to do, just recognize the existence of the organization.*

Transcript of Sitka Charter Commission (July 15, 1977) (emphasis added).

[4] Although the colloquy quoted above was not directly in reference to the meaning of Charter section 3.05, it offers a valuable insight into the probable intent of the Charter Commission. We therefore reject the IBEW's contention that the phrase "recognizing employee organizations" should be interpreted to require Sitka to engage in collective bargaining with respect to the terms and conditions of employment of municipal employees. "Collective bargaining" is a term of art in labor law that harbors the concommitant duty to bargain

9. 2 E. McQuillan, The Law of Municipal Corporations § 9.22 at 685 (3d ed. 1979).

10. As Judge Learned Hand noted in *Cabell v. Markham*, 148 F.2d 737, 739 (2d Cir.), *aff'd*, 326 U.S. 404, 66 S.Ct. 193, 90 L.Ed. 165 (1945):

> Of course it is true that the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract, or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning.

11. At oral argument, Sitka argued that the enactment of the personnel policy ordinance by the assembly, which included members of the Charter Commission, was a contemporaneous practical construction of the Charter that should be considered controlling. Although a contemporaneous construction may provide some evidence of the meaning of the Charter, it is not conclusive, especially if it conflicts with a literal reading of the language used and the history of the enactment of the Charter.

in good faith.[12] We recognized in *Kenai Peninsula Borough School District v. Kenai Peninsula Education Association*, 572 P.2d 416 (Alaska 1977), that the good faith standard of collective bargaining may affect the substantive position of the bargaining parties. We stated:

> While the good faith standard of collective bargaining does not compel either party to make concessions, intransigent positions, adopted in an effort to avoid any agreement, are disfavored. Thus a legal determination that a matter is subject to good faith collective bargaining may narrow the policy-making powers of an employer by curtailing any absolute directives on his part.

572 P.2d at 418–19 (footnote omitted). This consequence raises particularly sensitive concerns when collective bargaining in the public sector is at issue because the public employer who is obligated to engage in good faith bargaining relinquishes some of the essential attributes of sovereignty. Moreover, we also recognized in *Kenai Peninsula Education Association* that collective bargaining in the public sector is fundamentally a political process:

> "Finally, decisionmaking by a public employer is above all a political process. The officials who represent the public employer are ultimately responsible to the electorate, which for this purpose can be viewed as comprising three overlapping classes of voters—taxpayers, users of particular government services, and government employees. Through exercise of their political influence as part of the electorate, the employees have the opportunity to affect the decisions of government representatives who sit on the other side of the bargaining table."

572 P.2d at 419, *quoting Abood v. Detroit Board of Education*, 431 U.S. 209, 228, 97 S.Ct. 1782, 1796, 52 L.Ed.2d 261, 280 (1977).

[5, 6] Mindful of the nature of collective bargaining in the public sector and of the serious implications of the duty to bargain in good faith, the decision to engage in collective bargaining should not be implied from language that is unclear. It is only when a legislative enactment expressly and unambiguously announces a decision to undertake collective bargaining that a court should find that a government entity has bound itself to such a course of dealing. The language employed by the Charter Commission is not so clear and explicit that this court will interpret the phrase to mandate collective bargaining. Instead, the less stringent obligation to "meet and confer" is applicable to discussions between Sitka and recognized employee organizations.[13]

[7] Although we conclude that Charter section 3.05 does not require Sitka to engage in collective bargaining, it does not follow that the establishment of an employees' negotiating committee as defined by the personnel policy ordinance satisfied the Charter obligation to "recognize employee organizations." In the context of enactments concerning public employment, "employee organization" is typically defined broadly to include any organization that assists its members in improving the terms and conditions of their employment.[14] The focal point, here, is what was intended by use of the word "recognize." In other clauses of Charter section 3.05, the verb "establish" is used with regard to provisions for employment qualifications, a merit system, and a pay plan. If the Charter Com-

12. *See* AS 23.40.250(1).

13. A "meet and confer," or "meet and discuss," obligation imposes only the duty to meet at reasonable times and to discuss recommendations or proposals submitted by the employee organization. We have previously recognized the value of an obligation to meet and confer with recognized employee organizations. *See Kenai Peninsula Borough School Dist. v. Kenai Peninsula Educ. Ass'n*, 572 P.2d at 423.

14. For example, AS 23.40.250(4) defines "organization" to mean "a labor or employee organization of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment and conditions of employment." *See also United Faculty of Florida v. Branson*, 350 So.2d 489, 494 (Fla.App.1977); *New York State Teachers Ass'n v. Helsby*, 57 Misc.2d 1066, 294 N.Y.S.2d 38, 41 (1968).

mission intended that the administrative code provide for employee organizations defined by the municipality, the verb "establish" would have been used here, too. Instead, the Charter Commission used the verb "recognize," which implies that Sitka will acknowledge an employee organization set up by employees. Moreover, the use of the plural suggests that the Charter Commission contemplated that several different employee organizations would be formed. Sitka's argument that it may unilaterally determine that all municipal employees must be included within a single employee organization is misplaced. Although undue fragmentation of the municipal workforce is a legitimate concern,[15] the Charter Commission plainly anticipated that employees would have at least the option of forming more than one employee organization.[16]

Our conclusion that Sitka has not satisfied its obligation to "recognize employee organizations" by establishing a bargaining committee is also supported by the principles articulated in *Kenai Peninsula Borough School District v. Kenai Peninsula Borough School District Classified Association*, 590 P.2d 437 (Alaska 1979). At issue in that case was whether the Kenai Peninsula School Board could establish a system of collective bargaining for non-certified school employees and yet limit the employees' rights to freely choose a bargaining representative and to affiliate with a national union. We found "that the right of the District's non-certificated employees to 'select representatives of their own choosing for collective bargaining,' be they from local or national organizations, 'without restraint or coercion by their employer,' is grounded firmly in the first amendment." 590 P.2d at 440, *quoting NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 33, 57 S.Ct. 615, 622, 81 L.Ed. 893, 909 (1937). We therefore held that the "restrictions on affiliation and choice of bargaining representative are violative of first amendment freedoms guaranteed to the non-certificated school employees." 590 P.2d at 441. The Sitka Charter plainly contemplates the existence of employee organizations. We will not interpret the intent of the framers of the Charter in a manner that would interfere with the employees right to select a representative of their own choice.

We therefore hold that Sitka's personnel policy does not provide for "recognizing employee organizations" as required under Sitka Charter section 3.05.[17]

IV. REMEDY

[8] The superior court's order directs Sitka to recognize and negotiate with whatever agency a majority of the electrical department employees elect as their representative. Sitka argues that this remedy is inappropriate. We agree.

The Sitka Charter provides the only basis for relief in this case. Section 3.05 does not require the municipality to recognize an agent selected by the electrical department, but only requires recognition of employee organizations. The judgment should only require compliance with the mandate of the Sitka Charter. On remand, we direct the superior court to modify its final judgment in a manner that orders the Sitka Assembly to adopt within a reasonable time an ordinance that provides for recognizing employee organizations pursuant to Charter section 3.05.

15. *See* AS 23.40.090. We note, though, in view of our holding that Sitka need not engage in collective bargaining to comply with Charter § 3.05, the problems typically associated with the excessive fragmentation of the workforce into separate bargaining units are not as substantial in the present case as they might otherwise be.

16. We need not address whether Sitka may define by ordinance appropriate bargaining units.

17. Sitka advances two other grounds for reversal of the superior court's decision. We are unpersuaded by either. First, Sitka argues that the IBEW's unreasonable delay in bringing this action constitutes laches. Second, Sitka argues that the IBEW waived its claim. The superior court found neither laches nor waiver. These findings are not clearly erroneous and will not be set aside here. Alaska R.Civ.P. 52(a).

The judgment of the superior court is AFFIRMED in part, REVERSED in part, and REMANDED for modification in accordance with this opinion.

BURKE, C.J., not participating.

RABINOWITZ, Justice, dissenting.

I disagree with the court's holding that Sitka Ordinance 73-93 validly exempted Sitka from the requirements of PERA. Therefore, I would affirm the superior court's ruling that Sitka's attempted exemption from PERA was ineffective.

In my view, *State v. Petersburg*, 538 P.2d 263 (Alaska 1975), is controlling. The focus of my disagreement with the court's treatment of this issue is its conclusion that the organizational activity must occur between the effective date of PERA, September 5, 1972, and the July 10, 1973 passage of the exemption ordinance. The distinction between *Petersburg* and the instant case is that in the former the union activity took place between the effective date of PERA and the city's exemption. Here the union activity occurred prior to the effective date of PERA. In my view, this factual distinction is of no legal significance.

The principal concern of *Petersburg* was that a city might employ its opt-out option as a de facto veto of a particular labor organization. Although a claim that the political subdivision has resorted to its exemption to thwart particular employee organizations is compelling when the city or borough exempts itself immediately after the commencement of organizational activities, as was the case in *Petersburg*, the timing of those organizational activities should not be dispositive.

It is uncontroverted that Sitka was aware of the long history of past IBEW organizational attempts. More important than the lack of Union activity within the "window period" is the city's continuing fear of, and disdain for, the IBEW. Sometime after all the electrical employees signed union authorization cards (which was probably in the spring of 1972 and before the city passed its exemption ordinance in July 1973), several city leaders met with the electrical department employees. At this meeting, IBEW representation was discussed. One employee testified: "I remember Mr. Conway (an assembly man) saying that if you do get a union, we will pull back everything, start from there, you won't have anything. Those aren't verbatim, but that's the gist of what he said." The city's only objection to IBEW seems to have been that it was a powerful outside organization. The city administrator testified: "I believe it's the feeling of the assembly and the prior council there that it should be a local problem there, and wages and fringes should be tied to a local economy as to the prevailing wage and what have you. This—this is what I read into it." Thus, review of the record persuades me that there is ample evidence showing that Sitka opted out of PERA primarily because it objected to the IBEW.

Terry WILLIFORD, Appellant,

v.

STATE of Alaska, Appellee.

No. 5986.

Court of Appeals of Alaska.

Oct. 22, 1982.

Defendant was convicted before the District Court, Third Judicial District, Kenai, Jess Nicholas, Magistrate, of operating motor vehicle while intoxicated, and she appealed. The Court of Appeals, Coats, J., held that: (1) statute, which provides that person commits crime of driving while intoxicated if he drives motor vehicle while he is under combined influence of intoxicating liquor and another substance, provides sufficient notice of the prohibited conduct; (2) statute pertaining to refusal to submit

CITY of WRANGELL, ALASKA

INCORPORATED JUNE 15, 1903

BOX 531, 99929 (907) 874-2381

ADOPTED AUGUST 1972

February 14, 1986

Representative Al Adams, Chairman
House Finance Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

RE: House Bill No. 537 regarding Right to Strike
or Binding Arbitration

Dear Sir:

The City of Wrangell is strongly opposed to House Bill No. 537. As written, the Bill would bring municipalities under the State Public Employment Relations Act (PERA) unless a local ordinance was enacted to permit collective bargaining with the right to strike or binding arbitration as the final step in the negotiation process.

In 1972, the Legislature recognized the financial impact PERA could have on municipalities, as well as the need for local control, and provided that we could opt out of the Act by adoption of a Resolution or Ordinance. Recognizing the economic and social impact the Act could have on services provided to the public, the Wrangell City Council did indeed opt out of the Act in the best interests of the taxpayers.

The Wrangell city employees are currently receiving wages and benefits that exceed those received by the private major industry employees in our community. We need not remind you that the non-governmental employees in our community are the very taxpayer that must bear the burden of government wages and benefits. While it is recognized that public employees received greater benefits than private employees for many years due to their lower wages, this is no longer true. In many cases (if not most) the public employees far exceed the private employees in both benefits and wages. The State, in fact, has several employees that receive a higher annual salary than the Governor, some of which were achieved through PERA.

The threat of strike or binding arbitration would place an unfair burden on local government. Unlike private industry, a government employee strike can effect the health and welfare of an entire community by reducing or completely stopping public services. Binding arbitration can take away the City

Council's ability to set the mill levy and utility rates in a reasonable, equitable manner for all of the residents.

We urge defeat of House Bill No. 537 which would only serve to increase local budgets at a time when our revenues, like the State's, are decreasing.

Sincerely,

Joyce Rasler
City Manager

cc: Senator Robert H. Ziegler, Sr.
Representative John Sund
Representative Robin Taylor
Representative Ronald Larson
Alaska Municipal League

also Hurley DeVries Kelliher

CITY OF PALMER

231 W. EVERGREEN AVE.
PALMER, ALASKA 99645

Phone (907) 745-3271

A HOME RULE CITY

March 4, 1986

The Honorable Ronald Larson
Alaska State Legislature
Parcel V (MS 3100)
Juneau, Alaska 99811

RE: HB 537 - Mandatory PERA

Dear Representative Larson:

I have given HB 537 Mandatory PERA a lot of thought and it seems as though every legislative session, since my coming to Palmer this issue continues to come up.

Before the State legislature gets carried away with PERA, I think we should really see what we are trying to accomplish by enacting this bill.

Most cities within the State, whether union or non-union, have personnel policies which provide for a grievance procedure and causes which justify the termination of an employee.

However, pursuing the issue of employee rights further, the court decisions of late, are clearly on the side of the employee which makes dismissal a very exact, time and money consuming procedure to follow through.

With times going to get tougher in the future, lay-off of employees are inevitable.

PERA is only going to further coddle employees who are not pulling their fair share.

A merit raise is the only way to reward an employee for their work. Under PERA, all employees are equal and takes away the initiative to excell or want to advance.

With a forty-eight and one half percent (48.5%) employee fringe benefit package presently in the City of Palmer, I truly am concerned about any attempt by the State to impose further restrictions on local government to make the act of providing services uneconomical. This will result in lay-offs when dealing with the private sector to provide the same services. It may not be totally cost effective but the time savings in dealing with grievance arbitration, and strikes makes this choice easier not to avoid the hassle. We somehow forget that time is money too.

I urge you not to support HB 537. As a property owner, PERA legislation will impact your property tax rate directly in the level of services you recieve.

The present PERA legislation is satisfactory and needs no tinkering.

Should you have any questions please contact me.

Yours truly,

David L. Soulak
City Manager
City of Palmer

DLS/tls

cc: Scott Burgess

CITY OF SEWARD

P.O. BOX 167
SEWARD, ALASKA 99664

- Main Office (907) 224-3331
- Police (907) 224-3338
- Harbor (907) 224-3138
- Fire (907) 224-3445
- Telecopier (907) 224-3248

March 5, 1986

MR. SCOTT A. BURGESS, EXECUTIVE DIRECTOR
ALASKA MUNICIPAL LEAGUE
105 Municipal Way, Suite 301
Juneau, AK 99801

RE: HB 537 - MANDATORY PERA

Dear Scott:

We are strongly opposed to HB 537 which would force cities and boroughs into the Public Employees Retirement Act if they do not allow employees to strike or provide binding arbitration of collective bargaining disputes.

On September 8, 1975, the City of Seward enacted Ordinance No. 412 rejecting the application of PERA to the City of Seward. In that Ordinance the City noted that it had considered the Alaska Supreme Court Opinion in State of Alaska v. City of Petersburg. 538P 2nd 263 (1975). Last year, the City again rejected a request to become subject to the terms of that Act, and intends to retain local control of labor relations, while granting limited rights to those employees who choose to be covered by a collective bargaining agreement to affiliate together in a labor organization in bargaining with the City.

The Seward City Council enacted Ordinance No. 540 on May 25, 1985, which sets forth certain parameters for collective bargaining with employees. Specifically, Ordinance No. 540 provides that: (1) no City employee shall have the right to strike; (2) each City employee included within the bargaining unit shall indicate whether or not they wish to be governed by the terms and conditions contained in the Agreement; (3) all collective bargaining agreements are subject to approval by the City Council; (4) all collective bargaining agreements shall expire on June 30 of the last contract year; (5) the City Council shall determine, in each instance, the unit appropriate for purposes of collective bargaining.

The Legislative Determination Preamble to the aforestated enactments is explanatory of our opposition to HB 537. To paraphrase from these Legislative Determinations, Seward is remote geographically and provides essential public services, including fire, police, sewer, water, snow removal, street repair, electrical, hospital care, and other services critical to the public health, safety and convenience.

critical to the public health, safety and convenience. City employees are agents of the City and, serving only public purposes, are entirely different from employees in the private sector; strike by them would contravene the public welfare, paralyze the City and endanger the public health, safety and convenience.

Since the terms of employment of City employees include economic obligations and commitments which, under the City of Seward Charter, can only be determined by the City Council, granting a right to strike or binding arbitration would, in effect, permit employees and arbitrators to place undue pressure and influence on the City Council. The City Council would be prone to accede to the demands of striking employees or arbitrators in order to protect the public, while the concessions granted or forced by arbitrator decision may well be against the public interest in that they could affect the financial well being of the city. Employees or arbitrators ought not to be granted the powers to put the city in such a dilemma.

In the face of declining revenues, Alaskan cities and boroughs must retain control of their finances. If city or borough employees are permitted to strike, or if collective bargaining agreements can be mandated by binding arbitration, the City Councils and Borough Assemblies will no longer be able to provide for the public health, safety and convenience, and would not retain control of their finances. To permit employees to strike and binding arbitration would result in a surrender of the power of taxation since the commitment of public monies in the form of wages and working conditions can result in tax adjustments. It is essential that the City Council or Borough Assembly approve any collective bargaining agreement before it can become effective.

Please let me know if we can assist further with additional comment, information and/or testimony.

Sincerely,

CITY OF SEWARD, ALASKA

RONALD A. GARZINI
CITY MANAGER

RAG:DS:alm

Enclosure: Ordinance No. 540

cc: J. Kerttula
E. DeVries
B. Cato

CITY OF SEWARD, ALASKA
ORDINANCE NO. 540

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SEWARD, ALASKA, CONCERNING COLLECTIVE BARGAINING WITH CITY EMPLOYEES

WHEREAS, the City of Seward opted out of the State of Alaska Public Employee Relations Act in 1975 by Ordinance No. 412, and has again in 1985 rejected a request to become subject to the terms of that Act, and intends to retain local control over labor relations while granting limited rights to those employees who choose to be covered by a collectively bargained agreement to affiliate together in a labor organization and bargain with the City; and

WHEREAS, pursuant to Resolution No. 85-34 the City has permitted an election among City employees for the purposes set forth in that Resolution; and

WHEREAS, the results of that election were certified by the City Council and the City had determined in Resolution No. 85-34 that if a majority of the City employees voted in favor of being represented by the IBEW then the City Council would begin to make the required changes in its ordinances and personnel regulations to permit collective bargaining on behalf of those employees who choose to be covered by a collective bargaining agreement, while protecting the rights of those who do not choose to be covered by a collective bargaining agreement; and

WHEREAS, the City Council finds it in the public interest to make the minimum changes necessary to its existing Personnel Ordinance in order to preserve the stable atmosphere that has prevailed in the City during the past years; and

WHEREAS, given the size of the City of Seward, its remote geographical location and the dependence of the public on City services, the City Council views all City employees as essential for the public peace, health, safety and convenience; and

WHEREAS, the City Council is aware of the common law with regard to the issue of whether public employees have the right to engage in strikes or other concerted economic action and the City Council wishes to codify those provisions and to also cover those areas which might be in dispute among the various courts; and

WHEREAS, the City Council, as previously referenced in Resolution No. 85-34, does not intend to infringe on any individual's right to join or not join a union or be subject to the terms of a collectively bargained agreement, even though Federal or State statutes may provide otherwise; and

CITY OF SEWARD, ALASKA
ORDINANCE NO. 540

WHEREAS, the City Council wishes to make known some of the more important reasons for enacting changes to the Seward Code while not being bound by only the reasons set forth below;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SEWARD, ALASKA, HEREBY ORDAINS that:

Section 1. The City Council of the City of Seward, Alaska, makes the following legislative determinations:

a. The City of Seward is remote geographically, and the City provides essential public services including fire, police, sewer, water, snow removal, street repair, electrical, and other services critical to the public health, safety and convenience.

b. Granting public employees the right to strike may be construed as granting employees the right to deny the authority of the City of Seward, and, as a home rule municipality, the City of Seward desires its authority to be broadly construed.

c. A strike or work stoppage by public employees is the equivalent to a rebellion against the very existence of the government and is not to be condoned or permitted.

d. Employees of the City of Seward, being agents of the City and serving only public purposes, are entirely different from employees in the private sector and a strike by them would contravene the public welfare and paralyze the City and endanger the public health, safety and convenience.

e. Since the terms of employment of City employees include economic obligations and commitments which under the City of Seward Charter can only be determined by the City Council, granting a right to strike would, in effect, permit employees to place undue pressure and influence on the City Council in that the City Council would be prone to accede to the demands of striking employees in order to protect the public, while the concessions granted in so doing may well also be against the public interest insofar as they could affect the financial well being of the City. Employees ought not be permitted to put the City in such a dilemma.

f. Unlike private enterprise, the City of Seward does not perform its public functions and

activities for profit and thus purely economic considerations may not appropriately be the most important considerations and should not be allowed to become the most important through strike activity.

g. The efficient operation of the City and harmonious labor relations between the City and its employees will best be served when each individual employee has the maximum freedom possible to choose individually whether to affiliate with other employees or a labor organization for the purpose of collective bargaining.

h. The interests of the majority of the City employees should not infringe on the interests of the minority provided the interests of the minority can be accommodated.

i. Because the City of Seward has a long-standing set of personnel procedures and ordinances which, for the most part, have resulted in stable and harmonious labor relations, the public interest would be best served by permitting each individual employee the right to choose to continue to be subject to the existing personnel policies and procedures (as they may be amended), thus permitting each employee the widest possible freedom to choose while at the same time permitting those who wish to collectively bargain the right to do so. The City realizes that this approach could be construed as a possible violation under Section 8(a)(1) of the National Labor Relations Act, but also realizes, for reasons set forth above, that the City has the right to determine its own labor relations policies, and has determined, as a legislative matter, that the greatest freedom of choice for individual employees serves the public interest best.

j. The City Council realizes its obligation never to surrender the power of taxation as set forth in the City Charter. The City Council determines that the accountability of the City Council to the public can only be maintained if this power to tax remains exclusively with the City Council. Since the commitment of public monies in the form of wages and working conditions can result in a tax adjustment, the City Council determines that it is essential that the City Council approve any collective bargaining agreement before it can become effective. Because of the budget requirements set

forth in the City Charter, and in order to preserve the public's opportunity to be heard on the budget, any collective bargaining agreement which would result in a change in the amounts budgeted for City employees must be concluded in time for the changes to be included in the annual budget prior to the end of the fiscal year.

k. The City Council also realizes that it would be unrealistic to require collective bargaining to conclude in the first year prior to the required budget deadlines and therefore finds that it would be permissible, for the budget year 1986 only, to review a collectively bargained agreement which could result in changes in wages or working conditions provided that such an agreement were to be submitted prior to August 1, 1985, and further, that any changes in wages or working conditions would not be retroactive.

l. The City Council finds that due to the annual budget process it would disrupt the orderly operation of the City if collectively bargained agreements were to expire at any time other than the close of the fiscal year.

Section 2. Section 17-13.6 of the City of Seward Code is added to read as follows:

Sec. 17-13.6 No right to strike. No City employee shall have the right to strike. A strike is defined as a concerted failure to report for duty, a willful absence from work, a stoppage of work, or an abstinence from the full and proper performance of duties for the purpose of inducing or coercing a change in working conditions or compensation. The term strike includes any refusal to perform regular duties while other City employees, or any other persons, are engaged in picketing or any other work stoppage, slowdown or refusal.

Section 3. A new Section 17-14 is hereby created and added to the Seward City Code as follows:

SECTION 17-14 -- COLLECTIVE BARGAINING

Sec. 17-14.1 Freedom of Choice. Upon the conclusion of the collective bargaining process and the approval of any such contract by the City Council as provided in Section 17-14.2 below, each City employee included within the bargaining unit

shall indicate whether that person wishes to be governed by the terms and conditions contained in that agreement. If not, then the employee shall continue to be subject to this personnel code and regulations and pay plan as they exist and may be amended or changed. Neither the City nor any City employee shall discriminate against any employee solely by reasons of that employee's exercise of this right to choose, although differences between terms and conditions of employment set forth in the City Personnel Code and those terms and conditions set forth in a collectively bargained agreement that result in differential treatment will not be a violation of this section. Each new employee likewise shall have the right to choose between the Personnel Code and any collectively bargained agreement after being offered a position but before beginning work.

Sec. 17-14.2 Submission of collective bargaining agreements to the City Council. Any collectively bargained agreement is subject to approval by the City Council.

Sec. 17-14.3 Effective dates for agreements. All collectively bargained agreements shall expire on June 30 of the last contract year. No agreement may require changes in wages or working conditions that are retroactive to any date prior to the date of approval by the City Council.

Sec. 17-14.4 Appropriate Bargaining Unit. The City Council shall determine, in each instance, the unit appropriate for purposes of collective bargaining. In making its determination, the City Council shall consider the avoidance of fragmented bargaining units and any expressed desires of members of the unit.

Section 4. This ordinance shall take effect 10 days following enactment.

ENACTED BY THE CITY COUNCIL OF THE CITY OF SEWARD, ALASKA, this 29th day of May, 1985.

CITY OF SEWARD, ALASKA
ORDINANCE NO. 540

THE CITY OF SEWARD, ALASKA

DONALD W. CRIPPS, MAYOR

AYES: CRIPPS, GILLESPIE, HILTON, MEEHAN, SCHOLL, SIMUTIS & WILLIAMS
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

ATTEST:

Linda S. Murphy, City Clerk

(City Seal)

APPROVED AS TO FORM:

HUGHES, THORSNESS, GANTZ, POWELL AND BRUNDIN, Attorneys for the City of Seward, Alaska

Fred B. Arvidson, City Attorney

Introduction Date; 05/13/85

Introduced By: City Attorney

Public Hearing & Enactment Date: 05/29/85

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

Signature of Camera Operator

9/11/89
Date

02-519 (REV 8/78)

HB
539

HB 539 and CSHB 539
LIFELINE BILL

FILE CONTENTS

General

1) House Committee Report from Telecommunications Committee

2) HB 539

3) CSHB 539

4) Fiscal notes

5) Affected statutes

January 31, 1986

6) Memo from Telecommunications Committee staff -- background on lifeline programs

7) Options for Implementing a Lifeline Program in Alaska

8) Committee minutes for January 31, 1986

February 4, 1986

9) Options for various lifeline programs

10) Committee minutes for February 4, 1986

11) Survey on State Lifeline Telephone Service -- National Assoc. of Regulatory Utility Commissioners

February 7, 1986

12) Sectional analysis of HB 539

13) Written testimony from Gordon Parker, Alaska Telephone Assoc.

14) Committee minutes from February 7, 1986

February 11, 1986

15) Poverty guidelines for Alaska

16) Pages from Alaska Food Stamp Manual

17) Committee minutes from February 11, 1986

February 21, 1986

18) Committee minutes from February 21, 1986

Back-up Materials

19) Comments from Alaska Consumer Advocacy Program

20) Letter from American Association of Retired Persons

21) Memorandum from Alaska Public Utilities Commission

HOUSE

COMMITTEE REPORT

(7)
Date referred: 2/3/86

FURTHER REFERRALS: STATE AFFAIRS

DATE: _____

HOUSE SPECIAL COMMITTEE
The ON TELECOMMUNICATIONS Committee has considered HB 539

"An Act relating to reduced rates and discounted service for low-income telecommunication customers."

and recommends:

[X] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[X] replace with CSHB539 [X] same title

[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

David W. Thompson
F. Kopaczis
Bruce Henley
Thyra McCall

SIGNING OTHER RECOMMENDATIONS:

David W. Thompson - Vice Chair
Chairman

Committee

HOUSE
COMMITTEE REPORT

(7)

Date referred: 3/7/86

FURTHER REFERRALS:

DATE: 3/17/86

The STATE AFFAIRS Committee has considered HB 539

"An Act relating to reduced rates and discounted service for low-income telecommunication customers."

and recommends:

[✓] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[✓] replace with CSHB539(CTEEE) [✓] same title

[ ] new title

and recommends do pass

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

Katie Hurley

Mike Stewart

O.C. Brooks

SIGNING OTHER RECOMMENDATIONS:

Katie Hurley
Chairman

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 539
Title : An Act relating to reduced rates and discounted service for low income telecomm. customers
Sponsor House Spec. Telecomm. & State Affairs
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : Alaska Public Utilities Comm
BRU : Alaska Public Utilities Comm
Components : Administration

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by : T.S. Moninski II, Deputy Director
Division : Alaska Public Utilities Commission
Phone : 276-6222
Date : February 7, 1986

Approved by Commissioner : Steven J. Sternberg
Agency : Commerce and Economic Development
Date : February 7, 1986

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

10/25/85

0190k2786a

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 539
Title : Relating to reduced rates and discounted service for low-income telecommunicatins customers.
Sponsor : Special Committee on Telecommunications
Requestor :
Date of Request : 2/5/86

FISCAL DETAIL

Agency Affected : Administration
BRU : Telecommunications Services
Components : Telecommunications Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

The bill, of itself, has zero financial inpact on this agency. The effect of the bill would be to allow telecommunications utilities to provide reduced rates to low-income customers notwithstanding the prohibitions in AS 42.05 against rate discrimination.

Prepared by : (Ted McIntire) Phone : 465-2041
Division : Telecommunications Services Date : 2/5/86

Approved by Commissioner : Date : 2/5/86
Agency : Administration

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

10/25/85

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

House Bill No. 539

For an Act entitled: "An Act relating to reduced rates and discounted service for low-income telecommunication customers."

Background

As proposed, the Department views House Bill No. 539 as simply modifying existing statutes governing utilities to allow low-income telephone users to be assessed a lower service charge than that charged to other customers. House Bill No. 539 neither requires nor suggests that either utilities or the State must or should implement such rate structure changes.

The Department appreciates having been invited to participate in committee discussions about what has been called the "Lifeline Program" by states which allow for (or mandate) lower telephone rates to needy citizens. Though the concept was new to us, it quickly became obvious that such a program could potentially be an effective, low-cost way to provide an essential service to certain needy Alaskans whom we serve in our public assistance programs. Whether they live in rural or urban isolation, to many of our low-income disabled and elderly recipients, the telephone can be a health or life-preserving necessity. If Alaska's currently high telephone rates actually increase soon, as many believe they will, we feel that there might soon be a legitimate need for a lifeline program here.

If such a program is found to be necessary, we would be grateful for the opportunity to advise either separate utility companies or the Legislature concerning our experiences in designing and administering needs-based programs. If an Alaska lifeline program is not carefully designed, it could actually have an adverse effect on some recipients of our federally-funded programs, or merely result in substituting private or state funds for federal funds. In addition, if it were to be restricted to persons receiving public assistance (a restriction we do not initially support), there could be a fiscal and workload impact upon the Division of Public Assistance in verifying assistance status.

RECOMMENDATION

As proposed, House Bill No. 539 would have no fiscal or operational impact upon this Department. Therefore, we neither support nor oppose passage of this measure.

Recommended by: _____
John R. Taber, Director
Division of Public Assistance

Date: 2-14-86

Approved by: _____
John R. Pugh, Commissioner
Department of Health &
Social Services

Date: 2/20/86

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB No. 539
Title : An Act relating to reduced rates and discounted service to low-income telecommunication customers.
Sponsor : House Special Com on Telecomm.
Requestor : _____
Date of Request : 2/86

FISCAL DETAIL

Agency Affected : Health & Social Services
BRU : Public Assistance/Administration
Components : Eligibility Determination

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

This measure merely amends statutes to allow for income-based differentials in telephone rates. It does not establish any program which would impact the Division of Public Assistance.

Prepared by : John R. Taber, Director
Phone : 465-3347
Division : Division of Public Assistance
Date : 2-14-86

Approved by Commissioner : _____
Date : 2/20/86
Agency : HEALTH + SOCIAL SERVICES

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4931

DISTRICT 10
BOX 111038
ANCHORAGE, ALASKA 99511
(907) 349-2192

CHAIRMAN
Special Committee on
Telecommunications

MEMBER
Labor and Commerce
State Affairs
Finance—Subcommittee Administration

Representative H. A. "Red" Boucher

January 31, 1986

TO: Members, House Special Committee on Telecommunications

FROM: Chris Herberger, Committee staff

SUBJECT: Lifeline programs

In general terms, lifeline telephone service means a discounted service or a reduced rate in order to maintain essential communication services for low-income residential customers.

So far only four states have implemented lifeline programs that are based on need (meaning that there is a qualifying means test to determine recipients). The states are California, Arkansas, New York and Wisconsin, and only in California was the lifeline program implemented by the legislature; in the other three states it was the Public Utility Commissions. These states have generally reduced the flat or measured local rate 50-66%. Funding mechanims varied.

Nineteen states are offering "budget services" -- telephone service which is available to customers regardless of need, but the rate is based on some combination of distance, frequency, time-of-day and duration. This type of pricing is similar to the way long distance calls are priced.

Ten states have indicated that there is a statutory, judicial or administrative bar to lifeline rates with their state. These states include Colorado, Georgia, Indiana, Maryland, Oregon, Pennsylvania, South Dakota, Tennessee, Utah and Washington. Of these states, Georgia, Oregon, Tennessee and Washington have budget services, and Maryland and Nebraska have lifeline legislation pending. Details of each state's action or non-action are in the enclosed lifeline program survey.

A lifeline bill was introduced in the U.S. House of Representatives by Mickey Leland in January 1985. It was referred to Energy and Commerce Committee's subcommittee on telecommunications in February 1985 and no action has been taken on it.

The Federal Communications Commission has approved a lifeline program which all states may participate in. The program provides that federal money, up to the amount of the end-user charge, will be contributed to a lifeline program if the state matches the contribution. Recipients would be those eligible to receive Aid to Families with Dependent Children (AFDC) or Supplemental Social Security Income (SSI). At this time the state has approximately 9,702 cases with those two programs. The end-user charge is now $1, scheduled to rise to $2 in June 1986.

Alaska State Legislature

House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

DATE: February 18, 1986

TO: Representatives Pignalberi and Thompson

FROM: Chris Herberger, Telecom committee staff

SUBJECT: Lifeline rates

To clarify the issue of which public assistance programs give a specific telephone allowance, or which programs provide direct support to offset the cost of telephone service -- there are none. Further discussion with Division of Public Assistance revealed that the average cost of telephone service is taken into consideration when determining the benefit amount to be given to the recipient. For example, the telephone allowance in the Food Stamp program results generally in $4 more in food stamps for people in southeast Alaska. The amount differs depending on the area you live in. So through the Food Stamp program, people indirectly have more money to spend on the telephone bill or any other expense, because they pay less for food. The Food Stamp program is the only Public Assistance program that takes into account telephone and other utility expenses when determining benefit amounts.

Commissioner Weatherly also did some checking on public assistance programs in response to Representative Thompson's question last Tuesday and came up with the same answer.

AARP

1985-1986
ALASKA STATE LEGISLATIVE COMMITTEE

CHAIRMAN
Mr. John E. Dapcevich
Box 1081
Sitka, AK 99835
(907) 747-8383

VICE CHAIRMAN
Ms. Lee McAneirney
P.O. Box 406
Seward, AK 99664
(907) 224-3080

SECRETARY
Ms. June A. Robinette
P.O. Box 870797
Wasilla, AK 99687
(907) 376-2092

February 22, 1986

H. S. Boucher, Representative
Pouch V (MS 3100)
Juneau, Ak. 99811

Dear Red:

The Alaska State Legislative Committee for the American Association of Retired Persons recently met in Juneau and I was asked to send a letter of support to you for the following:

House Bill 539 titled "Telecommunications; Reduced Rates"

Our committee, which represents the 20,914 AARP members in Alaska, would appreciate any action you might take that would ensure passage of this legislation.

Best personal regards,

John E. Dapcevich
Chairman

NOTES TO DECISIONS

Separation of intrastate and interstate properties, expenses and revenues is required for properly determining the adequacy of a utility's intrastate rates. United States v. RCA Alaska Communications, Inc., Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

Collateral references. — Charitable contributions by public utility as part of operating expense, 59 ALR3d 941.

Fuel adjustment clauses: validity of "fuel adjustment" or similar clauses authorizing electric utility to pass on increased costs of fuel to its customers, 83 ALR3d 933.

Advertising or promotional expenditures of public utility as part of operating expenses for ratemaking purposes, 83 ALR3d 963.

Affiliates: amount paid by public utility to affiliate for goods or services as includible in utility's rate base and operating expenses in rate proceeding, 16 ALR4th 454.

Injunctions — rates: validity, construction, and application of Johnson Act (29 USCS § 1342), prohibiting interference by Federal District Courts with state orders affecting rates chargeable by public utilities, 28 ALR Fed 422.

Applied in Alaska Pub. Util. Comm'n v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1139 (File No. 2314), 534 P.2d 549 (1975).

Sec. 42.05.390. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.391. Discrimination in rates. (a) A public utility may not, as to rates, grant an unreasonable preference or advantage to any of its customers or subject a customer to an unreasonable prejudice or disadvantage. A public utility may not establish or maintain an unreasonable difference as to rates, either as between localities or between classes of service. A municipally owned utility may offer uniform or identical rates for a public utility service to customers located in different areas within its certificated service area who receive the same class of service. Any uniform or identical rate shall, upon complaint, be subject to review by the commission and may be set aside if shown to be unreasonable.

(b) A rate charged by a municipality for a public utility service furnished beyond its corporate limits is not considered unjustly discriminatory solely because a different rate is charged for a similar service within its corporate limits.

(c) A public utility may not directly or indirectly refund, rebate or remit in any manner, or by any device, any portion of the rates and charges or charge, demand or receive a greater or lesser compensation for its services than is specified in its effective tariff. A public utility may not extend to any customer any form of contract, agreement, inducement, privilege or facility, or apply any rule, regulation or condition of service except such as are extended or applied to all customers under like circumstances. A public utility may not offer or pay any compensation or consideration or furnish any equipment to secure the installation or adoption of the use of utility service unless it conforms

Collateral references. — Federal control as affecting power of public service commission, 4 ALR 1703, 1718, 1719; 8 ALR 969, 981; 10 ALR 956; 11 ALR 1450; 14 ALR 234; 19 ALR 678; 52 ALR 296.

Right of public utility company to discontinue its entire service, 11 ALR 252.

Sec. 42.05.300. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.301. Discrimination in service. A public utility may not, as to service, make or grant an unreasonable preference or advantage to any person or subject any person to an unreasonable prejudice or disadvantage. A public utility may not establish or maintain or provide an unreasonable difference as to service, either as between localities or as between classes of service, but nothing in this section prohibits the establishment of reasonable classifications of service or requires unreasonable investment in facilities. (§ 6 ch 113 SLA 1970)

Collateral references. — Discrimination in provision of municipal services or facilities as civil rights violation, 51 ALR3d 950.

Civil rights: racial or religious discrimination in furnishing of public utilities, services or facilities, 53 ALR3d 1027.

Use priorities: validity of imposition, by state regulation, of natural gas use priorities, 84 ALR3d 541.

Sec. 42.05.310. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.311. Joint use and interconnection of facilities. (a) A public utility having sewers, conduits, utilidors, poles, pole lines, pipes, pipelines, mains or other distribution or transmission facilities shall, for a reasonable compensation, permit another public utility to use them when the public convenience and necessity require this use and the use will not result in substantial injury to the owner, or in substantial detriment to the service to the customers of the owners. The cost of modifications or additions necessary to a joint use shall be at the expense of the public utility requesting the use of the facilities.

(b) A telecommunications utility shall permit connection to be made and service to be furnished between a system operated by it and the system or toll facilities operated by another public utility or with the communications facility or system of a nonutility, or between its toll facilities and the toll facilities of another public utility, when public convenience and necessity require the connection and the connection will not result in substantial injury to the owner or other users of the facilities of either public utility or in substantial detriment to the service of either public utility.

(c) The tariff of a public utility shall include rules setting out the terms and conditions under which it will construct, or permit its customers or subscribers to construct, and install lines, cables, radio

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
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CHAIRMAN
Special Committee on
Telecommunications

MEMBER
Labor and Commerce
State Affairs
Finance—Subcommittee Administration

Representative H. A. "Red" Boucher

OPTIONS FOR IMPLEMENTING A LIFELINE PROGRAM
IN ALASKA

1) Legislature eliminates only the perceived statutory bar, leaving the possibility of an actual lifeline program open.

2) Legislature does #1 and designs entire lifeline program including what agency administers the program, funding, recipients, and the appropriate rate.

3) Legislature does #1 and mandates an appropriate administrative agency to investigate and propose a lifeline program.

4) Legislature does #1 and some combination of the above.

5) Legislature does #1, determines that the state should participate in the federal program and takes necessary action.

6) Legislature does nothing.

SOME COMMENTS ON THE WORK DRAFT:

1) Some agency, if not the legislature, will need to define the terms in the draft, specifically "low-income," "essential," "discounted service," and "reduced rate." These terms are certainly open to various interpretations.

2) If the legislature does not mandate an agency to investigate the need and details of a lifeline program, and if the legislature does not do it itself, then lifeline rates will depend on the initiative of the APUC and the telephone utilities.

3) The legislature might want the broaden the scope and include all utilities and not just utilities providing telecommunication services.

Introduced: 2/3/86
Referred: House Special Committee on
Telecommunications and State Affairs

IN THE HOUSE

BY THE HOUSE SPECIAL COMMITTEE
ON TELECOMMUNICATIONS

HOUSE BILL NO. 539

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to reduced rates and discounted service for low-income telecommunication customers."

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

* Section 1. AS 42.05.301 is amended by adding a new subsection to read:

(b) Notwithstanding (a) of this section, a public utility may grant low-income customers discounted service or a reduced rate for essential telecommunication services.

* Sec. 2. AS 42.05.391 is amended by adding a new subsection to read:

(e) Notwithstanding (a) of this section, a public utility may grant low-income customers discounted service or a reduced rate for essential telecommunication services.

Original sponsor: House Special Committee on Telecommunications

IN THE HOUSE

BY THE HOUSE SPECIAL COMMITTEE ON TELECOMMUNICATIONS

CS FOR HOUSE BILL NO. 539 (Telecommunications)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to reduced rates and discounted service for low-income telecommunication customers."

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

* Section 1. AS 42.05.301 is amended by adding a new subsection to read:

(b) Notwithstanding (a) of this section, a public utility may initiate a discounted service or a reduced rate for essential telecommunication services for the benefit of its low-income customers. The commission may not require a utility to provide a discounted service or reduced rate under this subsection. The commission may not require a telephone utility to incur uncompensated costs or administrative burdens that are not recoverable through an approved tariff if the utility provides a discounted service or reduced rate.

* Sec. 2. AS 42.05.391 is amended by adding a new subsection to read:

(e) Notwithstanding (a) of this section, a public utility may initiate a discounted service or a reduced rate for essential telecommunication services for the benefit of its low-income customers. The commission may not require a utility to provide a discounted service or reduced rate under this subsection. The commission may not require a telephone utility to incur uncompensated costs or administrative burdens that are not recoverable through an approved tariff if the utility provides a discounted service or reduced rate.

Official Business

COMMITTEE: House Telecom

DATE: 2-4-86

Subject of meeting: Lifeline Rates

SIGN-IN

NAME	ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Cynthia Halterman	Box V, Cap 121	3844	Sen Zharoff	No
John Toben	P.O. Box H-07 Juneau	3347	Public Assistance	Yes
Frank Baker	Star Rt. 2 Box 608 T-Bird	688-4388	Sohio	NO
Reed Stoops	Box 1211 Juneau	586-3340	G.C.I	No
Joe Darnell	" " "	"	"	No

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SURVEY ON
STATE LIFELINE TELEPHONE SERVICE

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SUMMARY OF RESPONSES

Forty-five States and the District of Columbia responded to the NARUC's lifeline telephone service questionnaire. Four of these States, Arkansas, California, New York and Wisconsin, indicated that they had implemented or were about to implement strictly-defined lifeline telephone service. For purposes of this survey, strictly-defined lifeline service includes only that service which is made available to subscribers based upon need.

In California the imposition of lifeline service was mandated by the State Legislature. In New York, Arkansas and Wisconsin the impetus for such service originated with the utility commission. In Arkansas, lifeline service is being offered on a trial basis, while in California, New York and Wisconsin such service is or will soon be a permanent offering of the local exchange company. In Arkansas, New York and Wisconsin lifeline service is being offered only by the local Bell operating company while in California all local telcos operating in the State are required to provide lifeline service to their qualifying customers.

Ten States indicated that a statutory, judicial or administrative bar to the implementation of lifeline telephone service exists in their State. However, two of these States, Maryland and West Virginia, indicated further that their State legislatures are considering proposals which would override this bar. Additionally, Washington responded that although the State Attorney General considers there to be a statutory prohibition against the setting of lifeline telephone rates one local exchange company

has recently filed with the UTC a proposal which would set up a lifeline service plan.

Many States which do not or cannot have lifeline programs have authorized their local telephone companies to offer budget services. These services, available to customers regardless of need, are believed by those utility commissions to serve many of the same functions as lifeline offerings. Nineteen States indicated that they currently offer some form of budget local exchange service. Typically, budget services are offered on some type of measured service basis. In some States, charges vary according to the distance, frequency, time of day and duration of a subscriber's calls. In other States, only 2 or 3 of these elements are used. In still other States, charges are based only upon the number of calls a subscriber makes in a given monthly period.

Although only four States have implemented strictly-defined lifeline service, ten other States are presently considering development of lifeline programs. In four of these States, Iowa, Maryland, Nebraska and West Virginia, the question is currently pending before the State Legislature. In one other State, Vermont, the State Legislature has already acted, mandating the Vermont Commission to study the lifeline issue and to develop a recommended program. In the remaining five States, Minnesota, Mississippi, Nevada, Utah and Washington, the State utility commission is currently addressing the lifeline issue.

Although approximately half of the responding State commissions

either failed to express their views or offered equivocal thoughts on H.R. 151, the bill proposing the Lifeline Telephone Services Act of 1985, seventeen State commissions did indicate that they were opposed to the bill's passage. Some of the reasons given most frequently for opposing the legislation were: (1) lifeline telephone service is an issue best handled at the local level; (2) H.R. 151 is premature. State remedies should be exhausted first; (3) the State utility commissions and local telephone companies are not social welfare agencies. Administration and funding should come from traditional social welfare sources; and (4) the State utility commissions do not have the resources to administer a program of this magnitude. State commissions also expressed the following thoughts: (1) January 1, 1986 is an unreasonable deadline for State commission action; (2) lifeline service should not exclude Local Measured Service as an acceptable methodology; (3) the bill will create added pressure to bypass; and (4) the planned funding from interstate toll ignores the present FCC trend toward pricing more in line with costs.

Five State commissions indicated that they supported H.R. 151 although two of these States specified that their support was contingent on the addition of several amendments.

State Commission Responses

Alabama Public Service Commission

There is no statutory, judicial or adminis[illegible] bition in Alabama against the setting of lifelin[illegible] wever, no lifeline or budget service has been im[illegible] oposed in the State.

With regard to H.R. 151, the Commiss[illegible] that it needed more time to study the proposed le[illegible]

Alaska Public Utilities Commission

There is no statutory, judicial or administ[illegible] bition in Alaska against the setting of lifeline[illegible] r, no lifeline or budget service has been imp[illegible] posed in the State.

The Alaska PUC did not respond with its[illegible] 51.

The average charges per residentia[illegible] local exchange service in Alaska are listed in Att[illegible]

Arizona Corporation Commission

There is no prohibition in Arizona aga[illegible] cation of lifeline service. Yet, strictly-defi[illegible] ervice has not been proposed or implemented. Mounta[illegible] wever, offer a Residence Budget Service to its cu[illegible] ieves some of the goals of lifeline service. Resid[illegible] rvice is priced at $6.00/month plus usage charges on ea[illegible] going

State Commission Responses

Alabama Public Service Commission

There is no statutory, judicial or administrative prohibition in Alabama against the setting of lifeline rates. However, no lifeline or budget service has been implemented or proposed in the State.

With regard to H.R. 151, the Commission responded that it needed more time to study the proposed legislation.

Alaska Public Utilities Commission

There is no statutory, judicial or administrative prohibition in Alaska against the setting of lifeline rates. However, no lifeline or budget service has been implemented or proposed in the State.

The Alaska PUC did not respond with its views on H.R. 151.

The average charges per residential customer for local exchange service in Alaska are listed in Attachment A.

Arizona Corporation Commission

There is no prohibition in Arizona against the implementation of lifeline service. Yet, strictly-defined lifeline service has not been proposed or implemented. Mountain Bell does, however, offer a Residence Budget Service to its customers which achieves some of the goals of lifeline service. Residence Budget Service is priced at $6.00/month plus usage charges on each outgoing

local call. Usage rates are discounted based on time of day. Arizona reports that as of November 1984 there are approximately 50,800 Residence Budget Service subscribers, and that the option has been well received by subscribers.

Arizona did not express its views on H.R. 151.

Arkansas Public Service Commission

Southwestern Bell (SW Bell) implemented lifeline service on September 10, 1984 on a trial basis. The lifeline rate is 33% of the one-party residential flat rate with a 20 direct-dialed local call allowance. All calls over 20 are billed at the Standard Local Measured Service Rate. Lifeline service is only available in areas where Standard Local Measured Service is available.

Eligibility is determined based upon qualification for the Food Stamp Program administered by the State Department of Human Services. SW Bell is responsible for the annual review of eligibility for the program.

Funding for such service is derived from the overall tariff structure of SW Bell. The main costs of this program are a revenue shortfall of $8.25 per month per lifeline subscriber.

As of December 31, 1984, 1,144 customers subscribed to this service. Lifeline subscription has grown steadily since its introduction.

The Arkansas PSC objected to H.R. 151 on two grounds:

1. "This bill removes from the hands of the State regulatory agencies the authority to determine what is in the public interest

as it relates to this issue."

2. "The Arkansas Public Service Commission does not possess the resources to administer the program alluded to in this bill."

Average Charges per residential customer for one-party service are as follows:

Allied Tel.	7.85	Perco Tel.	7.50
Central Ark. Tel.	9.90	Prairie Grove Tel.	5.91
Arkansas Tel.	10.10	Redfield Tel.	4.50
Cleveland Tel.	4.34	Rice Belt Tel.	5.75
Liberty Tel. & Comm.	9.65	E. Ritter Tel.	14.20
Madison Co. Tel.	6.25	SW Bell	11.90
Union Tel.	10.90	Liberty Tel.	8.35
Yell Co. Tel.	7.55	Magazine Tel.	5.31
Yelcot Tel.	16.65	Mountain Home Tel.	9.40
Continental of Ark.	11.55	Mountain View Tel.	6.75
Decatur Tel.	4.30	North Ark. Tel.	10.90
GenTel of SW	11.49	S. Ark. Tel.	5.28
Lavaca Tel.	6.83	SW Ark. Tel.	10.15
United Tel.	9.54	Tri-County Tel.	6.50
Walnut Hill Tel.	9.25		

California Public Utilities Commission

Pacific Bell implemented lifeline service on March 31, 1969. GenTel of California implemented lifeline service on December 31, 1969. All other telephone utilities implemented lifeline service by July 1, 1984 pursuant to the mandate of the Moore Universal Telephone Service Act.

Rates, as required by the Moore Act, are one-half of the basic flat rate or measured rate of the telco providing service, plus a call allowance where measured service if offered. A $0.75 instrument allowance is provided. Service is measured service where available, with a 30 to 60 call per month allowance;

where measured service is not available service is unlimited local calling within the customer's area, including any extended area service regularly provided for that exchange.

Lifeline service is limited to those subscribers with household incomes under $11,000 per year; subscribers certify themselves for the program. Lifeline service is only available for residences. Approximately 500,000 customers currently subscribe to this service.

The California PUC estimates a total yearly cost of $13,821,500 for managing this program; Administrative Costs $221,500; Cost of local exchange charges $13,600,000. Lifeline service is funded by a tax on intrastate interlata long distance service providers.

California responded that its lifeline program appears to be consistent with the principles and objectives of H.R. 151. The costs of implementing H.R. 151 were estimated to be the same as the costs of the present program, with 600,000 subscribers estimated to be eligible for assistance under H.R. 151.

Average charges per residential customer for local exchange service:

Pacific Bell	$8.25
General Telephone	$9.25

Colorado Public Utilities Commission

There is a statutory ban against the provision of lifeline service by the Colorado PUC. **Mountain States Legal Foundation v. PUC**, 197 Colo. 56, 590 P.2d 495 (1979).

The Colorado PUC's views on H.R. 151 are as follows: "It is offensive in the extreme to be asked to comment on what type of welfare program we favor in order to provide minimal telephone service to our low income citizens."

Colorado estimates that the costs of implementing H.R. 151 would be $500,000 per year with 400,000 subscribers qualifying for assistance.

Average charges per residential customer for local exchange service:

Mountain Bell	$7.26

Connecticut Department of Public Utility Control

There is no prohibition against the implementation of lifeline service by the Connecticut DPUC. However, no lifeline service has been implemented or proposed.

Connecticut did not express its views on H.R. 151.

Delaware Public Service Commission

There are no specific prohibitions against lifeline service in Delaware. However, no lifeline service, strictly-defined, has been implemented. Diamond State Telephone does, however, offer Low Cost Measured Service which the Delaware PSC views as contributing greatly to the universal availability of telephone service.

While Delaware is not directly opposed to the concept of lifeline service, it prefers that action be taken at the State

level, with State legislators defining the social parameters of such a program. Delaware also expressed the concern that if H.R. 151 becomes law, low cost States will likely subsidize higher cost States.

Public Service Commission of the District of Columbia

There is no specific prohibition against the setting of lifeline service rates by the District of Columbia PSC. While lifeline service has not been proposed or implemented, C&P Telephone Company of D.C. has offered an Economy Message Service since August 1972 which contributes to the universality of telephone service. This option currently has 6,774 subscribers or 2.4% of residential customers. The D.C. Commission feels that consumer response to this offering has been slight up until now because other residential options are currently priced low enough.

In response to the question regarding its views on H.R. 151, the D.C. Commission stated its belief that the surcharges for interstate toll service, which would fund the Lifeline Service Fund, would be of such a magnitude as to cause a substantial increase in bypass. In the long run, this bypass would adversely affect small businesses and residential customers.

Average charges per residential customer for local exchange service:

C&P Telephone Co. of D.C.	$10.22

Florida Public Service Commission

There is no prohibition against implementation of lifeline service by the Florida PSC. However, no lifeline service has been implemented or proposed.

Florida is opposed to H.R. 151. It believes that lifeline is a matter best handled on a local basis. Specifically, Florida offered the following:

1. The plan to fund the service through interstate toll ignores the current FCC trend toward pricing at cost.

2. If the plan is to surcharge only interstate toll provided by FCC regulated carriers (i.e., not private microwave) bypass might be encouraged.

3. Rates should not be required to be on a message basis. Use of a fully measured basis would provide for even lower cost off-peak calling for lifeline customers.

Georgia Public Service Commission

The Georgia PSC is prohibited from implementing lifeline service because Georgia law prohibits "discrimination in rates charged for same service."

Yet, Southern Bell has implemented, on an experimental basis, Message and Low Measured Service Rates which the Georgia PSC views as some aid to needy subscribers.

Message Rate Service provides for 25 calls at a flat rate with all calls after 25 billed at 12 cents per call. Low Measured Service provides for time-of-day discounts. Currently, 1,684

customers subscribe to Message Rate and 631 customers subscribe to Low Use Measured Service. Public response has been "extremely moderate."

It is the Georgia PSC's view that if H.R. 151 is adopted lifeline service should be administered by an agency separate from the PSC.

Average local exchange charges per residential customer:

Southern Bell	$13.00 - $14.00

Hawaii Public Utilities Commission

There is no prohibition against the implementation of lifeline service by the Hawaii PUC. However, no lifeline service has been implemented or proposed.

The Hawaii PUC's view on H.R. 151 is as follows: "When local telephone rates increase dramatically, some sort of local lifeline rates for the handicapped, elderly and the poor may be considered."

Average Local Exchange Charges per residential customer:

Hawaiian Telephone Co.	$11.00

Idaho Public Utilities Commission

Idaho does not have a lifeline service plan in effect. Pacific NW Bell does, however, offer a Residence Budget Measured Service to all customers which Idaho considers to be an alternative to lifeline service. This service is structured at a $4.00/ month flat rate plus usage charges of $.04 for initial minutes

Indiana Public Service Commission

Indiana Code 8-1-2-103 has been interpreted by the U.S. Court of Appeals of Indiana, 4th District and the Indiana PSC (Case No. 35780-58) to prohibit lifeline rates for electric utilities. The PSC believes that the principles stated in those cases are broadly applicable and prohibit the implementation of lifeline telephone rates.

It is Indiana's view that lifeline benefits should be made available on a means basis but that utilities and regulatory bodies should not administer such programs.

Indiana estimates that it would cost more than $10 million to implement H.R. 151 and that approximately 100,000 customers would qualify for this service.

Average Local Exchange Charges per residential customer:

Indiana Bell	$26.47

Iowa State Commerce Commission

Lifeline service is currently being proposed by the Iowa State Legislature. Such proposed service would tie qualification for lifeline to qualification for other assistance such as Energy Aid (LEAP and HEAP) or 150% of the poverty guidelines of the federal government.

There are several proposed funding alternatives for this service: (1) surtax on interexchange carriers, (2) general State tax revenues, or (3) a shift of the cost to other local exchange rates.

The Iowa SCC's position on H.R. 151 and all lifeline programs is that such programs are not within the function of a regulatory agency. Lifeline policy is appropriately determined by legislative bodies and administration and funding should fall to normal social welfare agencies. The Iowa SCC estimates that approximately 100,000 households would qualify for assistance under H.R. 151.

Average local exchange rates per residential customer:

See Attachment B.

Kansas Corporation Commission

Southwestern Bell proposed an "Economy Service" option as part of its 1983 Divestiture Rate case. The proposal gained no significant support during the rate case and was not adopted. The service would have provided a low basic charge with a 12-call allowance. All calls after 12 would have been billed at the standard OLCP usage charges plus a 20 cents surcharge per call.

Kansas views the thrust of H.R. 151 as beneficial and appropriate. Kansas had the following concerns regarding the language of H.R. 151:

a. In Sec. 225(a)(3)(A)(i), is the average to be weighted in any way? If so, how? Weighting on the basis of lines may be appropriate.

b. In Sec. 225(a)(3)(A)(ii), it may be necessary to recognize that "the charge" may vary by size of exchange or other factors, again raising a weighting question.

c. In Sec. 225(b)(1) it may be better to provide for a one-time annual election option for State commissions to implement rules and

participate in the fund, rather than require all State commissions to draft rules and participate in the fund by a specific date (1/1/86 in H.R. 151). This would better allow State commissions to balance needs, priorities, and resources.

Average local exchange rates per residential customer are contained in Attachment I.

Louisiana Public Service Commission

South Central Bell has available to its subscribers several offerings in addition to basic local exchange service. Three of these offerings are considered by the Louisiana PSC to be lifeline or budget services. They are:

(1) Low-Use Measured Service which provides a 45% discount from the basic local exchange rate with a low-use usage service allowance of $1.00 per month; and a Standard Measured Service which provides a 30% discount from the basic local exchange rate with a standard service allowance of $5.00 per month.

(2) Message Rate Service which provides for a discount of 45% with a $1.00 allowance per month for dialed sent paid local calls.

(3) Two- or Four-Party Service available on a flat rate basis.

No means tests are attached to any of these services. Subscription levels for these services are:

Two Party Residence	20,599
Four Party Residence	20,149
Message	6,700
Measured Low Usage	17,012

Measured Standard Usage 77,108

There has been relatively low response to these options. Less than 10% of residential subscribers take any of these services.

The Louisiana PSC did not express an opinion on H.R. 151.

Average local exchange rates per residential customer are contained in Attachment C.

Maine Public Utilities Commission

The Maine PUC has made available a Low-Use Residence Message Service for all subscribers in four New England Telephone exchanges since 1976. The Maine PUC believes that this may constitute a form of lifeline or budget service. This service is available for $4.81/month and includes a 30 message unit allowance. Additional message units are 11.4 cents each.

Customer response to this option has been very modest. Not greater than 8.5% of subscribers have taken this service in any exchange. In total, only 1,978 customers subscribe to this option.

Maine does not support H.R. 151. It believes that lifeline service should not be mandated by the federal government. Maine estimates that the ongoing costs of administering H.R. 151 would be insignificant and that 65,000 customers would qualify for its assistance.

Average local exchange rates per residential customer:

New England Telephone (87% of State) $10.67

Maryland Public Service Commission

Maryland has a statutory ban on the provision of lifeline service. Md. Ann. Code Art. 78, Sect. 26(a). However, a proposal currently pending before the Maryland Legislature would allow for the provision of lifeline service by C & P of Maryland by July 1, 1986.

Those eligible for such service would be recipients of State General Public Assistance and recipients of Supplemental Security Income. The Maryland Department of Human Services would certify eligibility to C & P. The rate for this service would be 50% of basic residential local exchange rates and would include 30 local, untimed messages/month. All local messages after the first 30 would be billed at the applicable and approved rate. Under current C & P tariffs this rate would be $4.05/month plus 9 cents per message in excess of 30. Installation, service connection and regrading charges would be billed at 50% of applicable tariff charges.

The proposed lifeline service would be funded through general tax revenues that would otherwise be collected from C & P under Maryland gross receipts tax. C & P estimates that the cost of this service would be $2 million annually. Approximately 65,000 customers would be eligible for this service.

Maryland's view on H.R. 151 is that the decision to implement a lifeline rate should be left to each State.

Average local exchange charges per residential customer may be found in Attachment D.

Massachusetts Department of Public Utilities

The Massachusetts DPU has approved an optional Local Measured Service for New England Telephone which it believes serves as a form of lifeline service. The option is offered at $3.25/month and includes free 30 message units. The option is presently available to 78% of residence lines. Approximately 5% or 90,000 customers have subscribed to this service.

Massachusetts' view on H.R. 151 is that no federal legislation is needed or appropriate on this issue.

Average local exchange rates per residential customer:

New England Telephone	$25.00 - $28.00

Michigan Public Service Commission

The Michigan PSC considers the Optional Measured Service offerings of Michigan Bell (since 1971) and GenTel of Michigan (since 1975) to be forms of lifeline service. Michigan Bell offers two-party Measured Service for $4.27/month with a 44 call allowance; 6.2 cents per call thereafter. GenTel offers one-party Measured Service for $6.05 - $8.53/month with a 30 call allowance; 10 cents per call thereafter.

Approximately 100,000 customers presently subscribe to these services. Customer response has been largely favorable.

The Michigan PSC does not believe that H.R. 151 is the appropriate vehicle for preserving universal service. It estimates that under H.R. 151 500,000 subscribers would qualify for assistance and the costs of such a program would approach $13 million.

Average local exchange rates per residential customer:

Michigan Bell	$9.77
General Telephone	$7.80

Minnesota Public Utilities Commission

Minnesota does not have a prohibition against the implementation of lifeline service. Although no such service has been implemented, proposals for such service are in the planning stages.

Minnesota is in favor of H.R. 151.

Average local exchange rates per residential customer:

Northwestern Bell	$13.98
Continental	$16.35
Central	$ 8.60
United	$15.54

Mississippi Public Service Commission

The Mississippi PSC has encouraged South Central Bell to file a definitive lifeline tariff in its next rate case. SC Bell had previously provided the Commission with a general framework within which to consider a lifeline tariff. SC Bell had proposed that where LMS is available, lifeline should include an access portion between the regular and low use and would provide $7.50 worth of usage allowance. In exchanges where LMS is not available, SC Bell proposed a $13.00 flat rate for qualifying customers. SC Bell proposed that the revenue deficiencies be recovered by an increase in the premium flat rate. A means test including self-certification was considered.

Additionally, since 1981 South Central Bell has offered

Low Use Measured Service to all customers in areas where LMS is technologically feasible. Low Use LMS is priced at 55% of the flat rate with a $3.00/month call allowance included. Usage charges are based on distance, frequency, time of day and duration of calls. As of December 1984, 19,131 customers subscribed to Low Use LMS. Mississippi reports that customer response to this offering has been very positive.

Mississippi believes that H.R. 151 is unnecessary. It believes that the interests of Mississippi telephone users can best be addressed by a lifeline plan developed on a State level. Mississippi estimates that 165,000 customers would be eligible for assistance under H.R. 151.

Average local exchange rates per residential customer:

South Central Bell	$15.23

Missouri Public Service Commission

Although the Staff of the Missouri PSC does not feel it proper to characterize the offerings of any local telco in Missouri as lifeline or budget, there are presently two local telcos in the State offering Optional Local Measured Service to all customers in certain exchanges. Southwestern Bell offers LMS in all ESS offices and United in its digital offices. For both of these companies the LMS is structured with the access line rate set at 55% of the one-party flat residence or business rate. Usage rates are distance, time of day and duration sensitive. Approximately 6% of SW Bell's customers subscribe to this offering.

Missouri did not express its view on H.R. 151.

Average local exchange rates per residential customer are contained in Appendix H.

Nebraska Public Service Commission

The Nebraska Legislature currently has pending before it a bill which would create lifeline service for persons over 65 with annual incomes below $4,300 for individuals, $8,400 for married individuals both over 65 and $7,400 for married individuals with spouse under 65. Subscribers whose basic residential service charge is above $10.00 would receive a subsidy in the form of a credit to their monthly bill in a sum which is the difference between $10.00 and their residential service charge up to a maximum credit of $5.00. The bill would provide for annual self-certification.

This service would be funded through a Statewide Telephone Service Fund administered by the Nebraska PSC.

The Nebraska PSC expressed no opinion on H.R. 151.

Nevada Public Service Commission

Nevada Bell has proposed a lifeline service as part of its pending rate case. Such service would be available at $5.00/month with $3.00 worth of free local calling on a measured basis to subscribers with a family income of $10,000 or less. Nevada Bell proposes to fund this service through its general revenues.

The Nevada PSC expressed no opinion on H.R. 151 although