

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5527 SSTA SB 328 - SB 372

9. The SBC shall:
 - a. review the recommendations of its financial advisor under 4a, b, c, and d hereof and recommend to the DOA, University, or Court System the execution of a lease securing a financing obligation of the Authority if, in its judgment, it deems all the terms of the financing obligations that affect the lease (including the amount of the financing and time of sale) to be in the best interests of the State; and, in its discretion, recommend that the DOA, University, or Court System limit approval of the lease upon compliance with terms recommended by the SBC which affect the cost of the lease to the State or the creditworthiness of the State; and
 - b. at the time of sale of the obligation, review the recommendations of its financial advisor under 4e hereof; if the SBC determines that the bids or prices are not satisfactory or that the bidders are not responsible, the SBC shall not recommend the execution of the lease.
10. The Authority shall, after considering the recommendation of the SBC and receiving approval by the DOA, University, or Court System of the terms of the lease, consider approval of the issuance of the financing obligation if, in the Authority's judgment, the issuance is in the best interest of the Authority and the State.
11. The Authority shall be reimbursed from financing proceeds at the time of closing for all costs of the Authority, in accordance with the terms of the lease and financing documents.
12. The Authority and the State shall follow the same procedures detailed herein for any refinancing as with respect to an original obligation.
13. Lease payments on any State lease securing obligations issued by the Authority shall be subject to annual appropriation, and any such lease shall contain a provision to that effect.
14. With the approval of the lessee, the Authority may contract with DOTPF or the University Division of Facilities Planning and Construction for development, construction, or related services for public buildings leased to the State, or the Authority may provide for development, construction, and related services without assistance from DOTPF or the University.

15. Each transaction to finance State public buildings is to be structured to limit the liability of the Authority. Contracts between the Authority and DOTPF or the University Division of Facilities Planning and Construction relating to the development, construction, or related services for public buildings owned by the Authority shall specify that the Authority is not liable for project costs that exceed the authorized funding total. DOTPF and the University Division of Facilities Planning and Construction will use appropriate and prudent management systems to assure the authorized funding total is not exceeded. If for any reason it becomes apparent that project costs will exceed the authorized funding total, and applicable bond funds are exhausted, DOTPF or the University will be responsible in coordination with the lessee for securing additional sources of funds to meet contractual or other project obligations.
16. Each of the parties to this MOU shall provide reasonable written notice to the other parties of any actions intended to be taken that are the subject of this Memorandum. The parties shall circulate documents and provide information pertinent to any such action to the other parties on a timely basis.

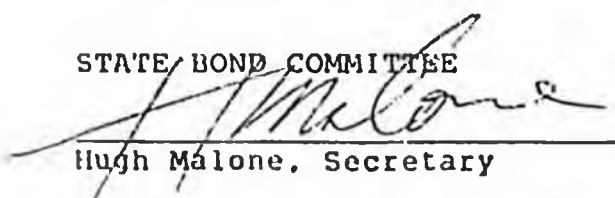
The foregoing is intended to express the understanding of the parties and is not intended to be a binding legal contract.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum to be executed by their respective duly-authorized officers on this 28th day of October, 19 87.

ALASKA STATE BUILDING AUTHORITY


Barbara Morse-Quinn, Executive Director

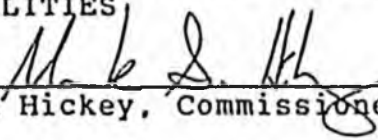
STATE BOND COMMITTEE


Hugh Malone, Secretary

DEPARTMENT OF ADMINISTRATION

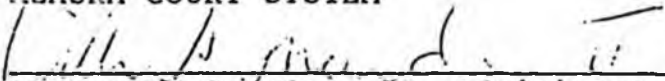

Gatreys Peska, Commissioner

DEPARTMENT OF TRANSPORTATION & PUBLIC
FACILITIES



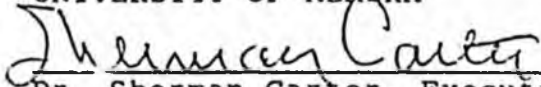
Mark Hickey, Commissioner

ALASKA COURT SYSTEM



Arthur H. Snowden, II, Administrative
Director

UNIVERSITY OF ALASKA



Dr. Sherman Carter, Executive Vice
President and Vice President of Finance

SB

341

STATE OF ALASKA

DEPARTMENT OF REVENUE

TREASURY DIVISION

STEVE COWPER, GOVERNOR

ELEVENTH FLOOR
STATE OFFICE BUILDING
P.O. BOX SB
JUNEAU, ALASKA 99811-0400

March 24, 1988

MAR 24 1988

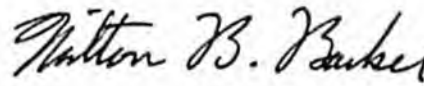
The Honorable Mitch Abood
Chairman
Senate State Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Abood:

The enclosed letter from Standard & Poor's may be of interest to the Senate State Affairs Committee in any deliberations on SB 341. SB 341 would centralize all lease-financings of the state in the Alaska State Building Authority.

Government Finance Associates, Inc., to which the S & P letter is address, is the financial advisor to the State Bond Committee.

Sincerely,



Milton B. Barker
Deputy Commissioner

MBB/gb
88-86

Enclosure

cc: Royce Weller, Special Assistant
Department of Revenue

Bob Evans, Legislative Liaison
Office of the Governor

Standard & Poor's Corporation

25 Broadway, New York, New York 10004



Vladimir Y. Stadnyk
Senior Vice President
Municipal Finance Department
212/208-1780

RECEIVED MAR 21 1988

RECEIVED
MAR 23 1988

ALASKA DEPARTMENT OF REVENUE
TREASURY DIVISION
JUNEAU

March 18, 1988

Mr. J. Chester Johnson
President
Government Finance Associates, Inc.
742 Alexander Road
Princeton, New Jersey 08540

Dear Chester:

I take this opportunity to respond to your inquiry regarding centralization of lease financing into the Alaska State Building Authority.

In general, any mechanism that allows an issuer to consolidate its debt planning and management into a central function is viewed quite positively. From an analytical standpoint such a structure reflects on the control an entity has in managing its current and future debt burden.

As you know, a fundamental element in the evaluation of credit risk is the impressions one gets from the administrative factors of each entity. Therefore, good centralized debt management controls lend themselves to favorable evaluations of the administrative factors. However, you are also aware that the credit evaluation process looks to a plethora of factors and that organizational and management techniques are only a small part of the total process. Consequently, your proposed centralization may or may not affect specific credit ratings.

I hope this short response addresses your needs, but if not feel free to call on me at any time.

Sincerely,

VYS/cr



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 14, 1988

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

Dear Senator Faiks:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating, for the most part, to lease-purchasing under the new Procurement Code.

The main purpose of the bill, embodied in sec. 8, is to centralize all lease-financings for public buildings in the Alaska State Building Authority (ASBA). Section 7 of the bill requires the legislative and judicial branches to notify the legislature of leases and lease-purchases, including lease-financings, if the cost is expected to exceed \$1,000,000 annually. Currently, only the executive branch, through the Department of Administration, and the University of Alaska are subject to this requirement.

"Lease-purchase agreement" and "public building" are defined in sec. 9 of the bill. "Lease-finance agreement" is also defined in that section as a type of lease-purchase agreement.

Section 6 of the bill statutorily authorizes the legislative and judicial branches to enter into lease-purchase agreements. Other amendments, relating to the new definitions added by sec. 9 of the bill, are also made in sec. 6.

Existing AS 36.30.005(c)(5) defines "department," for the purposes of AS 36.30.005(c) which transfers procurement and construction authority to the Board of Regents, as meaning the University of Alaska. Thus, wherever "department" is used in AS 36.30, the Procurement Code, with regard to university procurement, etc., the university is covered by the provision. It is therefore unnecessary to refer expressly to the university in secs. 6, 7, and 8 of the bill.

Sections 4 and 5 of the bill make amendments to reflect the amendments made by secs. 6, 7, and 8 of the bill.

The amendments made by sec. 1 of the bill, and the new statute proposed by sec. 2, relate to the University of Alaska's financing authority in general.

Section 3 of the bill allows ASBA to transfer land or public buildings to a governmental agency for less than appraised value. (In the next-to-last sentence of what will become AS 18.55.255(a), incidentally, a publication error that first appeared in the 1986 AS 18 pamphlet is corrected without amendment; see sec. 1, ch. 91, SLA 1976.)

Under sec. 10 of the bill, university projects, and lease-purchase agreements entered into by the university, the legislature, or the court system, will not be subject to proposed AS 14.40.253 (university), and amended AS 36.30.080(c) (legislature and court system) as it is amended by sec. 7 of the bill, if the project is authorized by law before July 1, 1988, regardless of whether arrangements for the project or agreement are made final by that date.

Section 11 of the bill exempts projects authorized by law before July 1, 1984 from the requirement that a lease-financing agreement for such a project may be entered into only with ASBA. (This provides a type of "grandfather clause" exception for the Anchorage court facility, authorized by sec. 2, ch. 78, SLA 1984.) Projects authorized by law after July 1, 1984, for which a lease-financing agreement is not signed before July 1, 1988 (the effective date of this Act), will be subject to AS 36.30.080(d); however, those for which a lease-financing agreement is signed before July 1, 1988 will not, of course, be subject to that subsection.

As mentioned earlier in this letter, sec. 8 of the bill centralizes all lease-financings for public buildings in ASBA. There are at least four reasons for consolidating lease-financing in ASBA: efficiency, accountability, market acceptance, and state control.

Using one issuer/lessor for state lease-financing will build expertise in both ASBA staff and retained professionals, such as bond counsel, about the legal and financial requirements and procedures of both the credit markets and the state. This will create greater efficiency not only in processing such transactions, but in structuring them as well. An example of this effect is the innovative and low-cost financing obtained by the Alaska Housing Finance Corporation (AHFC) for mortgage loans in Alaska. It is improbable that the overseas and other creative financing AHFC employs would

have been possible if housing financing in this state had been splintered among many municipal or regional housing authorities.

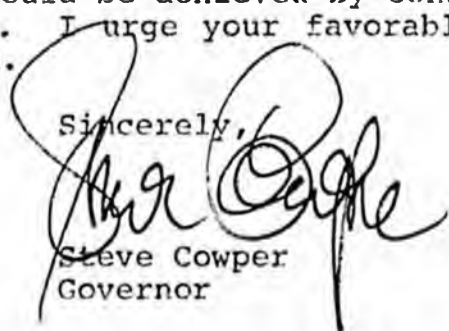
One issuer/lessor for lease-financing would also provide clearer accountability and a central, uniform source of reporting. This would enable the state to provide timely, accurate responses to inquiries about or reviews of lease-financing from auditors, legislative committees, or national credit rating agencies.

The credit markets should also respond favorably to a single issuer for state lease-financing. The more regular issuance from one issuer should lead to greater market recognition and confidence, and a broader base of bond holders and lower interest rates as a result.

Another, and possibly the most important, reason for consistently using ASBA for state lease-financing is to facilitate state control of lease-financing. This type of financing is paid entirely from the state's general fund. Its rate is based on the state's credit rating, and is normally one notch below the state's general obligation bond rating because lease payments are subject to appropriation. Lease-financing is counted as part of the state's debt burden by Moody's and Standard & Poor's credit rating services. In the event of default, it is the state's rating that would suffer. Attempts at state control of this type of financing would be frustrated by a multiplicity of issuers.

State lease-financing capacity is not unlimited. It is limited by the ability to appropriate lease payments from the general fund and by the credit rating of the state. The best use of that capacity would be achieved by consolidation of lease-financing in ASBA. I urge your favorable consideration of this legislation.

Sincerely,



Steve Cowper
Governor

STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: _____
Publish Date: _____

REQUEST: _____

Revision Date: _____
Title: Relating to Public Finance

Agency Affected: State Bond Committee
BRU: _____

Sponsor: Rules by Request of Governor
Requestor: _____

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page for analysis.

Prepared By: Milt Barker MB
Division: Treasury

Phone: 465-2350
Date: December 4, 1987

Approved by Commissioner: [Signature]
Agency: Department of Revenue

Date: 12/6/87

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 14, 1988

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

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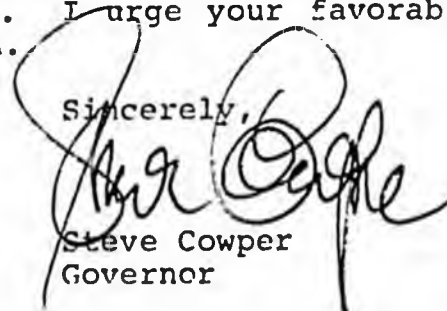
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Sincerely,



Steve Cowper
Governor

SB

344

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 3/16/88 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: L&C

**FISCAL NOTE(S) ATTACHED **
IN ACCORDANCE WITH AS 24.08.035
(see below)

423

1/14/88

DATE TURNED INTO OFFICE 4/6/88

Mr. President:

State Affairs Committee considered SB 344

general contractors, and to certain contracts of state agencies and political subdivisions.

and recommended:

- replace with CS _____ same title
- attached amendment(s) and new title

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted and attached

** Committee attached or adopted fiscal note(s)
 zero fiscal impact

MEMBERS SIGNING DO PASS

[Signature]

OTHER RECOMMENDATIONS

[Signature] No Rec

[Signature]
Chairman signature and recommendation

Committee Backup Attached

Alaska State Legislature

SENATOR JIM DUNCAN

P.O. Box V JUNEAU, ALASKA 99811

(907) 465-4766

COMMITTEES:
FINANCE
RESOURCES
BUDGET AND AUDIT

MEMORANDUM

February 17, 1988

To: Senator Mitchell Abood
Chairman Senate State Affairs

From: Senator Jim Duncan

Subject: SB 344 Relating to general contractors

I would appreciate your scheduling SB 344, a bill concerning contracting procedures, for a hearing before the Senate State Affairs Committee at your earliest convenience.

Current statutes have not prevented the loss of business and jobs to contractors from outside Alaska. It is my hope that with some minor changes in the contracting law we will save some Alaskan businesses and many Alaskan jobs.

I have attached some supporting material that could be used in the Committee's bill files.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

January 8, 1988

SUBJECT: Coverage of bill on the use and registration
of subcontractors (Work Order No. 5-1534)

TO: Senator Jim Duncan

FROM: Theresa L. Bannister
Legislative Counsel

This memo accompanies the draft of the bill that you requested to require contractors to use registered subcontractors.

The business license requirement in the draft is carried over from the present language of AS 36.30 (state procurement code). To obtain an Alaska business license, a contractor must also have satisfied the registration requirements of AS 08.18 (AS 43.70.020(d)). That is why there is no specific registration requirement in section 2, 5 and 6 of the draft.

This draft applies subcontractor registration requirements to the sections of the procurement code (AS 36.30) that deal with procurement by sealed bids and sealed proposals. You may wish to consider whether you want to apply the new provisions to the other types of procurement, which are sole source procurements (AS 36.30.300), limited competition procurements (AS 36.30.310), emergency procurements (AS 36.30.320), and small procurements (AS 36.30.320). All of these could be used for contracts with construction contractors, but there may be policy reasons against imposing the same requirements on them.

If I can be of further assistance, please advise.

Attachment

TLB:bb
B010/WKE?

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 344
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
Title: " An Act relating to general
contractors and...contracts of state agencies..." BRU: Labor Standards & Safety
Sponsor: Duncan Components: Wage & Hour
Requestor: Senate State Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Tom Stuart, Director Phone: 264-2452
Division: Labor Standards & Safety Date: 3/22/88

Approved by Commissioner: Jim Sampson Date: 3/22/88
Agency: Department of Labor

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

UAJ LIBRARY JUNEAU FALL 1987

GLAZING BIDS RECEIVED BY THE SUCCESSFUL BIDDER

DAWSON CONSTRUCTION- BELLINGHAM, WASHINGTON

company	from	base bid	skylight	combined
Sound Glass,	Tacoma	121000	26100	147000
National Glass, McMinneville, Ore.		118000	----	----
AK. Commercial, Anchorage		149982	113000	262982
Perseverance Glass Juneau		152500	87000	239500
Glass Sash, Anchorage		180000	-----	-----
Arctic Glass Anchorage		190000	-----	-----
Bucher Glass Fairbanks		221000	-----	-----
JD Glass Juneau		228000	93000	321000

*1 Sound Glass didnot acknowledge addenda #1, and was not bidding a product with prior approval.

*2 Neither Sound Glass or National Glass were at the date of the bid or as of Jan. 28, 1988, licensed in the state of Alaska.

*3 On Jan. 28, 1988, I called Sound Glass. A principle in that firm stated to me that he had a contract for the project, and anticipated beginning work sometime near the first of a March 1988.

UAJ LIBRARY JUNEAU FALL 1987

GLAZING BIDS RECEIVED BY AN UNSUCCESSFUL BIDDER

PETER KIEWIT CONSTRUCTION- ANCHORAGE

company	from	base bid	skylight	combined bid
Sound Glass, Tacoma		121000	REJECTED 26100	147100
AK. Com., Anchorage		149982	113000	262982
Perseverance, Juneau		152500	87000	239500
Doors/Windows, Kenai		160000	-----	-----
Glass Sash, Anchorage		180000	-----	-----
Arctic, Anchorage		190000	-----	-----
Bucher, Fairbanks		221000	-----	-----
JD, Juneau		228000	93000	321000
Unknown, Fairbanks		231000	125000	356000

*1 Sound Glass didnot acknowledge addenda #1, and was not bidding a product with prior approval. Bid preparer at Keiwit considered this bid to be too low, and hence too risky. This bid was rejected as unresponsive.

*2 Sound Glass was not licensed at the date of the bid. However, Keiwit was not required to inquire as to this status.

*3 On Jan 28, 1988, I called Sound Glass. A principle in the firm stated to me that he had a contract for the project, and anticipated beginning work sometime near the first of March 1988.

*4 Please note: Alaska bids are grouped competitively, all were responding to plans and specifications, and all were licensed to do business in the state.

FISCAL NOTE

REQUEST:

Revision Date: -
Title: An Act relating to general contractors...
Sponsor: Senator Duncan
Requestor:

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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)

Prepared by: Jennifer Strickler, Management Analyst Phone: 465-2144
Division: Occupational Licensing Date: March 10, 1988

Approved by Commissioner: J. Anthony Smith Date: 3/10/88
Agency: Commerce and Economic Development

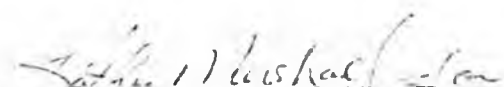
Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

SB 344: An Act relating to general contractors, and to certain contracts of state agencies and political subdivisions.

Section 1 of the bill amends AS 08.18.011(b) to prohibit a general contractor from contracting with, soliciting a bid or proposal from, or awarding a bid or proposal to an unlicensed individual. Current statute prohibits a general contractor from allowing a person to work without proper licensure. The amendment to this section goes one step further by disallowing solicitation of a bid or proposal from an unlicensed individual, and prohibits an award, bid or proposal to be made to an unlicensed individual. This will ensure that only properly licensed contractors will be eligible to perform the construction work for which licensure is required under AS 08.18 and help to assist in the enforcement of unlicensed activity in the State.

The department supports passage of this legislation which clarifies the need to have properly licensed contractors working in Alaska and encourages the Legislature's support in passing the bill.



J. Anthony Smith, Commissioner
Department of Commerce and Economic
Development

3/10/58

Date

JS/dg10051o
031188a

BY SENATOR DUNCAN

Senate Bill 344

"An Act relating to general contractor, and to certain contracts of state agencies and political subdivisions."

Section 1.

Strengthens current language under AS 08.18 (Construction Contractors) by requiring that a general contractor may NOT:

1. Solicit a bid or proposal from,
2. Award a bid or proposal to,
3. Contract with,

a person required to be registered under AS 08.18 unless the person is registered.

Current law only requires that the general contractor may not allow a person to work for the general as a speciality contractor unless the person is registered under AS 08.18.

Section 2.

Requires that a state agency soliciting bids for work SHALL require that a bid include a list of the subcontractors that the bidder will be using and include:

1. The name and location of the place of business of each subcontractor; and
2. Evidence of each subcontractor's valid Alaska business license.

In addition, A person scliciting subcontractor bids in response to a state agency's invitation SHALL serve notice that a bid will not be considered unless it includes evidence of the bidders contractor registration.

Section 3.

AS 36.30.115 (Subcontractors) is amended to exempt construction contractors from the requirement to submit "the name, location and place of business, and evidence of valid Alaska business license five working days after identification of the apparent low bidder", because they are required to report that information at the time they submit their bid.

Section 4.

AS 36.30.210 (Request for Proposals) is also amended to exempt construction contractors from the requirement to submit "the name, location and place of business, and evidence of valid Alaska business license five working days after identification of the apparent low proposer", because they are required to report that information at the time they submit their proposal.

Section 5.

Requires that a state agency requesting proposals for work SHALL require that the proposal include a list of the subcontractors that the offeror will be using and include:

1. The name and location of the place of business of each subcontractor; and
2. Evidence of each subcontractor's valid Alaska business license.

In addition, A person soliciting subcontractor proposals in response to a state agency's request for proposals SHALL insert in the solicitation that a proposal will not be considered unless it includes evidence of the offeror's registration.

Section 6.

Requires that a political subdivision of the state that solicits bids or proposals for public construction or public works SHALL require that the bid or proposal include a list of the subcontractors that the bidder or offeror will be using and include:

1. The name and location of the place of business of each subcontractor; and
2. Evidence of each subcontractor's valid Alaska business license.

In addition, A person soliciting subcontractor bids or proposals in response to a political subdivision's invitation or request SHALL serve notice that a bid or proposal will not be considered unless it includes evidence of bidder or offeror registration.

Also, in this section definitions for "public construction" and "public works" as well as "political subdivision of the state" are provided.

MEMORANDUM

State of Alaska

TO: - Tom Stuart
Director

DATE: December 4, 1987

THRU: Randy Carr
Statewide Supervisor

FILE NO:

TELEPHONE NO: 465-4842

FROM: James A. Sanwick
Regional Supervising Investigator

SUBJECT: Unlicensed Contractors
on Southeast Public
Construction

This memo is to inform you of the final resolution of the complaints originally raised by Senator Duncan's office concerning unlicensed out of State contractors bidding on construction projects at the Sitka Elementary School project and the University of Alaska Southeast.

On November 17, 1987 (after researching the companies in question and coordinating with Commerce) I traveled to Sitka and met with Harry Chartier, job superintendent, about problems with National Glass Company having been unlicensed when it submitted its bid. We met with Dawson's superintendent and explained the problem and that my office had discussed the problem and Dawson's current probation for violation in May with Lonny in Seattle. He said that the company had recently pulled National Glass off the subcontractor list (only preliminary excavation has been done at this point on the project) and he didn't know when or how the company would replace them. Harry said he understood the provision of the law and would call us if he had questions about any subs appearing on the lists.

On November 24, 1987 I met with Jim Kytola of Dawson on the UAS Library project. I explained to him that we had a report about Sound Glass company having been awarded the bid and the ramifications of having an unlicensed contractor awarded the bid. He said that his most recent subcontractor list had removed that name and his list showed no contract award for glazing.

I explained Dawson's current probation status and suspended fine. He said he was well aware (Jim was the site superintendent when I cited Glazco and Dawson for violation last May which resulted in Dawson's probation) of Dawson situation and believed Lonny (in Seattle office) now understood Dawson's responsibility and liability.

It is important to note that if not for the probation stipulated in the May judgement Dawson would not have been in violation of the current Statutes. Under normal conditions a General can only be cited if he allows an unlicensed sub to work on the project. In both of these cases the sub was unlicensed when they bid but became licensed after the bid was awarded but before work began. In the judgement's stipulation Dawson was prohibited from doing business with unlicensed subs. In discussion with Dawson I maintained that to award the contract was indeed to do business with the firm and thus would violate the stipulation.

Tom Stuart
December 4, 1987
Page 2

This loophole could be fixed, I believe, by changing the language in 8.18.011(b) to read:

"A general contractor may not consider or award a bid to a person required to be registered under this chapter to work for the general contractor as a specialty contractor unless the person is registered under this chapter at the time the bid is submitted."

We might also tighten up this problem by placing a requirement in AS 36.05.035 that would read:

36.05.035

(b) the state, political subdivision of the State or General Contractor awarded a contract by either the State or Political subdivision of State, shall place in all of its request for bids a clause stating that no bid will be considered unless proof of proper registration with Commerce and Economic Development, Division of Occupational Licensing is submitted with the bid.

I believe the real key to making this law work is making the entity responsible for awarding the bids accountable. Otherwise we continue to have the problem of out of State contracts outbidding local firms because of they don't bear the cost of bonding and licensing until the bid is awarded to them.

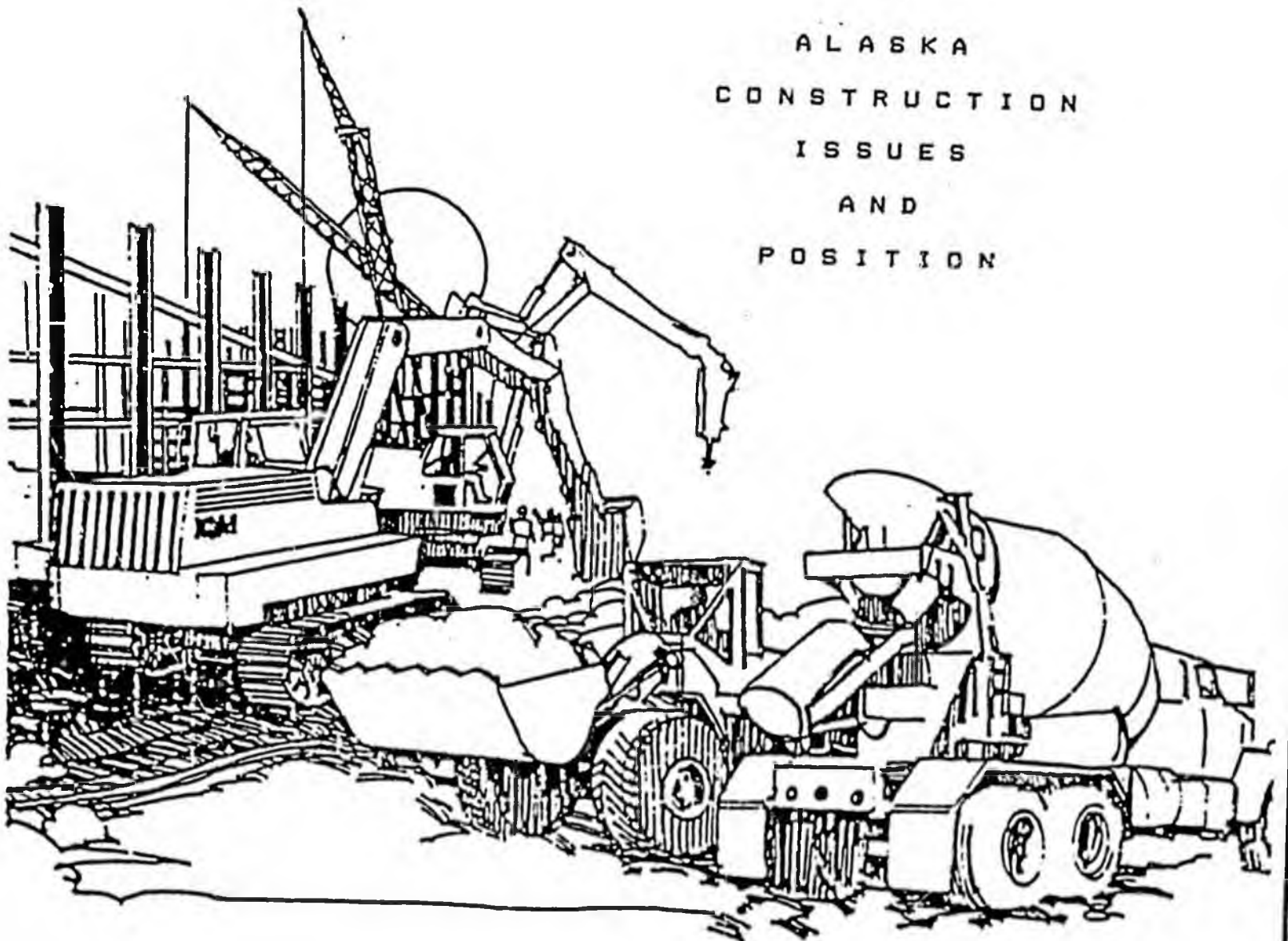
cc: Jim Sampson, Commissioner
Senator Jim Duncan

Kisa

ASSOCIATED GENERAL
CONTRACTORS
ALASKA CHAPTER



ALASKA
CONSTRUCTION
ISSUES
AND
POSITION



J., concurring), Quoting Lynden Transport, Inc. v. State, 532 P.2d 700, 710 (Alaska 1975)".

From a philosophical perspective, A.G.C. opposes government regulations of the construction industry. A.G.C. supports the free market, competitive bidding system for awarding construction contracts. This system has stood the test of time as the most economical system for the owner and a fair system for the contractors. Consistency dictates that A.G.C. not seek special regulatory favor for Alaska contractors. Further, a local preference is not consistent with the competitive free market system.

NAMING SUBCONTRACTORS AT BID

Requiring subcontractors to be named in the bid and requiring inclusion of evidence of each subcontractor's valid Alaska business license demonstrates a clear lack of understanding of the construction bid process. The inclusion of such a provision will lead to increased costs and increased litigation. A.G.C.-Alaska has and will continue to oppose any legislation requiring the naming of subcontractors at bid.

Prior to selection of a subcontractor a primary contra-

ctor must evaluate a bid and the scope of work quoted in the sub-bid. The prime must then check on insurance; bonding capability and qualifications of the subcontractor; and finally the prime must insure that the labor policy is compatible with any labor agreements to which the prime contractor may be signatory. Additionally, on most publicly funded projects there are requirements for subcontracting a certain percentage of work to certified Disadvantaged Business Enterprises (DBE) and Women Business Enterprises (WBE). The prime must be assured that the lowest DBE and WBE bids are from firms that have current certifications from the awarding agency. It is very common that a DBE or a WBE firm may be certified by one branch of the government, but not another. This certification information must be obtained and verified by the prime, otherwise the prime may be held in noncompliance with the contract DBE/WBE requirements.

Requiring the prime contractor to list subs prior to investigation and evaluation of the sub could create contractual obligations between a prime and a sub where later investigation or evaluation by the prime contractor would result in selection of a different subcontractor.

LITTLE MILLER ACT

Under existing law on public construction contracts, a



SKILL
RESPONSIBILITY
INTEGRITY

THE ALASKA CHAPTER
THE ALASKA CHAPTER
**ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, INC.**

BOX 92500 * ANCHORAGE, ALASKA 99509
TELEPHONE (907) 561-5354



3201 SPENARD ROAD
ANCHORAGE
WILLIAM E. SCHNEIDER
EXECUTIVE DIRECTOR

March 21, 1988

RECORDED SB 344
MAR 21 1988
C
M

Senator Mitch Abood
Chairman
State Affairs Committee
Pouch V
Juneau, Alaska 99811

Re: SB 344

Dear Senator Abood:

We would like to make a few comments on SB 344 which deals with general contractors use and the registration of subcontractors.

After several meetings with the sponsors staff and a meeting with the sponsor, they indicated that the purpose of this legislation is to prevent general contractors from contracting with subcontractors that are not licensed and registered in the State of Alaska.

Section one would go a long way to accomplish this goal. We would suggest a small change:

Page 1, line 11 after "A general contractor may ..." the word knowingly be inserted.

The Section would read:

A general contractor may not knowingly solicit a bid or proposal from, award a bid or proposal to, contract with, or allow a person required to be registered under this chapter to work for a general contractor as a specialty contractor unless the person is registered under this chapter.

During the last hectic days of preparing a bid the general contractor receives numerous phone calls with bid proposals from subcontractors that he or she may not know. There is just not enough time to check out each and every subcontractor. A subcontractor could tell the general contractor on the phone that he is registered and then the general could find out a day or so later that he is not registered. Therefore, we need to insert the word "knowingly".

We believe the remainder of the bill, which makes changes to Alaska's Procurement Code, is unnecessary. The issue of subcontractor identification received substantial testimony during hearings on Alaska's Procurement Code. The Procurement Code passed the Legislature after 19 hearings in 1986 and was amended in 1987. The effective date of the 1987 amendments, which this bill changes, was January 1, 1988. SB 344 was introduced 13 days after the effective date of the 1987 changes.

AS 36.30115 (a) of the Procurement Code require the apparent low bidder to submit a list of:


- subcontractors
- evidence of the subcontractor's valid Alaska business license, and;
- evidence of each subcontractor's registration under AS 08.18.

We believe these provisions of Alaska's Procurement Code will cure the problem that the sponsor is attempting to address in this legislation. But, the Procurement Code needs time to be in effect and to work.

If problems do occur this construction season, we would be happy to work with the sponsor to draft legislation for introduction next Session.

Sincerely,

ASSOCIATED GENERAL CONTRACTORS
OF ALASKA


William F. Reeves
General Counsel

Enclosure

cc: ABC Legislative Committee

Sec. 36.30.100. General policy. (a) Except as otherwise provided in this chapter, or unless specifically exempted by law, an agency contract shall be awarded by competitive sealed bidding.

(b) Competitive sealed bidding is not required

(1) when the commissioner determines in writing that food, clothing, or medical supplies, or materials for use in laboratory or medical studies may be purchased otherwise to the best advantage of the state;

(2) when rates are fixed by law or ordinance;

(3) for the purchase of products or services manufactured or provided by an employment program;

(4) for the purchase of products or services provided by the correctional industries program established under AS 33.32;

(5) for professional services; or

(6) for concessions operated on state property.

(c) In this section "employment program" means a nonprofit program to increase employment opportunities for individuals with physical or mental disabilities that constitute substantial handicaps to employment. (§ 2 ch 106 SLA 1986)

Collateral references. — Requirement that public contract be awarded on competitive bidding as applicable to contract for public utility. 81 ALR3d 979.

Sec. 36.30.110. Invitation to bid. (a) When competitive sealed bidding is used, the procurement officer shall issue an invitation to bid. It must include a time, place and date by which the bid must be received, purchase description, and a description of all contractual terms and conditions applicable to the procurement.

(b) When responding to the invitation to bid, the bidder shall supply evidence of the bidder's valid Alaska business license. A bidder for a construction contract shall also submit evidence of the bidder's registration under AS 08.18. (§ 2 ch 106 SLA 1986)

Sec. 36.30.115. Subcontractors. (a) Within five working days after the identification of the apparent low bidder, the apparent low bidder shall submit a list of the subcontractors the bidder proposes to use in the performance of the contract. The list must include the name and location of the place of business for each subcontractor and evidence of the subcontractor's valid Alaska business license. A bidder for a construction contract shall also submit evidence of each subcontractor's registration under AS 08.18.

(b) A bidder may replace a listed subcontractor if the subcontractor

(1) fails to comply with AS 08.18;

(2) files for bankruptcy or becomes insolvent;

(3) fails to execute a contract with the bidder involving performance of the work for which the subcontractor was listed and the bidder acted in good faith;

(4) fails to obtain bonding;

(5) fails to obtain insurance acceptable to the state;

(6) fails to perform the contract with the bidder involving work for which the subcontractor was listed;

(7) must be substituted in order for the prime contractor to satisfy required state and federal affirmative action requirements;

(8) refuses to agree or abide with the bidder's labor agreement; or

(9) is determined by the procurement officer not to be a responsible bidder.

(c) If a bidder fails to list a subcontractor or lists more than one subcontractor for the same portion of work and the value of that work is in excess of half of one percent of the total bid, the bidder shall be considered to have agreed to perform that portion of work without the use of a subcontractor and to have represented the bidder to be qualified to perform that work.

(d) A bidder who attempts to circumvent the requirements of this section by listing as a subcontractor another contractor who, in turn, sublets the majority of the work required under the contract violates this section.

(e) If a contract is awarded to a bidder who violates this section, the purchasing officer may

(1) cancel the contract; or

(2) after notice and a hearing, assess a penalty on the bidder in an amount that does not exceed 10 percent of the value of the subcontract at issue. (§ 2 ch 106 SLA 1986; am §§ 4, 5 ch 65 SLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, in subsection (a) in the first sentence substituted "five working days" for "24 hours," "the identification of the apparent low bidder" for "opening of bids," "apparent low bidder" for "two apparent low bid-

ders," and "bidder proposes" for "bidders propose," and in the second sentence substituted "must" for "shall"; and in subsection (b) added "and the bidder acted in good faith" at the end of paragraph (3) and inserted "state and" in paragraph (7).

Sec. 36.30.120. Bid security. (a) Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the procurement officer to exceed an amount established by regulation of the commissioner. Bid security on construction contracts under the amount set by the commissioner may be required when the circumstances warrant. Bid security may be required for competitive sealed bidding for contracts for supplies, services, or professional services in accordance with regulations of the commissioner when need for the protection of the state.

(b) Bid security must be a bond provided by a surety company authorized to do business in the state or otherwise supplied in a form

Sec. 08.18.010. [Repealed, § 1 ch 100 SLA 1968.]

Sec. 08.18.011. Registration required. (a) A person may not submit a bid or work as a contractor until that person has been issued a certificate of registration by the Department of Commerce and Economic Development. A partnership or joint venture shall be considered registered if one of the general partners or venturers whose name appears in the name under which the partnership or venture does business is registered.

(b) A general contractor may not allow a person required to be registered under this chapter to work for the general contractor as a specialty contractor unless the person is registered under this chapter. (§ 2 ch 100 SLA 1968; am § 1 ch 83 SLA 1985)

Effect of amendments. — The 1985 amendment added subsection (b).

NOTES TO DECISIONS

Use of registered name not required. — While a joint venture is not required to hold itself out to the public at large under a registered name in order to be doing business in that name, it must at least use that name in its dealings with the contracting party and in its business dealings with others against whom it may later seek to bring claims. *Fomby v. Whisenhunt*, Sup. Ct. Op. No. 2801 (File No. 7434), 680 P.2d 787 (1984).

Satisfying AS 08.18.051 is not prerequisite. — No specific language makes satisfaction of AS 08.18.051 a prerequisite to a finding that this section is satisfied. *Fomby v. Whisenhunt*, Sup. Ct. Op. No. 2801 (File No. 7434), 680 P.2d 787 (1984).

Substantial compliance abrogates bar of AS 08.18.151. — The statutory bar of AS 08.18.151 may be abrogated by a general contractor's substantial compliance with this section. *Jones v. Short*, Sup. Ct. Op. No. 2916 (File No. S-220), 686 P.2d 665 (1985).

Substantial compliance with chapter not shown. — Where a subcontractor was neither registered nor bonded until

the day before it completed work, it did not substantially comply with this chapter. *Lost Valley Timber, Inc. v. Power City Constr., Inc.*, 809 F.2d 590 (9th Cir. 1987).

Anyone engaged in building trades must be charged with awareness of the pervasive system of licenses and permits designed to enhance the public safety and confidence in the industry. *Sumner Dev. Corp. v. Shivers*, Sup. Ct. Op. No. 984 (File No. 2036), 517 P.2d 757 (1974).

Applied in *Gross v. Bayshore Land Co.*, Sup. Ct. Op. No. 3002 (Files Nos. S-711, S-713), 710 P.2d 1007 (1985).

Quoted in *State ex rel. Smith v. Tyork Timber, Inc.*, Sup. Ct. Op. No. 2815 (File Nos. 7170, 7256), 680 P.2d 1148 (1984).

Cited in *Industrial Power & Lighting Corp. v. Western Modular Corp.*, Sup. Ct. Op. No. 2259 (File Nos. 4163, 4176), 623 P.2d 291 (1981); *Alaska Protection Servs., Inc. v. Frontier Colorcable, Inc.*, Sup. Ct. Op. No. 2800 (File Nos. 7562, 7609), 680 P.2d 1119 (1984).

Collateral references. — Contractor's failure to procure license or permit as af-

fecting enforceability of contract or right of recovery for work done. 44 ALR4th 271.

S B

347



Alaska State Legislature

SENATOR JIM DUNCAN

P. O. Box V JUNEAU, ALASKA 99811

(907) 465-4766

COMMITTEES:
FINANCE
RESOURCES
BUDGET AND AUDIT

MEMORANDUM

January 26, 1988

TO: Senator Mitch Abood, Chairman
Senate State Affairs Committee

FROM: Senator Jim Duncan

SUBJECT: SB 347, "An act relating to the regulation of motorboat repairs".

SB 347 amends the definition section of the current law relating to the Regulation of Motor Vehicle Repairs to include motorboats and defines motorboats.

Currently under AS 45.45, motor vehicle repair, when a customer takes his motor vehicle to a shop for repair the customer may request a written estimate prior to the commencement of any repairs. If the shop has given the customer an estimate and the price for the authorized repairs exceeds the estimate, the shop must call the customer before continuing with the repairs and at that time the shop has the opportunity to give the customer a new estimate. Also if the customer requests, at the time the repair order is taken, the customer may elect to receive the parts of their motor vehicle that are replaced.

Essentially 45.45 Regulation of Motor Vehicle Repairs is a consumer protection law. SB 347 will provide the same protection for boat owners as for motor vehicle owners under AS 45.45.

My office was contacted by an individual who needed to have his boat engine repaired. A verbal estimate by the boat dealership indicated the repairs would cost \$4,500.00. When the dealership was finished repairing the engine the total bill was over \$7,000.00. There was no indication to the owner at any time prior to the billing that the amount due would be over the original estimate.

With the large number of boat owners in our state and the fact that for many their boat is an important means of transportation I believe this bill will extend the necessary protection for boat owners that currently exists for car owners.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to regulation of motorboat repairs."
Sponsor: Senator Duncan
Requestor: Senate State Affairs

Agency Affected: Department of Law
BRU: Consumer Protection
Components: Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		47.0	23.5	23.5		
TRAVEL		5.0	2.5	2.5		
CONTRACTUAL		10.0	5.0	5.0		
SUPPLIES		3.3	1.8	1.8		
EQUIPMENT		8.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	73.3	32.8	32.8	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	73.3	32.8	32.8	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	1	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	1	1	-0-	-0-
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Richard I. Pegues
Prepared by: Richard I. Pegues, Director
Division: Administrative Services
Richard I. Pegues / FC/1
Approved by Commissioner: Grace Berg Schuble, Atty. Gen.
Agency: Department of Law

Phone: 465-3672
Date: January 27, 1988
Date: January 27, 1988

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

- CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 347

This bill amends AS 45.45.240(2) by changing the definition of "motor vehicle" or "vehicle" to include motorboats. The bill further defines "motorboat" to mean a vessel used or capable of being used as a means of transportation on water if the vessel is propelled in whole or in part by machinery; "motorboat" includes a vessel temporarily equipped with a detachable motor, but does not include aircraft equipped to land on water.

The effect of this bill will be to extend the existing regulation of motor vehicle repairs, set out in AS 45.45.130 through AS 45.45.240, to the repair of motorboats. This regulation includes: repair cost estimates, on request; notice to customers of their rights under the Act; fair charges for cost estimates, where such charges are necessary; customer authorization to proceed, including notice of and prior approval of unanticipated additional work and costs; return or inspection of parts that are replaced; a dated invoice detailing the costs of all parts and labor involved in the repair, identifying all part replacements as either new, used, rebuilt, or reconditioned; prohibited practices on the part of repair shops; and the requirement that shops maintain for inspection by the attorney general repair records and invoices for parts purchased by the shop for a period of two years.

Although the bill does not place mandatory administrative duties on the Department of Law, for investigation and enforcement action under AS 45.50.471 through AS 45.50.561, the attorney general is, nonetheless, empowered to take such actions under these sections.

It is the department's view that marine repair shop compliance with the motor vehicle repair statute will not be successful unless two essential steps are accomplished. First, a comprehensive education program for shop operators, explaining the new requirements of the statute, must be undertaken. To be effective, such a program would necessarily include preparation, printing, and distribution of explanatory brochures, and face-to-face visits by Department of Law consumer protection staff. This is based on the department's prior experience in obtaining compliance by automotive repair shops under the motor vehicle repair statute as originally enacted. When specific regulatory requirements are first placed on an industry not previously subject to them, it takes considerable time and effort to inform and assist the businesses in adapting to the change and to gain their cooperation in voluntary compliance.

Second, some follow-up enforcement and informational efforts must occur in order to demonstrate the willingness of the state to back up the standards of conduct required of shop operators. Enforcement would primarily involve investigating and mediating complaints, but it may also involve taking legal action if it becomes necessary to do so.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 347

Unfortunately, budget reductions which took place in FY 1987 and FY 1988, have substantially cut enforcement resources and have eliminated most consumer complaint mediation services, except at Fairbanks. The department's consumer protection section, which had a full-time staff of 15 employees in FY 1986, was reduced to the equivalent of 10 full-time employees in FY 1987, and reduced to 4 full-time and 1 part-time employees in FY 1988. The current staff consists of 1 attorney, 1 investigator, and 1 legal secretary at Anchorage, and 1 investigator/mediator and 1 part-time legal secretary at Fairbanks. Because of the reduced size of the staff, the Anchorage office's efforts have been concentrated on bringing enforcement action against wide-scale consumer fraud having the most serious impact on consumers. Efforts at the Fairbanks office continue to be centered on the investigation and resolution of consumer complaints.

Due to the substantial staff reduction mentioned above, the department recommends employment of an Associate Attorney I (paraprofessional) at Juneau to prepare and conduct the marine repair shop education program. This position would also be responsible for providing some follow-up complaint mediation and enforcement. It is anticipated that the associate attorney position would be required on a full-time basis for the first year following implementation of the bill, and on a part-time basis for two successive years, after which the department's involvement in marine repair shop enforcement would cease. First year education costs include \$6,000 for production of the marine shop brochure, \$4,000 for additional postage and long-distance toll costs, and \$5,000 for travel to coastal marine repair centers, except for Anchorage and Fairbanks where on-site consultation would be handled by existing staff. These out-of-pocket costs would drop by about fifty per cent after the first year, when the program enters the follow-up enforcement phase. New position costs include the purchase of a personal computer with letter quality printer to avoid the substantially greater cost of clerical assistance, although some clerical help from the civil division will be required from time-to-time.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 347

Fiscal Analysis Summary

	<u>First Year</u>	<u>Second and Third Years</u>
71000	46,960	23,480
72000	5,000	2,500
73000	10,000	5,000
74000	3,300	1,800
75000	8,000	-0-
	<hr/>	<hr/>
Total	73,260	32,780

Position Title Associate Attorney I		No. of Positions 1	Range/Step 17A	Barg. Unit PX
Time Status PFT	Staff Months 12	Location Juneau		Election District 4
Type of Expenditure		Justification		
1	2	3		
Salary	34,920	This position is required to provide consumer protection law information to operators of marine repair shops, who would be included under the state's motor vehicle repair statute if SB 347 is enacted. In addition to the service, the position would investigate consumer complaints under the amended statute, provide mediation services and, if legal action becomes necessary, provide case preparation assistance for attorneys who handle such actions. In view of the level of expertise required of these sometimes highly technical investigations, allocation to the mid-level para-professional class of Associate Attorney I is recommended.		
Benefits	12,040			
Premium Pay				
Other				
Total Personal Services	46,960			
Travel	5,000			
Contractual	10,000			
Commodities	3,300			
Equipment	8,000			
Other				
Total Cost	73,260			
Funding Source for Total Cost				
Federal Receipts	1002			
G. E. Match	1003			
General Fund	1004	73,260		
GF Program Receipts	1005			
Other				

**Request For
New Position**

Agency Department of Law
 BRU Consumer Protection
 Component Consumer Protection

Page 1 of 1
 Revised Date _____

FY 89

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 347
PUBLISH DATE: 1-15-88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to the
regulation of motorboat repairs
Sponsor: Duncan
Requestor: _____

Agency Affected: _____
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Senate State Affairs Committee Phone: 465-4522
Division: _____ Date: _____
Senator: _____
Approved by Commissioner: Mitch Abbod Date: 1-28-88
Agency: Senate State Affairs Committee

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

Sec. 45.45.220. Records. A shop shall maintain repair records and invoices for parts purchased by the shop. The records shall be available for reasonable inspection by the attorney general or other persons acting at the request of the attorney general and shall be retained for at least two years. (§ 1 ch 146 SLA 1976)

Sec. 45.45.240. Definitions. In AS 45.45.130 — 45.45.240

(1) "customer" includes a person authorized by the customer to act on the customer's behalf;

(2) "motor vehicle" or "vehicle" means a motor vehicle as defined in AS 28.40.100 which is required to be registered under AS 28.10, or with a governmental agency of another jurisdiction performing a similar function;

(3) "motor vehicle repair shop" or "shop" means an individual, corporation, partnership, or other form of business organization engaged in the motor vehicle repair business and includes owners, officers, directors, agents, employees, and representatives but excludes the following:

(A) a shop engaged solely in the business of repairing the motor vehicles of a single commercial, industrial or governmental establishment, or of two or more of these establishments which are related by common ownership or corporation affiliation;

(B) a person repairing the person's own or a family member's motor vehicle;

(4) "repair" or "repairs" means the improvement, adjustment, replacement, examination, diagnosis, maintenance, servicing, removal or installation of any component or part of a motor vehicle, but does not include towing or the supplying of motor fuel to a motor vehicle. (§ 1 ch 146 SLA 1976; am § 21 ch 144 SLA 1977)

Article 6. Motor Vehicle Warranties.

Section	Section
300. Repairs required	335. Resale without disclosure prohibited
305. Replacement or refund	340. Other rights and remedies
310. Notice by owner	345. Repair facilities
315. Exceptions	350. Reimbursement of shipping costs
320. Presumption	355. Arbitration or mediation
325. Parts availability	360. Definitions
330. Failure to replace or refund	

Opinions of attorney general. — The Better Business Bureau's auto line informal dispute resolution mechanism pursuant to this article is in substantial compliance with 16 C.F.R. § 703, setting forth the standards for informal dispute settlement procedures. 1986 Op. Att'y Gen. No. 01.

S B

350

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 15, 1988

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

Dear Senator Faiks:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the delegation of authority from the Board of Trustees of the Alaska Permanent Fund Corporation (board) to the employees and outside advisors of the corporation, and limiting the liability of the fund, its board, and employees.

Section 1 of the bill adds proposed AS 37.13.105, concerning delegation of the board's duties and limiting liability. The proposed statute (1) clarifies that the board may allocate its responsibilities among its members and may delegate any of its responsibilities to the corporation's employees; (2) specifically authorizes the board to contract with one or more investment managers for investment of the fund's assets, and defines "investment manager"; (3) relieves the board from liability with respect to assets for which investment authority has been prudently delegated; and (4) clarifies the degree of indemnity provided to the board and its employees in performing their official duties.

Although I believe that the board already has implied authority or coverage regarding some of these matters, there are arguments that could lead a court to conclude otherwise. Therefore, this bill provides specific statutory authorization and clarification to protect both the board and its employees from untoward liability that could otherwise arise even if actions taken are prudent and appropriate under the circumstances.

In an opinion dated September 13, 1982, the Department of Law discussed board delegation of decision-making to an employee or investment manager. That opinion stated that, given the statutory scheme under which the board is compensated, by honorarium, only for those days spent dealing directly with board work, it is "obviously implied" that the board would delegate to its employees, or to investment managers retained under contract, substantial responsibility

for day-to-day decisions. The opinion further stated that the board may so delegate as much authority as is consistent with the prudence displayed by similarly situated institutional investors.

Notwithstanding this opinion, however, there is no express statutory language that permits allocation or delegation of final investment decisions or even lesser matters. Express statutory authorization is desirable, particularly in light of (1) the consistently applied common law rule that such delegations are not usually permitted; (2) the fact that other institutional investors that allow such delegations almost uniformly do so under express authorizations; and (3) the fact that the reasoning of the opinion would not support the delegation of authority to subcommittees of the board (as has sometimes occurred in the past).

Current AS 37.13.120(f) permits the board to enter into "all contracts necessary, convenient or desirable" for the purposes of the corporation. While the state would argue that this is clear support for the board's authority to contract with professional investment managers for investment services, the board is not relieved of liability for the subsequent investment decisions of those investment managers -- even if the choice of a particular manager was prudent. Under 29 U.S.C. 1105(d), a provision of the federal Employee Retirement Income Security Act (ERISA), a fiduciary is expressly absolved of liability if investment responsibility is delegated to a professional investment manager, and such a provision is desirable here. Additionally, the language of AS 37.13.120(f) would not cover allocation of duties among board members or delegation of responsibilities to corporation employees.

Therefore, proposed AS 37.13.105(a) and (b) make clear that the board may allocate its responsibilities among its members and may delegate any of its responsibilities to its employees. Proposed AS 37.13.105(c) expressly permits the board to contract with one or more "investment managers" for investment of the permanent fund, and relieves the board of liability with respect to assets for which investment responsibility is so delegated, as long as the delegation was done in a prudent manner. Proposed AS 37.15.105(d) provides a definition of "investment manager," with the language in subparagraphs (2)(A) -- (C) of that subsection being taken from the parallel provisions of ERISA. Subparagraph (d)(2)(D) adds a category for real estate investment managers which is not included in ERISA but which is appropriate for permanent fund investments.

Finally, subsection (e) of proposed AS 37.13.105 clarifies the degree of indemnity provided to the board and its employees in performing their official duties. AS 09.50.250 immunizes the state against suit based upon an agency's or employee's exercise or failure to exercise discretionary functions or duties, whether or not the discretion involved is abused. The Department of Law stated in an opinion dated December 2, 1982, that the immunity for discretionary acts probably covers most decisions of the board; it is state policy to defend and indemnify officers or employees against personal liability.

Nonetheless, the opinion pointed out that there is no statutory provision relating to indemnity, and suggested that enactment of a statute stating the scope of indemnity would be helpful. Furthermore, in several cases in recent years the Alaska Supreme Court has held that only decisions that rise to the level of planning or policy formulation fall within the discretionary acts exception, while decisions made at the operational or ministerial level will not be shielded from liability. E.g., Japan Air Lines Co., Ltd. v. State, 628 P.2d 934 (Alaska 1981); Carlson v. State, 598 P.2d 969 (Alaska 1979); Adams v. State, 555 P.2d 235 (Alaska 1976); State v. Abbott, 498 P.2d 712 (Alaska 1972). This doctrine leaves a great deal of room for successful lawsuits attempting to impose liability for decisions that, with hindsight, might appear ill-advised. For example, in Division of Corrections v. Neakok, 721 P.2d 1121 (Alaska 1986), the Alaska Supreme Court held that decisions by the counselors and parole officers in formulating a particular individual's parole plan, in deciding on the type of special conditions to impose, and in deciding on whether to inform persons in the community and potential future victims of possible crimes about the character of the parolee, were "ministerial," rather than protected "discretionary" acts.

Consequently, an argument might be made under present law that while the decision to delegate investment responsibility to the staff or to a yet-to-be selected investment manager is a discretionary act and thus immune from suit, the actual choices of the investment manager and of investments themselves are "operational," and thus not immune. This narrow application of the distinction between "discretionary" and "ministerial" acts renders the present immunity statute (AS 09.50.250) practically meaningless; yet it is an increasingly plausible outcome under recent court reasoning. Thus, express protection for the board and its employees against liability should be extended.

The bill proposes another new section, AS 37.13.125, to authorize the board to create one or more limited liability trusts. The Alaska Permanent Fund Corporation has a substantial, diversified investment portfolio, which includes a variety of investments in real estate. Some of these investments have taken the form of general partnership interests in partnerships owning and operating various kinds of real estate. Because of the liability that can attach to general partners in such circumstances, it has become desirable to provide a means by which assets of the Alaska Permanent Fund Corporation other than general partnership interests are insulated from any such liability that may accrue through ownership of general partnership interests. The purpose of the proposed statute is to expressly allow creation of a separate legal entity, a trust, that would afford the Alaska Permanent Fund Corporation the same protection against liability that a corporation affords a shareholder.

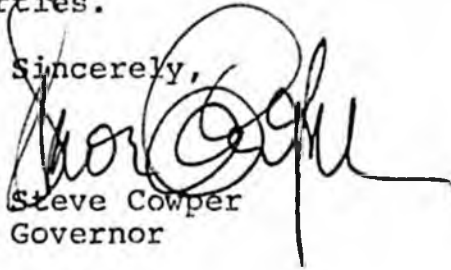
Such a trust, holding general partnership interests and any other related assets considered appropriate by the board, would be created by a trust instrument that names the board as trustees of that trust and names the Alaska Permanent Fund Corporation itself as the the exclusive beneficiary of the trust. The corporation would at all times have the unfettered ability (1) to withdraw the corpus and income from such a trust, (2) to revoke the trust, (3) to dismiss the trust's investment advisor after reasonable notice, and (4) to terminate its interest in the trust by selling its interest to any organization permitted to own such a trust under 26 U.S.C. 501(c)(25) (Internal Revenue Code, as amended as of 1986).

The trust instrument would permit investment of trust assets in such general partnership interests, and otherwise limit the trust to the exclusive purpose of acquiring such partnership interests or other real property, and holding title to and collecting income from the property. The trust must remit the entire amount of such income (less expense) to the Alaska Permanent Fund Corporation.

Under the laws of Alaska, only the trust assets would stand behind obligations of the trust. Neither the trustees, nor the Alaska Permanent Fund Corporation as the trust beneficiary, would be liable for any obligations of the trust, except that the Alaska Permanent Fund Corporation could be

liable for an amount up to the value of any trust assets distributed to it after a liability of the trust arose, to the extent that trust assets are insufficient to satisfy the trust's liability to third parties.

Sincerely,

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

Steve Cowper
Governor

STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: _____

Publish Date: _____

Revision Date: _____

Agency Affected: Revenue

Title: Delegation of responsibilities of APFC Board of Trustees; relating to liability

BRU: Alaska Permanent Fund Corporation

Sponsor: of APFC, board, employees.

Components: _____

Requestor: By Rules Committee by Request of Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
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-

There is no fiscal impact on the Alaska Permanent

ANALYSIS : (Attach a separate page if necessary) Fund Corporation's budget with this legislation.

This bill consists of technical amendments to the Alaska Permanent Fund statute. The amendments add new sections which authorize the delegation of the board's authority to corporation employees and investment managers; provides liability protection; authorizes creation of subtrusts to prevent jeopardizing the Fund's assets.

Prepared by: David A. Rose, Executive Director

Phone: 465-2047

Division: Alaska Permanent Fund Corporation

Date: 12/29/87

Approved by Commissioner: *Alastair C. ...*
Agency: Alaska Permanent Fund Corporation (Dept. of Revenue)

Date: 12/29/87

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

SB

364



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 22, 1988

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

Dear Senator Faiks:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that deals with a technical problem in AS 28 relating to the crime of driving while license suspended, canceled, or revoked, or driving in violation of a limitation, and that reduces, in certain circumstances, the mandatory penalty for those convicted of that offense.

Section 1 of the bill amends AS 12.55.055(d) to allow a court to offer community work service, if it is specifically provided for in the applicable statute, in substitution for a mandatory minimum period of imprisonment. This amendment was made to enable the court to require community work service, in place of imprisonment, under repealed and reenacted AS 28.15.291 in sec. 5 of the bill.

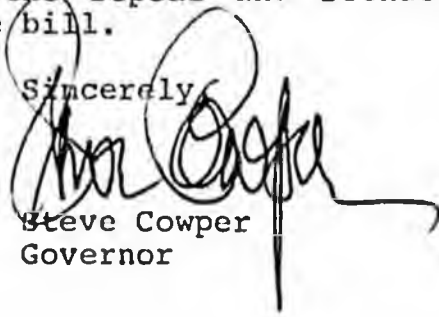
Sections 2, 3, 4, and 5 of the bill rectify a technical problem in the law, regarding the state's ability to, under certain circumstances, charge a person with the crime of driving while license suspended, canceled, or revoked, which was addressed in Fielding v. State, 733 P.2d 271 (Ak. App. 1987), Roberts v. State, 700 P.2d 815 (Ak. App. 1985) and Francis v. Municipality of Anchorage, 641 P.2d 226 (Ak. App. 1982). The amendments to AS 28.18.165(a) and (c) and 28.65.181(a), combined with the repeal and reenactment of AS 28.15.291, make it clear that the privilege to drive or obtain a license can be suspended, canceled, or revoked, if an individual does not have a valid driver's license at the time certain offenses were committed, and that if the person subsequently drives when that privilege has been suspended, canceled, or revoked, he or she can be charged under AS 28.15.291.

In sec. 5 of the bill, repealed and reenacted AS 28.15.291 sets out the elements and penalty of the crime of driving while license or privilege is suspended, canceled, or revoked, or driving in violation of a limitation. Current AS 28.15.291 distinguishes between two classes of violators. The first class consists of all individuals who drove in violation of the action taken upon their license, except those whose license was affected as a result of convictions for driving while under the influence (DWI) or refusal to submit to a chemical test (refusal). The penalty for this first class is a 10-day mandatory jail term, irrespective of the number of the violator's similar prior convictions. As reenacted, AS 28.15.291(b)(1) requires that a violator be sentenced to a minimum sentence of imprisonment of not less than 10 days, with all of it suspended on the condition that the violator complete 80 hours of community work service. Under reenacted AS 28.15.291(b)(2), if the violator had previously been convicted of a similar offense, the current 10-day mandatory jail term would be imposed.

The second class of violators under present AS 28.15.291 consists of those individuals driving in violation after being convicted of DWI or refusal. The penalties for this class in reenacted AS 28.15.291(b)(3) and (4) distinguish between individuals who subsequently drive a motor vehicle after a first conviction for DWI or refusal, and individuals who subsequently drive after a second conviction. Under those paragraphs, the mandatory jail term has been greatly reduced for this second class of violators, and some mandatory community work service would be imposed.

Section 6's repeal of AS 28.15.181(d), combined with sec. 4's deletion of AS 28.15.181(a)(9), remove the mandatory one-year driver's license revocation by the court for both classes of offenders. The revocation language in existing AS 28.15.291 is deleted by the repeal and reenactment of that section in sec. 5 of the bill.

Sincerely,



Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to privilege to drive and relating penalties for DWIs."
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Corrections
BRU: Statewide Operations
Components: All Institutions

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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		0				
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Inasmuch as this bill seeks to reduce use of costly hard bed space in favor of community service, it would seem on the surface to have a negative not a zero fiscal note. However, since the Alaska inmate population is expanding and since this bill would affect fewer than twenty beds statewide,

Prepared by: Susie H. Riley Phone: 465-3376
Division: Administrative Services Date: 01-21-88
Approved by Commissioner: Susan Humphrey-Barnett Date: 01-21-88
Agency: Department of Corrections

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

the effect is to simply postpone slightly the time when additional beds must be constructed and on line or reduce the current overcrowded situation. It reduces total state costs over a long span of time, but it does not reduce costs of operations of any current facility since they must still be fully staffed and funded. The bill serves to help stabilize prison population growth.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: An Act relating to the privilege
to drive and to obtain a license.... BRU: Motor Vehicles
 Sponsor: Rules Committee
 Requestor: Senate State Affairs Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact on this department.

JWR
2/2/88

Prepared by: Bill Brown Phone: 465-4335
 Division: Motor Vehicles Date: 1-28-88
 Approved by Commissioner: Walter Hartley, Dec. Date: 2-10-88
 Agency: Public Safety

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

S B

372

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 1/27/88 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: C&RA

**FISCAL NOTE(S) ATTACHED _____ **
IN ACCORDANCE WITH AS 24.08.035
(see below)

1/26/88
Mr. President:

DATE TURNED INTO OFFICE 4/6/88

State Affairs

Committee considered SB 372

relating to the applicability of the Public Employment Relations
Act to municipalities and political subdivisions

and recommended:

- replace with CS _____ same title
- attached amendment(s) and new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____
- letter of intent adopted and attached

** Committee attached or adopted fiscal note(s)
 zero fiscal impact

MEMBERS SIGNING DO PASS

[Signature]

OTHER RECOMMENDATIONS

Just Kelly (No Rec)
Joe Jonsson (Do NOT Pass)

[Signature]
Chairman signature and recommendation

Committee Backup Attached

Alaska State Legislature

SENATOR KEN FANNING
PO BOX 80929
COLLEGE, ALASKA 99708



PO. BOX V—STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3880

Senate

MEMORANDUM

TO: Senator Mitch Abood

FROM: Senator Ken Fanning *KF*

DATE: February 5, 1988

SUBJ: Public Employment Relations Act (PERA) and SB 372

RECEIVED
FEB 5 1988
C
W

In response to several queries I have had from legislators regarding SB 372 and the effect it will have on Alaskan communities, I would like to provide you with a synopsis of the bill and some backup materials. Briefly, what SB 372 will do is allow any municipality or political subdivision to either opt in or out of PERA, the Public Employment Relations Act. Currently all but seven communities in Alaska have opted out of PERA. This bill would provide the opportunity for the remaining seven communities to opt out of PERA if they so desire. Likewise, if a community had opted out of PERA some time ago, this would allow that community to opt back in.

The bill in no way prohibits collective bargaining. In fact, the communities we have contacted (who have opted out of PERA) have adopted their own local ordinances which include collective bargaining, and in some cases, binding arbitration. Based on our research, this bill does not introduce a new concept, it merely reinforces the intent of the original Act, that of providing a framework for the bargaining process between public employers and employees, while at the same time, giving local governments control of their own affairs.

If you have any questions regarding SB 372, please feel free to call and speak with me or Gail Thibodeau of my staff (3880).

Bill No. Senate Bill 372

Date February 2, 1988

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

Contact: Eileen Plate
465-2700

This legislation repeals Section 4, Chapter 113, SLA 1972, which permits municipalities and political subdivisions to elect not to be covered by the Public Employment Relations Act; and replaces it with language that permits municipalities and political subdivisions to opt in, or out, of PERA coverage at will, subject to a lapse of three years between each action.

Under this bill, political subdivisions who are currently under PERA coverage would have the opportunity to opt out by adopting an ordinance or resolution to that effect. Similarly, as is provided under current law, political subdivisions who opted out in 1972 could rescind that exemption and come under PERA coverage. The only restriction placed on exercising one option or the other is that three years must have elapsed since the time an option was last exercised.

This has no practical effect on those political subdivisions who elected to opt out when PERA was passed in 1972. They may presently rescind that action by ordinance or resolution and come within coverage of PERA, as the City of Fairbanks did in 1983. However, this bill would allow those political subdivisions currently under PERA to exempt themselves from coverage, an option that does not currently exist.

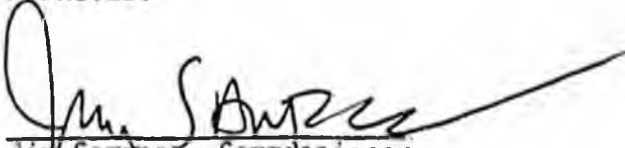
The municipality or political subdivision could, at its discretion, therefore rescind rights previously extended to employees without any participation by the workers in that decision. This clearly goes against the intent of the act which is to promote harmonious employer/employee relationships. The provisions of this bill are, therefore, contrary to the principals upon which collective bargaining laws are premised.

There are presently six communities that are covered by PERA - City of Fairbanks, Fairbanks North Star Borough, City of Petersburg, Ketchikan Gateway Borough, City of Unalaska, and City of Nome. These communities could, under this bill, exempt themselves and discontinue the collective bargaining relationship at the expiration of existing contracts.

This bill is not in the interest of good management and labor relations; and the Department is opposed to it.

There is no fiscal impact on the Department.

APPROVED:



Jim Sampson, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to Public
Employment Relations Act.."
Sponsor: Fanning
Requestor: State Affairs

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Tom Stuart Director *Stuart* Phone: 264-2452
Division: Labor Standards and Safety Date: 2/2/88

Approved by Commissioner: Jim Sampson *Sampson* Date: 2/2/88
Agency: Labor

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

SPONSOR STATEMENT
for Senate Bill 372

The purpose of this bill is to clarify the conditions under which a municipality or political subdivision may opt in or out of PERA, the Public Employment Relations Act. Section 4 of Chapter 113, SLA 1972 indicates that PERA applies to all boroughs and political subdivisions of the state, "unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply." It seems clear that the legislature intended to give full control to the local governments, allowing them to decide whether or not they wished to come under the provisions of PERA, however the courts have not interpreted that provision of the law the way the legislature intended.

This bill merely clarifies the intent of the original 1972 law by giving a municipality or political subdivision the choice to either opt in or out of PERA. The Mat-Su Borough, Anchorage, Juneau, and Kenai have opted out of PERA; In fact, only seven communities in Alaska are currently covered by PERA. Passage of this bill would provide the opportunity for all local governments in Alaska to be on an equal footing - allowing them to retain local control of their bargaining process. This bill does not preclude collective bargaining, but rather allows the local governments, not the State of Alaska, to set the parameters.

In 1983 when Fairbanks chose to opt back into PERA, Alaska's economy was in good shape. The state's budget was \$600 million more for FY83 than it was for FY88. That, of course, also affected the revenues available to Fairbanks. Now the economic picture has changed, and communities across the state are tightening their belts. Binding arbitration, a measure mandated by PERA, can be extremely costly to local governments. In Fairbanks those employees who, under PERA, were mandated to go to binding arbitration, took substantively smaller pay and benefit reductions than those taken by other municipal employees. Since the city cannot, under PERA, achieve equitable and necessary pay cuts, they must resort to layoffs. Last year the City laid off 105 employees; an additional 42 layoffs are expected this year. We only have 300 employees - 1/2 the work force has been cut. It's bleak. This bill would give local governments the flexibility needed to ensure that all city and municipal employees would receive fair treatment.

While the legislation should be noncontroversial - in that it only clarifies current law, and while there are only seven communities in our state covered by PERA - those who oppose local option will undoubtedly protest loudly. This bill is supported by the Alaska Municipal League, which is composed of 135 municipal members.

SYNOPSIS OF SB 372

Section 1 (a) allows a municipality or a political subdivision to exempt itself from the provisions of PERA (the Public Employment Relations Act) by adopting an ordinance or resolution. If the municipality or political subdivision are not currently covered by PERA, this allows them to adopt the provisions of PERA through an ordinance or resolution.

Section 1 (b) mandates that a municipality or political subdivision who either adopt PERA or opt out of PERA, as provided for in Section 1(a), may not change their status for at least three years following that action.

Section 2 repeals a non-codified section of the original Public Employment Relations Act (PERA) that defines which political subdivisions are to be covered by the Act. SB 372 more clearly spells out this provision of PERA, so the old language is no longer needed.



P.O. Box 23, Craig, Alaska 99921

(907) 826-3275 ✓ ↗

FEB 22 1988

February 16, 1988

Senator Ken Fanning
Box V
Juneau, Ak 99811

Dear Senator Fanning:

This is to support your efforts in passing SB 372, a bill to allow a municipality or political subdivision of the state to either opt in or out of PERA.

The City of Craig supports the efforts to clarify the issues as proposed by the bill, and supports the concept of "local control" and "local options" wherein the people most affected by the actions are the ones who make the choices.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. Palmer", written over a horizontal line.

David Palmer
Executive Assistant to the Mayor



Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-4801

BOROUGH ASSEMBLY

February 24, 1988

Senator Ken Fanning
Pouch V, State Capitol
Juneau, Alaska 99811

Dear Senator Fanning:

We did participate in the teleconference on SB372, February 17, and enforced our view of local control. Lee Hall our personnel officer testified at that time. We currently are not under PERA and enjoy a very good relationship with our employees local union, but believe strongly for municipalities to have the options available to them.

Thank you for bringing this to our attention so that we may participate.

Sincerely,

A handwritten signature in cursive script that reads "Dorothy A. Jones".

Dorothy Jones
Mayor

Senator John B. (Jack) Coghill
Alaska State Legislature

File ✓
PERA

Box V
Juneau, Alaska 99811
(907) 465-4797

Box 55028
North Pole, Alaska 99705
(907) 488-0862



MEMORANDUM

FEB 10 1988

TO: Senator Ken Fanni
FROM: Senator Jack Coghill
DATE: February 9, 1988 Relations Act (PERA)
RE: Public Employment Relations Act (PERA) and SB 372

Thank you very much for sending me a copy of SB 372. I will do everything I can to help support this bill.

STATE OF ALASKA

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 1149
JUNEAU, ALASKA 99802-0700
PHONE: (907) 465-2700

March 8, 1988

Ms. Carol Horos
Professional Assistant
State Affairs Committee
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear Carol:

As you requested last week, following is a summary of the cases handled by the Department during the last three years which have gone to binding arbitration for final resolution.

1. Operating Engineers Local 302 vs. Fairbanks Municipal Utility System (1985).

Union asking: 4% wage increase plus 50¢/hr. health and welfare
City offering: 2.6% wage increase
Award: 4% wage increase

2. Fairbanks Police Employees Association vs. City of Fairbanks (1985).

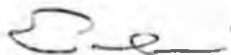
Union asking: 8.5 to 22% wage increase
City offering: 2.6% wage increase
Award: 2.6% wage increase

3. Fairbanks Police Employees Association vs. City of Fairbanks (1986)

Union asking: 3.1% wage increase
City offering: wage freeze
Award: 3.1% wage increase

If you have any questions or need additional information, please let me know.

Sincerely,



Eileen Plate
Legislative Liaison

EP/gw
06703

PUBLIC OPINION MESSAGE

✓ FD

DEAR: SENATOR FANNING

NAME: ANNE M. SMITH
TITLE:
ADDRESS: 1903 CAPITOL AVE.
CITY: FAIRBANKS ZIP: 99709
PHONE: 456-5576
BILL NO: SB 372
SUBJECT: APPLICABILITY OF PERA TO MUNICIPALITIES
MESSAGE: FOR THE RECORD, I URGE YOU TO SUPPORT SB 372. RESEARCH BY ITA SHOWS
EMPLOYEE REPRESENTATIVES IN FAIRBANKS LACKED INCENTIVE TO NEGOTIATE IN GOOD
FAITH BECAUSE OF BINDING ARBITRATION BACK PROCEDURES. DEMANDS MADE BY
ASSOCIATIONS AND CONCESSIONS GIVEN BY MANAGEMENT REFLECTED IN RESULTING
CONTRACT VERIFY THIS FACT.

EOM-FZ

POMID: 07145414
DATE: 02/18/88
TIME: 14:54:14
LIONAME: FAIRBANKS LIO

COPIES: SENATORS

ABOOD
HENSLEY
JOSEPHSON
UEHLING

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PUBLIC OPINION MESSAGE

6TV

DEAR: SENATOR FANNING

NAME: JIM WEIDNER
TITLE:
ADDRESS: 5479 CHSR
CITY: FAIRBANKS ZIP: 99712
PHONE: 488-6366
BILL NO: SB 372
SUBJECT: APPLICABILITY OF PERA TO MUNICIPALITIES
MESSAGE: I SUPPORT SB 372 AND URGE PROMPT PASSAGE. EOM/MJO

POMID: 07120612
DATE: 02/16/88
TIME: 12:06:12
LIONAME: FAIRBANKS LIO

COPIES: SENATORS

ABOOD
HENSLEY
JOSEPHSON
UEHLING
HALFORD
KELLY
STURGULEWSKI
SZYMANSKI
ZHAROFF

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61 ✓

PUBLIC OPINION MESSAGE

DEAR: SENATOR FANNING

NAME: ANNE M. SMITH
 TITLE:
 ADDRESS: 1903 CAPITOL AVE.
 CITY: FAIRBANKS
 PHONE: 456-5576
 BILL NO: SB 372
 SUBJECT: APPLICABILITY OF PERA TO MUNICIPALITIES
 MESSAGE: MUNICIPALITIES, ESPECIALLY FAIRBANKS, NEED TO REGAIN CONTROL OF
 LOCAL SPENDING. PERA'S BINDING ARBITRATION PROVISION HAS HAMSTRUNG LOCAL
 GOVERNMENT. I URGE YOU TO SUPPORT SB 372 ALLOWING LOCAL GOVERNMENT TO
 OPT OUT OF PERA. EOM/MJO

POMID: 07105001
 DATE: 02/03/88
 TIME: 10:50:01
 LIONAME: FAIRBANKS LIO

COPIES: SENATORS

- HALFORD
- KELLY
- STURGULEWSKI
- SZYMANSKI
- ZHAROFF
- BINKLEY
- DUNCAN
- FISCHER
- HENSLEY
- UEHLING
- JONES
- JOSEPHSON
- KERTTULA
- FAIKS
- RODEY
- ELIASON
- FAHRENKAMP
- COGHILL
- ABOOD

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PUBLIC OPINION MESSAGE

gt ✓

DEAR: SENATOR FANNING

FEB 5 1988

NAME: FRANCIS ROSS
TITLE:
ADDRESS: 337 HAGELBARGER AVE.
CITY: FAIRBANKS ZIP: 99712
PHONE: 457-2439
BILL NO: SB 372
SUBJECT: APPLICABILITY OF PERA TO MUNICIPALITIES
MESSAGE: LOCAL GOVERNMENT NEEDS MORE CONTROL. WE NEED TO BE ABLE TO OPT
IN OR OUT OF PERA.

POMID: 07082221
DATE: 02/03/88
TIME: 08:22:21
LIONAME: FAIRBANKS LIO

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PUBLIC OPINION MESSAGE

61V

DEAR: SENATOR FANNING

NAME: ANN ROBERTS
TITLE:
ADDRESS: 2821 TOTEM DRIVE
CITY: FAIRBANKS
PHONE: 479-6375

ZIP: 99709

FEB 3 1988

BILL NO: SB 372
SUBJECT: APPLICABILITY OF PERA TO MUNICIPALITIES
MESSAGE: PLEASE SUPPORT THE PEOPLE'S RIGHT TO CHOOSE. IF WE CAN OPT INTO PERA, WE SHOULD BE ABLE TO OPT OUT! PERA DOESN'T ADEQUATELY ADDRESS DECLINING REVENUES. WITH BINDING ARBITRATION FREEZING INFLATED WAGES, WE'RE FORCED TO LAY OFF EMPLOYEES RATHER THAN CUT BACK WAGES A LITTLE AND KEEP EVERYONE WORKING.

POMID: 07082425
DATE: 02/03/88
TIME: 08:24:25
LIONAME: FAIRBANKS LIO

COPIES: SENATORS

FAIKS
JOSEPHSON
KERTTULA
RODEY
STURGULEWSKI
COGHILL
DUNCAN
ELIASON
FISCHER
ZHAROFF
FAHRENKAMP
KELLY
SZYMAWSKI
UEHLING
HALFORD
BINKLEY
HENSLEY
JONES
ABOOD

PUBLIC OPINION MESSAGE

GTV

FEB 3 1988

DEAR: SENATOR FANNING

NAME: MARLENE LEAK
TITLE:
ADDRESS: 771 8TH AVE.
CITY: FAIRBANKS
PHONE: 452-1015
BILL NO:
SUBJECT: SB372

ZIP: 99701

MESSAGE: IT IS ONLY PROPER FOR A MUNICIPALITY TO HAVE THE OPTION TO
DISASSOCIATE ITSELF FROM PERA, UPON THE VOTE OF ITS ELECTED REPRESENTATIVE BODY,
SINCE ADOPTING PERA WAS OPTIONAL AND NOT MANDATORY TO BEGIN WITH. ALL
EMPLOYEES ARE PROTECTED BY STATE LABOR LAWS IN THE ABSENCE OF PERA.

POMID: 07093029
DATE: 02/03/88
TIME: 09:30:29
LIONAME: FAIRBANKS LIO

COPIES: SENATORS

ABOOD
HENSLEY
JOSEPHSON
UEHLING

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7

PUBLIC OPINION MESSAGE

6TV

DEAR: SENATOR FANNING

FEB 3 1988

NAME: DOUG DIMBAT
TITLE:
ADDRESS: 135 LAKE DRIVE
CITY: NORTH POLE
PHONE: 488-9694
DILL NO:
SUBJECT: SB 372
MESSAGE: I BELIEVE THE LEGISLATURE SHOULD APPROVE FOR LOCAL GOVERNMENTS TO
OPTED OUT OF PERA.

ZIP: 99705

EOM-FZ

POMID: 07100149
DATE: 02/03/88
TIME: 10:01:49
LIONAME: FAIRBANKS LIO

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05 ✓

PUBLIC OPINION MESSAGE

DEAR: SENATOR FANNING

NAME: KATE DESROCHERS
TITLE:
ADDRESS: P.O. BOX 61056
CITY: FAIRBANKS
PHONE: 474-8821

SEP 5 1988
ZIP: 99706

BILL NO:
SUBJECT: SB 372
MESSAGE: FAIRBANKS VOTERS SHOULD BE ABLE TO CHOOSE FOR OR AGAINST PERA
AS OUR ECONOMY DICTATES. FAIRBANKS CANNOT AFFORD PERA AND BINDING ARBITRA-
TION AT THIS TIME.

EOM-FZ

PMID: 07200310
DATE: 02/02/88
TIME: 20:03:10
LIONAME: FAIRBANKS LIO

COPIES: SENATORS

ABOOD
HENSLEY
JOSEPHSON
UEHLING

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PUBLIC OPINION MESSAGE

DEAR: SENATOR FANNING

OT ✓
FEB 3 1988

NAME: GEORGE DESROCHERS
TITLE:
ADDRESS: PO BOX 60456
CITY: FAIRBANKS ZIP: 99706
PHONE: 479-6652
BILL NO: SB 372
SUBJECT: APPLICABILITY OF PERA TO MUNICIPALITIES
MESSAGE: I WOULD LIKE TO HAVE YOU PASS THIS BILL. THE REASON BEING IS
THAT THE LOCAL GOVERNMENT NEEDS MORE CONTROL OVER THE PERA. GIVE THEM THE
OPTION OF BEING IN IT OR OUT OF IT. EOM/MJO

POMID: 07085701
DATE: 02/03/88
TIME: 08:57:01
LIONAME: FAIRBANKS LIO

COPIES: SENATORS


ABOOD
HENSLEY
JOSEPHSON
UEHLING

Alaska
MUNICIPAL
League

TELEPHONE
(907) 586-1325

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

TO: Senator Mitch Abood, Chair
Members of the Senate State Affairs Committee

FROM: Scott A. Burgess, Executive Director 

DATE: February 3, 1988

SUBJECT: SB 372 - Applicability of Public Employment Relations Act to municipalities and political subdivisions

On behalf of its 135 municipal members, the Alaska Municipal League supports SB 372, allowing municipalities and political subdivisions of the State to exempt themselves from the Public Employees Relations Act (PERA).

The AML's support is based on the language contained in the 1988 AML Policy Statement adopted by the membership at its annual meeting in Anchorage in November 1987:

1. Alaska Public Employees Labor Relations Act: The League strongly opposes any legislation that 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 employee labor relations ordinances. The League supports legislation to allow each municipality to reject or withdraw from the terms of the Alaska Public Employees Labor Relations Act at any time. The scope of decisions as to local government finance and labor policies is best left to the local governing body.

The bill would clarify existing exemptions provided by Section 4, Chapter 113, SLA 1972 which allowed municipalities to opt out of PERA by ordinance or resolution when the Act was first passed. The bill would place this into statute but would also allow municipalities and political subdivisions to change their status after three years.

While not opposed to collective bargaining, the membership supports each community's ability to determine its own process of dealing with its employees based on their unique circumstances. The AML is opposed to the State dictating provisions of local public employee relations ordinances. I have attached a policy paper developed by the AML Legislative Committee in 1986.

Again, the AML supports SB 372, and urges its passage.