

ALASKA LEGISLATURE COMMITS 1993-1994 8672

7955 HOUSE LABOR & COMMERCE

1993-1994 8672

255

HB



# NEA-ALASKA

*Affiliated with the National Education Association*

## POSITION - HB 255 AND SSHB 255

NEA-Alaska opposes HB 255 and the SSHB 255. The focus of this position paper will be on SSHB 255.

The bill will allow municipalities or other political subdivisions including school districts to conduct an election to determine if employees are to continue under the provision of AS 23.40.070 - 23.40.260.

Since the early 1970's state policy extended the statutory right to bargain to public employees. School employees struggled for over ten years to establish their rights under PERA. The schools and school employees have developed a successful pattern of bargaining under PERA for nearly four years.

Bargaining provides public employees a good participatory way to influence decisions that affect the work place. At the bargaining table public employees share in the decision-making process affecting wages and working conditions. They have become more responsive and better able to exchange ideas and information on operations with their administrators. Successful businesses are moving to management models designed to involve employees in a meaningful participatory role. Studies have shown that successful school reform occurs in school districts where mature bargaining relations exist.

If SSHB 225 were to become law, labor relations between school districts and school employees would be disrupted. Good faith bargaining would give way to politics. Management and school boards would have greater latitude to delay and forestall the bargaining process. Some school districts could submit the question of continuance under PERA to voters annually or during each round of bargaining. In short the school, municipal, borough or state employee would lose. Inconsistency between units and school districts would occur. The bargaining process would be weakened and in some instances destroyed.

The bill calls for a vote of the people. Who pays for the election? Will the election activate adversarial clashes between the special anti-labor groups with agendas opposed to working people?

We live in a republic where representatives are elected to make decisions for their constituency in view of the public good. The issue of inclusion of school employees under PERA has been debated on the state level. A majority of the legislature, after weighing carefully the facts and information, decided it is good policy. In its declaration of policy, Sec. 23.40.070, "the legislature finds that joint decision-making is the modern way of administering government."

1-25-94

TESTIMONY OPPOSING HB 255

Mr. Chairman, members of the committee:

My name is Joan Wilkerson, I'm the Southeast Regional Manager for the APEA/AFT, which represents 2500 public employees in this state. I am also speaking today on behalf of the Alaska AFL-CIO and its 50,000 members state-wide.

We adamantly oppose HB 255 - as should all supporters of collective bargaining - because this bill is intended to do nothing less than eliminate collective bargaining for thousands of Alaska's workers. By establishing a revolving door system of opting in or out of PERA, the bill would not only deny the basic human right to collectively bargain with their employer to employees in political subdivisions which opt out of the system, but would also render meaningless the system left behind for those areas which continue to bargain with their employees, since the notion of "good faith bargaining" will cease to exist when an employer can always threaten to opt out if it doesn't like the way things are going in negotiations.

The immediate practical effect of this legislation will be full employment for attorneys - to the detriment of both taxpayers and employee groups. The legal issues raised by an election to opt out

while a collective bargaining agreement is in effect will tie both the courts and the labor relations agency in knots. Even where a healthy and viable bargaining relationship exists between the local government and its employees, a small number of anti-union voters in a community, sufficient to put the issue on the ballot by initiative, can require annual elections with the attendant expenditure of public and private resources better used elsewhere.

PERA has governed public employment relations in this state for 20 years. There was nothing "inadvertent" about its intent to apply to political subdivisions. A floor amendment allowed a one-time "opt-out", of which many municipalities have made use. Some, such as Fairbanks and Cordova, have subsequently elected to opt back in.

*Omaha*  
This bill makes no mention of the preservation of basic employee rights. In PERA, political subdivisions who exercise their right to opt out in a timely manner are required to create and maintain a personnel system for their employees which would guarantee some of the basic rights guaranteed under PERA. The absence of any similar language in this bill makes it clear that its sponsors wish to return to a standard of employment relations resembling indentured servitude - not one based on human dignity and individual rights.

*Conclusion*  
Some decisions must be final and binding - the decision to engage in good faith bargaining with employees is one such decision.

We urge you to go on record in support of collective bargaining and keep this bill in committee.

# Alaska State Legislature

While in Session:  
State Capitol Building  
Juneau, Alaska 99801-1162  
907-465-3719



Interim:  
119 N. Cushman  
Suite 211  
Fairbanks, Alaska 99701  
907-456-5081

Representative Al Vezey

January 12, 1994

## SPONSOR STATEMENT

HB 255

The intent of HB 255 "An Act relating to application of the Public Employment Relations Act to municipalities and other political subdivisions." is to allow municipalities the option of removing themselves from PERA. Under this proposed legislation, a municipality could make such a decision with the approval of the voters of the municipality.

It was the intent of the 1972 legislation to allow municipalities to opt out of PERA. As the law currently exists, a municipality under PERA for all practical purposes, cannot remove themselves. This determination has been brought about by decisions of the court. This condition has resulted in diminished control over local self determination.

Existing legislation as interpreted by the courts has put local governing bodies in a position where one governing body can obligate all future governing bodies. This bill is intended to correct what the legislature has inadvertently allowed the court to mandate on local governments by placing the decision making process back into the hands of local governing officials and the people.

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

### MEMORANDUM

February 13, 1994

**SUBJECT:** Sectional Summary of SSHB 255 (Application of the Public Employment Relations Act to municipalities and other political subdivisions)

**TO:** Representative Bill Hudson, Chair  
House Labor and Commerce Committee

**FROM:** Teresa B. Cramer   
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

**Section 1** amends the Public Employment Relations Act (PERA) to provide that PERA does not apply to a municipality or other political subdivision of the state unless the municipality or political subdivision holds an election as set out in subsection (b). Under paragraph (b)(1), a municipality or political subdivision may elect to become covered by PERA by majority vote of the voters participating in the election if it is a municipality or political subdivision that either has not held an election to consider the question or has held an election and the result was that PERA was voted down.

Under (b)(2) a municipality or political subdivision that has elected to be covered by PERA may later "opt out" by majority vote of the voters participating in the election.

**Sec. 2** repeals the previous "opt out" provision of PERA for municipalities and political subdivisions and the "non-opt out" provision of the Act making PERA apply to certificated and noncertificated public school employees. Section 4, ch. 113, SLA 1972, is a provision in the Act that enacted PERA. It states:

This Act [PERA] is applicable to organized boroughs and political subdivisions of the state, home rule or otherwise, unless the legislative

Representative Bill Hudson  
February 13, 1994  
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body of the political subdivision, by ordinance or resolution, rejects having its provisions apply.

Section 11, ch. 1, SLA 1992, is a provision in the more recent Act placing public school employees into PERA. It states:

Notwithstanding sec. 4, ch. 113, SLA 1972, a municipal school district or regional educational attendance area may not reject application of AS 23.40.070 - 23.40.260 [PERA] to employment relations with public school employees.

Sec. 3 complies with the constitutional prohibition against legislation that impairs the obligation of contracts and states that the Act does not terminate or modify the terms of an existing collective bargaining contract.

TC:lmb  
94-052.lmb

Revision Date: \_\_\_\_\_ Dept. Affected: Community & Regional Affairs  
 Title: 'An Act relating to application of the Public Employment Relations Act ..... BRU: \_\_\_\_\_  
 Sponsor: House State Affairs Committee Component: \_\_\_\_\_  
 Requestor: Sen. Vezey COMPONENT SERIAL NO. \_\_\_\_\_

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current (FY93) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Remond Henderson Phone: 465-4708  
 Division: Administrative Services Date: 4/6/93  
 Approved by Commissioner: [Signature] Deputy Commissioner Date: 4/6/93  
 Agency: Community & Regional Affairs

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duced by: Council Member Cleworth  
May 20, 1991

RESOLUTION NO. 3261, As Amended

A RESOLUTION URGING THE ALASKA STATE LEGISLATURE TO ENACT AN EXEMPTION BY POPULAR ELECTION PROVISION TO THE STATE PUBLIC EMPLOYMENT RELATIONS ACT.

WHEREAS, by resolution the City of Fairbanks exercised its exemption following the adoption of PERA, but in 1984 waived the exemption by ordinance, thus becoming the first major municipality in Alaska to fall under PERA's jurisdiction; and

WHEREAS, among its many provisions PERA provides for mandatory binding arbitration concerning wages, hours and terms and conditions of employment for Class I public employees; and

WHEREAS, binding arbitration divests a local governing body of its publicly entrusted spending power and delegates the same to an individual not elected by the people and with no fiduciary duty of loyalty and responsibility to local citizens; and


WHEREAS, this divestiture effectively removes the voice of the people over how their tax dollars are to be spent in the public domain; and

WHEREAS, the cost of local government must be controlled by those who pay for it; and

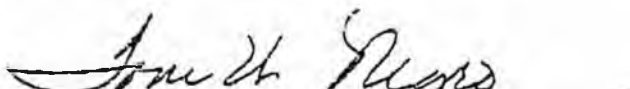
WHEREAS, an exemption by popular election amendment to PERA can restore to local citizens their constitutional entitlement of maximum local self government and the assurance that all local government powers will remain vested in those charged with the public trust.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, that the Alaska State Legislature be and hereby is urged to enact a bill providing for clarification of the municipal exemption and address a popular election provision to the state Public Employment Relations Act (PERA). A municipal exemption by popular election provision should include, but not be necessarily limited to, express statutory language to provide for a popular election to determine whether municipalities under the jurisdiction of PERA shall remain subject to its provisions. Copies of this resolution shall be forwarded by the city clerk to all legislators and the governor.

PASSED AND APPROVED this 20th day of May, 1991.

  
WAYNE S. NELSON, Mayor

ATTEST:

  
TONI W. NIGRO, City Clerk

# Alaska State Legislature

Legislative Research Agency



130 Seward Street, Suite 218  
Juneau, Alaska 99801-2196

Phone: (907) 463-3991  
Fax: (907) 463-3351

AUG 16 1993

July 8, 1993

## MEMORANDUM

TO: Representative Al Vezey

FROM: Carol R. Vandor *CRV*  
Legislative Analyst

RE: Public Employment Relations Act (PERA)  
Research Request 93.232

You asked about the number of state political subdivisions covered by the Public Employment Relations Act (PERA). Title 23, chapter 40 of the Alaska statutes governs PERA. There is no requirement for a political subdivision to report its status under PERA; therefore, the only way of knowing whether a political subdivision is covered under PERA or has opted-out is if a hearing has been held by the Alaska Labor Relations Agency or a suit has been filed in the courts. Following is a brief discussion of PERA and the Alaska Labor Relations Agency followed by a list of the 15 political subdivisions that are known to be covered by PERA and the 11 that have opted-out of PERA.

### Public Employment Relations Act

In June 1972 the State of Alaska enacted the Public Employment Relations Act. The PERA confers upon public employees the right to organize and to bargain collectively with their employers (AS 23.40.080). The Declaration of Policy, set forth in AS 23.40.070, states in part:

The legislature declares that it is the public policy of the state to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. These policies are to be effectuated by recognizing the right of public employees to organize for the purpose of collective bargaining; (2) requiring public employers to negotiate with and enter into written agreements with employee organizations on matters of wages, hours, and other terms and conditions of employment; and (3) maintaining merit-system principles among public employees.

Representative Vezey

July 8, 1993

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Alaska Statute 23.40.250 defines public employer and public employee as used in the Declaration of Policy as follows:

"public employer" means the state or a political subdivision of the state, including without limitation, a municipality, district, school district, regional educational attendance area, board of regents, public and quasi-public corporation, housing authority, or other authority established by law, and a person designated by the public employer to act in its interest in dealing with public employees.

"public employee" means any employee of a public employer, whether or not in the classified service of the public employer, except elected or appointed officials or superintendents of schools.

An appointed official, defined in 2 AAC 10.220, is a person who exercises significant responsibilities for the public employer in the area of collective bargaining policy formulation and implementation.

The interpretation of PERA as it applies to political subdivisions has been litigated on several occasions since PERA was enacted. The most recent decision, *Kodiak Island Borough v State of Alaska*, Supreme Court File No. S-4891, (June 1993) addressed the issue of the right of public employees to organize for the purpose of collective bargaining under PERA, and the right of a political subdivision to exempt itself. In this case, the borough had adopted an opt-out resolution in 1980 after it became aware of substantial organizational activities by its employees. The court ruled that a political subdivision may not opt-out of PERA after becoming aware of organizational activity by employees. A copy of the decision is attached.

#### Alaska Labor Relations Agency

For many public employees in Alaska, the Alaska Labor Relations Agency provides enforcement of PERA. The agency is comprised of three members appointed by the governor and confirmed by the legislature. It serves as the labor relations agency under the Public Employment Relations Act and carries out the functions specified in that act. Under Title 23, the agency has the authority to enter into labor management matters when certain situations exist. The agency has several responsibilities, one of which is the investigation and resolution by conciliation of unfair labor practices committed by either employers or employees. The decisions can be enforced by an injunction to cause the prohibited practice to cease and desist. The agency also decides the unit appropriate for the purpose of

Representative Vezey  
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collective bargaining and schedules representation elections and settles issues regarding clarifications of the appropriate unit.

#### PERA Status

According to the Alaska Labor Relations Agency employees of 15 political subdivisions are known to be covered under PERA and 11 political subdivisions have opted-out. PERA status is pending in three political subdivisions.

#### Covered

City of Whittier  
Bristol Bay Borough  
City of Fairbanks  
Fairbanks North Star Borough  
Ketchikan Gateway Borough  
Nome  
City of Seldovia  
Unalaska  
Petersburg  
Haines Borough  
Thomas Bay Power Authority  
City of Dillingham  
City of Cordova  
City of Hoonah  
Kodiak Island Borough

#### Opted-Out

City of Ketchikan  
Wrangell  
Seward  
North Pole  
North Slope Borough  
City and Borough of Juneau  
Municipality of Anchorage  
Sitka  
Mat-Su Borough  
City of Kodiak  
City of Homer

#### Status Dispute Pending

City of Bethel  
City of Kotzebue  
City of Haines

I hope this information is useful to you. If we may be of further assistance, please contact this office.

Attachments

Notice: This is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

RECEIVED  
JUN 07 1993  
Alaska Labor Relations Agency

THE SUPREME COURT OF THE STATE OF ALASKA

KODIAK ISLAND BOROUGH, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF ALASKA, DEPARTMENT )  
 OF LABOR, LABOR RELATIONS )  
 AGENCY; and the INTERNATIONAL )  
 BROTHERHOOD OF ELECTRICAL )  
 WORKERS, LOCAL 1547, )  
 )  
 Appellees. )

Supreme Court File No. S-489  
Superior Court File No.  
3AN-90-4512 Civil

O P I N I O N

[No. 3965 - June 4, 1993]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage,  
Karen L. Hunt, Judge.

Appearances: Paul H. Cragan, Hughes, Thorsness, Gantz, Powell & Brundin, Fairbanks, for Appellant. Toby N. Steinberger, Assistant Attorney General, Anchorage, and Charles E. Cole, Attorney General, Juneau, for State of Alaska, Department of Labor, Labor Relations Agency and William F. Morse, Associate General Counsel, IBEW LOCAL UNION 1547, for Brotherhood of Electrical Workers, Local 1547, Appellees.

Before: Moore, Chief Justice, Rabinowitz, Burke, Matthews and Compton, Justices.

COMPTON, Justice.  
BURKE, Justice, concurring.  
MATTHEWS, Justice, concurring.

This case arises out of the Department of Labor, Labor Relations Agency's (DOL) ruling that the Kodiak Island Borough's (Borough) 1980 resolution opting out of the Public Employment Relations Act (PERA) AS 23.40.070-.260 was invalid. On appeal to the superior court, Judge Karen Hunt affirmed the DOL ruling. The Borough appeals. We affirm.

#### I. FACTUAL AND PROCEDURAL BACKGROUND

The material facts are not disputed. In June 1972 the State of Alaska enacted PERA. PERA confers upon public employees the right to organize and to bargain collectively with their employers. However, Section 4 of PERA also permits the legislative body of any political subdivision of the state to reject PERA, preventing its application to the public employees of that subdivision. Section 4 reads:

This Act is applicable to organized boroughs and political subdivisions of the state, home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply.

Ch. 113, § 4, SLA 1972. PERA became effective on September 5, 1972.

In 1977 the Borough enacted personnel rules and regulations governing relations with its employees. These rules do not require the Borough to recognize an employees' union nor do the rules expressly reject PERA. In 1979 Kodiak Island Borough Employees' Association (KIBEA) submitted a petition to DOL requesting that KIBEA be recognized as the bargaining

representative for the Borough's general government employees. KIBEA later withdrew its petition for certification in favor of a petition submitted by the Alaska Public Employees Association (APEA).

After becoming aware of this organizing activity, the Borough enacted Resolution No. 79-5-R, rejecting the application of PERA. DOL concluded that the Borough had not validly opted out of PERA. It sought to conduct a representation election under PERA. The Borough refused to allow the election to proceed. As a result DOL filed a lawsuit against the Borough in superior court.

The superior court granted DOL's motion for summary judgment, holding that the Borough had not validly opted out of PERA. DOL then held the certification election. APEA did not secure the requisite number of votes to be certified by DOL as the bargaining representative for the Borough employees.

On January 22, 1980, twelve days after DOL announced the results of the election, the Borough again attempted to reject PERA by adopting Resolution No. 80-5-R. The 1980 resolution is identical to the 1979 resolution:

Resolution No. 80-5-R, exempting Kodiak Island Borough from the Alaska Public Employment Act, Whereas, the assembly believes that the public interest is best served by administration of borough employee relations at the local level, and Whereas, the State Public Employee Relations Act applies to municipalities unless the governing body rejects application of its provisions; Now, therefore, the Kodiak Island Borough Assembly resolves: Pursuant to Section 4, Chapter 113 SLA 1972, the Kodiak Island Borough rejects application of Section 2, Chapter 113, [SLA] 1972, codified as

AS 23.40.070 et. seq., and commonly known as the Alaska Public Employment Relations Act.

In 1989 Borough employees again attempted to organize. The International Brotherhood of Electrical Workers, Local Union 1547 (IBEW), filed a petition with DOL to be recognized as the exclusive bargaining agent for the Borough employees. The Borough objected to the petition, claiming that it had "opted out" of PERA by its 1980 resolution. IBEW asserted that the 1980 opt out resolution was not valid and that DOL had proper jurisdiction.

DOL held a hearing on IBEW's petition for certification and the Borough's objections. DOL ruled that the Borough did not validly opt out of PERA in 1980. The Borough appealed this ruling to the superior court pursuant to AS 22.10.020(d) and Appellate Rule 602(a). The superior court affirmed DOL's decision. It held the 1980 resolution was untimely, since the Borough enacted the resolution after it was aware of organizational activities of its employees.

## II. STANDARD OF REVIEW

The superior court was sitting as an intermediate appellate court. Accordingly, its decision is not entitled to deference. Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co., 746 P.2d 896, 903 (Alaska 1987). DOL held a formal adjudicatory hearing before a neutral hearing officer. Both parties were represented by counsel, examined and cross-examined witnesses and introduced evidence. The hearing officer rendered formal findings of fact and conclusions of law, which were adopted by DOL as its

decision. As to questions of law which do not involve agency expertise we apply the substitution of judgment standard of review. Union Oil Co. of California v. State, 804 P.2d 62, 64 (Alaska 1990). The primary task in this case is to construe two seemingly inconsistent sections of the same statutory scheme. The interpretation of this statute is a question of law to which we will apply our independent judgment.

To the extent that facts are necessary to the determination of the legal question, we will adopt DOL's findings of fact if they are supported by substantial evidence. Commercial Fisheries Entry Comm'n v. Baxter, 806 P.2d 1373, 1374 (Alaska 1991).

### III. DISCUSSION

#### KODIAK ISLAND BOROUGH'S RESOLUTION EXEMPTING THE BOROUGH FROM THE PUBLIC EMPLOYMENT RELATIONS ACT IS NOT VALID

The question presented by this case involves the interplay between the right of public employees to organize for the purpose of collective bargaining under PERA,<sup>1</sup> and the right of a

- 
1. Alaska Statute 23.40.070 states in relevant part:

Declaration of policy. . . . The legislature declares that it is the public policy of the state to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. These policies are to be effectuated by

(continued...)

political subdivision to exempt itself pursuant to section 4 of PERA. We previously examined these two provisions together in State v. City of Petersburg, 538 P.2d 263 (Alaska 1975). In Petersburg, the city's electrical workers signed cards authorizing IBEW to act as their collective bargaining representative. The city council then held a special meeting to exempt the city from the provisions of PERA. Id. at 264. At the time of this meeting the members of the city council were aware of employees' activities concerning the formation of a collective bargaining unit. Id.

In Petersburg we looked for the point beyond which the right of the city to reject PERA became subordinated to the rights of the employees to organize. We concluded that "the analysis must turn on both the substantiality of the organizational activities undertaken by the employees and the extent of the City's awareness of those activities." Id. at 267. The city's rejection of PERA after becoming aware of the organizational activities constituted "a gross and impermissible interference with the employees' freedom to choose which collective bargaining association should represent them. . . . [t]he City's prerogative to reject the Act is not to be used as a de facto veto against particular unions . . . ." Id. We noted that the city had requested that the employees form their own union rather than join IBEW. Id. We concluded such

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1. (...continued)

(1) recognizing the right of public employees to organize for the purpose of collective bargaining.

maneuvering was an attempt to interfere with the employees' rights under PERA. Id.

In this case the Borough contends that DOL and the superior court erred by interpreting Petersburg too broadly. The Borough notes that section 4 expressly allows political subdivisions of the state to reject PERA. It argues that the Petersburg limitation on the employer's right to exempt itself should only apply to situations in which employee PERA rights are being interfered with by favoring one union over another. But, if the employer rejects PERA totally, refusing to deal with any union, section 4 applies.

The Borough thus argues that Petersburg should be read narrowly, prohibiting local government only from favoring one union over another. The Borough claims it engaged in no such favoritism. Rather, the Borough made the decision to avoid collective bargaining in order to manage its employment relations in a way that was beneficial and appropriate to the overall needs, abilities and resources of the community. Since the Borough did not interfere with any specific organizing efforts, it concludes that its election to reject PERA should be upheld.

DOL and IBEW argue that the Petersburg analysis should invalidate any rejection of PERA after employees have exercised their PERA rights. In 1979 Borough employees prevailed in a lawsuit which permitted them to exercise their PERA rights and to decide if a majority of the employees wanted to be represented by APEA. DOL and IBEW argue the Borough's attempt to reject PERA is

invalid because it occurred after the employees exercised their PERA rights.

In City & Borough of Sitka v. International Bhd. of Elec. Workers, Local Union 1547, 653 P.2d 332 (Alaska 1982), we held the opt out from PERA valid even though there had been prior employee organizing efforts. However, we distinguished Petersburg because the employees in Sitka had attempted to organize prior to the passage of PERA. From the time PERA was enacted until Sitka exempted itself there had been no organizing activities. The employees could not have organized in reliance on their PERA rights because PERA had not yet become the law. City & Borough of Sitka, 653 P.2d at 335.

By contrast, in this case Borough employees have already relied upon their PERA rights. The Borough's attempt in 1979 to stop the employees from organizing was an attempt, as in Petersburg, to deny employees their statutory right to organize. The fact that the resolution was passed just twelve days after the employee vote indicates the Borough was still attempting to thwart employee efforts to organize under PERA.<sup>2</sup>

In Petersburg we limited a local government's ability to exempt itself from PERA once the local government became aware of

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2. We reject the Borough's contention that organizing activity had ceased after the election because there were no organizing efforts in the twelve day period preceding the Borough's rejection of PERA. We note that PERA requires employees to wait for one full year following a valid election before they can hold another election. AS 23.40.100. As the organizational hiatus during the twelve day period was consistent with PERA, the lack of organizational activity did not terminate the employees' PERA rights.

substantial steps taken by employees to exercise their PERA rights. Although this holding limits the freedom of political subdivisions to opt out of PERA, we concluded that this result was consistent with the legislature's intent. 538 P.2d at 268. "[A]pplicability of PERA is the rule, exemption the exception." Id. We reaffirm that political subdivisions may not reject PERA after becoming aware of substantial organizational activity by employees.<sup>3</sup>

#### IV. CONCLUSION

The Borough's rejection of PERA after it became aware of substantial organizational activity is invalid. The decision of the superior court affirming DOL's determination that the Borough's 1980 resolution was ineffective in rejecting PERA is AFFIRMED.

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3. In Anchorage Mun. Employees Ass'n v. Municipality of Anchorage, 618 P.2d 575, 579 (Alaska 1980), we wrote "a public employer which chooses to opt out of PERA must do so promptly, rather than at its leisure . . . ." Because we conclude that Kodiak Island Borough's rejection of PERA after it became aware of substantial organizational activity was invalid, we do not reach the question of whether PERA can be rejected seven years after it was enacted.



## LAWS OF ALASKA

1972

Source

HB 603 am S

Chapter No.

111

## AN ACT

Relating to wages, hours and working arrangements.

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

Section 1. AS 23.10.140 is amended to read:

Sec. 23.10.140. PENALTY. An employer who violates a provision of secs. 50 - 150 of this chapter, or of any regulation or order of the commissioner issued under it, upon conviction is punishable by a fine of not less than \$100 nor more than \$2,000, or by imprisonment for not less than 10 nor more than 90 days, or by both. Each day a violation occurs constitutes a separate offense.

Sec. 2. AS 23.40 is amended by adding new sections to read:

## ARTICLE 2. PUBLIC EMPLOYMENT RELATIONS ACT.

Sec. 23.40.070. DECLARATION OF POLICY. The legislature finds that joint decision making is the modern way of administering government. If public employees have been granted the right to share in the decision-making process affecting wages and working conditions, they have become more responsive and better able to exchange ideas and information on operations with their administrators. Accordingly, government is made more effective. The legislature further finds that the enactment of positive legislation establishing guidelines for public employment relations is the best way to harness and direct the energies of public employees eager to have a voice in determining their conditions of work, to provide a rational method for dealing with disputes and work stoppages, to strengthen the merit principle where civil service is in effect and to maintain a favorable political and social environment. The legislature declares that it is the public policy of the state to promote

an agreement reached if requested by either party, but these obligations do not compel either party to agree to a proposal or require the making of a concession;

(2) "election" means a proceeding conducted by the labor relations agency in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives, or for any other purpose specified in secs. 70 - 260 of this chapter;

(3) "labor relations agency" means the state personnel board with regard to the state and employees of the state, and means the Department of Labor with regard to all other public employees and all other public employers;

(4) "organization" means a labor or employee organization of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment and conditions of employment;

(5) "public employee" means any employee of a public employer, whether or not in the classified service of the public employer, except elected or appointed officials or teachers or noncertificated employees of school districts;

(6) "public employer" means the state or a political subdivision of the state, including without limitation, a town, city, borough, district, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and a person designated by the public employer to act in its interest in dealing with public employees;

(7) "terms and conditions of employment" means the hours of employment, the compensation and fringe benefits, and the employer's personnel policies affecting the working conditions of the employees; but does not mean the general policies describing the function and purposes of a public employer.

Sec. 23.40.260. SHORT TITLE. Secs. 70 - 260 of this chapter may be cited as the Public Employment Relations Act.

1 Sec. 3. AS 09.43.010 is amended to read:

Sec. 09.43.010. ARBITRATION AGREEMENTS VALID; APPLICATION OF CHAPTER. A written agreement to submit an existing controversy to arbitration or a provision in a written contract to submit to arbitration a subsequent controversy between the parties is valid, enforceable and irrevocable, except upon grounds which exist at law or inequity for the revocation of a contract. However, this chapter does not apply to a labor-management contract unless it is incorporated into the contract by reference or its application provided for by statute.

2 Sec. 4. This Act is applicable to organized boroughs and

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political subdivisions of the state, home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply.

▪ Sec. 5. AS 23.40.010 is repealed.

**Chapter 1**

- 1 • **Sec. 11.** Notwithstanding sec. 4, ch. 113, SLA 1972, a municipal school district or regional  
2 educational attendance area may not reject application of AS 23.40.070 - 23.40.260 to employment  
3 relations with public school employees.
- 4 • **Sec. 12.** This Act takes effect immediately under AS 01.10.070(c).

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# ALASKA STATUTES

Binder 5

TITLES 21 TO TITLE 25

1992 Cumulative Supplement

OCTOBER 1992

*Ineffective Date of Statutes*

See Alaska Constitution, art. II, § 18.

Annotated through Sup. Ct. Op. No. 3852. For complete scope of annotations, see scope page in front of supplement to first binder. For detailed information on the use of the Alaska Statutes, see User's Guide published following the scope page.

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ALASKA STATUTES

## Chapter 40. Labor Organizations.

### Article

2. Public Employment Relations Act (§§ 23.40.200, 23.40.205, 23.40.215, 23.40.250)

### Article 2. Public Employment Relations Act.

#### Section

200. Classes of public employees; arbitration

205. Family leave

#### Section

215. Funding and legislative approval

250. Definitions

Cross references. — For inability of municipal school districts or regional educational attendance areas to reject appli-

cation of this article, see § 11, ch. 1, SLA 1992 in the Temporary and Special Acts.

### Sec. 23.40.070. Declaration of policy.

#### NOTES TO DECISIONS

Job classification plan. — A job classification plan is an integral part of the very foundation of the merit principle in state employment. *Alaska Pub. Employees Ass'n v. State*, Sup. Ct. Op. No. 3825 (File Nos. S-3582, S-3622), P.2d (1992).

Assignment of salary ranges to job classes. — The assignment of salary ranges to job classes is not a mandatory subject of collective bargaining between the state and its employees' collective bar-

gaining representatives. *Alaska Pub. Employees Ass'n v. State*, Sup. Ct. Op. No. 3825 (File Nos. S-3582, S-3622), P.2d (1992).

Negotiability. — For discussion of negotiable and nonnegotiable items under former AS 14.20.550 — 14.20.610 in negotiations between school boards and teachers, see *Kenai Peninsula Borough Sch. Dist. v. Kenai Peninsula Educ. Ass'n* 572 P.2d 416 (Alaska 1977).

### Sec. 23.40.090. Collective bargaining unit.

#### NOTES TO DECISIONS

Cited in *McGrath v. University of Alaska*, 813 P.2d 1370 (Alaska 1991).

### Sec. 23.40.110. Unfair labor practices.

#### NOTES TO DECISIONS

Cited in *International Bhd. of Elec. Workers v. City of Ketchikan*, 805 P.2d 340 (Alaska 1991).

Sec. 23.40.170. Regulations.

NOTES TO DECISIONS

Cited in *McGrath v. University of Alaska*, 513 P.2d 1370 (Alaska 1991).

Sec. 23.40.200. Classes of public employees; arbitration.

(a) For purposes of this section, public employees are employed to perform services in one of the three following classes:

(1) those services which may not be given up for even the shortest period of time;

(2) those services which may be interrupted for a limited period but not for an indefinite period of time; and

(3) those services in which work stoppages may be sustained for extended periods without serious effects on the public.

(b) The class in (a)(1) of this section is composed of police and fire protection employees, jail, prison, and other correctional institution employees, and hospital employees. Employees in this class may not engage in strikes. Upon a showing by a public employer or the labor relations agency that employees in this class are engaging or about to engage in a strike, an injunction, restraining order, or other order which may be appropriate shall be granted by the superior court in the judicial district in which the strike is occurring or is about to occur. If an impasse or deadlock is reached in collective bargaining between the public employer and employees in this class, and mediation has been utilized without resolving the deadlock, the parties shall submit to arbitration to be carried out under AS 09.43.030.

(c) The class in (a)(2) of this section is composed of public utility, snow removal, sanitation, and educational institution employees other than employees of a school district, a regional educational attendance area, or the state boarding school. Employees in this class may engage in a strike after mediation, subject to the voting requirement of (d) of this section, for a limited time. The limit is determined by the interests of the health, safety, or welfare of the public. The public employer or the labor relations agency may apply to the superior court in the judicial district in which the strike is occurring for an order enjoining the strike. A strike may not be enjoined unless it can be shown that it has begun to threaten the health, safety, or welfare of the public. A court, in deciding whether or not to enjoin the strike, shall consider the total equities in the particular class. "Total equities" includes not only the impact of a strike on the public but also the extent to which employee organizations and public employers have met their statutory obligations. If an impasse or deadlock still exists after the issuance of an injunction, the parties shall submit to arbitration to be carried out under AS 09.43.030.

(d) The class in (a)(3) of this section includes all other public employees who are not included in the classes in (a)(1) or (a)(2) of this section. Employees in this class may engage in a strike if a majority of the employees in a collective bargaining unit vote by secret ballot to do so. However, if an impasse or deadlock is reached in collective bargaining negotiations between a municipal school district, a regional educational attendance area, or the state boarding school and its employees, the parties shall submit to advisory arbitration before the employees may engage in a strike. The arbitrator selected to conduct the advisory arbitration must be a member of the American Arbitration Association Panel of Labor Arbitrators or the Federal Mediation and Conciliation Service. In selecting the arbitrator, the parties shall request a list of arbitrators who have knowledge of and recent experience in the local conditions in the school district, regional educational attendance area, or state boarding school. A list containing at least five nominees who meet the qualifications of this subsection is a complete list for the purpose of striking names and selecting the arbitrator.

(e) Notwithstanding the provisions of (b), (c) and (d) of this section, the employees with the concurrence of the employer may agree in writing to submit a dispute arising from interpretation or application of a collective bargaining agreement to arbitration.

(f) The parties to a collective bargaining agreement may provide in the agreement a contract for arbitration to be conducted solely according to the Uniform Arbitration Act (AS 09.43) if the Act is incorporated into the agreement or contract by reference. (§ 2 ch 113 SLA 1972; am §§ 3, 4 ch 1 SLA 1992)

**Cross references.** — Section 9, ch. 1, SLA 1992, provides that the amendments to (c) and (d) of this section made by §§ 3 and 4, ch. 1, SLA 1993 do not terminate or modify a collective bargaining unit, recognition of exclusive bargaining representative, or collective bargaining unit, "if the unit, recognition, or agreement is in effect on March 26, 1992."

**Effect of amendments.** — The 1992 amendment, effective March 26, 1992, in subsection (c), deleted "public school and other" preceding "educational institution" and added "other than employees of a school district, a regional educational attendance area, or the state boarding school" in the first sentence, and, in subsection (d), added the last four sentences.

## NOTES TO DECISIONS

### II. Arbitration.

#### II. ARBITRATION.

**Applicability of Uniform Arbitration Act.** — Even though this section does provide that interest arbitration shall be conducted under AS 09.43.030, the section of the Uniform Arbitration Act (UAA) providing for appointment of arbitrators by agreement of the parties, or, in the ab-

sence of an agreement, by the superior court, the entire UAA is not applicable to this section. *State v. Public Safety Employees Ass'n*, 798 P.2d 1281 (Alaska 1990).

**Matter for courts.** — Arbitrability is a question for the courts unless the parties clearly and unmistakably provide other-

wise. *State v. Public Safety Employees Ass'n*, 79S P.2d 1281 (Alaska 1990).

Standard of review. — Appellate courts should apply the arbitrary and capricious standard when reviewing awards

in compulsory interest arbitrations; in voluntary interest arbitrations, the standard of review is gross error. *State v. Public Safety Employees Ass'n*, 79S P.2d 1281 (Alaska 1990).

Sec. 23.40.205. Family leave. Notwithstanding any provision of AS 23.40.070 — 23.40.260 to the contrary, an agreement between the employer subject to AS 23.10.500 — 23.10.550 and an employee bargaining organization that does not contain benefit provisions at least as beneficial to the employee as those provided by AS 23.10.500 — 23.10.550 shall be considered to contain the benefit provisions of those statutes. (§ 7 ch 96 SLA 1992)

Revisor's notes. — Enacted as AS 23.40.200(g). Renumbered in 1992.

Cross references. — For transitional provisions related to the effect of this section on bargaining agreements in effect on

September 16, 1992, see § 11, ch. 96, SLA 1992 in the Temporary and Special Acts.

Effective dates. — Section 7, ch. 96, SLA 1992, which enacted this section, took effect on September 16, 1992.

### Sec. 23.40.210. Agreement.

#### NOTES TO DECISIONS

Agency assumption of jurisdiction over pending grievance procedures. — The agency may exercise jurisdiction over unfair labor practice claims which are the subject of pending grievance procedures not yet exhausted where it appears that pursuing the grievance procedures would

be futile. *Public Safety Employees Ass'n v. State*, 799 P.2d 315 (Alaska 1990).

Availability of statutory remedies. — The availability of arbitration does not preclude statutory remedies. *Public Safety Employees Ass'n v. State*, 799 P.2d 315 (Alaska 1990).

Sec. 23.40.215. Funding and legislative approval. (a) The monetary terms of any agreement entered into under AS 23.40.070 — 23.40.260 are subject to funding through legislative appropriation.

(b) The Department of Administration shall submit the monetary terms of an agreement to the legislature within 10 legislative days after the agreement of the parties, if the legislature is in session, or within 10 legislative days after the convening of the next regular session. The legislature shall advise the parties by concurrent resolution if it approves or disapproves of the monetary terms within 60 legislative days after the agreement is submitted to the legislature. The approval of the monetary terms of an agreement under this subsection is a nonbinding, advisory expression of legislative intent. If within 60 legislative days after the agreement is submitted the legislature advises the parties by concurrent resolution that it disapproves the monetary terms of the agreement, the parties may resume negotiations.

(c) Notwithstanding (b) of this section, the monetary terms of an agreement entered into between a school district or regional educa-

tional attendance area and its employees are not subject to approval by the legislature. (§ 2 ch 113 SLA 1972; am § 1 ch 10 SLA 1984; am § 5 ch 1 SLA 1992)

*Effect of amendments.* — The 1992 amendment, effective March 26, 1992, added subsection (c).

Sec. 23.40.250. Definitions. In AS 23.40.070 — 23.40.260, unless the context otherwise requires,

(1) "collective bargaining" means the performance of the mutual obligation of the public employer or the employer's designated representatives and the representative of the employees to meet at reasonable times, including meetings in advance of the budget making process, and negotiate in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or negotiation of a question arising under an agreement and the execution of a written contract incorporating an agreement reached if requested by either party, but these obligations do not compel either party to agree to a proposal or require the making of a concession;

(2) "election" means a proceeding conducted by the labor relations agency in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives, or for any other purpose specified in AS 23.40.070 — 23.40.260;

(3) "labor relations agency" means the Alaska labor relations agency established in AS 23.05.360;

(4) "monetary terms of an agreement" means the changes in the terms and conditions of employment resulting from an agreement that will require an appropriation for their implementation or will result in a change in state revenues or productive work hours for state employees;

(5) "organization" means a labor or employee organization of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of employment;

(6) "public employee" means any employee of a public employer, whether or not in the classified service of the public employer, except elected or appointed officials or superintendents of schools;

(7) "public employer" means the state or a political subdivision of the state, including without limitation, a municipality, district, school district, regional educational attendance area, board of regents, public and quasi-public corporation, housing authority, or other authority established by law, and a person designated by the public employer to act in its interest in dealing with public employees;

(8) "regional educational attendance area" means an educational service area in the unorganized borough that may or may not include a military reservation, and that contains one or more public schools of grade levels K — 12 or any portion of those grade levels that are to be operated under the management and control of a single regional school board;

(9) "terms and conditions of employment" means the hours of employment, the compensation and fringe benefits, and the employer's personnel policies affecting the working conditions of the employees; but does not mean the general policies describing the function and purposes of a public employer. (§ 2 ch 113 SLA 1972; am § 2 ch 10 SLA 1984; am E.O. No. 77 § 3 (1990); am §§ 6 — 8 ch 1 SLA 1992)

Revisor's notes. — Paragraph (8) was enacted as (9) and renumbered in 1992, at which time former paragraph (8) was renumbered as (9).

Effect of amendments. — The 1992 amendment, effective March 26, 1992, in paragraph (6), substituted "superinten-

dents of schools" for "teachers or noncertificated employees of school districts"; in paragraph (7), substituted "a municipality, district, school district, regional educational attendance area." for "a town, city, borough."; and added paragraph (8).

#### NOTES TO DECISIONS

The assignment of salary ranges to job classes is not a mandatory subject of collective bargaining between the state and its employees' collective bargaining

representatives. Alaska Pub. Employees Ass'n v. State, Sup. Ct. Op. No. 3825 (File Nos. S-3582, S-3622). P.2d (1992).

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## Title 23 Labor and Workers' Compensation

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But it was further defined by the Public Employment Relations Act, AS 23.40.070, et seq. *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

The Public Employment Relations Act, AS 23.40.070, et seq., contains far more detailed provisions than this section. *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

Public Employment Relations Act, AS 23.40.070 et seq., applies to employees of the state division of marine transportation. *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

If there is no implied exemption for ferry personnel under the Public Employment Relations Act, AS 23.40.070, et seq., it cannot be said that the two acts do not cover the same people. This section is a subset of the broader Public Employment Relations Act coverage and was likely left intact deliberately to designate the commissioner of public works as the state's representative in bargaining with the ferry unions. *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

Collateral references. — 48A Am. Jur. 2d, Labor and Labor Relations, §§ 1764-1775, 1787-1999.

51 C.J.S., Labor Relations, §§ 148-216;  
56 C.J.S., Master and Servant, §§ 28(20)-28(42).

Validity of union procedures for fixing and reviewing agency fees of nonunion employees under public employees representation contract — post-Hudson cases. 92 ALR Fed. 893.

*Secs. 23.40.045 — 23.40.060. Records; local labor organizations; interference in chartering prohibited; civil enforcement; exemptions; penalties. [Repealed, § 55 ch 69 SLA 1970.]*

## Article 2. Public Employment Relations Act.

Section	Section
70. Declaration of policy	200. Classes of public employees; arbitration
75. Items not subject to bargaining	210. Agreement
80. Rights of public employees	212. Agreement with the Board of Regents
90. Collective bargaining unit	215. Funding and legislative approval
100. Representatives and elections	220. Labor or employee organization dues and employee benefits, deduction and authorization
110. Unfair labor practices	225. Exemption from Public Employment Relations Act
120. Investigation and conciliation of complaints	240. Effect on certain units, representatives, and agreements
130. Complaint and accusation	245. Postsecondary student involvement in collective bargaining
140. Orders and decisions	250. Definitions
150. Enforcement by injunction	260. Short title
160. Power to investigate and compel testimony	
170. Regulations	
180. Penalty for violation of order or decision	
190. Mediation	

Cross references. — For applicability of article to political subdivisions unless rejected by them, see § 4, ch. 113, SLA 1972 in the Temporary and Special Acts;

for provisions relating to collective bargaining for teachers, see AS 14.20.550 — 14.20.610.

## ALASKA STATUTES

### NOTES TO DECISIONS

Right of public employees in Alaska to bargain collectively was created by this article. *Alaska Pub. Employees Ass'n v. Municipality of Anchorage*, 555 P.2d 552 (Alaska 1976).

This article confers upon public employees the right to organize and bargain collectively with their employers and requires public employers to recognize collective bargaining units designated pursuant to this article. *Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71*, 591 P.2d 1292 (Alaska 1979), overruled on other grounds, *Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast*, 715 P.2d 707 (Alaska 1986).

This article allows political subdivisions of the state to reject its provisions for conduct of labor relations and to substitute their own provisions. *Alaska Pub. Employees Ass'n v. Municipality of Anchorage*, 555 P.2d 552 (Alaska 1976).

Applicability of article is the rule. — Under the present statute, applicability of this article is the rule, exemption the exception. *State v. City of Petersburg*, 538 P.2d 263 (Alaska 1975).

This article is expressly made applicable to home-rule municipalities, and thus municipalities are impliedly prohibited from refusing to negotiate with organizations selected by employees unless the exemption was timely enacted. *State v. City of Petersburg*, 538 P.2d 263 (Alaska 1975).

Applying a liberal construction to the powers of local government cannot override the express declaration of policy made a part of this article when coupled with considerations of the impact of the repeal of AS 23.40.010 and the different language used in the 1972 exemption provision, § 4, ch. 113, SLA 1972. *State v. City of Petersburg*, 538 P.2d 263 (Alaska 1975).

Article applicable unless state political subdivisions reject it. — The legislature provided for this article to be applicable to all political subdivisions of the state unless they rejected it rather than making the article inapplicable unless affirmative steps are taken by these same subdivisions to adopt the act (see § 4, ch. 113, SLA 1972). *State v. City of Petersburg*, 538 P.2d 263 (Alaska 1975).

Section 4, ch. 113, SLA 1972, not temporary. — Had the legislature wanted

§ 4, ch. 113, SLA 1972, to be of temporary duration, it would have so indicated. *Anchorage Mun. Employees Ass'n v. Municipality of Anchorage*, 618 P.2d 575 (Alaska 1980).

When article may be rejected. — This article may be rejected when all evidence indicates that municipal governments exempted themselves solely for the purpose of retaining local control over their labor relations, and with the clear intent of continuing collective bargaining rather than to interfere with established employee rights. *Anchorage Mun. Employees Ass'n v. Municipality of Anchorage*, 618 P.2d 575 (Alaska 1980); *City of Sitka v. International Bhd. of Elec. Workers, Local 1547*, 653 P.2d 332 (Alaska 1982).

Rejection of this article in order to gain an undue advantage in a labor dispute or the negotiation of a new collective bargaining agreement constitutes a deliberate interference with the right of employees to organize and bargain collectively in derogation of the act's express declaration of policy. *Anchorage Mun. Employees Ass'n v. Municipality of Anchorage*, 618 P.2d 575 (Alaska 1980).

Rejection must be prior to substantial organizational activity by public employees. — It is evidence from the wording of the exemption provision that the legislature intended to limit the freedom of the political subdivision to consider whether it wishes this article to apply to it by adopting the position that the article must be rejected prior to substantial organizational activity by public employees. *State v. City of Petersburg*, 538 P.2d 263 (Alaska 1975).

Prior to becoming aware of substantial organizational activity, the city could have exempted itself from the applicability of this article without interfering with the right of the employees to organize. Rejection of this article after becoming aware of such activity constitutes a gross and impermissible interference with the employees' freedom to choose which collective bargaining association should represent them. *State v. City of Petersburg*, 538 P.2d 263 (Alaska 1975).

This article was intended to recognize the right of employees to organize for the purpose of collective bargaining and to require public employers to negotiate and enter into labor contracts with employee organizations. It is apparent that this purpose would be substantially frustrated if a

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city would wait until the employees elected to be represented by a specific union, and then could exempt itself from the requirements of this article if that union was not favored by the city. In effect, this would give the city the right to control the organization to be selected by the employees. *State v. City of Petersburg*, 538 P.2d 263 (Alaska 1975).

A city council cannot validly reject application of this article more than six months after it becomes effective, and after the members of the council have learned of the organizational activity of the city's power plant employees. *State v. City of Petersburg*, 538 P.2d 263 (Alaska 1975).

The right and power of a city to reject this article becomes subordinated to the rights of the employees granted by the same legislation once the public employer becomes aware of substantial organizational activity on the part of its employees. *Anchorage Mun. Employees Ass'n v. Municipality of Anchorage*, 618 P.2d 575 (Alaska 1980).

**Freedom to develop varying scheme of collective bargaining.** — Local governments which have validly rejected this article are free to develop a local scheme of collective bargaining which varies from the state scheme as provided in this article. *Anchorage Mun. Employees Ass'n v. Municipality of Anchorage*, 618 P.2d 575 (Alaska 1980).

The legislature has expressly declared that the state policy of promoting harmonious and cooperative relations in public employment relations can best be effectuated by requiring public employers to bargain collectively with their employees. It is, therefore, most difficult to construe this article to prohibit local governments, which effectively rejected the article, from engaging in collective bargaining under their own local ordinances. It is far more likely that § 4, ch. 113, SLA 1972, was added to give political subdivisions of the state the freedom to fashion their own labor ordinances and systems of collective bargaining. *Anchorage Mun. Employees Ass'n v. Municipality of Anchorage*, 618 P.2d 575 (Alaska 1980).

**Determining timely rejection.** — Whether a local government has exercised its option to reject this article in a sufficiently timely fashion is best determined by looking at the circumstances of the individual case rather than setting an inflexible deadline. *Anchorage Mun. Em-*

*ployees Ass'n v. Municipality of Anchorage*, 618 P.2d 575 (Alaska 1980).

**Forfeiture of exemption from article.** — A city did not forfeit its exemption from coverage by this article, by continuing to recognize and negotiate with unions subsequent to its exemption. *City of Fairbanks v. Fairbanks AFL-CIO Crafts Council*, 623 P.2d 321 (Alaska 1981).

There is nothing in the language of the Public Employment Relations Act, AS 23.40.070 — 23.40.260, or its legislative history to suggest that the legislature intended to preclude local governments which have validly exempted themselves from coverage under the act from thereafter voluntarily engaging in collective bargaining with employee organizations. *City of Fairbanks v. Fairbanks AFL-CIO Crafts Council*, 623 P.2d 321 (Alaska 1981).

The city did not waive its exemption under § 4, ch. 113, SLA 1972, by negotiating with the union, and thus did not forfeit the authority to enact its own personnel guidelines. *City of Fairbanks v. Fairbanks Firefighters Union*, 623 P.2d 339 (Alaska 1981).

**Effect of elimination of state from exemption authorization.** — See *State v. City of Petersburg*, 538 P.2d 263 (Alaska 1975).

AS 23.40.040, relating to collective bargaining agreements, was not repealed by implication by the enactment of this article. *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

Nor is it an implied exception to article. — AS 23.40.040 cannot be read as an implied exception to this article. *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

This article was intended to incorporate existing collective bargaining agreements rather than exempt them. *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

**Construed in pari materia.** — Since AS 23.40.040 cannot be treated as an implied exception to this article, and since this article did not repeal AS 23.40.040 by implication, the statutes are construed in pari materia. *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

This article and AS 23.40.040 can be effectively harmonized to further the legislative purpose of establishing uniform procedures for public employee collective bargaining and to protect the policies the legislature thought important in enacting this article. *Hafling v. Inland-*

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boatmen's Union, 585 P.2d 870 (Alaska 1978).

Any possible conflict between AS 23.40.040 and this article is neither severe nor irreconcilable, particularly in light of AS 23.40.240 which incorporates existing agreements. *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

The most reasonable construction, consistent with the implied exception rule, is that the legislature was aware of AS 23.40.040 and saw no inconsistency in enacting this article to provide guidelines and procedures for public employee collective bargaining. The Public Employment Relations Act does nothing to undercut the AS 23.40.040 authorization of collective bargaining. Rather, it gives it additional content. *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

This article contains far more detailed provisions than AS 23.40.040. *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

And further defines AS 23.40.040. — AS 23.40.040 was comprehensive when it was enacted, but it was further defined by this article. *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

Action not in reliance on rights under article. — Where municipality's electrical department employees had pursued unionization since the early 1960's, long before the enactment of this article, although all the electrical department employees signed union authorization cards sometime in 1972, there was no evidence of any organizational activities occurring between the effective date of this article, September 5, 1972, and the passage of the exemption ordinance in question, July 10, 1973; thus the employees were not acting in reliance on rights granted them by this article. *City of Sitka v. International Bhd.*

of Elec. Workers, Local 1547, 653 P.2d 332 (Alaska 1982).

This article applies to employees of the state division of marine transportation. *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

If there is no implied exemption for ferry personnel under this article, it cannot be said that the two acts do not cover the same people. AS 23.40.040 is a subset of the broader coverage under this article and was likely left intact deliberately to designate the commissioner of public works as the state's representative in bargaining with the ferry unions. *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

"Public employees" excludes teachers. — The legislature chose to define "public employees" as excluding teachers from the Public Employment Relations Act because the cooperative relations purpose of that act was already fulfilled with regard to teachers under the provisions of Title 14. *Anchorage Educ. Ass'n v. Anchorage School Dist.*, 648 P.2d 993 (Alaska 1982).

Employees covered by this article are free to join a national as well as a local union. *Kenai Peninsula Borough School Dist. v. Kenai Peninsula Borough School Dist. Classified Ass'n*, 590 P.2d 437 (Alaska 1979).

As to procedural safeguards which local labor ordinances must afford concerning representation elections, see *Alaska Pub. Employees Ass'n v. Municipality of Anchorage*, 555 P.2d 552 (Alaska 1976).

Cited in *Warwick v. State ex rel. Chance*, 548 P.2d 384 (Alaska 1976); *Public Safety Employees Ass'n v. State*, 658 P.2d 769 (Alaska 1983); *Carter v. Alaska Pub. Employees Ass'n*, 663 P.2d 916 (Alaska 1983).

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Collateral references. — 48A An. Jur. 2d, Labor and Labor Relations, §§ 1764-1775.

51 C.J.S., Labor Relations, §§ 52, 148; 51A C.J.S., Labor Relations, § 306.

Validity of union procedures for fixing and reviewing agency fees of nonunion employees under public employees representation contract — post-Hudson cases. 92 ALR Fed. 893.

**Sec. 23.40.070. Declaration of policy.** The legislature finds that joint decision-making is the modern way of administering government. If public employees have been granted the right to share in the decision-making process affecting wages and working conditions, they have become more responsive and better able to exchange ideas and information on operations with their administrators. Accordingly, government is made more effective. The legislature further finds that the enactment of positive legislation establishing guidelines for public employment relations is the best way to harness and direct the energies of public employees eager to have a voice in determining their conditions of work, to provide a rational method for dealing with disputes and work stoppages, to strengthen the merit principle where civil service is in effect, and to maintain a favorable political and social environment. The legislature declares that it is the public policy of the state to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. These policies are to be effectuated by

(1) recognizing the right of public employees to organize for the purpose of collective bargaining;

(2) requiring public employers to negotiate with and enter into written agreements with employee organizations on matters of wages, hours, and other terms and conditions of employment;

(3) maintaining merit-system principles among public employees. (§ 2 ch 113 SLA 1972)

**Opinions of attorney general.** — Paragraph (2) of this section and AS 23.40.250(8), standing alone, clearly would make both group life and health insurance benefits and retirement benefits subject to collective bargaining since they both are "fringe benefits." January 23, 1978, Op. Att'y Gen.

Because health insurance deals with the economic interests of employees and does not deal with fundamental policy; because AS 39.30.090, the group insurance statute, authorizes the Department of Administration to obtain "a policy or policies"; and because AS 39.30.090 does not specify what levels of coverage or benefits must be included in the policy (or policies) obtained, the issue of group life and health insurance benefits is negotiable

under the Public Employment Relations Act (AS 23.40.070 — 23.40.260). January 23, 1978, Op. Att'y Gen.

Given AS 39.35.120(b) and AS 39.35.170, which make inclusion in the public employees retirement system (AS 39.35.010 — 39.35.690) a condition of employment for state employees and contributions to it mandatory, the conclusion is that the legislature intended the statutory provisions of the public employees retirement system to apply to all state employees, and benefits under the public employees retirement system may not be negotiated under the Public Employment Retirement Act (AS 23.40.070 — 23.40.260). January 23, 1978, Op. Att'y Gen.

#### NOTES TO DECISIONS

Applied in *State v. City of Petersburg*, 538 P.2d 263 (Alaska 1975); *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978); *Anchorage Mun. Em-*

*ployees Ass'n v. Municipality of Anchorage*, 618 P.2d 575 (Alaska 1980); *Anchorage Educ. Ass'n v. Anchorage School Dist.*, 648 P.2d 993 (Alaska 1982).

Quoted in *City of Fairbanks v. Alaska Dep't of Labor*, 763 P.2d 976 (Alaska 1988).

Stated in *Alaska Pub. Employees Ass'n v. State, Dep't of Admin.*, 776 P.2d 1030 (Alaska 1989).

Cited in *Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska*, 669 P.2d 1299 (Alaska 1983); *Walt v. State*, 751 P.2d 1345 (Alaska 1988).

Collateral references. — 48A Am. Jur. 2d. *Labor and Labor Relations*, §§ 1764-1775.

51 C.J.S., *Labor Relations*, §§ 20-22, 33.

Bargainable or negotiable issues in state public employment labor relations. 84 ALR3d 242.

Sec. 23.40.075. Items not subject to bargaining. The parties may not negotiate terms contrary to

(1) the reemployment rights for injured state employees under AS 39.25.158; or

(2) the reemployment rights of the organized militia under AS 26.05.075. (§ 1 ch 86 SLA 1988; am § 2 ch 77 SLA 1990)

Effect of amendments. — The 1990 amendment added the paragraph (1) des-

ignation, added paragraph (2), and made a related grammatical change.

Sec. 23.40.080. Rights of public employees. Public employees may self-organize and form, join, or assist an organization to bargain collectively through representatives of their own choosing, and engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. (§ 2 ch 113 SLA 1972)

#### NOTES TO DECISIONS

Applied in *Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71*, 591 P.2d 1292 (Alaska 1979).

Quoted in *Alaska Community Colleges' Fed'n of Teachers Local 2404 v.*

*University of Alaska*, 669 P.2d 1299 (Alaska 1983).

Cited in *Kollodge v. State*, 757 P.2d 1028 (Alaska 1988); *City of Fairbanks v. Alaska Dep't of Labor*, 763 P.2d 976 (Alaska 1988).

Collateral references. — Right of public employees to strike or engage in work stoppage. 37 ALR3d 1147.

Right of public employees to form or join a labor organization affiliated with a federation of trade unions or which includes private employees. 40 ALR3d 728.

Validity and construction of statutes or

ordinances providing for arbitration of labor disputes involving public employees. 68 ALR3d 885.

Who are employees forbidden to strike under state enactments or state common-law rules prohibiting strikes by public employees or stated classes of public employees. 22 ALR4th 1103.

**Sec. 23.40.090. Collective bargaining unit.** The labor relations agency shall decide in each case, in order to assure to employees the fullest freedom in exercising the rights guaranteed by AS 23.40.070 — 23.40.260, the unit appropriate for the purposes of collective bargaining, based on such factors as community of interest, wages, hours, and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. Bargaining units shall be as large as is reasonable, and unnecessary fragmenting shall be avoided. (§ 2 ch 113 SLA 1972)

**Sec. 23.40.100. Representatives and elections.** (a) The labor relations agency shall investigate a petition if it is submitted in a manner prescribed by the labor relations agency and is

(1) by an employee or group of employees or an organization acting in their behalf alleging that 30 per cent of the employees of a proposed bargaining unit

(A) want to be represented for collective bargaining by a labor or employee organization as exclusive representative, or

(B) assert that the organization which has been certified or is currently being recognized by the public employer as bargaining representative is no longer the representative of the majority of employees in the bargaining unit; or

(2) by the public employer alleging that one or more organizations have presented to it a claim to be recognized as a representative of a majority of employees in an appropriate unit.

(b) If the labor relations agency has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice. If the labor relations agency finds that there is a question of representation, it shall direct an election by secret ballot to determine whether or by which organization the employees desire to be represented and shall certify the results of the election. Nothing in this section prohibits the waiving of hearings by stipulation for the purpose of a consent election in conformity with the regulations of the labor relations agency or an election in a bargaining unit agreed upon by the parties. The labor relations agency shall determine who is eligible to vote in an election and shall establish rules governing the election. In an election in which none of the choices on the ballot receives a majority of the votes cast, a runoff election shall be conducted, the ballot providing for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election. If an organization receives the majority of the votes cast in the election it shall be certified by the labor relations agency as exclusive representative of all the employees in the bargaining unit.

(c) An election may not be held in a bargaining unit or in a subdivision of a bargaining unit if a valid election has been held within the preceding 12 months.

(d) Nothing in this chapter prohibits recognition of an organization as the exclusive representative by a public agency by mutual consent.

(e) An election may not be directed by the labor relations agency in a bargaining unit in which there is in force a valid collective bargaining agreement, except during a 90-day period preceding the expiration date. However, a collective bargaining agreement may not bar an election upon petition of persons in the bargaining unit but not parties to the agreement if more than three years have elapsed since the execution of the agreement or the last timely renewal, whichever was later. (§ 2 ch 113 SLA 1972)

Opinions of attorney general. — The Department of Administration may comply with an order received from the labor relations agency directing the state, in its

capacity as a public employer, to provide lists of all employees eligible to vote in a representation election held pursuant to AS 23.40.100. July 1, 1988, Op. Att'y Gen.

#### NOTES TO DECISIONS

Applied in *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

**Sec. 23.40.110. Unfair labor practices.** (a) A public employer or an agent of a public employer may not

(1) interfere with, restrain, or coerce an employee in the exercise of the employee's rights guaranteed in AS 23.40.080;

(2) dominate or interfere with the formation, existence, or administration of an organization;

(3) discriminate in regard to hire or tenure of employment or a term or condition of employment to encourage or discourage membership in an organization;

(4) discharge or discriminate against an employee because the employee has signed or filed an affidavit, petition, or complaint or given testimony under AS 23.40.070 — 23.40.260;

(5) refuse to bargain collectively in good faith with an organization which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

(b) Nothing in this chapter prohibits a public employer from making an agreement with an organization to require as a condition of employment

(1) membership in the organization which represents the unit on or after the 30th day following the beginning of employment or on the effective date of the agreement, whichever is later; or

(2) payment by the employee to the exclusive bargaining agent of a service fee to reimburse the exclusive bargaining agent for the expense of representing the members of the bargaining unit.

(c) A labor or employee organization or its agents may not

(1) restrain or coerce

(A) an employee in the exercise of the rights guaranteed in AS 23.40.080, or

(B) a public employer in the selection of the employer's representative for the purposes of collective bargaining or the adjustment of grievances;

(2) refuse to bargain collectively in good faith with a public employer, if it has been designated in accordance with the provisions of AS 23.40.070 — 23.40.260 as the exclusive representative of employees in an appropriate unit. (§ 2 ch 113 SLA 1972)

Revisor's notes. — In 1990 the word "with" was inserted after "interfere" in (a)(1) of this section to correct a manifest error of omission in ch. 113, SLA 1972.

#### NOTES TO DECISIONS

Similarity to federal act. — Paragraphs (a)(1) and (a)(3) are substantially similar to § 8(a)(1) and (a)(3) of the Labor Management Relations Act, 29 U.S.C. § 158(a)(1) and (a)(3). Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, 669 P.2d 1299 (Alaska 1983).

For establishment of violation of 29 U.S.C. 158(a)(3), see Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, 669 P.2d 1299 (Alaska 1983).

Derivative violation of (a)(1) from violation of (a)(3). — A violation of paragraph (a)(3) derivatively results in a violation of (a)(1) as well since employer discrimination in hiring, firing or working conditions also coerces or restrains employees in their rights to organize, bargain collectively and engage in other concerted activities. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, 669 P.2d 1299 (Alaska 1983).

Refusal to ratify tentative agreement. — It is permissible for an employer to refuse to ratify a tentative collective bargaining agreement in accordance with an agreed upon ground rule, so long as the employer's failure to ratify does not appear to have resulted from the employer's intent to string out negotiations and avoid reaching agreement. Alaska Community Colleges' Fed'n of Teachers Local 2404 v.

University of Alaska, 669 P.2d 1299 (Alaska 1983).

Work rule changes. — Since employers are free to make unilateral changes on matters which fall outside mandatory subjects of bargaining, the labor relations agency erred insofar as it rescinded work rules pertaining to permissive bargaining subjects and ordered the extension of terms in the previously expired collective bargaining agreement pertaining to permissive bargaining subjects. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, 669 P.2d 1299 (Alaska 1983).

Burden on union. — A union is required to demonstrate that an applicant was denied employment because of some antiunion motive on the part of the employer. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, 669 P.2d 1299 (Alaska 1983).

The union did not establish the presence of an antiunion motive on the part of the university where there was testimony that the applicant was not hired because more qualified applicants were available and ultimately because a lack of student interest caused the class to be cancelled and where although the union presented correspondence which demonstrated that the university considered the applicant's unavailability (because of his position as a negotiator) in determining his qualifica-

tion, there was unequivocal testimony that it was the mere fact of the applicant's unavailability, not the reason therefor, which was considered in this regard. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, 669 P.2d 1299 (Alaska 1983).

Applied in *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

Quoted in *State v. City of Petersburg*, 538 P.2d 263 (Alaska 1975).

Cited in *Hicklin v. Orbeck*, 565 P.2d 159 (Alaska 1977), rev'd, 437 U.S. 518, 98 S. Ct. 2482, 57 L. Ed. 2d 397 (1978).

Collateral references. — What constitutes unfair labor practice under state

public employee relations acts. 9 ALR4th 20.

**Sec. 23.40.120. Investigation and conciliation of complaints.** If a verified written complaint by or for a person claiming to be aggrieved by a practice prohibited by AS 23.40.110, or a written accusation that a person subject to AS 23.40.070 — 23.40.260 has engaged in a prohibited practice, is filed with the labor relations agency, it shall investigate the complaint or accusation. If it determines after the preliminary investigation that probable cause exists in support of the complaint or accusation, it shall try to eliminate the prohibited practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during this endeavor may be used as evidence in a subsequent proceeding. (§ 2 ch 113 SLA 1972)

#### NOTES TO DECISIONS

Applied in *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

**Sec. 23.40.130. Complaint and accusation.** If the labor relations agency fails to eliminate the prohibited practice by conciliation and to obtain voluntary compliance with AS 23.40.070 — 23.40.260, or, before it attempts conciliation, it may serve a copy of the complaint or accusation upon the respondent. The complaint or accusation and the subsequent procedures shall be handled in accordance with the administrative adjudication portion of the Administrative Procedure Act (AS 44.62). (§ 2 ch 113 SLA 1972)

#### NOTES TO DECISIONS

Applied in *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

**Sec. 23.40.140. Orders and decisions.** If the labor relations agency finds that a person named in the written complaint or accusation has engaged in a prohibited practice, the labor relations agency shall issue and serve on the person an order or decision requiring the person to cease and desist from the prohibited practice and to take affirmative action which will carry out the provisions of AS 23.40.070

— 23.40.260. If the labor relations agency finds that a person named in the complaint or accusation has not engaged or is not engaging in a prohibited practice, the labor relations agency shall state its findings of fact and issue an order dismissing the complaint or accusation. (§ 2 ch 113 SLA 1972)

NOTES TO DECISIONS

Distinction between mandatory and permissive bargaining subjects. — This section requires the labor relations agency to distinguish between mandatory and permissive bargaining subjects in its remedial orders. *Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska*, 669 P.2d 1299 (Alaska 1983).

While this section authorizes the agency to issue cease and desist orders barring prohibited practices, and to order affirmative action which will carry out the provisions of the Public Employment Relations Act, it does not require employers to bring to the bargaining table subjects other than wages, hours, and

other terms and conditions of employment. *Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska*, 669 P.2d 1299 (Alaska 1983).

The labor relations agency erred insofar as it rescinded work rules pertaining to permissive bargaining subjects and ordered the extension of terms in the previously expired collective bargaining agreement pertaining to permissive bargaining subjects. *Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska*, 669 P.2d 1299 (Alaska 1983).

Applied in *Hafling v. Inlandboatmen's Union*, 585 P.2d 370 (Alaska 1978).

Sec. 23.40.150. Enforcement by injunction. The labor relations agency may apply to the superior court in the judicial district in which the prohibited practice occurred for an order enjoining the prohibited acts specified in the order or decision of the labor relations agency. Upon a showing by the labor relations agency that the person has engaged or is about to engage in the practice, an injunction, restraining order, or other order which is appropriate may be granted by the court and shall be without bond. (§ 2 ch 113 SLA 1972)

NOTES TO DECISIONS

Applied in *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

Sec. 23.40.160. Power to investigate and compel testimony.

(a) For the purpose of the investigations, proceedings, or hearings which the labor relations agency considers necessary to carry out the provisions of AS 23.40.070 — 23.40.260, the labor relations agency may issue subpoenas requiring the attendance and testimony of witnesses and the production of relevant evidence.

(b) The labor relations agency may administer oaths, examine witnesses, and receive evidence.

(c) The attendance of witnesses and the production of evidence may be required from any place in the state at any designated place of hearing.

(d) If a person refuses to obey a subpoena issued under AS 23.40.070 — 23.40.260, the superior court in the district in which the person resides or is found may, upon application by the labor relations agency, issue an order requiring the person to comply with the subpoena. (§ 2 ch 113 SLA 1972)

#### NOTES TO DECISIONS

Applied in *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

**Sec. 23.40.170. Regulations.** The labor relations agency may adopt regulations under the Administrative Procedure Act (AS 44.62) to carry out the provisions of AS 23.40.070 — 23.40.260. (§ 2 ch 113 SLA 1972)

#### NOTES TO DECISIONS

Stated in *Carter v. Alaska Pub. Employees Ass'n*, 663 P.2d 916 (Alaska 1983).

**Sec. 23.40.180. Penalty for violation of order or decision.** A person who violates a provision of an order or decision of the labor relations agency is guilty of a misdemeanor and is punishable by a fine of not more than \$500. (§ 2 ch 113 SLA 1972)

#### NOTES TO DECISIONS

Applied in *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

**Sec. 23.40.190. Mediation.** If, after a reasonable period of negotiation over the terms of a collective bargaining agreement, a deadlock exists between a public employer and an organization, the labor relations agency may appoint a competent, impartial, disinterested person to act as mediator in any dispute either on its own initiative or on the request of one of the parties to the dispute. The parties may also select a mediator by agreement or mutual consent. It is the function of the mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the labor relations agency has any power of compulsion in mediation proceedings. (§ 2 ch 113 SLA 1972)

**Sec. 23.40.200. Classes of public employees; arbitration.**  
(a) For purposes of this section, public employees are employed to perform services in one of the three following classes:

(1) those services which may not be given up for even the shortest period of time;

(2) those services which may be interrupted for a limited period but not for an indefinite period of time; and

(3) those services in which work stoppages may be sustained for extended periods without serious effects on the public.

(b) The class in (a)(1) of this section is composed of police and fire protection employees, jail, prison, and other correctional institution employees, and hospital employees. Employees in this class may not engage in strikes. Upon a showing by a public employer or the labor relations agency that employees in this class are engaging or about to engage in a strike, an injunction, restraining order, or other order which may be appropriate shall be granted by the superior court in the judicial district in which the strike is occurring or is about to occur. If an impasse or deadlock is reached in collective bargaining between the public employer and employees in this class, and mediation has been utilized without resolving the deadlock, the parties shall submit to arbitration to be carried out under AS 09.43.030.

(c) The class in (a)(2) of this section is composed of public utility, snow removal, sanitation, and public school and other educational institution employees. Employees in this class may engage in a strike after mediation, subject to the voting requirement of (d) of this section, for a limited time. The limit is determined by the interests of the health, safety, or welfare of the public. The public employer or the labor relations agency may apply to the superior court in the judicial district in which the strike is occurring for an order enjoining the strike. A strike may not be enjoined unless it can be shown that it has begun to threaten the health, safety, or welfare of the public. A court, in deciding whether or not to enjoin the strike, shall consider the total equities in the particular class. "Total equities" includes not only the impact of a strike on the public but also the extent to which employee organizations and public employers have met their statutory obligations. If an impasse or deadlock still exists after the issuance of an injunction, the parties shall submit to arbitration to be carried out under AS 09.43.030.

(d) The class in (a)(3) of this section includes all other public employees who are not included in the classes in (a)(1) or (a)(2) of this section. Employees in this class may engage in a strike if a majority of the employees in a collective bargaining unit vote by secret ballot to do so.

(e) Notwithstanding the provisions of (b), (c) and (d) of this section, the employees with the concurrence of the employer may agree in writing to submit a dispute arising from interpretation or application of a collective bargaining agreement to arbitration.

(f) The parties to a collective bargaining agreement may provide in the agreement a contract for arbitration to be conducted solely according to the Uniform Arbitration Act (AS 09.43) if the Act is incorpo-

**Sec. 23.40.210. Agreement.** Upon the completion of negotiations between an organization and a public employer, if a settlement is reached, the employer shall reduce it to writing in the form of an agreement. The agreement may include a term for which it will remain in effect, not to exceed three years. The agreement shall include a pay plan designed to provide for a cost-of-living differential between the salaries paid employees residing in the state and employees residing outside the state. The plan shall provide that the salaries paid, as of August 26, 1977, to employees residing outside the state shall remain unchanged until the difference between those salaries and the salaries paid employees residing in the state reflects the difference between the cost of living in Alaska and living in Seattle, Washington. The agreement shall include a grievance procedure which shall have binding arbitration as its final step. Either party to the agreement has a right of action to enforce the agreement by petition to the labor relations agency. (§ 2 ch 113 SLA 1972; am § 1 ch 62 SLA 1977)

NOTES TO DECISIONS

**Constitutionality.** -- This section's cost-of-living wage differentials do not violate the federal constitution's commerce clause since Alaska acted as a "market participant" rather than as a "market regulator." *International Org. of Masters v. Andrews*, 626 F. Supp. 1271 (D. Alaska 1986), *aff'd*, 831 F.2d 843 (9th Cir. 1987), *cert. denied*, 485 U.S. 962, 108 S. Ct. 1228, 99 L. Ed. 2d 428 (1988).

Because the existence and amount of the wage differentials imposed under this section reasonably further a legitimate state purpose, the wage differentials do not violate the equal protection clause of the fourteenth amendment. *International Org. of Masters v. Andrews*, 626 F. Supp. 1271 (D. Alaska 1986), *aff'd*, 831 F.2d 843 (9th Cir. 1987), *cert. denied*, 485 U.S. 962, 108 S. Ct. 1228, 99 L. Ed. 2d 428 (1988).

Imposing wage differentials according to Alaska Marine Highway System (AMHS) employee's states of residence did not infringe on their "right to travel" guaranteed by the fourteenth amendment since the wage adjustments do not penalize AMHS employees for migrating to or emigrating from Alaska. *International Org. of Masters v. Andrews*, 626 F. Supp. 1271 (D. Alaska 1986), *aff'd*, 831 F.2d 843 (9th Cir. 1987), *cert. denied*, 485 U.S. 962, 108 S. Ct. 1228, 99 L. Ed. 2d 428 (1988).

This section's wage differentials do not violate the privileges and immunities clause because the interest "burdened" by this section's wage differentials is not

"fundamental" in nature, and even if this interest were fundamental for purposes of privileges and immunities analysis, Alaska has a substantial interest in eliminating disincentives that discourage Alaska Marine Highway System employees from residing in the state, and its wage differentials bear a "substantial relationship" to its objective of eliminating, or at least minimizing, these disincentives. *International Org. of Masters v. Andrews*, 626 F. Supp. 1271 (D. Alaska 1986), *aff'd*, 831 F.2d 843 (9th Cir. 1987), *cert. denied*, 485 U.S. 962, 108 S. Ct. 1228, 99 L. Ed. 2d 428 (1988).

This section, granting cost of living wage adjustments to resident, but not nonresident employees of the Alaska Marine Highway System, does not violate the Privileges and Immunities Clause or the right to travel as embodied in the fourteenth amendment. *International Org. of Masters v. Andrews*, 831 F.2d 843 (9th Cir. 1987), *cert. denied*, 485 U.S. 962, 108 S. Ct. 1228, 99 L. Ed. 2d 428 (1988).

**Statutory violations.** -- Exclusion of grievances involving involuntary transfers from binding arbitration in a provision of the collective bargaining agreement between the state and a union, the Public Safety Employees Association, violates this section. *Hemmen v. State, Dep't of Pub. Safety*, 710 P.2d 1001 (Alaska Ct. App. 1985).

Applied in *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

**Sec. 23.40.212. Agreement with the Board of Regents.** (a) The Board of Regents of the University of Alaska may delegate to the Department of Administration its authority under AS 23.40.070 — 23.40.260 to negotiate with an organization for an agreement.

(b) The Department of Administration shall participate in the negotiations between the Board of Regents and an organization. An agreement between the board and an organization requires the approval of the department. (§ 1 ch 148 SLA 1978)

**Sec. 23.40.215. Funding and legislative approval.** (a) The monetary terms of any agreement entered into under AS 23.40.070 — 23.40.260 are subject to funding through legislative appropriation.

(b) The Department of Administration shall submit the monetary terms of an agreement to the legislature within 10 legislative days after the agreement of the parties, if the legislature is in session, or within 10 legislative days after the convening of the next regular session. The legislature shall advise the parties by concurrent resolution if it approves or disapproves of the monetary terms within 60 legislative days after the agreement is submitted to the legislature. The approval of the monetary terms of an agreement under this subsection is a nonbinding, advisory expression of legislative intent. If within 60 legislative days after the agreement is submitted the legislature advises the parties by concurrent resolution that it disapproves the monetary terms of the agreement, the parties may resume negotiations. (§ 2 ch 113 SLA 1972; am § 1 ch 10 SLA 1984)

**Opinions of attorney general.** — To the extent the cost of negotiated group life and health insurance coverage exceeds what the State would have paid under its

employer-sponsored plan, the negotiated coverage is subject to legislative approval under this section. January 23, 1978. Op. Att'y Gen.

#### NOTES TO DECISIONS

Monetary terms of agreement are not effective until funds are appropriated by legislature. Each year the monetary terms of a collective bargaining agreement are subject to independent legislative approval. Public Employees' Local

71 v. State, 775 P.2d 1062 (Alaska 1989).  
Applied in *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).  
Cited in *Warwick v. State ex rel. Chance*, 548 P.2d 384 (Alaska 1976).

**Sec. 23.40.220. Labor or employee organization dues and employee benefits, deduction and authorization.** Upon written authorization of a public employee within a bargaining unit, the public employer shall deduct from the payroll of the public employee the monthly amount of dues, fees, and other employee benefits as certified by the secretary of the exclusive bargaining representative and shall deliver it to the chief fiscal officer of the exclusive bargaining representative. (§ 2 ch 113 SLA 1972)

**Sec. 23.40.225. Exemption from Public Employment Relations Act.** Notwithstanding the provisions of AS 23.40.220, a collective bargaining settlement reached, or agreement entered into, under AS 23.40.210 that incorporates union security provisions, including but not limited to a union shop or agency shop provision or agreement, shall safeguard the rights of nonassociation of employees having bona fide religious convictions based on tenets or teachings of a church or religious body of which an employee is a member. Upon submission of proper proof of religious conviction to the labor relations agency, the agency shall declare the employee exempt from becoming a member of a labor organization or employee association. The employee shall pay an amount of money equivalent to regular union or association dues, initiation fees, and assessments to the union or association. Nonpayment of this money subjects the employee to the same penalty as if it were nonpayment of dues. The receiving union or association shall contribute an equivalent amount of money to a charity of its choice not affiliated with a religious, labor, or employee organization. The union or association shall submit proof of contribution to the labor relations agency. (§ 1 ch 85 SLA 1976)

**Editor's notes.** — Section 2, ch. 85, SLA 1976 provides: "If any portion of AS 23.40.225 is declared unconstitutional or void by a court of competent jurisdiction, then that entire section is void."

**Opinions of attorney general.** — This section does not supplant 18.80.220(a), a general provision against religious discrimination, nor does it violate the "establishment clause" of the Alaska Constitu-

tion where the non-associational rights of all public employees are secured by AS 18.80.220(a). January 13, 1984, Op. Att'y Gen.

A state employee in a collective bargaining unit who does not belong to an organized religion is entitled to an accommodation of his religious opposition to the payment of union dues. January 13, 1984, Op. Att'y Gen.

#### NOTES TO DECISIONS

Applied in *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

*Sec. 23.40.230. Assistance by Department of Labor. [Repealed, E.O. No. 77 § 8 SLA 1990.]*

**Sec. 23.40.240. Effect on certain units, representatives, and agreements.** Nothing in this chapter terminates or modifies a collective bargaining unit, recognition of exclusive bargaining representative, or collective bargaining agreement if the unit, recognition, or agreement is in effect on September 5, 1972. (§ 2 ch 113 SLA 1972)

## NOTES TO DECISIONS

Applied in *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978); *Northwest Arctic Regional Educ. Attendants Area v. Alaska Pub. Serv. Employees, Local 71*, 591 P.2d 1292 (Alaska 1979).

Sec. 23.40.245. Postsecondary student involvement in collective bargaining. (a) When a bargaining unit includes members of the faculty or other employees of a public institution of postsecondary education, the public employer and the representative of the bargaining unit shall permit student representatives of that institution to

(1) attend and observe all meetings between the public employer and the representative of the bargaining unit which are involved with collective bargaining;

(2) have access to all documents pertaining to collective bargaining exchanged by the employer and the representative of the bargaining unit, including copies of transcripts of the meetings.

(b) Student representatives may not disclose information concerning the substance of collective bargaining obtained in the course of their activities under (a) of this section, unless that information is released by the employer or the representative of the bargaining unit.

(c) For the purpose of this section, the students of the institution involved in negotiations shall select their representatives from the institution directly involved in negotiations.

(d) When the institutions are negotiating with bargaining units representing more than one major geographic area of the state, the student representatives shall be from those areas. No more than three student representatives may attend meetings at any time. (§ 1 ch 148 SLA 1978)

Sec. 23.40.250. Definitions. In AS 23.40.070 — 23.40.260, unless the context otherwise requires,

(1) "collective bargaining" means the performance of the mutual obligation of the public employer or the employer's designated representatives and the representative of the employees to meet at reasonable times, including meetings in advance of the budget making process, and negotiate in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or negotiation of a question arising under an agreement and the execution of a written contract incorporating an agreement reached if requested by either party, but these obligations do not compel either party to agree to a proposal or require the making of a concession;

(2) "election" means a proceeding conducted by the labor relations agency in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives, or for any other purpose specified in AS 23.40.070 — 23.40.260;

(3) "labor relations agency" means the Alaska labor relations agency established in AS 23.05.360;

(4) "monetary terms of an agreement" means the changes in the terms and conditions of employment resulting from an agreement that will require an appropriation for their implementation or will result in a change in state revenues or productive work hours for state employees;

(5) "organization" means a labor or employee organization of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of employment;

(6) "public employee" means any employee of a public employer, whether or not in the classified service of the public employer, except elected or appointed officials or teachers or noncertificated employees of school districts;

(7) "public employer" means the state or a political subdivision of the state, including without limitation, a town, city, borough, district, board of regents, public and quasi-public corporation, housing authority, or other authority established by law, and a person designated by the public employer to act in its interest in dealing with public employees;

(8) "terms and conditions of employment" means the hours of employment, the compensation and fringe benefits, and the employer's personnel policies affecting the working conditions of the employees; but does not mean the general policies describing the function and purposes of a public employer. (§ 2 ch 113 SLA 1972; am § 2 ch 10 SLA 1984; am E.O. No. 77 § 3 (1990))

**Revisor's notes.** — In 1984, paragraph (8), added in 1984, was renumbered as paragraph (4) and former paragraphs (4)-(7) were renumbered as present paragraphs (5)-(8) to retain alphabetical order.

**Effect of amendments.** — The 1990 amendment, effective July 1, 1990, re-wrote paragraph (3).

**Opinions of attorney general.** — AS 23.40.070(2) and paragraph (8) of this section, standing alone, clearly would make both group life and health insurance benefits and retirement benefits subject to collective bargaining since they both are "fringe benefits." January 23, 1978, Op. Att'y Gen.

Because health insurance deals with the economic interests of employees and does not deal with fundamental policy; because AS 39.30.090, the group insurance statute, authorizes the Department of Administration to obtain "a policy or poli-

cies"; and because AS 39.30.090 does not specify what levels of coverage or benefits must be included in the policy (or policies) obtained, the issue of group life and health insurance benefits is negotiable under the Public Employment Relations Act (AS 23.40.070 — 23.40.260). January 23, 1978, Op. Att'y Gen.

Given AS 39.35.120(b) and AS 39.35.170, which make inclusion in the public employees retirement system (AS 39.35.010 — 39.35.690) a condition of employment for state employees and contributions to it mandatory, the conclusion is that the legislature intended the statutory provisions of the public employees retirement system to apply to all state employees, and benefits under the public employees retirement system may not be negotiated under the Public Employment Retirement Act (AS 23.40.070 — 23.40.260). January 23, 1978, Op. Att'y Gen.

## NOTES TO DECISIONS

Labor organization representing two bargaining units within same employer. — There is nothing in the language of the definition of "organization" which suggests that an otherwise qualified labor organization could not represent two different bargaining units within the same public employer. Indeed, the use of the phrase "labor organization of any kind" suggests the contrary. *City of Fairbanks v. Alaska Dep't of Labor*, 763 P.2d 976 (Alaska 1988).

Ferry personnel are public employees of a public employer and are not included within any of the itemized exceptions of paragraph (6). *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

Since paragraph (3) of this section defines "labor relations agency," which supervises and enforces this article, as the state personnel board for state employees and the Department of Labor with regard to all other public employees, the state personnel board would be the applicable regulatory agency with regard to ferry personnel. Therefore, there is no inconsistency in the ferry crew exemption from the state personnel system and its inclusion with this article. *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

Teachers, who are not "public employees" for purposes of this article, are not covered by this section. *Anchorage Educ. Ass'n v. Anchorage School Dist.*, 648 P.2d 993 (Alaska 1982).

The legislature defined "public employees" as excluding teachers from the Public Employment Relations Act because the cooperative relations purpose of that act was already fulfilled with regard to teachers under the provisions of Title 14. *Anchorage Educ. Ass'n v. Anchorage School Dist.*, 648 P.2d 993 (Alaska 1982).

Noncertificated school employees are not among those within the ambit of this article. *Kenai Peninsula Borough School Dist. v. Kenai Peninsula Borough School Dist. Classified Ass'n*, 590 P.2d 437 (Alaska 1979).

Nor are noncertificated employees of regional educational attendance areas. — This article does not apply to the noncertificated employees of the regional educational attendance areas. *Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71*, 591 P.2d 1292 (Alaska

1979), overruled on other grounds, *Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast*, 715 P.2d 707 (Alaska 1986).

Since such attendance areas appear to be school districts. — Regional educational attendance areas appear to be school districts within the meaning of paragraph (6), defining "public employees" for the purposes of this article. *Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71*, 591 P.2d 1292 (Alaska 1979), overruled on other grounds, *Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast*, 715 P.2d 707 (Alaska 1986).

Thus, such attendance areas have no statutory duty to bargain with noncertificated employees. — This article exempts noncertificated employees of the regional educational attendance areas from its coverage. The regional educational attendance areas therefore have no statutory duty to bargain with a bargaining representative of the noncertificated employees. *Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71*, 591 P.2d 1292 (Alaska 1979), overruled on other grounds, *Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast*, 715 P.2d 707 (Alaska 1986).

The legislature did not intend to bind the regional educational attendance areas to the employment contracts of their predecessor, the Alaska State Operated School System. *Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71*, 591 P.2d 1292 (Alaska 1979), overruled on other grounds, *Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast*, 715 P.2d 707 (Alaska 1986).

Although the Alaska State Operated School System, the predecessor to the regional educational attendance areas, was a state agency subject to this article and not a "school district" whose noncertificated employees are exempt under paragraph (6), and therefore did not have a "right" to refuse to bargain which it could waive. Even if the Alaska State Operated School System had waived its right to claim exemption under this article, it does not follow that the regional educational attendance areas also have waived their right to assert the statutory exemption, since the regional educational attendance areas are not simply successors to the Alaska State Operated School System but

are independent entities which have been given broad powers to run their individual school districts as they see fit. Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, 591 P.2d 1292 (Alaska 1979), overruled on other grounds, Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast, 715 P.2d 707 (Alaska 1986).

Jurisdiction to determine applicability of collective bargaining agreement. — Because the noncertificated employees of school districts are not employees of the state directly or public em-

ployees under this article neither the state personnel board nor the Department of Labor has jurisdiction to determine the applicability of a collective bargaining agreement to the regional educational attendance areas. Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, 591 P.2d 1292 (Alaska 1979), overruled on other grounds, Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast, 715 P.2d 707 (Alaska 1986).

Quoted in Carter v. Alaska Pub. Employees Ass'n, 663 P.2d 916 (Alaska 1983).

Sec. 23.40.260. Short title. AS 23.40.070 — 23.40.260 may be cited as the Public Employment Relations Act. (§ 2 ch 113 SLA 1972)

## Chapter 45. General Provisions.

### Section

#### 10. Definitions

Sec. 23.45.010. Definitions. In this title

- (1) "commissioner" means the commissioner of labor;
- (2) "department" means the Department of Labor;
- (3) "wages" means, except for the purposes of construing AS 23.20 and AS 23.30
  - (A) the basic hourly rate of pay; and
  - (B) all other compensation to an employee for services performed, including revocable and irrevocable contributions made by an employer to a trustee or third party for the benefit of the employee and contributions which may be reasonably anticipated in providing benefits to employees under an enforceable agreement to provide medical care, compensation for death or injury, or other fringe benefits. (am § 1 ch 115 SLA 1966)

BURKE, Justice, concurring.

I concur because I am bound by the decision of the court  
in State v. City of Petersburg, 538 P.2d 263 (Alaska 1975).

MATTHEWS, Justice, concurring.

I agree that the 1980 opt-out resolution of the Kodiak Island Borough is invalid. I reach this conclusion on the basis of the fact that the resolution was untimely, coming as it did more than seven years after the effective date of PERA. This court has not established a specific time limit for a public employer to exempt itself from PERA. However, we have made it clear that "a public employer which chooses to opt out of PERA must do so promptly, rather than at its leisure . . . ." Anchorage Mun. Employees Ass'n v. Municipality of Anchorage, 618 P.2d 575, 579 (Alaska 1980) (opt-out resolution passed one month after municipal entity was created held timely). Although we have never set a definite outside limit after which a municipality's attempted opt-out would be considered untimely, it seems clear to me that the 1980 resolution of the Borough is necessarily beyond any reasonable limit.

I do not think that today's opinion is on sound ground in concluding that awareness of substantial organizational activity by employees necessarily precludes an employer from rejecting PERA. The point of State v. City of Petersburg, 538 P.2d 263 (Alaska 1975), is that an employer should not be able to change the rules by which organizational contests are conducted in the midst of a contest. In the present case the contest was over. The organizational election had been held and the union had lost. Despite the fact that the Borough was aware of these events, recognizing the opt-out as valid would not be unfair because the opt-out did not interfere with ongoing organizational activities.

H B

2 6 6

**REPRESENTATIVE GAIL PHILLIPS**

**SPONSOR STATEMENT FOR HB 266**

**GUIDE-OUTFITTER AND MASTER GUIDE-OUTFITTER  
LICENSES**

**HOUSE LABOR AND COMMERCE COMMITTEE**

**JANUARY 25, 1994**

**THIS BILL SEEKS TO ACCOMPLISH THREE THINGS:**

- 1. EXTEND THE BIG GAME COMMERCIAL SERVICES BOARD'S STATUTORY AUTHORITY TO JUNE 30, 1997.**
- 2. GRANT THE BOARD SOME AUTHORITY TO UPGRADE STANDARDS IN THE GUIDING PROFESSION.**
- 3. RE-ENACT AND DEFINE THE "MASTER GUIDE" LICENSE.**

THE STATE AUDIT REPORT IN YOUR FILE DETAILS THE OUTSTANDING JOB DONE BY THE BIG GAME COMMERCIAL SERVICES BOARD AND INCLUDES A RECOMMENDATION FOR EXTENDING ITS TERMINATION DATE TO 1997. AS AN EXTENSION OF THE FINE WORK THE BOARD HAS DONE, THIS LEGISLATION WAS REQUESTED BY THE BOARD CHAIRMAN, PAUL JOHNSON WHO WOULD LIKE TO SPEAK BEFORE YOU TODAY. IN ADDITION, JOE KLUTCH, OF THE ALASKA PROFESSIONAL HUNTERS ASSOCIATION IS HERE TO TESTIFY ON BEHALF OF THE BILL.

SINCE THE TIME THIS BILL WAS ORIGINALLY INTRODUCED IN COMMITTEE THE NEED FOR SOME MINOR AMENDMENTS BECAME APPARENT. THE AMENDMENT SHEET IN YOUR FOLDERS INCLUDES A NEW TERMINATION DATE FOR THE BOARD IN SECTION ONE AND SOME CLARIFICATION LANGUAGE FOR SECTION THREE PERTAINING TO THE MASTER GUIDE LICENSE. IN ADDITION THERE IS AN INCLUSION FOR SECTION TWO THAT SPEAKS TO THE BOARD'S AUTHORITY AND LATITUDE IN SETTING UP CRITERIA FOR GUIDE-OUTFITTER LICENSES. THERE IS SUBSTANTIAL EVIDENCE THAT CURRENT STATUTES PERTAINING TO THE MASTER GUIDE LICENSE HAVE PROVEN UNFAIR IN PRACTICE AND THIS BILL SEEKS A SIMPLE REMEDY.

I STRONGLY SUPPORT HOUSE BILL 266. THE CONTINUATION OF THIS BOARD WITH ITS EXPERTISE AND TRACK RECORD, IS VITAL TO THE CONTINUED HEALTH OF OUR BIG GAME RESOURCES, TO THE INTEGRITY OF THE INDUSTRY IT SERVES, AND THE PEOPLE OF ALASKA.



Official Business

**COMMITTEE:**

HOUSE LABOR AND COMMERCE COMMITTEE

**DATE:** 1/25/94

**SIGN-IN**

**Subject of meeting:**

HB 266

Guide Outfitters License

NAME	ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Dick Rohrer	via Teleconference/Kodiak	LICO		
Eric Stirrup	via Teleconference/Kodiak	LICO		
Mike Humbach			Rep. Phillips	✓
Paul Johnson	Big Game Commercial Service Board Box 313 King Salmon		BGC SB	✓
Joe Klutsch	Alaska Professional Hunters Association		APHA Guides/outfitter	✓

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 30, 1993

FURTHER REFERRALS:

Resources  
Finance

Date of Committee Action: 1/25/94

The LABOR AND COMMERCE Committee considered:

HB 266

HOUSE BILL NO. 266

ELIGIBILITY FOR GUIDE-OUTFITTER LICENSE

"An Act relating to guide-outfitter and master guide-outfitter licenses; extending the termination date of the Big Game Commercial Services Board; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 266  the same title  a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_

APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note Commerce

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Bill Hudson</i>	<input checked="" type="checkbox"/>				
<i>Tom</i>				<input checked="" type="checkbox"/>	
<i>Joe Sittler</i>	<input checked="" type="checkbox"/>	<i>Bruce Porter</i>			
<i>Edon L. Reed</i>	<input checked="" type="checkbox"/>	<i>Joseph P. ...</i>			<input checked="" type="checkbox"/>
		<i>W. J. Williams</i>			<input checked="" type="checkbox"/>

*Bill Hudson*  
CHAIRMAN'S SIGNATURE

**STATE OF ALASKA  
1994 LEGISLATIVE SESSION**

**BILL NO. HB 266**

Revision Date: 1/23/94  
 Title: An Act relating to Master-Guide Outfitters and Guide-Outfitters;...  
 Sponsor: Rep. Phillips  
 Requestor: Rep. Phillips

Department: Commerce and Economic Dev.  
 BRU: Occupational Licensing  
 Component: Operations

COMPONENT SERIAL NO. 1844

Expenditures/Revenues		(Thousands of Dollars)				
OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
--------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE		(Thousands of Dollars)				
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY 94) cost: \$ None

POSITIONS		FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
FULL-TIME		0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME		0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY		0.0	0.0	0.0	0.0	0.0	0.0

**ANALYSIS:** (Attach a separate page if necessary)  
 HB 266 extends the Big Game Commercial Services Board to June 30, 1995, reinstates the Master Guide license category, and strengthens entry requirements for a guide-outfitter license. New funds are not required to implement provisions of this bill.

Prepared by: Jennifer Strickler, Administrative Officer  
 Division: Occupational Licensing  
 Approved by Commissioner: Paul Fuhs  
 Agency: Commerce and Economic Development

Phone: 465-2144  
 Date: 1/24/94  
 Date: \_\_\_\_\_

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**AMENDMENTS TO HOUSE BILL 266**  
**ELIGIBILITY FOR GUIDE-OUTFITTER LICENSE**

**JANUARY 25, 1994**

**HOUSE LABOR AND COMMERCE COMMITTEE BY REP. GAIL PHILLIPS**

**AMENDMENT #1:**

page 1, line 7 - Delete: "1995"

Add: "1997"

**AMENDMENT #2:**

page 2, line 19 - after "(10)"

Delete: [all language in subsection 10]

Add: "has been favorably recommended in writing by eight big game hunters and meets other requirements established by the board in regulations."

page 2, line 31 Delete: entire subsection (11)

page 3, line 5 Delete: (12) and use [(11)] (renumbering)

page 3, line 7 Delete: (13) and use [(12)] (renumbering)

**AMENDMENT #3:**

page 3, line 20 - after "for a total of at least 12"

Add: "of the last 15"

page 3, line 21 - after "years"

Add: "including the year immediately preceding their application for a master guide outfitter license."

**HB 266: "An Act relating to guide-outfitter and master guide-outfitter licenses; extending the termination date of the Big Game Commercial Services Board; and providing for an effective date."**

Section 1 extends the Big Game Commercial Services Board to 1997. The board has implemented the use area registration system. The board will need to monitor this new system closely and continue to clarify its operations and other statutory provisions through regulation.

Section 2 helps to strengthen the entry requirements for the guide-outfitter license and eliminates the requirement of having to submit two client recommendations for each of the applicant's most recent three years which has been the subject of three litigations in the past year and is currently being appealed to the superior court. For example, under current law, an applicant may have guided numerous clients from 1985 through 1988. The applicant takes two clients in 1989, two in 1991 and only one in 1992. Because the statute states that the applicant is required to guide-outfit two clients for the most recent three years of guiding, this applicant would not qualify because of the one client in 1992. This applicant would have to start over in 1993 with two clients and would not be eligible until 1995 assuming he/she took two clients in 1994 and 1995.

It has been brought to the division's attention that occasionally, individuals are testing for the guide-outfitter license and have never guided a brown bear, mountain goat or sheep hunter. Nonresidents are required to hire a guide-outfitter for these three species. It makes a lot of sense to require that an applicant has guided for these species prior to authorizing them to book hunters for these species. In addition to this requirement, the entry requirements would also be raised under this bill by requiring a minimum of eight clients and a minimum of 90 days in the field during at least three of the last five years.

The department recommends that AS 08.54.350(a)(10), line 22, be amended to include "in the last five years" inserted after guide-outfitted. Line 31, page 2, refers to 90 days over three years. This should be clarified so as not to be interpreted as 90 days per year. Line 2, page 3, should be amended to read "one hunt [day]."

Section 3 reinstates the master guide-outfitter category which was repealed in 1989, however, approximately 35 individuals were grandfathered with this title. Master Guide-Outfitters appear to have an advantage when booking clients. The department supports the reinstatement of this category, noting that the requirements are essentially the same as when the category was in effect under the old law. The department recommends Section 3. AS 08.54.350(b), line 20, be amended by inserting the word "12 consecutive years."

In summary, the department supports this bill with the amendments noted above.

  
Paul Fuhs, Commissioner

Date: 1/25/94

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 30, 1993

FURTHER REFERRALS:

Resources  
Finance

Date of Committee Action: 1/25/94

The LABOR AND COMMERCE Committee considered:

HB 266

HOUSE BILL NO. 266

ELIGIBILITY FOR GUIDE-OUTFITTER LICENSE

"An Act relating to guide-outfitter and master guide-outfitter licenses; extending the termination date of the Big Game Commercial Services Board; and providing for an effective date."

RECOMMENDATIONS:  the same title  
be replaced by CS HB 266  a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note Commerce

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Bill Hudson</i>	<input checked="" type="checkbox"/>				
<i>Tom</i>				<input checked="" type="checkbox"/>	
<i>Steve Sittler</i>	<input checked="" type="checkbox"/>	<i>Ernest Porter</i>			
<i>Edon K. Field</i>	<input checked="" type="checkbox"/>	<i>Joseph D. ...</i>			<input checked="" type="checkbox"/>
		<i>W. J. Williams</i>			<input checked="" type="checkbox"/>

*Bill Hudson*  
CHAIRMAN'S SIGNATURE

# Audit Report

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DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT  
BIG GAME COMMERCIAL SERVICES  
BOARD

October 8, 1993

---



Audit Control Number:

08-1408-94

Division of Legislative Audit  
P.O. Box 113300, Juneau, Alaska 99811-3300

# LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from each legislative chamber. The chairmanship of the committee alternates between the two chambers every legislature.

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**P.O. Box 113300**  
**Juneau, Alaska 99811-3300**

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# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300  
Juneau, AK 99811-3300  
(907) 465-3830  
FAX (907) 465-2347

October 8, 1993

Members of the Legislative Budget  
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

### DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BIG GAME COMMERCIAL SERVICES BOARD

October 8, 1993

Audit Control Number

08-1408-94

The objective of the audit was to determine if the Big Game Commercial Services Board should continue its existence. AS 44.66.010 has scheduled the board for termination on June 30, 1993. As of the date of this report, the board is technically in its one-year "wrap-up" period and, if no action is taken by the legislature, the board will be dissolved at June 30, 1994. We recommend that the legislature extend the board's termination date to June 30, 1997.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section of this report.

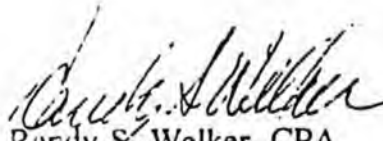
  
Randy S. Welker, CPA  
Legislative Auditor

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## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Titles 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Big Game Commercial Services Board to determine if it should continue in existence as provided for under terms of the State's "sunset" legislation.

As required by legislative intent, this report is part of the oversight function when they consider if a board or commission should be reestablished. The law currently specifies that the board will terminate on June 30, 1993 and will have one year from that date to conclude its affairs. As of the date of this report, the board is technically in its one-year "wrap-up" period.

### Objectives

Our specific audit objectives were:

1. To make recommendations to the legislature regarding the continued existence of the board.
2. To determine if the board is performing in compliance with state statutes and regulations.
3. To determine if the board is performing in the interest of the public.

### Scope and Methodology

We focused on activities that have occurred since the board was established on May 12, 1989 to determine if it has been operating in the interest of the public. Also, we reviewed the proceedings of the current board to ensure that they are in compliance with Alaska statutes and regulations.

During the course of our audit, we attended a teleconference meeting of the board which focused on the requests for additional guide use areas under state regulations (12 AAC 38.820). During the meeting, we observed the proceedings of the board. We were able to see firsthand how the board operates and interacts with the public.

In order to address our audit objectives, we reviewed the following:

- Applicable sections of Alaska's statutes and regulations.
- Minutes of prior board meetings.
- The director's reading files.

## ORGANIZATION AND FUNCTION

In the October 21, 1988 *Owsichuk* decision, the Alaska Supreme Court decided that the statutes and regulations establishing the State's exclusive guide area system were unconstitutional. These statutes and regulations had been used by the Guide Licensing Control Board, and later the Guide Board, as an integral part of their oversight function. The Big Game Commercial Services Board was established in the Department of Commerce and Economic Development in May 1989 by Chapter 37, SLA 1989 [House Bill (HB) 112]. It was the intent of the legislature that the board establish a resource-based management system for allocating big game hunting opportunities among guide-outfitters. The management system was to:

1. Provide for the conservation of the game resources.
2. Provide for equal opportunity to all qualified guide-outfitters when access to hunting rights are assigned or reassigned.
3. Provide financial compensation to the State for the commercial harvest of Alaska's big game resources to be used for game management purposes.
4. Designate the Alaska Department of Fish and Game as the lead agency to formulate management areas.
5. Provide for long-term stability and economic health of any commercial industry utilizing big game resources.
6. Include recommendations from private and public land owners in order to ensure statewide applicability.

The provisions of AS 08.54 define the board's authority, purpose, and scope of work. In addition to establishing the resource-based management system above, the primary functions of the board include the following:

1. Determine qualifications of applicants for guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, and assistant guide-outfitter licenses.
2. Establish performance standards for providers of big game commercial services and regulate the activities of these providers.
3. Compile, maintain, and publish an annual register of big game commercial service providers.
4. Prohibit guide-outfitting, transporting, and other big game commercial services activities that are unsportsmanlike, unethical, unsafe, against principles of game conservation, degrading to the professions, or that adversely affect natural resources.

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Titles 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Big Game Commercial Services Board to determine if it should continue in existence as provided for under terms of the State's "sunset" legislation.

As required by legislative intent, this report is part of the oversight function when they consider if a board or commission should be reestablished. The law currently specifies that the board will terminate on June 30, 1993 and will have one year from that date to conclude its affairs. As of the date of this report, the board is technically in its one-year "wrap-up" period.

### Objectives

Our specific audit objectives were:

1. To make recommendations to the legislature regarding the continued existence of the board.
2. To determine if the board is performing in compliance with state statutes and regulations.
3. To determine if the board is performing in the interest of the public.

### Scope and Methodology

We focused on activities that have occurred since the board was established on May 12, 1989 to determine if it has been operating in the interest of the public. Also, we reviewed the proceedings of the current board to ensure that they are in compliance with Alaska statutes and regulations.

During the course of our audit, we attended a teleconference meeting of the board which focused on the requests for additional guide use areas under state regulations (12 AAC 38.820). During the meeting, we observed the proceedings of the board. We were able to see firsthand how the board operates and interacts with the public.

In order to address our audit objectives, we reviewed the following:

- Applicable sections of Alaska's statutes and regulations.
- Minutes of prior board meetings.
- The director's reading files.

- Investigation and litigation files.
- Office of the Ombudsman closed case file.
- Budget documents, session laws and other legislative information relating to the board's operations.
- Internal reports and documents prepared by the board.
- Other documents as deemed pertinent.
- Financial reports from the state accounting system.
- Prior year audit work papers and audit reports.
- Office of the Governor, Boards and Commissions' files.

In addition, we conducted interviews with the management and staff of the board and Department of Fish and Game employees involved in developing guide-outfitter use areas.

## ORGANIZATION AND FUNCTION

In the October 21, 1988 *Owsichuk* decision, the Alaska Supreme Court decided that the statutes and regulations establishing the State's exclusive guide area system were unconstitutional. These statutes and regulations had been used by the Guide Licensing Control Board, and later the Guide Board, as an integral part of their oversight function. The Big Game Commercial Services Board was established in the Department of Commerce and Economic Development in May 1989 by Chapter 37, SLA 1989 [House Bill (HB) 112]. It was the intent of the legislature that the board establish a resource-based management system for allocating big game hunting opportunities among guide-outfitters. The management system was to:

1. Provide for the conservation of the game resources.
2. Provide for equal opportunity to all qualified guide-outfitters when access to hunting rights are assigned or reassigned.
3. Provide financial compensation to the State for the commercial harvest of Alaska's big game resources to be used for game management purposes.
4. Designate the Alaska Department of Fish and Game as the lead agency to formulate management areas.
5. Provide for long-term stability and economic health of any commercial industry utilizing big game resources.
6. Include recommendations from private and public land owners in order to ensure statewide applicability.

The provisions of AS 08.54 define the board's authority, purpose, and scope of work. In addition to establishing the resource-based management system above, the primary functions of the board include the following:

1. Determine qualifications of applicants for guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, and assistant guide-outfitter licenses.
2. Establish performance standards for providers of big game commercial services and regulate the activities of these providers.
3. Compile, maintain, and publish an annual register of big game commercial service providers.
4. Prohibit guide-outfitting, transporting, and other big game commercial services activities that are unsportsmanlike, unethical, unsafe, against principles of game conservation, degrading to the professions, or that adversely affect natural resources.

5. After a hearing, revoke, suspend, or deny renewal of a license or permit.
6. Authorize issuance of transporter licenses and commercial use permits.
7. Establish the level of supervision that a guide-outfitter will provide for class-A assistant guide-outfitters and assistant guide-outfitters.

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**BIG GAME COMMERCIAL SERVICES BOARD  
OCTOBER 1993**

**Glen Alsworth, Transporter**  
**Peter R. Buist, Guide-Outfitter**  
**Richard Burley, Board of Game Representative**  
 (pending appointment by the Game Board)  
**Glenn W. Fredricks, Native Land Holder**  
**Robert A. Hinman, Commercial Use Permit Holder**  
**Paul E. Johnson, Guide-outfitter, Chairman**  
**Scott Ogan, Public**  
**Thomas N. Scarborough, Public**  
**Eric C. Stirrup, Transporter**

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The board consists of nine members (see inset at above right) who, unless otherwise noted, are appointed by the governor and serve at the pleasure of the governor. By statute, the nine member board must be made up of:

1. two licensed guide-outfitters;
2. two transporters (one in the business of air transport);
3. one commercial use permit holder who does not hold any class of guide-outfitter license or a transport license;
4. one member of the Board of Game who is chosen by the Board of Game and does not hold a commercial use permit;
5. one member who represents Native landholders; and
6. two public members.

Members serve staggered four-year terms.

## BACKGROUND INFORMATION

As discussed in the Organization and Function section, the *Owsichek* decision handed down in October 1988 by the Alaska Supreme Court struck down the legality of statutes and regulations related to the exclusive guide area (EGA) system. In many respects, the decision was the culminating blow for the State's guiding industry as it then existed and was regulated. The decision was a watershed event that lent even more urgency to the effort to overhaul how the State's hunting guides were regulated.

### *Owsichek* decision was the major, but not the only critical problem facing guide regulators

The EGA system was an integral part of the administrative responsibility of the former Guide Board. The legal demise of EGA came on the heels of other problems and concerns facing guide regulation in general, and the Guide Board in particular, such as:

1. The lack of regulation of air taxi operators, many calling themselves "outfitters," who in the view of many guides were acting as unlicensed competitors.
2. Complaints by individuals that the guide licensing process was too subjective and that obtaining a license or an EGA depended more on "connections with the right people" and subjective evaluation, than objective consideration of relevant experience.
3. The problem that the Division of Fish and Wildlife Protection was having enforcing guiding laws, due to difficulty in defining what constituted unlicensed guiding activity.

### Legislature had already established a task force to consider changes in guide regulation

Even before the *Owsichek* decision brought the problems of the industry to a cataclysmic pitch, the legislature was already considering a public policy response. Chapter 160, SLA 1988 established what was termed the Interim Task Force on Guiding and Game, under the jurisdiction of the legislative council. The task force was to examine these various problems and develop a proposed alternative regulatory method. The task force consisted of:

1. the commissioners of the Departments of Fish and Game, Commerce and Economic Development, and Public Safety, (or their designees);
2. two members of the Senate and two members of the House of Representatives; and
3. six other "special interest" members appointed by the governor as follows:
  - a. one member of the Guide Board,
  - b. one big game licensed guide, not a member of the Guide Board;

- c. two persons engaged in a business, other than guiding, that were involved in transporting big game hunters to and from the field (but only one of the two could be an air taxi operator); and
- d. two public members, neither of whom had a financial interest in any business involving or related to the commercial taking of game.

Chapter 10, SLA 1989 extended the task force's termination date to the earlier of January 15, 1990 or the enactment of legislation establishing:

- 1. A licensing system for hunting guides and other providers of big game services to hunters; and
- 2. A management system for allocating rights of access to big game to licensed guides.

The legislation also added two additional members to board: (1) an individual with expertise in research and analysis, and (2) a representative of Native landholders.

#### Task force recommended creation of Big Game Commercial Services Board

The task force recommended that a new regulatory board be created. It also recommended expanding the regulatory purview of the new board to cover both the guides and outfitters (classifying a singular group as "guide-outfitters") in addition to a group designated as transporters. The House Resources Committee introduced legislation that incorporated much of what the task force recommended.

The legislature allowed for the reestablishment of what was termed "area assignments" which were, to a very limited degree, analogous to the old EGA concept, whereby certain license holders would be permitted to guide in designated geographic areas. But in various intent statements, the legislature directed that the precepts of the *Owsichek* decision be respected in the development of any new guide area system. The intent from the Senate Finance Committee directed, in part, that

*it is the intent of the legislature that the Big Game Commercial Services Board, with recommendation from the Task Force on Guiding and Game, . . . shall consider the implications of the Owsichek decision issued by the Alaska Supreme Court . . . when establishing the resource-based management system for allocating big game hunting opportunities among guide-outfitters.*

Regulations for area assignments started adoption process in January 1992

In January 1992, maps of designated use areas were first developed. The first draft of associated regulations which established how license holders could apply and qualify for areas were finished in July. The BGCSB held public hearings on the proposed regulations in late September 1992, after the new rules had been circulated publicly for more than 60 days. At their September 27, 1992 meeting, the board adopted the regulations, as amended based on public comment. The regulations were forwarded to the Department of Law for legal review in early October and were approved in their final form by the lieutenant governor in late January 1993.

Areas began being assigned by the Division of Occupational Licensing (OL) in July of 1993. As of the date of this report, OL has received 845 applications for area assignments from 330 guides. As of the same date, 720 of the area permits had been granted. As discussed in Recommendation No. 1, we have excluded any analysis of the area assignment process from our sunset review. We feel that there has not been enough experience to assess the fairness and objectivity of the area assignment process. However, we are encouraged by the initial role played by the Department of Fish and Game in establishing relevant game management units that serve as the underlying structure for the area assignments.

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## REPORT CONCLUSION

Alaska Statute 44.66.010 requires that the Big Game Commercial Services Board be terminated on June 30, 1993. As of the date of this report, the board is technically in its one-year "wrap-up" period and, if no action is taken by the legislature, the board will be dissolved at June 30, 1994. We recommend that the legislature extend the board's termination date until June 30, 1997 (see Recommendation No. 1).

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