

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8519 HOUSE • COMMUNITY & REGIONAL AFFAIRS •

Sec. 23.35.100. Transportation, hospital, nursing, medical and surgical expenses. The department may pay out of the fund all reasonable transportation charges incurred under AS 23.35.080 and 23.35.090, including cost of returning the fisherman to the boat or home of the fisherman or to another place which reasonably meets with his convenience, and the reasonable hospital, nursing, medical and surgical expense incurred in the examination, treatment and care of the fisherman. (§ 6 ch 100 SLA 1951)

Opinions of attorney general. — Money cannot be expended from the sick and disabled fishermen's fund for the payment of charges for medicine prescribed by chiropractors. 1961 Op. Att'y Gen., No. 23. It is illegal and criminal for a chiropractor, without additional qualifications, to prescribe drugs or medicine to sick or injured persons. 1961 Op. Att'y Gen., No. 23.

Sec. 23.35.110. Contracts for care. In carrying out this chapter, the department may enter into contracts or other arrangements with hospitals and doctors in the state for furnishing care on an annual basis to persons entitled to benefits. (§ 6 ch 100 SLA 1951)

Sec. 23.35.120. Cooperation with other agencies. In providing care the department shall provide the type and quality of treatment which will restore the fisherman to health and productivity, if possible. The department may enter into cooperative arrangements with agencies of the federal government, other states and territories, and private clinics and rehabilitation centers for the care and treatment of fishermen. (§ 7 ch 100 SLA 1951)

Sec. 23.35.130. Duration of care. Except for compelling reasons, compensation may not be paid for the care of any one person involving a single injury or disability beyond a period of one year from the date of initial allowance. (§ 7 ch 100 SLA 1951)

Opinions of attorney general. — The legislature intended a relatively liberal interpretation of the act. 1959 Op. Att'y Gen., No. 5. **Scope of term "compelling reasons".** — See 1959 Op. Att'y Gen., No. 5.

Sec. 23.35.140. Limitation on benefits. (a) Except for compelling reasons,

(.) compensation may not be paid for medical care or hospitalization furnished before the ascertainable time of injury, or before authorization in the case of disability caused by an occupational disease;

(2) the total allowance for any one injury or disablement is \$2,500.

(b) The total allowance for any one heart attack is \$2,500. (6 7 ch

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Opinions of attorney general. — There might be many very "compelling reasons" to raise the benefits above \$2,500 under some circumstances 1959 Op. Att'y Gen., No. 5

Sec. 23.35.150. Definitions. In this chapter

(1) "approved medical facilities" and "medical care" include the facilities of, or the care and treatment prescribed or performed by, a practitioner of chiropractic licensed by the state under AS 08.20.

(2) "commissioner" means the commissioner of labor;

(3) "council" means the Fishermen's Fund Advisory and Appeals Council;

(4) "department" means the Department of Labor;

(5) "fisherman" means a person who is licensed by the state to engage in commercial fishing under AS 16.05.480 or who is the holder of a permit issued under AS 16.43 and who, at the time injury is sustained or illness is contracted, is actually so engaged or is occupied in Alaska in preparing or dismantling boats or gear used in commercial fishing;

(6) "fund" means the Fishermen's Fund;

(7) "occupational disease" means hernia; varicose veins of the leg; the respiratory diseases, bronchitis, pleurisy, and pneumonia caused by or aggravated by the fishing endeavor, but excluding the common cold and influenza; rheumatism, arthritis and those musculoskeletal diseases (such as bursitis, traumatic sciatica, and tenosynovitis) directly caused by or aggravated by the fishing endeavor; and does not include a disease not common to both sexes, venereal disease, or a condition arising out of an attempt of a fisherman to injure self or another. (§§ 4, 5, 8 ch 100 SLA 1951; am §§ 1, 2, ch 99 SLA 1955; am § 1 ch 59 SLA 1957; am § 13 ch 64 SLA 1959; am § 1 ch 93 SLA 1960; am § 1 ch 77 SLA 1962; am § 1 ch 51 SLA 1972; am § 17 ch 105 SLA 1977)

Revisor's notes. — This section was reorganized in 1984 to place the defined terms in alphabetical order.

Chapter 40. Labor Organizations.

Article

1. Local Organizations and Ferry System Employees (§§ 23.40.020 — 23.40.040)
2. Public Employment Relations Act (§§ 23.40.070 — 23.40.260)

Article 1. Local Organizations and Ferry System Employees.

Section

20. Enforcement of contract provisions

Section

20. Application of law

Sec. 23.40.010. Union contracts with state and political subdivisions. [Repealed, § 5 ch 113 SLA 1972.]

Sec. 23.40.020. Enforcement of certain contracts only if union registers. A labor contract executed in this state by a labor organization that has no local in this state or which contract is not to be executed by one or more of its locals in this state may not be enforced in the courts of this state unless the labor organization has registered with the department and complied with all regulations adopted by it. (§ 4 ch 108 SLA 1959)

Sec. 23.40.030. Definition of labor organization. For the purpose of AS 23.40.020 — 23.40.040 "labor organization" includes an organization constituted wholly or partly to bargain collectively or deal with employers, including the state and its political subdivisions, concerning grievances, terms, or conditions of employment or other mutual aid or protection in connection with employees. (§ 1 ch 108 SLA 1959; am § 32 ch 53 SLA 1973)

Collateral references. — 48 Am. Jur. 2d, Labor and Labor Relations, § 46.
51 C.J.S., Labor Relations, §§ 43-45, 66
C.J.S., Master and Servant, § 28(15).
Rights and remedies of workmen
blacklisted by labor union, 46 ALR2d
1124.

Combination of separate plants or units
of the same employer as single bargaining
unit, 12 ALR3d 787.
Right of labor union to exclude appli-
cants for membership and remedies of
applicant so excluded, 33 ALR3d 1305.

Sec. 23.40.040. Collective bargaining agreement. The commissioner of transportation and public facilities or an authorized representative, in accordance with AS 23.40.020 — 23.40.030, may negotiate and enter into collective bargaining agreements concerning wages, hours, working conditions and other employment benefits with the employees of the division of marine transportation engaged in operating the state ferry system as masters or members of the crews of vessels or their bargaining agent. A collective bargaining agreement is not final without the concurrence of the commissioner of transportation and public facilities. The commissioner of transportation and public facilities may make provision in the collective bargaining agreement for the settlement of labor disputes by arbitration. (§ 1 ch 93 SLA 1962; am E. O. No. 39, § 11 (1977))

NOTES TO DECISIONS

This section was not repealed by
implication by the enactment of the
Public Employment Relations Act, AS
23.40.070, et seq. *Haffing v.*
Inlandboatmen's Union, Sup. Ct. Op. No.
1743 (File No. 3438), 585 P.2d 870 (1978).

This section cannot be read as an implied
exception to the Public Employment
Relations Act, AS 23.40.070, et seq.
Haffing v. Inlandboatmen's Union, Sup.
Ct. Op. No. 1743 (File No. 3438), 585 P.2d
870 (1978).

AS 23.40.070 et seq., was intended to
incorporate existing collective bargaining
agreements rather than exempt them.
Haffing v. Inlandboatmen's Union, Sup.
Ct. Op. No. 1743 (File No. 3438), 585 P.2d
870 (1978).

Construed in pari materia. — Since
this section cannot be treated as an
implied exception to the Public Employ-
ment Relations Act, AS 23.40.070 et seq.,
and since the Public Employment
Relations Act did not repeal this section by
implication, the statutes are construed in
pari materia. *Haffing v. Inlandboatmen's*
Union, Sup. Ct. Op. No. 1743 (File No.
3438), 585 P.2d 870 (1978).

This section and Public Employment
Relations Act can be harmonized. —
The Public Employment Relations Act, AS
23.40.070, et seq., and this section can be
effectively harmonized to further the leg-
islative purpose of establishing uniform
procedures for public employee collective
bargaining and to protect the policies the
legislature thought important in enacting
the Public Employment Relations Act.
Haffing v. Inlandboatmen's Union, Sup.
Ct. Op. No. 1743 (File No. 3438), 585 P.2d
870 (1978).

Any possible conflict between this sec-
tion and the Public Employment Relations
Act in neither severe nor irreconcilable,
particularly in light of AS 23.40.240 which
incorporates existing agreements. *Haffing*
v. Inlandboatmen's Union, Sup. Ct. Op.
No. 1743 (File No. 3438), 585 P.2d 870
(1978).

The most reasonable construction, con-
sistent with the implied exception rule, is
that the legislature was aware of this sec-
tion and saw no inconsistency in enacting
the Public Employment Relations Act, AS
23.40.070 et seq., to provide guidelines and

procedures for public employee collective
bargaining. The Public Employment
Relations Act does nothing to undercut the
authorization of collective bargaining
under this section. Rather, it gives it addi-
tional content. *Haffing v. Inlandboatmen's*
Union, Sup. Ct. Op. No. 1743 (File No.
3438), 585 P.2d 870 (1978).

This section was comprehensive
when it was enacted. *Haffing v.*
Inlandboatmen's Union, Sup. Ct. Op. No.
1743 (File No. 3438), 585 P.2d 870 (1978).

But it was further defined by the
Public Employment Relations Act, AS
23.40.070, et seq. *Haffing v.*
Inlandboatmen's Union, Sup. Ct. Op. No.
1743 (File No. 3438), 585 P.2d 870 (1978).

The Public Employment Relations Act,
AS 23.40.070, et seq., contains far more
detailed provisions than this section.
Haffing v. Inlandboatmen's Union, Sup.
Ct. Op. No. 1743 (File No. 3438), 585 P.2d
870 (1978).

Public Employment Relations Act,
AS 23.40.070 et seq., applies to
employees of the state division of
marine transportation. *Haffing v.*
Inlandboatmen's Union, Sup. Ct. Op. No.
1743 (File No. 3438), 585 P.2d 870 (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 com-
missioner of public works as the state's
representative in bargaining with the
ferry unions. *Haffing v. Inlandboatmen's*
Union, Sup. Ct. Op. No. 1743 (File No.
3438), 585 P.2d 870 (1978).

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

51 C.J.S., Labor Relations, §§ 148-216.
56 C.J.S., Master and Servant,
§§ 28(20)-26(42).

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

- 70. Declaration of policy
- 80. Rights of public employees
- 90. Collective bargaining unit
- 100. Representatives and elections
- 110. Unfair labor practices
- 120. Investigation and conciliation of complaints
- 130. Complaint and accusation
- 140. Orders and decisions
- 150. Enforcement by injunction
- 160. Power to investigate and compel testimony
- 170. Regulations
- 180. Penalty for violation of order or decision
- 190. Mediation
- 200. Classes of public employees; arbitration

Section

- 210. Agreement
- 212. Agreement with the Board of Regents
- 216. Funding and legislative approval
- 220. Labor or employee organization dues and employee benefits, deduction and authorization
- 225. Exemption from Public Employment Relations Act
- 230. Assistance by Department of Labor
- 240. Effect on certain units, representatives and agreements
- 246. Postsecondary student involvement in collective bargaining
- 250. Definitions
- 260. Short title

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

for provisions relating to collective bargaining for teachers, see AS 14.20.650 -- 14.20.610.

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*, Sup. Ct. Op. No. 1328 (File No. 3046), 665 P.2d 552 (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*, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3362), 691 P.2d 1292 (1979).

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*, Sup. Ct. Op. No. 1328 (File No. 3046), 665 P.2d 552 (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*, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (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*, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (1976).

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, S.L.A. 1972. *State v. City of Petersburg*, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (1976).

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, S.L.A. 1972). *State v. City of*

Petersburg, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (1975).

Section 4, ch. 113, S.L.A. 1972, not temporary. — Had the legislature wanted § 4, ch. 113, S.L.A. 1972, to be of temporary duration, it would have so indicated. *Anchorage Mun. Employees Ass'n v. Municipality of Anchorage*, Sup. Ct. Op. No. 2204 (File No. 4562), 618 P.2d 575 (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*, Sup. Ct. Op. No. 2204 (File No. 4562), 618 P.2d 575 (1980); *City of Sitka v. International Bhd. of Elec. Workers, Local 1647*, Sup. Ct. Op. No. 2578 (File No. 6116), 653 P.2d 332 (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*, Sup. Ct. Op. No. 2204 (File No. 4562), 618 P.2d 575 (1980).

Rejection must be prior to substantial organizational activity by public employees. — It is evident 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*, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (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*, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (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 city could 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*, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (1975).

A city council cannot validly apply application of this article more than six months after it becomes effective, and all the members of the council have learned of the organizational activity of the city's power plant employees. *State v. City of Petersburg*, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (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*, Sup. Ct. Op. No. 2204 (File No. 4562), 618 P.2d 575 (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*, Sup. Ct. Op. No. 2204 (File No. 4562), 618 P.2d 575 (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, S.L.A. 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, Sup. Ct. Op. No. 2204 (File No. 4562), 618 P.2d 575 (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. Employees Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 2204 (File No. 4562), 618 P.2d 575 (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, Sup. Ct. Op. No. 2285 (File Nos. 4950, 5011), 623 P.2d 321 (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, Sup. Ct. Op. No. 2285 (File Nos. 4950, 5011), 623 P.2d 321 (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, Sup. Ct. Op. No. 2290 (File No. 4925), 623 P.2d 339 (1981).

Effect of elimination of state from exemption authorization. — See State v. City of Petersburg, Sup. Ct. Op. No. 1176 (File No. 2341), 538 P.2d 263 (1975).

AS 23.40.010, relating to collective bargaining agreements, was not repealed by implication by the enactment of this article. Haffing v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Nor is it an implied exception to article. — AS 23.40.040 cannot be read as an implied exception to this article. Haffing v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

This article was intended to incorporate existing collective bargaining agreements rather than exempt them. Haffing v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (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. Haffing v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

This article and AS 23.40.040 can be effectively harmonized to further the legislative purpose of establishing uniform procedures for public employees collective bargaining and to protect the policies the legislature thought important in enacting this article. Haffing v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (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 bargaining agreements. Haffing v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (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. Haffing v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

This article contains far more detailed provisions than AS 23.40.040. Haffing v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (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. Haffing v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (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, Sup. Ct. Op. No. 2578 (File No. 6116), 653 P.2d 332 (1982).

This article applies to employees of the state division of marine transportation. Haffing v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (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. Haffing v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (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., Sup. Ct. Op. No. 2537 (File No. 6021), 648 P.2d 993 (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, Sup. Ct. Op. No. 1802 (File No. 3800), 590 P.2d 437 (1979).

As to procedural safeguards which local labor ordinances must afford concerning representation elections, see Alaska Pub. Employees Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1328 (File No. 3045), 555 P.2d 552 (1976).

Cited in Warwick v. State ex rel. Chance, Sup. Ct. Op. No. 1252 (File No. 2712), 548 P.2d 384 (1976); Public Safety Employees Ass'n v. State, Sup. Ct. Op. No. 2607 (File No. 6053), 656 P.2d 769 (1983); Carter v. Alaska Pub. Employees Ass'n, Sup. Ct. Op. No. 2657 (File No. 6586), 663 P.2d 916 (1983).

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

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(7), 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*, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (1975); *Huffing v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978); *Anchorage Mun. Employees Ass'n v. Municipality of Anchorage*, Sup. Ct. Op. No. 2204 (File No. 4562), 618 P.2d 675

(1080); *Anchorage Educ. Ass'n v. Anchorage School Dist.*, Sup. Ct. Op. No. 2537 (File No. 5021), 648 P.2d 993 (1982).

Cited in *Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska*, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

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

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

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)

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

NOTES TO DECISIONS

Quoted in *Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska*, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

Applied in *Northwest Arctic Regional*

Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3362), 591 P.2d 1292 (1979).

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 of 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)

NOTES TO DECISIONS

Applied in *Halling v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

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

(1) interfere, 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 agency 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)

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*, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (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*, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (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*, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (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*, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (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, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (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*, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (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 qualification, 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*, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

Applied in *Haffing v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Quoted in *State v. City of Petersburg*, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (1975).

Cited in *Hicklin v. Orbeck*, Sup. Ct. Op. No. 1436 (File No. 3025), 565 P.2d 159 (1977).

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 *Haffing v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (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 *Haffing v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (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*, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (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, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (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*, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

Applied in *Haffing v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (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)

Applied in *Haffing v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (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 *Haffing v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (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*, Sup. Ct. Op. No. 2657 (File No. 6586), 663 P.2d 916 (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)

Applied in *Haffing v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (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 incorporated into the agreement or contract by reference. (§ 2 ch 113 SLA 1972)

NOTES TO DECISIONS

- I. General Consideration.
II. Arbitration.

I. GENERAL CONSIDERATION.

Certain teachers not covered by section. — 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.*, Sup. Ct. Op. No. 2537 (File No. 5021), 648 P.2d 993 (1982).

Strikes by teachers. — Issuance of injunction to end teachers' strike, without separate finding of irreparable harm was not error, since by making these strikes illegal, the legislature has decided that a teachers' strike would cause irreparable harm. *Anchorage Educ. Ass'n v. Anchorage School Dist.*, Sup. Ct. Op. No. 2537 (File No. 5021), 648 P.2d 993 (1982).

Applied in *Haffing v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

II. ARBITRATION.

Not exclusive remedy. — The fact that an arbitrator cannot grant the relief afforded by a statute is an indication that

remedy would conflict with the statutory purpose. *Public Safety Employees Ass'n v. State*, Sup. Ct. Op. No. 2607 (File No. 6053), 658 P.2d 769 (1983).

Issues arbitrable. — The duty to maintain fit premises under a collective bargaining agreement providing for bush housing is one for which a contract remedy is available and is thus arbitrable. *Public Safety Employees Ass'n v. State*, Sup. Ct. Op. No. 2607 (File No. 6053), 658 P.2d 769 (1983).

Issues not arbitrable. — The legality of a clearly expressed and plainly applicable contract formula was held not arbitrable under the terms of a contract clause providing for arbitration in disputes involving the meaning or application of the express terms of the contract. *Public Safety Employees Ass'n v. State*, Sup. Ct. Op. No. 2607 (File No. 6053), 658 P.2d 769 (1983).

Because of the explicit nonwaiver provisions of AS 34.03.040, the right to sue under the Uniform Residential Landlord and Tenant Act, AS 34.03, cannot be prospectively bargained away in a collective bargaining agreement which provides for arbitration. *Public Safety Employees Ass'n v. State*, Sup. Ct. Op. No. 2607 (File No. 6053), 658 P.2d 769 (1983).

Ass'n v. State, Sup. Ct. Op. No. 2607 (File No. 6053), 658 P.2d 769 (1983).

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

Applied in *Haffing v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (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 the Public Employment Relations Act 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

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)

Effect of amendments. — The 1984 amendment, effective February 24, 1984, added subsection (b).

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

Applied in *Hasting v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Cited in *Warwick v. State ex rel. Chance*, Sup. Ct. Op. No. 1252 (File No. 2712), 548 P.2d 384 (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. —

state employee in unit who does no religion is entitle his religious oppi union dues. Jan' Gen.

NOTES TO DECISIONS

Applied in *Hasting v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Sec. 23.40.230. Assistance by Department of Labor. When state employees are involved, the Department of Labor shall, if requested by the personnel board, and if there is no objection by the organization involved, assist the personnel board on matters such as, but not limited to, conduct elections and investigating unfair labor practices. (§ 2 ch 113 SLA 1972)

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 *Hasting v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978); *Northwest Arctic Regional Educ. Attendance Area v.*

Alaska Pub. Serv. Employees, Local 71, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3363), 591 P.2d 1292 (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 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) "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

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)

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 1984 amendment, effective February 24, 1984, added paragraph (4). (See revisor's notes.)

Opinions of attorney general. — AS 23.40.070(2) and paragraph (7) 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 policies"; and because AS 39.30.090 does not specify

what levels of coverage or benefits must be included in the policy for 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

Ferry personnel are public employees (a public employer and are not included within any of the itemized exceptions of paragraph (5)). *Halling v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (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. *Halling v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

employees" for purposes of this article, are not covered by this section. *Anchorage Educ. Ass'n v. Anchorage School Dist.*, Sup. Ct. Op. No. 2537 (File No. 5021), 618 P.2d 993 (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.*, Sup. Ct. Op. No. 2537 (File No. 5021), 618 P.2d 993 (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*, Sup. Ct. Op. No. 1802 (File No. 3800), 590 P.2d 437

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, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3362), 591 P.2d 1292 (1979).

Since such attendance areas appear to be school districts. — Regional educational attendance areas appear to be school districts within the meaning of paragraph (5), defining "public employees" for the purposes of this article. Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3362), 591 P.2d 1292 (1979).

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, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3362), 591 P.2d 1292 (1979).

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, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3362), 591 P.2d 1292 (1979).

Although the Alaska State Operated

School System, the predecessor to the regional educational attendance area, was a state agency subject to this article and not a "school district" whose noncertificated employees are exempt under paragraph (5), 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, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3362), 591 P.2d 1292 (1979).

Jurisdiction to determine applicability of collective bargaining agreement. — Because the noncertificated employees of school districts are not employees of the state directly, or public employees 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, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3362), 591 P.2d 1292 (1979).

Quoted in Carter v. Alaska Pub. Employees Ass'n, Sup. Ct. Op. No. 2657 (File No. 6586), 663 P.2d 916 (1983).

(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)

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;

Introduced by: Council Member Cleworth
Date: March 28, 1988

RESOLUTION NO. 2954

A RESOLUTION ENDORSING SENATE BILL 372 INTRODUCED BY
SENATOR KEN FANNING TO ALLOW MUNICIPALITIES TO OPT OUT
OF PERA.

WHEREAS, Senator Ken Fanning has introduced SB 372 in the
state legislature to amend the Alaska Public Employee Relations Act
(PERA), AS 23,40 et. seq., to allow a municipality to exempt itself
from PERA; and

WHEREAS, a municipality should have the option to exempt
itself if the municipality determines it to be in its best interest to
do so; and

WHEREAS, the Alaska Municipal League supports this
legislation; and

WHEREAS, SB 372 would provide the City of Fairbanks with
this option.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF FAIRBANKS, ALASKA, that the city council voice its support for
SB 372 to amend the Public Employee Relations Act, AS 23.40, and
encourage all Alaska legislators to pass the bill to allow
municipalities to exempt themselves from PERA and that the city clerk
provide Senator Fanning and the legislature with copies of this
resolution.

PASSED and APPROVED this 28th day of March, 1988.

BILL WALLEY, Mayor

ATTEST:

CARMA B. ROBERSON, City Clerk

Substitute

DIED

FOR

BY

(



LAWS OF ALASKA

1972

Source

HB 587 am 3

Chapter No.

113

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

Chapter 113

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.

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.

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 secs. 70 - 260 of this chapter, 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.

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) No election may be directed by the labor relations agency in a bargaining unit in which there is in force and effect a valid collective bargaining agreement, except during a 90-day period preceding the expiration date. However, no collective bargaining agreement may 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.

Sec. 23.40.110. UNFAIR LABOR PRACTICES. (a) A public employer or his agent may not

(1) interfere, restrain or coerce an employee in the exercise of his rights guaranteed in sec. 80 of this chapter;

(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 he has signed or filed an affidavit, petition or complaint or given testimony under secs. 70 - 260 of this chapter;

(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.

Chapter 113

(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 sec. 90 of this chapter, or

(B) a public employer in the selection of his 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 secs. 70 - 260 of this chapter as the exclusive representative of employees in an appropriate unit.

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 sec. 110 of this chapter, or a written accusation that a person subject to secs. 70 - 260 of this chapter 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.

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 secs. 70 - 260 of this chapter, 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).

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 him to cease and desist from the prohibited practice and to take affirmative

action which will carry out the provisions of secs. 70 - 260 of this chapter. 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.

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 a 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.

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 secs. 70 - 260 of this chapter, 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 secs. 70 - 260 of this chapter, 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 him to comply with the subpoena.

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 secs. 70 - 260 of this chapter.

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.

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.

Chapter 113

Sec. 23.40.260. 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

Chapter 113

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.)

• 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.

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

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.

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 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.

Sec. 23.40.215. FUNDING. The monetary terms of any agreement entered into under the Public Employment Relations Act are subject to funding through legislative appropriation.

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.

Sec. 23.40.230. ASSISTANCE BY DEPARTMENT OF LABOR. When state employees are involved, the Department of Labor shall, if requested by the personnel board, and if there is no objection by the organization involved, assist the personnel board on matters such as, but not limited to, conducting elections and investigating unfair labor practices.

Sec. 23.40.240. EFFECT ON EXISTING 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 at the time this Act becomes effective.

Sec. 23.40.250. DEFINITIONS. In secs. 70 - 260 of this chapter, unless the context otherwise requires,

(1) "collective bargaining" means the performance of the mutual obligation of the public employer or his 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

Chapter 113

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.

-9-

Approved by governor: June 7, 1972
Actual effective date: September 5, 1972

HB

262

Revision Date: _____
 Title: An Act relating to the human services community matching grant and providing for effective date.
 Sponsor: Representative Kelly
 Requestor: House (CRA)

Dept. Affected: Health and Social Services
 BRU: Family and Youth Services
 Component: DFYS Central Office
 COMPONENT SERIAL NO. 259
 See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGES IN REVENUES ()						
-------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY95) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

There would be no fiscal impact to the Department if this bill were to become law.

Prepared by: Kathy Tibbles, Acting Director
 Division: Family & Youth Services

Phone: 465-3191
 Date: 03/21/95

Approved by Commissioner: Karen Perdue, Commissioner
 Agency: Department of Health & Social Services

Date: 3/25/95

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Alaska State Legislature

REPRESENTATIVE
PETER KELLY

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House District 31

House Of Representatives

Sponsor Statement

House Bill 262

The Human Services Community Matching Grants program requires matching grants from larger communities throughout Alaska. Smaller communities, without a tax base, are not required to provide local tax revenues to match their community services grants.

The Human Services Community Matching Grants program was created by the 1992 legislature. The program sought to utilize private nonprofit agencies to provide for important services in the various municipalities. It was felt that the municipalities were best able to determine the needs of the local community than State officials. Local officials could also provide better focus and direction, potentially saving the State thousands of dollars.

House Bill 262 holds the local matching funds at 30%. Without the passage of HB 262 local governments will have to increase the level of funds required to receive matching State grants to the 50% level. Declining local revenues, when added to declining State revenues, will accelerate the loss of these services.

Alaska State Legislature

REPRESENTATIVE
PETER KELLY

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White In Juneau
State Capitol
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99801-1182
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House District 31

House Of Representatives

Memorandum

To: Representative Ivan

From: Representative Pete Kelly

PK

Date 3-22-95

Re: Request for hearing

Please schedule House Bill 262, "An Act relating to the human services community matching grant program" for hearing at your earliest convenience.

Thank you very much.

DEPARTMENT OF HEALTH AND
SOCIAL SERVICES

DIVISION OF FAMILY AND YOUTH SERVICES

P.O. BOX 110630
JUNEAU, ALASKA 99811-0630
PHONE: (907) 465-3170

March 31, 1995

Representative Ivan Ivan
Co-Chairman
Community and Regional Affairs Committee
Room 503, State Capitol
Juneau, Alaska 99801-1182

Dear Representative Ivan,

This letter follows my testimony of yesterday regarding the modifications to the Human Services Community Matching Grant program found at AS 29.60.600 *et. seq.* As I concluded my testimony, I promised I would provide further information to the committee regarding the manner by which the required match by eligible municipalities is calculated. First, however, I would like to correct one part of my testimony. I erroneously represented that with the current year's grants, the municipalities only had to provide 10% match. For FY 95, the required match is in fact 30%. See the transitional provision at Sec. 2 of Ch. 74, SLA 1992.

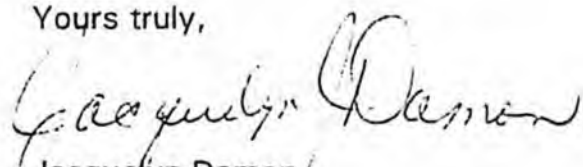
As for the amount of the match, and how it is calculated, the Department of Health and Social Services, initially interpreted the requirement to mean simply a percentage of the amount approved for each municipality. Last spring, however, following an internal discussion, we concluded the the correct approach is to view the percentage requirement as a percentage of the total effort. We sought an Attorney General's Opinion on the issue. A copy of our request and the resulting opinion accompanies this letter. Also accompanying this letter is a table which shows the Actual amounts granted since FY 93 and how it would work with the new approach to calculating the match. Although the Attorney General's Opinion approved of the new interpretation, the new interpretation was not imposed upon the municipalities for FY 95 because they had relied upon the old approach in rendering their budgets. Both municipalities were advised, however, that the new interpretation would be applied to their FY 96 grants.

Letter to Representative Ivan Ivan
March 31, 1995
Page Two

Finally, I wish to reiterate that Anchorage and Fairbanks are in fact the only two municipalities that receive direct grants to provide social service programs from the Department of Health and Social Services Human Services Community Matching Grant program. Other municipalities provide social services through other funding mechanisms which Anchorage and Fairbanks also receive.

If I can be of further assistance to the committee, please call.

Yours truly,


Jacquelyn Damon
Social Services Program Officer

Human Services Community Matching Grants Table

	Anchorage	Match	Total Effort		Fairbanks	Match	Total Effort
FY 93	\$1,656,600	-0-	\$1,656,600	FY 93	\$300,700	-0-	\$300,700
FY 94	1,467,975	146,798(10%)	1,614,773	FY 94	489,325	48,933	538,258
FY 95	1,348,400	404,520(30%)	1,752,920	FY 95	421,200	126,360	547,560
FY 96	1,348,400	577,886(30%) ¹	1,926,286	FY 96	421,200	180,514	601,714
FY 96	1,348,400	1,348,400(50%) ²	2,696,800	FY 96	421,200	421,200	842,400

¹ This assumes both that the bill to lower the required match beginning in FY 96 passes, and that the legislature makes identical appropriations each to Anchorage and Fairbanks as for FY 95. It also uses the new approach to calculating the match.

² This assumes that the proposed change to the match requirement does not pass and that the legislature makes identical appropriations to Anchorage and Fairbanks for FY 96 as in FY 95. It also utilizes the new approach to calculating the match.

STATE OF ALASKA

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

MARGARET R. LOWE, COMMISSIONER

P.O. BOX 110601
JUNEAU, ALASKA 99811-0601
PHONE: (907) 465-3030

M E M O R A N D U M

DATE: 22 July 1994

TO: Bruce M. Botelho
Attorney General

THRU: Nancy Bear Usera
Chief of Staff
Office of the Governor

FROM: Margaret R. Lowe, M. Ed., Ed. S.
Commissioner

SUBJ: Request for an Attorney General's
Opinion Regarding the "Human Services Community
Block Grants" to Fairbanks and Anchorage

This to request a written opinion regarding two issues which relate to the "Human Services Community Matching Grants" to the Municipality of Anchorage and the Fairbanks area.

On pages 22 and 23 of the appropriation bill for FY 95 (Chapter 3 of the First Special Session), (see attached), the legislature made two separate "Human Services Community Block Grant" appropriations, viz. one to the Municipality of Anchorage, and one to the City of Fairbanks/Fairbanks North Star Borough. These two appropriations appear to be outside of the statutory structure the legislature created just two years ago. See AS 29.60.600 - 650. Indeed, it appears that all who have looked at this issue agree that the legislature has done something outside the statutory structure. But does this mean that none of the rules which are contained in statute are to be applied to these two grants? For example, one of the rules is that the match to be provided by an eligible municipality may not be "in-kind." See Sec. 600(b)(1). This is one rule which we would like to use even if you conclude that none of the rules of the statutory structure apply to the grants to be let to the Municipality of Anchorage and the Fairbanks North Star Borough. That is, even if the statutes do not apply, I would hope that we have some license to make reasonable interpretations and impose reasonable conditions, such as that the nature of their match must be cash, and may not be "in-kind."

The second issue is the question of how to calculate the municipal match. There appear to be at least two possible methods of calculating the match. One is to simply say that the required match is 30% of what the legislature appropriates. Another is to say that the amount appropriated by the legislature is 70% of the "total effort." See the

attached table for a graphic display of the two approaches. For FY 94, the only year in which any match was required, the former interpretation was the one that was made. See the copy of the Grant Agreement with the Municipality of Anchorage for FY 94 which accompanies this memorandum. Regardless, we would now like to use the latter approach. Using this approach, the amount appropriated to the Fairbanks area is .7 of the total effort. Thus the total effort is equal to \$421,200 divided by .7 equals \$601,714, and the Fairbanks match is \$180,514 as opposed to \$126,360, a difference of \$54,154.

If the legislature has done something quite apart from the statutory structure such that As 29.60.600 - 650 does not apply and cannot be made to apply to the grant agreements which should now be made, we would hope that we nevertheless have the authority to make reasonable interpretations and impose reasonable conditions on these grants. In the latter category, even before the 1992 legislation, this department had imposed a condition that the recipient municipalities may not use more than 5% of the amount granted for administrative costs incurred in connection with these grants.

I ask for your earliest possible attention to this request. Both Fairbanks and Anchorage are standing by, waiting for their money, and will not issue any money to their subgrantees unless they first have money in hand from us.

MEMORANDUM

State of Alaska

Department of Law

TO: Hon. Margaret R. Lowe
Commissioner
Department of Health and
Social Services

DATE: August 25, 1994

FILE NO.: 663-95-0051

TEL NO.: 465-3603

SUBJECT: Community Block Grants
to Fairbanks and Anchorage

FROM:

Jan A. Rutherford
Jan A. Rutherford
Assistant Attorney General
Human Services Section-Juneau

You requested advice regarding two issues relating to the community block grants appropriated to Anchorage and Fairbanks for FY 95 (hereafter referred to as "FY 95 grants"). First, you asked whether reasonable conditions could be made on the FY 95 grants such as those contained in AS 29.60.600 -- .650, even if those statutes do not apply to the FY 95 grants. Second, you asked if you could use a different funding formula than the one used last year. Our answer is "yes" to both these questions.

In your opinion request, you assume that the FY 95 grants fall outside the statutory structure set out in AS 29.60.600 -- .650, and therefore none of the provisions in these statutes apply. We are aware of only two differences between the FY 95 grants and the type of matching grant contemplated by AS 29.60.600 -- .650: (1) a specific amount is allocated to each municipality so that there is no need to allocate the money between the two municipalities under AS 29.60.620; and (2) the term "community block grant" is used instead of "human services community matching grant" (the term used in the FY 94 grant). These differences, in our opinion, do not render all provisions in the statutes inapplicable.

The first difference -- that a specific amount of money is allocated -- merely means that the allocation section, AS 29.60.620, does not apply. The second difference -- the use of a different term -- is not significant because the two terms mean the same thing. When the statute was enacted two years ago, the two terms were used interchangeably. During committee hearings on HB 263, Representative Mark Boyer, the prime sponsor of the bill, stated that the purpose of HB 263 is "to codify the Anchorage and Fairbanks block grants [and thereby] clearly [establish] a public purpose for the block grants." Merely using a different term does not invalidate the provisions of the statute that still can be applied in distributing the funds. There is nothing otherwise stated in the appropriation bill or elsewhere to suggest that the statute should not apply. The only statement in the appropriation bill concerning the FY 95 grants is that there should be a "70 percent/30 percent State/Municipality match." This is the same

Hon. Margaret R. Lowe
Commissioner
Our file: 663-95-0051

August 25, 1994
Page 2

match required in section 2 of SCS CSHB 263(CRA) (the transitional provisions) for FY 95. Therefore, it is our opinion that the provisions in AS 29.60.600 and AS 29.60.610 are applicable to the FY '95 grants.

Even if AS 29.60.600 and AS 29.60.610 are inapplicable to the FY 95 grants, the type of conditions stated in those statutes can be used for distributing the FY 95 grants. The state can impose conditions on grants, as long as they are reasonable, and the conditions set out in AS 29.60.600 and AS 29.60.610 appear to be reasonable ones. In the process of codifying these conditions they were subject to public deliberation. They have been in effect for two years now, and those conditions have not been amended. Therefore, they can be imposed by the state even if the FY 95 grants fall outside the reach of the statute.

Your second question is whether the state is bound by the method of calculating the municipalities' match that was used in FY 94 ("the FY 94 method") or whether a different calculation can be used ("the proposed method"). Neither the FY 95 grants, AS 29.60.600 -- .650, nor the transitional provisions of SCS CSHB 263(CRA) discuss how to calculate the municipalities' share, other than stating that it should be a 70/30 percent match. There is no indication that the amount appropriated in the FY 95 grants was determined based on the FY 94 method; therefore, the municipalities cannot argue that they somehow relied on last year's calculations to their detriment. We agree that the proposed method makes more sense than the FY 94 method. We are aware of no other matching programs that use the FY 94 method, but there is another matching program that uses the same method as the proposed method, the state/municipality match for school funding set out in AS 14.11.008. For all the above reasons, there is no reason why the proposed method cannot be used.

We hope this memorandum answers your questions. If you have any additional questions or comments, please feel free to contact us.

/JAR:ebc

FY95 H&SS SUBGRANTEES

Page One

Michael G. Sturm, Controller Alaska Legal Services Corporation Anchorage and Statewide Office 1016 West Sixth Avenue, Suite 200 Anchorage, Alaska 99501-1963	Phone: (907) 276-6282 Fax: (907) 279-7417
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Fairbanks Office 1648 South Cushman, Suite 300 Fairbanks, Alaska 99701	Phone: (907) 452-5181
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Leslie J. Kitchin, Executive Director Big Brothers/Big Sisters-Greater Fairbanks P.O. Box 73924 Fairbanks, Alaska 99707	Phone: (907) 452-8110 Fax: (907) 452-8112
--	--

William Schweinler, Executive Director Breast Cancer Detection Center P.O. Box 71422 Fairbanks, Alaska 99707	Phone: (907) 479-3909 Fax: (907) 479-2215
---	--

Sharon Hunter, Executive Director Bread Line P.O. Box 73715 Fairbanks, Alaska 99707	Phone: (907) 456-8317 Phone: (907) 488-4282
--	--

Jody Pritchard, Executive Director Crisis Line P.O. Box 70908 Fairbanks, Alaska 99707	Phone: (907) 451-8600
--	------------------------------

Daniel LaBrosse, Executive Director Deaf Community Services 1405 Kellum Street Fairbanks, Alaska 99701	Phone: (907) 456-5913 Fax: (907) 456-2604
---	--

Samantha Castle Kirstein, Executive Director Fairbanks Community Food Bank 517 Gaffney Road Fairbanks, Alaska 99701	Phone: (907) 452-7761 Fax: (907) 456-2377
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FY95 H&SS SUBGRANTEES

Page Two

John Regitano, Executive Director Fairbanks Native Association 201 First Avenue, Suite 200 Fairbanks, Alaska 99701-4848	Phone: (907) 452-1648 Phone: (907) 455-4725 Fax: (907) 456-4148
Jon Zasada, Executive Director Fairbanks Youth Center P.O. Box 74143 Fairbanks, Alaska 99707	Phone: (907) 457-5223
Mary Kay Brown, Executive Director Hospice of the Tanana Valley P.O. Box 82770 Fairbanks, Alaska 99708	Phone: (907) 474-0311
Jeanne Thomas, Executive Director National Senior Volunteer Corps 1424 Moore Street Fairbanks, Alaska 99707	Phone: (907) 452-6471
Richard Greene, Corps Officer Salvation Army P.O. Box 70405 Fairbanks, Alaska 99707	Phone: (907) 452-5005

Agency	Allocation	Program Name	Nature of the Services Provided
Alaska Legal Services Corporation	\$70,000.00	Individual & Family Legal Crises Project	Civil legal advice and/or brief services to low income individuals in the areas of family law, landlord/tenant & housing law, needs based benefits and consumer/debt law.
Big Brothers/Big Sisters	\$30,000.00	Big Brothers/Big Sisters, Greater Fbks	Provide activities for children while they are on the wait list for big brothers/sisters, train volunteers, improve program service.
Bread Line	\$48,402.00	Feeding Hungry People a Hot Meal	Provide hot meals, sack lunches & clothing to those in the poverty/economic needs assessment categories.
Breast Cancer Detection Center	\$65,000.00	Once a Year for a Lifetime	Decrease the mortality rate from breast cancer in the FNSB and Alaska through education, screening, and examination for early detection, and appropriate referral or additional treatment or follow-up, and to provide this regardless of a client's ability to pay.
Crisis Line	\$50,000.00	Crisis Line	Provide 24-hour prevention & intervention services to the Fairbanks community and the northern region of Alaska.
Deaf Community Services	\$17,399.00	Interpreter Referral Line	Create better community wide access for deaf individuals through the increased use of qualified sign language interpreters.
Deaf Community Services	\$7,600.00	Independent Living Program	Provide independent living, vocational rehabilitation and advocacy services to deaf & hard of hearing individuals.
Fairbanks Community Food Bank	\$50,000.00	Food Bank	Salvage local surplus food and give it to people (through agencies) who need it. Collect, store, distribute food.
Fairbanks Native Association	\$18,996.00	Project Outreach	Reduce drug and alcohol abuse for runaway and/or homeless youth, through prevention and intervention services
Fairbanks Youth Center	\$55,308.00	Interim Prevention Project, Year 2	Provide young people in grades 6 - 12 with safe environments for recreation and social development, through youth center & outreach programs.
Hospice of the Tanana Valley	\$20,500.00	Hospice of the Tanana Valley	Provide support to the dying person, their family and loved ones. Provide bereavement support to those who have lost a loved one through death.
National Senior Volunteer Corps	\$25,000.00	Fairbanks Region Project, NSVC	Increase number of active senior volunteers in programs such as foster grandparents & senior companions. Provide the volunteers with training and program benefits.
Salvation Army	\$34,650.00	Medical/Dental Svs for Working Poor	Provide health & dental care services to people who meet the eligibility criteria and who are in need of such care.
Salvation Army	\$34,650.00	Men's Transitional Shelter Program	Provide transitional housing for homeless men, and case mgt. & counseling to return them to productive lives.

History Human Services Community Matching Grant

	State Funds	Local Funds	Combined	Notes
FY 1993				no local requirement
Anchorage	\$ 1,658,600	\$ -	\$ 1,656,600	appropriated individually
Fairbanks	300,700	0	300,700	
Total	\$ 1,957,300	\$ -	\$ 1,957,300	
FY 1994				10% match
Anchorage	\$ 1,467,975	\$ 146,798	\$ 1,614,773	proportioned by population
Fairbanks	489,325	48,932	538,257	(per statute)
Total	\$ 1,957,300	\$ 195,730	\$ 2,153,030	
FY 1995				30% match
Anchorage	\$ 1,348,400	\$ 404,520	\$ 1,752,920	appropriated individually: not
Fairbanks	421,200	127,260	548,460	by population
Total	\$ 1,769,600	\$ 531,780	\$ 2,301,380	
FY 1996 - Hickel				50%
Anchorage	not separated by community			would be proportioned
Fairbanks				by population (per statute)
Total	\$ 1,150,200	\$ 1,150,200	\$ 2,300,400	
FY 1996 - Knowles				50%
Anchorage	not yet announced - rumored to be higher			the rumor is that two individual
Fairbanks	than Hickel request			figures will be proposed, not relying
Total				on proportioning after budget passage

The Human Services Community Matching Grants program became effective with FY 1994. It requires allocation of funds as follows:

AS29.60.620 (a): If the amount of money is not adequate, the money shall be allocated proportionately based on the relationship the population of each municipality bears to the total population of the qualified municipalities.

(b) population shall be determined by the Dept. of Community & Regional Affairs.

Local match was not required prior to FY 94. Here is the definition of local match:

AS29.60.600 (b)(1): other sources may include federal or municipal money or money from other private or public sources. In this paragraph "municipal money" includes money derived from appropriations, allocations, entitlements, grants or other payments from the state other than the state grant under this section but does not include locally contributed staff hours, material, equipment or other in-kind contributions.

In FY94, the local match was satisfied by using a United Way grant to one of the sub-grantees.

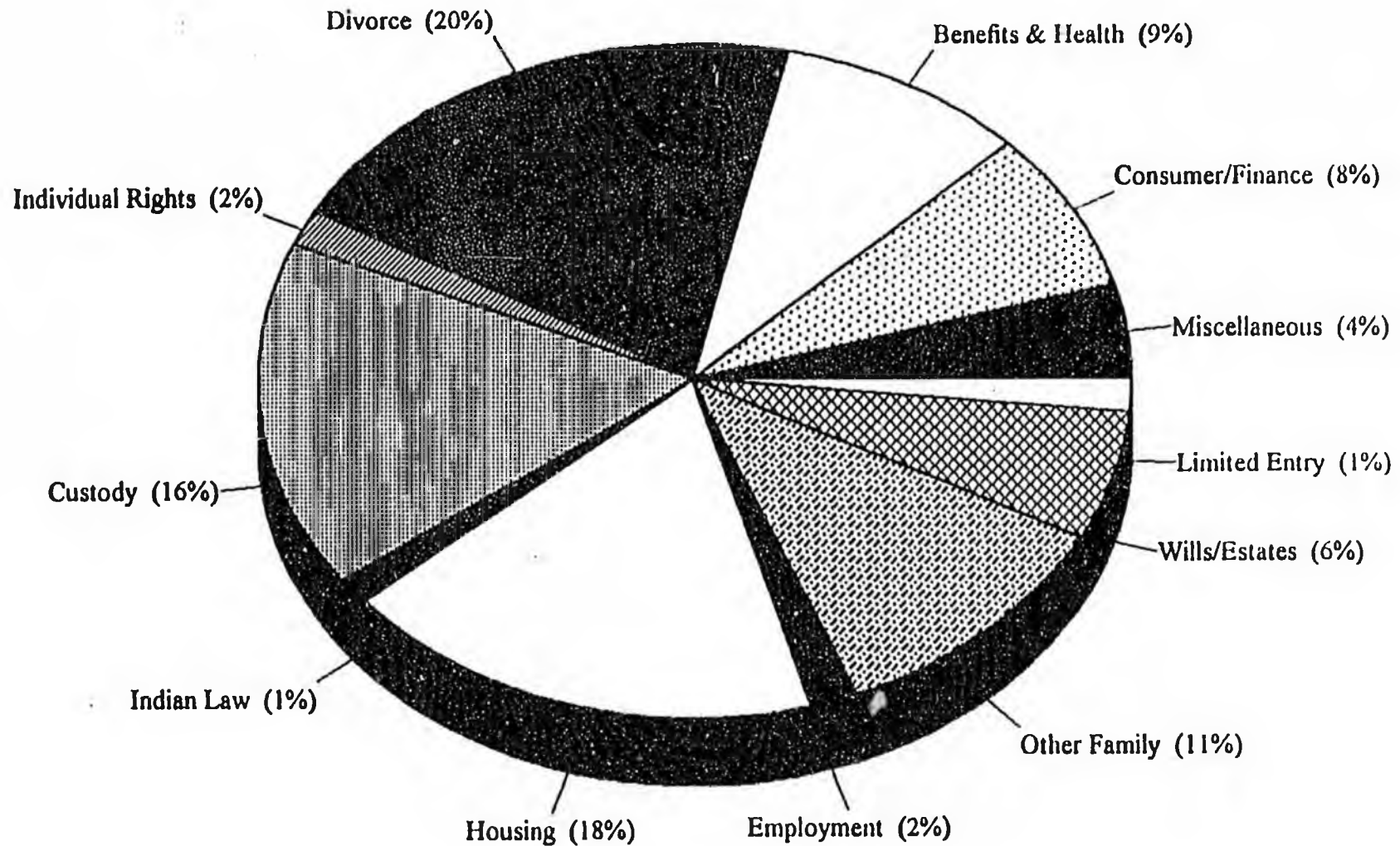
Sources: DCRA through Cheryl Keepers, CC Administrator, FNSB

**FY 95 CDBG AND HSMG
PROPOSED FUNDING**

AGENCY	CDBG		HSMG	
AK Women's Resource Ctr	18,000	Employment	42,540	New Dawn
AK AIDS Asst Assoc	70,000	Shelter		
Alzheimer's Assoc	26,436	Respite		
Big Bros/Big Sisters	22,988	Client Matches	9,450	Client Matches
Camp Fire	43,350	Drop-in, Fairview	137,020	After school care
			21,990	Summer
			45,340	Drop-in
Hope Cottages	35,476	Employment		
Lutheran Social Services	33,750	Transition housing	32,200	Direct asst
Salvation Army-Older Alaskans	50,000	Meals	52,760	Meals, 60+
Booth Newborn			12,350	Nursery
Mc Kinneel			179,390	Shelter
AWAIC			72,640	Shelter
American Red Cross			44,600	Direct Asst
Anch Center for Families			190,810	Intermission
Anch Literacy Project			10,200	Literacy
Anch Neighborhood Health			225,160	Medical & dental
Bean's Cafe			7,000	Meals, shelter
Boys & Girls Club			9,380	Summer
			31,980	School year
CSS-St Francis			24,990	Direct Asst
-Clare House			197,550	Shelter
-Brother Francis			50,000	Shelter
Chugiak Seniors			24,860	Meals
Food Bank			29,770	Food
STAR			34,000	Ed Specialist
TOTAL	300,000		1,550,980	

Closed Cases by Type

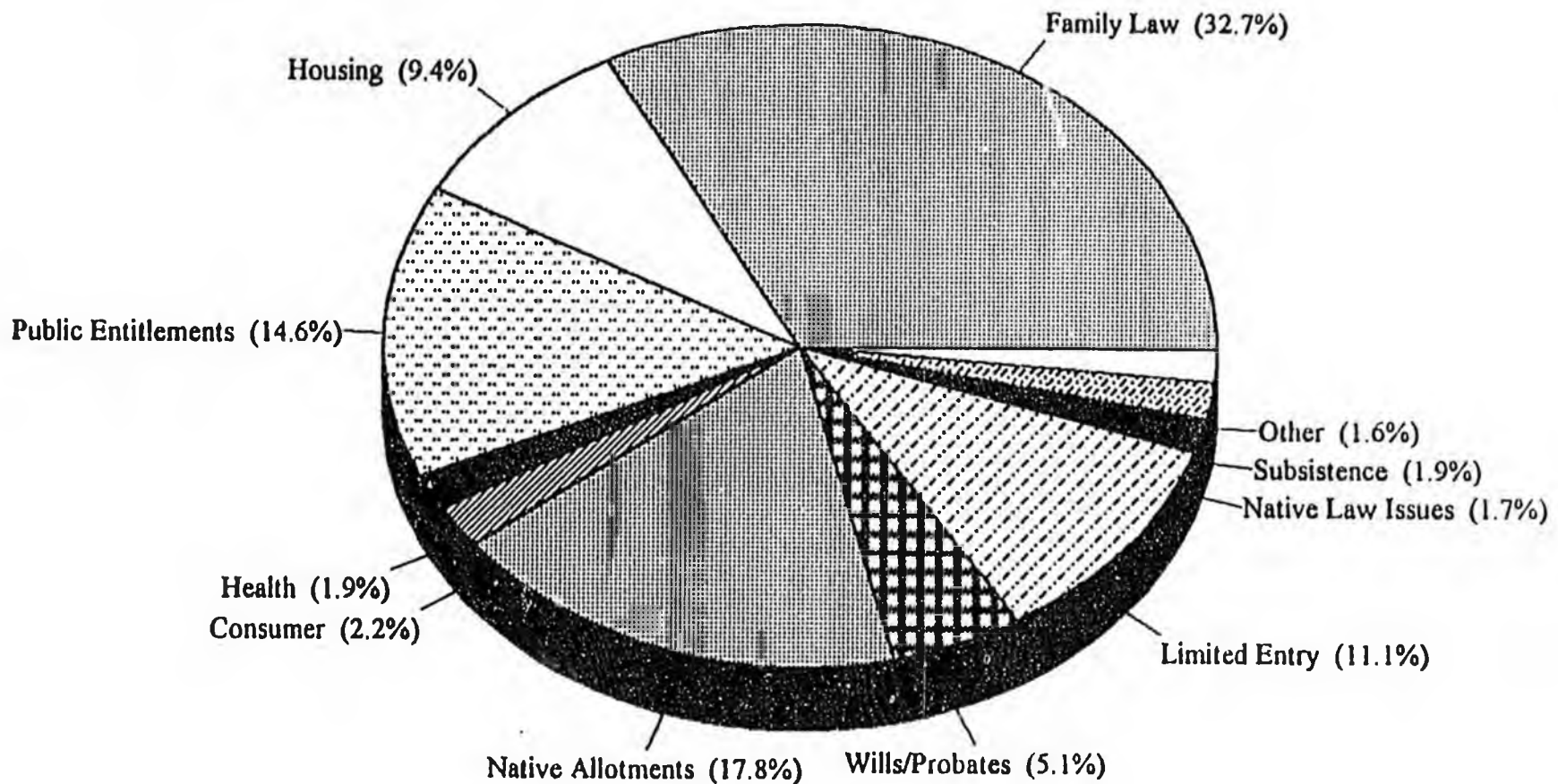
Calendar Year 1994 Case Closures



4,629 Cases Closed During 1994

Current Open Caseload

Alaska Legal Services Corporation



801 Open Cases Handled by Program Staff on 01/15/95

HB

272

CS FOR HOUSE BILL NO. 272(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVE HANLEY

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to municipal taxation of motor vehicles; and providing for an
2 effective date."

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

4 * Section 1. AS 28.10.431 is amended by adding a new subsection to read:

5 (i) A municipality that imposes a motor vehicle registration tax as described
6 under (a) of this section may also increase or decrease the scheduled amount of tax
7 described under (b) of this section by passage of an appropriate ordinance. A
8 municipality that chooses to change the tax imposed under (b) of this section shall file
9 a written notice of the change with the department by January 1 of the year preceding
10 the year in which the change in tax is to take effect. A municipality may not change
11 the amount of the tax imposed under this section more than once every two years.
12 The department may charge a municipality a one-time fee to cover the cost to the
13 department of implementing a change under this subsection.

14 * Sec. 2. This Act takes effect July 1, 1995.

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE HANLEY

TO: HB 272

1 Page 1, lines 11 - 14:

2 Delete "In addition to money retained under (e) of this section, the department may
3 retain money collected for a municipality under this section necessary to cover the
4 administrative expenses of the department incurred in implementing this section for that
5 municipality."

6 Insert "The department may charge a municipality a one-time fee to cover the cost to
7 the department of implementing a change under this subsection."

Municipal Accounting Report
 State of Alaska
 Division of Motor Vehicles
 February 1, 1995

FISCAL YR : 94

LOCATION	VENDOR#	COLLOCODE	MVRT TOTAL	RETAINED	REMITTED
BETHEL	CIB84214	64120043	\$39,717.00	\$3,177.36	\$36,524.64
DILLINGHAM	CID84836	64120051	\$24,138.00	\$1,931.04	\$22,121.96
NENANA	CIN84291	64120049	\$7,494.00	\$599.52	\$6,894.48
NOME	CIN84936	64120047	\$30,276.00	\$2,422.08	\$27,853.92
PETERSBURG	CIP84181	64120042	\$35,561.00	\$2,844.88	\$32,651.12
UNALASKA	CIU84215	64120046	\$40,538.00	\$3,243.04	\$37,272.96
WHITTIER	CIW84474	64120048	\$3,627.00	\$290.16	\$3,336.84
KENAI	KPB88172	64120052	\$762,038.00	\$60,963.04	\$700,331.96
KETCHIKAN	KGB84466	64120041	\$219,904.00	\$17,592.32	\$202,098.68
KODIAK	KIB84128	64120045	\$174,674.00	\$13,973.92	\$160,560.08
NAT-SU	MAB84586	64120044	\$810,088.00	\$64,807.04	\$744,586.96
ANCHORAGE	MUA84635	64120040	\$4,236,972.00	\$338,957.76	\$3,894,591.24
TOTALS:			\$6,385,027.00	\$510,802.16	\$5,868,824.84

pymvrtot

Revision Date: April 10, 1995 Dept. Affected: Community & Regional Affairs
 Title: An Act relating to municipal taxation of BRU: none
motor vehicles Component none
 Sponsor: Rep. Hanley
 Requestor: House CRA COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0

REVENUE FUND SOURCE:

--	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current (FY94) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

This legislation would have no fiscal impact on the department.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708
 Division: Division of Administrative Services Date: 4/10/95
 Approved by Commissioner: *Mike Scriven* Date: 4/10/95
 Agency: Community & Regional Affairs

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FISCAL NOTE

STATE OF ALASKA

BILL NO: HB 272

1995 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Public Safety
 Title: Act relating to municipal taxation of motor BRU: Motor Vehicles
vehicles and providing for an effective date. Component: Field Services
 Sponsor: Rep. Hanley Administration
 Requestor: _____ COMPONENT SERIAL NO. 0502

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	43.3	278.3	278.3	278.3	278.3	278.3
TRAVEL						
CONTRACTUAL	13.0	13.0	13.0	13.0	13.0	13.0
SUPPLIES						
EQUIPMENT	10.0	50.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	66.0	351.3	291.3	291.3	291.3	291.3

CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
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CHANGE IN REVENUES ()	66.0	351.2	291.2	291.2	291.2	291.2
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	66.0	351.3	291.3	291.3	291.3	291.3
1006 GF/MHTIA						
Other						
TOTAL	66.0	351.3	291.3	291.3	291.3	291.3

Estimate of current year (FY 95) impact: \$ _____

POSITIONS:

FULL-TIME	1	7	7	7	7	7
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

The Municipal Vehicle Registration Tax (MVRT) program began in 1978. One of the basic principles involved in having Division of Motor Vehicles become a tax collection agency for the local governments was to eliminate the administrative burden on the state by maintaining only one tax rate for all locations. Even at that time it was recognized that the long lines at DMV offices would become longer if the registration process were to become more cumbersome. This approach sought to avoid the problems of many other states that have multiple confusing tax schedules. This bill will eliminate the one tax schedule and allow each local government to set their own rates.
 (See attached sheet for continuation)

Prepared By: Charles R. Hosack Phone: 269-5559
 Division: Motor Vehicles Date: 3-31-95
 Approved by Commissioner: _____ Date: 4-11-95
 Agency: Ronald L. Otte, Dept. of Public Safety

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Revision Date: _____ Dept. Affected: Public Safety

ANALYSIS CONTINUED:

There are 13 local governments currently in the MVRT program and therefore DMV faces the very real possibility of administering 13 separate tax schedules. Each local government has cited their desire to address their individual tax needs and therefore it stands to reason that each tax schedule will be different. The two main sources of dissatisfaction with the program are that the tax rates have not kept pace with increases in other taxes and that the rates are difficult to change. These same reasons are cited as reasons for not participating by those governments not currently in the program. If this bill passes then it is anticipated that more government units will participate in the program giving rise to even more tax tables.

The multiple tax schedules will require increased costs for extensive data processing changes and for administrative oversight to ensure correct and timely payments. These are overhead charges that would be incurred even if only a few local governments changed each year rather than the universal changes that are expected. The real costs will come in the increased complexity that each customer will face at the DMV counter and the dissatisfaction that the customers will voice to DMV concerning the increased taxes. Even though it is a municipal tax rather than a state tax, DMV employees will be the ones who must handle the customer comments. Any increase in taxes will generate more complaints or comments and it takes time to deal with these. This concept was recognized in 1993 when the tax rates were increased by only 10% yet 3 new employees were authorized. This bill has the potential for allowing much larger increases. For example an average new car costing \$15,000 pays a maximum of \$60 under the MVRT tax schedule but the same vehicle would pay \$240 under a typical mill rate for personal property.

Increases of this magnitude will certainly generate a large volume of customer comments and each must be dealt with. Another factor is that customers want to know how much a registration will cost before hand. The computer system now calculates fees but only after the registration has been completed. To respond to questions and phone calls the employees will have to consult several tables rather than one. This again adds to the complexity and takes time. A conservative estimate is that handling the complaints, questions and added complexity will add one minute to each registration transaction. This will take 6 employees to absorb the additional work without impact existing services at the field office. In addition to the field office employees an Accounting Technician I position will be used to set up the program, test new computer programs, coordinate year change over to the new schedules, and to develop new payment and auditing services. This position will start immediately to establish the program. As the changes take place after the year notification an Accounting Clerk III will be needed to do additional audit work and payment processing.

If the bill passes with an effective date of July 1, 1995, any municipality could notify DMV before January 1, 1996, that the tax schedule will change. The soonest date that the new taxes will be collected will be January 1, 1997. The Accounting Tech position will be needed immediately to establish the program and the computer changes will also be accomplished in FY 96 in order to be ready for registrations that can be processed early. The costs for computer changes will continue each year as it is anticipated that there will be various changes and new municipalities will join. The field office employees will be needed in July 1996 even though the tax would not start until January. Three months are needed for training before the first renewal notices with the new tax are sent in October.

The cost detail is as follows:

PERSONAL SERVICES

FY 96 1 Accounting Tech I (Range 12B)	43.5
FY 97 5 MVR I/II (Range 9B) @ \$39.2	196.0
FY 97 1 Accounting Clerk III (Range 10B)	39.0

CONTRACTUAL

Computer programming 140 hrs @ \$75.00 (Includes basic program modification for new tables, mailout program and batch reconciliation reports.)	10.5
---	------

DP charge back costs	2.5
----------------------	-----

EQUIPMENT

Computer workstation and office equip. for new employees @ \$10,000.00	70.0
---	------

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO: HB 272

Revision Date: _____ Dept. Affected: Public Safety

ANALYSIS CONTINUED:

REVENUE

Currently DMV collects in excess of \$6,000,000 in Municipal Tax revenue for local governments. All of this municipal tax revenue is returned to the local government less 8% collection costs which is returned to the State. This bill authorizes DMV to also retain the actual administrative costs for any changes made to the motor vehicle registration tax schedule. This amount will be taken from the revenue already collected. These costs are reflected as new revenue amounts in FY 96 and FY 97. In addition to the start up costs it is assumed that all municipalities that elect to change their tax rates will increase rather than decrease the scheduled amount of tax. This will also generate additional revenue as DMV will retain 8% of any increase. It is not possible to accurately estimate the amount of the increase until the local ordinance process is completed therefore, these increases are not reflected on the fiscal note.

The major impact of this bill will not be felt until the second year after passage when the new tax rates go into effect. It will be necessary to show an increment in DMV's FY97 budget component authorizing DMV to receive and expend the increased Program Receipts to fund the additional costs. DMV will not be able to implement the program if the FY97 increment is not authorized and funded.

POSITION INFORMATION HAS BEEN UPDATED AND FUNDING HAS BEEN UPDATED.

04/10/95

Position Information Inquiry/Update

10:14:23

Position: 12-125115 Project: 0 _____ Salary Costs: 29,352.00
Component: 12-55-07-07-01-04 Region: Benefits Costs: 14,268.66
Scenario: 7 FY: 96 COLA % = 0.000 Total Costs: 43,320.66

Actuals from Payroll (Status: FILLED) Retirement Code: A

K ° Step: B for 12.0 months & Step: C for 0.0 months (total: 12.00)
04/06/16 ° Merit Date; use merit defaults? N (0.0 @ & 0.0 @)
1 ° Class/Sched Prefix: 1 Schedule: 1A (actual: 1A)
EG ° Bargaining Unit: EG Range: 12 (actual: 12)
EBA ° Location Code: EBA Place: ANCHORAGE
P1210 ° Job Class Code: P1210 Title: ACCOUNTING TECH I
F ° Seasonal Indic.: F Type: FACL - FULL TIME / OMB AUTH

Optional Override Salary Rates:

Monthly Rate: 0.00 _____ for 0.0 months & rate of 0.00 _____ for 0.0 months
Hourly Rate: 0.00 _____ for 0.0 months Frozen at this rate? (Y/N): N

Premium Pay Items/Amounts Budgeted

	Item Cost	----- Actual Costs ----- Y.T.D.	Prior Year
Overtime Hours: _____	0.00	13	0
Graveyard Shift Diff. (months): _____	0.00	0	0
Swing Shift Diff. (months): _____	0.00	0	0
Hazard Pay (\$): _____	0.00	0	0
Sea Duty Pay (\$): _____	0.00	0	0
Standby Pay (\$): _____	0.00	0	0
Higher Class Work Pay (\$): _____	0.00	0	0
Area Subsistence Pay (\$): _____	0.00	0	0
Additional Salary (\$): _____	0.00	0	0
PLUS 0.00000 PERCENT C.O.L.A.	0.00		
Total Premium Pay Costs:	0.00	13	0

PCN: 12-125115 Scenario: 7 Salary Costs: 29,052.00
Component: 12-55-07-07-01-04 Benefits Costs: 14,268.66
Total Costs: 43,320.66

	Percentage	Amount
1002 FEDERAL RECEIPTS	0.00	0.00
1003 GENERAL FUND MATCH	0.00	0.00
1004 GENERAL FUND	100.00	43,320.66
1005 PROGRAM RECEIPTS/GEN FUND	0.00	0.00
????	0.00	0.00
????	0.00	0.00
????	0.00	0.00
????	0.00	0.00
????	0.00	0.00
????	0.00	0.00
????	0.00	0.00
????	0.00	0.00
????	0.00	0.00
????	0.00	0.00
????	0.00	0.00
????	0.00	0.00

To add, enter code & percentage; to delete, zero percentage.

ENTER=Update 1=PCN Inquiry/Update 2=Premium Pay 12=Exit Selection: 0

POSITION INFORMATION HAS BEEN UPDATED AND FUNDING HAS BEEN UPDATED.
 04/10/95 Position Information Inquiry/Update

10:10:45

Position: 12-125117 Project: 0 Salary Costs: 25,764.00
 Component: 12-55-07-07-01-04 Region: Benefits Costs: 13,242.15
 Scenario: 7 FY: 96 COLA % = 0.000 Total Costs: 39,006.15

 Actuals from Payroll (Status: FILLED) Retirement Code: A

 M Step: B for 12.0 months & Step: C for 0.0 months (total: 12.00)
 00/00/00 Merit Date; use merit defaults? N (0.0 @ & 0.0 @)
 1 Class/Sched Prefix: 1 Schedule: 1A (actual: 1A)
 GG Bargaining Unit: GG Range: 10 (actual: 10)
 EBA Location Code: EBA Place: ANCHORAGE
 P1203 Job Class Code: P1203 Title: ACCOUNTING CLERK III
 F Seasonal Indic.: F Type: FACL - FULL TIME / OMB AUTH

Optional Override Salary Rates:
 Monthly Rate: 0.00 for 0.0 months & rate of 0.00 for 0.0 months
 Hourly Rate: 0.00 for 0.0 months Frozen at this rate? (Y/N): N

Premium Pay Items/Amounts Budgeted		----- Actual Costs -----		
	Item Cost	Y.T.D.	Prior Year	
Overtime Hours: 0.0	0.00	0	0	
Graveyard Shift Diff. (months): 0.00	0.00	0	0	
Swing Shift Diff. (months): 0.00	0.00	0	0	
Hazard Pay (\$): 0.00	0.00	0	0	
Sea Duty Pay (\$): 0.00	0.00	0	0	
Standby Pay (\$): 0.00	0.00	0	0	
Higher Class Work Pay (\$): 0.00	0.00	0	0	
Area Subsistence Pay (\$): 0.00	0.00	0	0	
Additional Salary (\$): 0.00	0.00	0	0	
PLUS 0.00000 PERCENT C.O.L.A.	0.00			
Total Premium Pay Costs:	0.00	0	0	

PCN: 12-125117 Scenario: 7 Salary Costs: 25,764.00
 Component: 12-55-07-07-01-04 Benefits Costs: 13,242.15
 Total Costs: 39,006.15

	Percentage	Amount
1002 FEDERAL RECEIPTS	0.00	0.00
1003 GENERAL FUND MATCH	0.00	0.00
1004 GENERAL FUND	100.00	39,006.15
1005 PROGRAM RECEIPTS/GEN FUND	0.00	0.00
????	0.00	0.00
????	0.00	0.00
????	0.00	0.00
????	0.00	0.00
????	0.00	0.00
????	0.00	0.00
????	0.00	0.00
????	0.00	0.00
????	0.00	0.00
????	0.00	0.00
????	0.00	0.00

To add, enter code & percentage; to delete, zero percentage.
 ENTER=Update 1=PCN Inquiry/Update 2=Premium Pay 12=Exit Selection: 0

POSITION INFORMATION HAS BEEN UPDATED AND FUNDING HAS BEEN UPDATED.

03/08/95

Position Information Inquiry/Update

10:35:26

Position: 12-125234 Project: 0 _____ Salary Costs: 23,556.00
 Component: 12-55-07-07-01-01 Region: Benefits Costs: 12,552.81
 Scenario: 7 FY: 96 COLA %= 0.000 Total Costs: 36,108.81

 Actuals from Payroll (Status: FILLED) ° Retirement Code: A

A ° Step: A for 12.0 months & Step: B for 0.0 months (total: 12.00)
 05/08/16 ° Merit Date; use merit defaults? N (1.5 @ A & 10.5 @ B)
 1 ° Class/Sched Prefix: 1 Schedule: 1A (actual: 1A)
 3G ° Bargaining Unit: GG Range: 09 (actual: 08)
 AWA ? ° Location Code: EBA Place: ANCHORAGE
 P7549 ? ° Job Class Code: P7550 Title: MOTOR VEHICLE REP II _____
 F ° Seasonal Indic.: F Type: FACL - FULL TIME / OMB AUTH

Optional Override Salary Rates:

Monthly Rate: 0.00 _____ for 0.0 months & rate of 0.00 _____ for 0.0 months
 Hourly Rate: 0.00 _____ for 0.0 months Frozen at this rate? (Y/N): N

Premium Pay Items/Amounts Budgeted

	Item Cost	Y.T.D.	Prior Year
Overtime Hours: _____ 0.0	0.00	0	0
Graveyard Shift Diff. (months): _____ 0.00	0.00	0	0
Swing Shift Diff. (months): _____ 0.00	0.00	0	0
Hazard Pay (\$): _____ 0.00	0.00	0	0
Sea Duty Pay (\$): _____ 0.00	0.00	0	0
Standby Pay (\$): _____ 0.00	0.00	0	0
Higher Class Work Pay (\$): _____ 0.00	0.00	0	0
Area Subsistence Pay (\$): _____ 0.00	0.00	0	0
Additional Salary (\$): _____ 0.00	0.00	0	0
PLUS 0.00000 PERCENT C.O.L.A.	0.00	0	0
Total Premium Pay Costs:	0.00	0	0

Press ENTER to update record; enter # or use PF key to go another screen:
 1=Position Inquiry/Update 2=Funding info 12=Exit w/o update Selection: 0_



Representative Mark Hanley
Alaska State Legislature

SPONSOR STATEMENT

House Bill No. 272

"An Act relating to municipal taxation of motor vehicles"

HB 272 would allow municipalities that impose a motor vehicle registration tax to increase or decrease the schedule currently set in statute. Currently, there is no provision to change or update the fee schedule. This change would relieve the legislature of the burden of adjusting rates by legislation.

A municipality electing to change its rates would be required to pass an ordinance in support of the change, and provide written notice of the change to the department at least one year before it would take place. The opportunity for change would be available once every two years.

The municipality would pay the one time programming cost for the change incurred by the Department of Public Safety. The department collects 8% of the gross as a collection fee; a rate increase would result in a larger base for collection.

HB 272 puts the responsibility for change where it belongs, with the municipality. Each municipality should be able to choose reasonable tax rates suited to its needs and situation. The local ordinance provision and the democratic process will sufficiently protect the public from unreasonable tax rates.



Representative Mark Hanley
Alaska State Legislature

MEMORANDUM

DATE: March 31, 1995

TO: Representative Ivan M. Ivan
Co-Chair, Community & Regional Affairs

FROM: Representative Mark Hanley *MH*

RE: House Bill No. 272: "An Act relating to municipal taxation of motor vehicles"

This memo is to respectfully request that you schedule HB 272 for a hearing in your committee at your earliest convenience.

HB 272 would allow municipalities that impose a motor vehicle registration tax to increase or decrease the schedule currently set in statute. Currently, there is no provision to change or update the fee schedule. This change would relieve the legislature of the burden of adjusting rates by legislation.

A municipality electing to change its rates would be required to pass an ordinance in support of the change, and provide written notice of the change to the department at least one year before it would take place. The opportunity for change would be available once every two years.

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HB 272 puts the responsibility for change where it belongs, with the municipality. Each municipality should be able to choose reasonable tax rates suited to its needs and situation. The local ordinance provision and the democratic process will sufficiently protect the public from unreasonable tax rates.

MUNICIPALITY OF ANCHORAGE
1995 LEGISLATIVE PROGRAM

LEGISLATIVE ISSUES

TITLE: Vehicle Registration Fees Set By Local Government

The Municipality of Anchorage supports amending existing statutes to allow Municipalities and other local governments to determine appropriate motor vehicle registration fees to meet funding needs for their localities.

Road and street maintenance is becoming increasingly costly in Alaska. In Anchorage, these costs are borne by property taxpayers. One significant example of such costs involves the over \$100,000 of general tax revenues currently applied to cover the annual cost of removing abandoned and junk vehicles. A more equitable distribution of costs would involve empowering the local community to increase vehicle registration fees in order to increase the vehicle owners' share of road and street maintenance costs.

We support legislation that would allow a more equitable taxation on motor vehicles for each community. The current statute should be amended to allow each community participating in the Motor Vehicle Registration Tax program (AS 28.10.431) to establish individual rates for vehicle taxation. These individual community rates could be established within the state computer system. The rates would continue to be based on type and age of vehicle (information which is currently obtained from the state's vehicle registration files).

A legislative change in 1993 increased the administrative fee charged by the State Division of Motor Vehicles for administration of the Motor Vehicle Registration Tax program from 5% to 8%. For Anchorage, this fee is currently about \$330,000 annually. The State Division of Motor Vehicles should be able to accommodate any additional costs generated by the proposed local government determination of appropriate motor vehicle registration fees within the 8% fee. Since the amount of the 8% fee revenues to the State could increase significantly if local governments increase the amount of the Motor Vehicle Registration Tax, the Statutes should be amended to limit the State's fee to the actual costs for administration of the program not to exceed eight percent of the amount collected.

(more)

Vehicle Registration Fees Set By Local Government
(Continued)

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

* Section 1. INTENT. It is the intent of the legislature that every community participating in the Motor Vehicle Registration Tax program shall set their own rates of taxation; that this program shall continue to be administered and collected by the State of Alaska; that the State of Alaska shall continue to return all amounts so collected, less actual collection costs not to exceed eight percent of the amount collected, to the municipality for which the money was collected.

* Section 2. AS 28.10.431(b) is amended to read:

Section 28.10.431(b). The tax is levied upon motor vehicles subject to the license fee under AS 28.10.411 and 28.10.421 and is based upon the type and age of vehicles as determined by model year according to the schedule established by each community participating in this program. If the community does not choose to establish their own schedules, the tax will be computed based on the following schedule:

* Section 3. AS 28.10.431(e) is amended as follows:

Section 28.10.431(e). The department shall refund money collected under this section, less the departments actuals costs of administration not to exceed eight percent of the amount collected [less eight percent as collection costs], to a municipality for which the money was collected

Contact: Gene Dusek, Budget Director
Office of Management & Budget
Phone: 343-4490



MATANUSKA-SUSITNA BOROUGH

Borough Manager

350 E. Dahlia Avenue, Palmer, Alaska 99645-6488

Phone (907) 745-9689 • FAX (907) 745-0886

April 3, 1995

The Honorable Lyda Green
Alaska State Legislature
Rm. 423, State Capitol
Juneau, Alaska 99801-1182

Dear Senator Green:

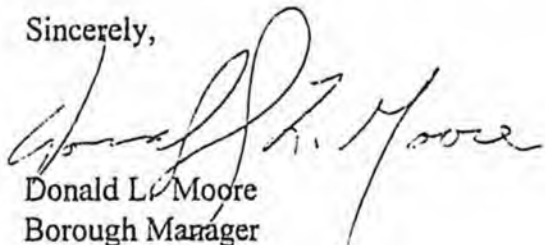
Thank you for the meeting with us recently to discuss legislative issues of interest to the borough. As we discussed at that meeting, I am providing a list of points in support of the draft legislation which would adjust the method of taxation of automobiles.

- This is not a new tax. The State of Alaska currently collects a "fee" on motor vehicles on behalf of local municipalities. Unfortunately, the fee schedule is far too low and does not allow municipalities any flexibility to adjust the schedule to their individual needs.
- The draft legislation would not increase state taxes. This legislation only allows local municipalities to raise or lower their taxes. If local governments are going to be burdened with cuts in revenue, they will need the tools to adjust local taxation programs in a manner that best meets their needs.
- State collection costs would be charged to the program. The point of registration is the most efficient manner to collect fees on motor vehicles. Under this program the state would charge its collection costs to the municipality on whose behalf the tax is collected.
- Many demands for local government services are related to roads and automobiles. The proposed legislation would allow local governments to recover some of the costs and generate revenues to provide services that relate to motor vehicles. Examples are: emergency medical and rescue services, road maintenance, and capital matching money for construction.
- Promote equity in the personal property taxation program. If the current very low vehicle tax were raised, the local municipality could generate sufficient funds to adjust or eliminate the onerous features of personal property taxation.

I hope this information is useful to you. The very restrictive personal property taxation laws in the State of Alaska have been a problem for municipalities, especially the Matanuska-Susitna Borough for a long time now. We greatly appreciate your willingness to finally craft some legislation in this regard that allows us to deal with this issue in a rational way.

Please give me a call if you require further information.

Sincerely,



Donald L. Moore
Borough Manager

er

cc: Jim Colberg, Assembly Member



217 Second Street, Suite 200 • Juneau, Alaska 99801 • Tel (907) 586-1325, Fax (907) 453-5480

April 6, 1995

TO: Representative Mark Hanley, Chairman
House Finance Committee

FROM: *Kevin C. Ritey*
Executive Director

RE: HB 272 - Municipal Motor Vehicle Tax

On behalf of the Alaska Municipal League, I would like to thank you for introducing HB 272, which would allow municipalities who have a motor vehicle registration tax to change their tax rate not more than once every two years.

The League supports putting responsibility for setting the tax rates at the local level to be decided by the community and people who pay the tax and benefit from the proceeds of the tax.

HB272 would take the burden off the Legislature to change the amount of the motor vehicle registration tax, which is money that goes directly to municipalities.

The state provides an efficient collection system for the municipalities. The current state system to track and collect the fees could not be duplicated by any municipality. For its assistance, the state collects an 8 percent administrative fee plus any special up front costs to change rates. This bill represents a good partnership between the state and its municipalities.

There has been concern expressed over a possible public reaction to a substantial increase in the rates. First, it is no less an ordeal to raise tax rates on the local level than it is at the state level. Second, the League supports an effort to place appropriate information on the tax notice

identifying it as a municipal tax and which municipal official to call if there are questions or comments.

Again, our thanks for your consideration on this issue and if you have any questions regarding the League's position, please do not hesitate to call me at 586-1325.

a:\jk\hb272\tr

HB

294

Alaska State Legislature

House of Representatives



State Capitol
Juneau, Alaska 99801-1182
(907) 465-3718

Official Business

House Majority Leader

SPONSOR STATEMENT

HB-294, "Village Safe Water Projects was introduced for the following reasons;

This bill was introduced to ensure that the highest quality work and the best price will be obtained for the construction of the "Village Safe Water Projects".

Only by competitive bidding can we be assured that the funds spent for these construction projects will result in the greatest value to the state and the communities involved.

By requiring competitive bidding we can also be assured that the awarding of contracts will meet all of the ethical standards the people of Alaska demand of their government.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. _____

HB 294

Revision Date: _____
 Title: Contracts for VSW Projects
 Sponsor: Representative Al Vezey
 Requestor: _____

Department Affected: Environmental Conservation
 BRU: Facility Construction & Operation
 Component: Facility Construction & Operation

COMPONENT SERIAL NO.

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	9.0	9.0	9.0	9.0	9.0	9.0
CHANGE IN REVENUES ()						

FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
TOTAL						

Estimate of any current year (FY95) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

SEE ATTACHMENT

Prepared by: Larry Jones
 Division: Director, Information and Administrative Services

Phone: 465-5010
 Date: 4/10/95

Approved by Commissioner: Lawrence Jones
 Agency: Department of Environmental Conservation

Date: 4/10/95

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

ATTACHMENT

FISCAL NOTE, HB 294 (continued)

This fiscal note is not an analysis of this bill's impact on the Department's operating budget or personnel. Rather, it explains what will happen to the effectiveness and efficiency of construction grant dollars administered by the Village Safe Water (VSW) program. If HB 294 is adopted and all State funded sanitation projects must be built by licensed contractors, construction costs will increase by approximately 35%. Our analysis is based on a line item cost comparison for completing a typical \$1,200,000 water and sewer project using "force account" and contract construction methods. The attached spreadsheet shows the additional requirements and costs associated with contracting projects in these nine (9) activities: engineering design; preparation of bid documents; performance bonding; working housing; labor; management; change orders; overhead and profit.

Requiring contract construction for all VSW projects would greatly reduce the funding available for other communities. Over the last four years, \$35.0 million of project funding would have been lost.

As pointed out in the Department's Bill Analysis, construction contracting has its place in sanitation facility construction. But neither the Department or the communities should be required to use it exclusively to complete projects.

Our analysis assumes that if this measure passes, the VSW capital budget request will have to increase by 35% to accomplish the same amount of work now done using force account construction.

FOR
**COMPLETING A TYPICAL \$1,200,000 VILLAGE WATER AND/OR SEWER
 PROJECT UNDER A PUBLIC BID SCENARIO VS. A FORCE ACCOUNT SCENARIO**

	PROJECT ACTIVITY	TRADITIONAL PUBLIC BID SCENARIO (DESIGN/BID/CONSTRUCT)	FORCE ACCOUNT SCENARIO (VILLAGE IS THE GENERAL CONTRACTOR)	APPROXIMATE SAVINGS UNDER FORCE ACCOUNT
1.	Design Engineering (preparation of plans specifications & bid documents)	Requires complete set of drawings, technical specifications for control of the contractor, bidding requirements and bid forms, procedures for change orders, pay requests etc. - the full blown contract "Boiler Plate".	Requires complete drawings and "outline" technical specifications only	30,000
2.	Bidding Process	Requires invitation to bid, advertisement, duplication and distribution of documents, prebid conference, addenda, bid opening, evaluation of bids, post bid conference, recommendation for award, possible protest of award, bid award preconstruction conference, etc.	Not required	8,000
3.	Performance & Payment Bond	Required	Not required when the village is the general contractor	20,000
4.	Submittals	Requires the contractor to prepare formal submittals, "cut sheets" and shop drawings for equipment and materials, etc. proposed for use in the work. Submittals must be formally reviewed and approved by the owner prior to ordering.	Most of this effort is eliminated	8,000
5.	Procure equipment, materials, supplies, etc. and transport them to the job site	Required	Required	-0-
6.	Construction Camp	Requires the contractor to procure, mobilize, set up, operate and demobilize a camp to house workers, provide a portable office for the contractor, and a separate office for the owner's representative and his inspector's.	Camp is generally not required since the majority of the labor is local; imported supervision general lives in existing village owned facilities, full time outside inspectors are not required since the village is the general contractor and has no incentive to "cut corners"	60,000

	PROJECT ACTIVITY	TRADITIONAL PUBLIC BID SCENARIO (DESIGN/BID/CONSTRUCT)	FORCE ACCOUNT SCENARIO (VILLAGE IS THE GENERAL CONTRACTOR)	APPROXIMATE SAVINGS UNDER FORCE ACCOUNT
7.	Construct the Project	Contractor imports a labor crew, pays Davis Bacon wages, pays to house and feed the vast majority of the workers in a camp	Only a few supervisors are imported, the locals are paid approximately ± 60% of the Davis Bacon wage, no room and board costs are incurred for the local labor	60,000*
8.	Manage the Project During Construction	Contractor must employ a cadre of people to interact with the owner's representatives and on-site inspectors on matters pertaining to errors on the plans, change orders, quality control inspections, pay requests, scheduling, etc. (There are essentially two teams of professionals on the jobsite.)	The village's construction management team runs the project. There is no cost associated with a second management team or with the interaction between the two management teams.	30,000
9.	Changes During Construction	Contractors often see change orders as opportunities to take a disproportionate markup. A substantial amount of negotiation and documentation is usually required to reach agreement on a change order.	Changes are easily made at the actual cost of performance.	20,000
10.	Contractor Overhead	Typically the contractor's overhead may be 8 to 15% of the construction cost (pays a portion of the contractor's home office rent, vehicles, administrative staff payroll, bidding expenses, etc.	Overhead is approximately half of what it costs under a public bid scenario. Typically the village sees only a temporary increase in administrative cost. Unlike the contractor the village has no on-going promotional and bidding expenses, and no separate facilities to maintain.	60,000
11.	Contractor Contingency	Generally the contingency the contractor adds to the bid to cover unforeseen difficulties is overstated. When this happens the money stays in the contractor's account.	The village pays actual cost of construction. No contractor contingency is paid.	20,000
12.	Contractor Profit	The contractor's profit is a function of the degree of difficulty, the perceived risk and the number of bidders. Profit margins are typically 8 to 20% of construction cost for village projects in the \$1,000,000 range. Use 10% for this computation	No contractor profit is paid.	100,000

TOTAL SAVINGS

\$416,000

PERCENT OF TOTAL PROGRAM

$\frac{\$416,000}{\$1,200,000} = 35\%$

* Reflects lower productivity of less experienced local crews

	OTHER ISSUES	TRADITIONAL PUBLIC BID SCENARIO (DESIGN/BID/CONSTRUCT)	FORCE ACCOUNT SCENARIO (VILLAGE IS THE GENERAL CONTRACTOR)	APPROXIMATE SAVINGS UNDER FORCE ACCOUNT
1.	Disputes between the contractor and the owner during construction	Disputes are bound to occur and often escalate requiring a large expenditure of management time on the part of both the owner and the contractor. Legal fees may add to the cost.	Completely avoided	Can't be quantified
2.	Support to the local economy	Contractors generally hire very few local people. Payroll dollars do not stay in the community	Typically 30% - 90% of the work is performed by local crews. Those payroll dollars add to the local economy.	Can't be quantified
3.	Community involvement and "ownership" in the project	The community generally has minimal involvement in the project and feels very little "ownership" in the completed facility	Local people are involved in the planning, scheduling, staffing, quality control and financial control of the project. The project becomes a community effort and the completed project is often a source of pride for the entire community.	Can't be quantified
4.	Operation and maintenance of the completed facility	Because the community doesn't feel it has a substantial ownership interest in the project there is naturally less commitment to insure the continued maintenance and operational success of the completed project.	Since the community planned and built the project it has more of a vested interest in the operational success of the completed facilities. Since local people were heavily involved in the planning and construction of the project they are better prepared to operate the completed system and repair it when necessary.	Can't be quantified
5.	Job Training	Since few local people are hired there is little opportunity for local people to improve their job skills	There is enormous opportunity for local residents to learn job skills, improve their job skills and develop supervisory skills.	Can't be quantified

CITY OF ST. MARY'S

P.O. Box 163
St. Mary's, AK 99658
(907) 438-2515

April 19, 1995

Senator Al Adams
BY FAX

Dear Senator Adams:

As I write this letter, my water and sewer supervisor is posting notices informing local residents to boil their water prior to drinking it. Our water system has again been overcome with run-off, and we are uncertain about the quality of water.

As a Bush resident and a Bush City Manager, I am deeply concerned about two items currently under consideration by the Legislature: (1) the possible elimination of VSW funding from the budget, and, (2) The introduction of HB 294 to insist that VSW projects are only to be bid out to contractors.

My first work in the public sector was over 20 years ago in health services planning. I was amazed when given a quote from the public health movement that increases in life expectancy in this century had been made .."in spite of modern medical science...". The majority of the increase is due to the public health movement, and in particular, to the development of safe and sanitary water and sewer systems.

Being a "doubting Thomas", I ordered the actuarial tables from the census bureau. I discovered that once you eliminated the age group of 0 to 5 years of age, the increased life expectancy between 1900 and 1970 was only a few years. In other words, the impact of early childhood mortality is what has made the greatest difference in life expectancy in this century. Also, the provision of good sanitation services has the greatest single effect on childhood morbidity and mortality.

What was also claimed during the '70's, was that the first programs to be cut during a budget crunch were the preventive programs, including water and sewer service funding. It appears that history will repeat itself in the Alaska legislature this year.

The passage of HB 294, and the cutting of water and sewer funding from the budget will ultimately have an impact on morbidity and mortality in the Bush.

On a more personal level, I traveled for the RUBA program for almost two years in this area. The villages I dealt with, for the most part, had very limited water and sewer systems. More than once I was advised to wash my hands frequently, as pink eye (or hepatitis, or some other bug) was circulating through the village. It is difficult to wash thoroughly when sanitation facilities consisted of a 40 gallon rubber trash can for the water supply, and a honey bucket to substitute for the sewer system.

I have had personal experience with force account labor, and with outside contractors doing work. I have also had both VSW and PHS supervise the work. While no system is perfect, I prefer the "force-account" method for providing water and sewer construction services for the following reasons:

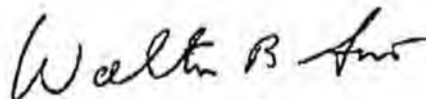
1. We get "more bang for the buck."
2. Overall, we have more control over the quality of the job; i.e., we have to service what we build, long after any warranty would have expired had we used a contractor.
3. We stimulate the local economy. Outside contractors come in, do the job, and leave, taking their money with them.

Yes, one can find excellent examples of contractor work that has gone well, and force account work that has not. Examples of good and bad work can be found in each type of project. However, on the average, I still believe we get more value and better projects when we do the work locally.

I think I have addressed the need for funding for water and sewer. I realize that it is difficult to provide water and sewer services to the Bush. I also realize it is difficult to support and maintain these systems once they are constructed. However, safe sanitation facilities are a basic health need. I would hope the legislature would fund the projects recommended by VSW in the Governor's budget.

Please contact me if I can provide you with additional information.

Sincerely yours,



Walton B. Smith
City Manager

cc. Sen. Adams, Rep. Austerman, Rep. Elton, Rep. Ivan, Rep. Kott, Rep. Mackie, Rep. Maclean, Rep. Nicholia, Rep. Vezey.

MEMORANDUM

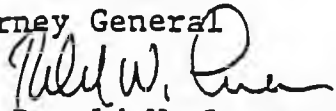
cc: Dale Cheek, Director
Wage & Hour Division
Department of Labor

DATE: October 11, 1978

FILE NO:

TELEPHONE NO:

cc: Avrum M. Gross
Attorney General

By: 
Ronald W. Lorensen
Assistant Attorney General

SUBJECT:

Performance of Public
Construction Projects by
Municipalities; A.G. File
No. J-66-195-79

This is in response to your recent request for our advice as to whether municipal governments may properly carry out their public construction projects by using their own employees under a "force-account" system which utilizes private contractors, if at all, solely to provide overall "hands-in-pocket" management and supervision of the project. Also, if municipalities may perform their own public construction in this manner, you wonder whether they are subject to the provisions of AS 36.05, relating to the payment of prevailing wages on public construction contracts.

As we understand the situation about which you are inquiring, at least one organized borough in the state does not carry out its public construction projects by hiring private construction contractors to perform all phases of the work and complete the project. Instead, it hires private contractors to perform only the management and supervisory functions necessary to accomplish the project for the borough, but requires that the contractor utilize borough employees to actually do the construction work. We see no legal impediment to a borough doing all or any portion of its public construction projects on its own in this manner.

As to whether AS 36.05 applies to a borough which accomplishes its public construction projects by use of its own employees under a "force account" system, we think the answer is clearly that it does not. AS 36.05.010, which establishes the scope of the requirement of payment of prevailing wages under AS 36.05, speaks only in terms of the duty of "contractors" and "sub-contractors" who perform work on public construction in the state. It does not state that political subdivisions performing such work must pay prevailing wages. Nor does it state that all employees working on public construction projects are entitled to be paid in accordance with prevailing wages. Thus, while it appears that AS 36.05 would apply to a municipality's contractor for management services on a public construction project, it does not apply to the municipality in carrying out such projects with its own employees.

MEMORANDUM

State of Alaska

TO: Honorable Richard A. Nevé
Commissioner
Department of Environmental
Conservation

DATE: May 9, 1983

FILE NO: 366-573-83

TELEPHONE NO: 465-3603

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Title 36

By: 
Gary I. Amendola
Assistant Attorney General
Human Services-Juneau

You have requested an opinion regarding the scope of Title 36 and its requirement that prevailing wages be paid on public works projects. Specifically you ask whether non-profit entities which receive grants under AS 37.05.316 or AS 37.05.317 can use "force account labor" to complete the public works project and thus avoid the payment of prevailing wages, as that term is used in AS 36.05.010 et seq.

On March 11, 1983, Deputy Attorney General Ron Lorensen issued an opinion regarding the application of the Little Davis-Bacon Act (AS 36.05) to designated grantees under AS 37.05.316 and 317. Under AS 37.05.317(2), nonprofit entities are permitted to receive and administer grants for public construction. This opinion addresses the related question which arose because of the issuance of that opinion.

A short answer to your question is yes.

The federal government has long recognized that where the government uses its own employees to perform public construction, the Davis-Bacon Act, upon which our "Little Davis Bacon Act" is modelled, does not require the payment of prevailing wages. See Veader v. Bay State Dredging and Contracting Company, 79 F. Supp. 837 (D.C. Mass. 1948); see also, Davis Bacon Act Field Operations Handbook, dated May 5, 1978 at page 15c14.

The 1978 informal Attorney General's opinion written by then Assistant Attorney General Ron Lorensen extended that rationale to municipal governments and by implication ratified that state governments could also use the "force account" system.

Without the existence of a contractual relationship between the non-profit entity and some third party doing the

Honorable Richard A. Nevé
Commissioner
366-573-83

May 9, 1983
Page 2

work, Title 36 simply does not apply. The legislation in Title 36 is written in terms of contractors, subcontractors, and contracts. AS 36.05.010 states in relevant part:

A contractor or subcontractor who performs work on public construction in the state, as defined by AS 36.95.010(3), shall pay not less than the current prevailing rate of wages for work of a similar nature in the region in which the work is done
...

Public construction, in turn, is defined at AS 36.95.010(3) as "the onsite field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, highways or other improvements to real property under contract for the state, a political subdivision of the state, or a regional school board with respect to an educational facility under AS 14.08.161." (emphasis supplied).

We can perceive of no reason to distinguish between a nonprofit entity's use of "force account labor" and a state's or municipality's use of "force account labor" to complete similar construction projects.

GIA:bap

MEMORANDUM

State of Alaska

TO: Robert Bacolas, Director
Division of Labor Standards & Safety
Department of Labor

DATE: December 30, 1985

FILE NO: 166-229-86

TELEPHONE NO: 276-3550

FROM: Harold M. Brown
Attorney General

SUBJECT: Application of AS 36.05
to contracts for
weatherizing
low income homes

By: *JH*
Jan Hart DeYoung
Assistant Attorney General

You have asked whether the requirement to pay prevailing wages in the "Little Davis-Bacon Act," AS 36.05.010--36.05.125, applies to contracts to weatherize privately owned, low income family homes. The answer is that the Act should apply if the state or a political subdivision of the state, such as the North Slope Borough, awards the contract. If the contract were funded by a grant made under AS 37.05.316, it probably would not be covered by the Act.

The facts prompting this question follow. One of the duties of the Department of Community and Regional Affairs (C&RA) is to plan programs for energy development, including weatherization, to meet community needs. AS 44.47.050(18). C&RA has adopted regulations establishing a low-income residential energy conservation program. 19 AAC 69.010--19 AAC 69.190. The program is funded through federal grants and state general funds.^{1/} The program is implemented through the award of contracts to political subdivisions, nonprofit corporations, and occasionally, private businesses. See 19 AAC 69.050. The contract awarded is the state's standard agreement for professional services contracts. The contract does not state whether prevailing wages under AS 36.05.010 must be paid by the contractor.

C&RA apparently has assumed that the requirement does not apply to professional services contracts. Ordinarily this is

1/ The federal funds come from two sources: a grant from the Department of Energy under 10 C.F.R. Part 1005 (1985) and a grant to the Department of Health and Social Services that is transferred to C&RA by reimbursable services agreement. The sources of state funds for the program in 1985 were the operating budget and the capital projects budget. Sec. 26, ch. 98, SLA 1985, p. 99, l. 17; Sec. 3, ch. 96, SLA 1985, p. 23, l. 6.

This memorandum does not address the effect of Federal regulations, if any, that would conflict with the application of "Little Davis-Bacon" scale wages.

true. Under AS 36.05.010, the prevailing wage requirement applies only to public construction,^{2/} and professional services contracts do not usually cover construction work. AS 36.98.080(2) defines "professional services" as predominantly intellectual in character:

Professional, technical, or consultant's services that are predominantly intellectual in character and that

(A) include analysis, evaluation, prediction, planning, or recommendation; and

(B) result in the production of a report or the completion of a task.

In contrast, "public construction" is predominantly physical in character. It is defined in AS 36.95.010(3) as follows:

"Public construction" or "public works" means the on-site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, highways or other improvements to real property under contract for the state, a political subdivision of the state, or a regional school board.

However, the weatherization "professional services" contracts do include some construction work. The description of the work in the weatherization contracts includes assessing energy needs of low-income applicants, distributing educational literature, inspection, recordkeeping, and most important, "ensuring" installation of eligible energy conservation materials. Approved conservation materials include caulk and weatherstripping, furnace modifications, thermostats, insulation, skirting, ventilation, vapor barriers, vestibules, heat exchangers, etc.

^{2/} AS 36.05.010 provides, in part, as follows:

A contractor or subcontractor who performs work on public construction in the state, as defined by AS 36.95.010(3), shall pay not less than the current prevailing rate of wages for work of a similar nature in the region in which the work is done. . . .

Actual installation work certainly qualifies as "rehabilitation, alteration, extension, or repair . . . of buildings" in AS 36.95.010(3). The construction work in the contract, moreover, is not insignificant. The installation of energy-saving materials appears to be the primary purpose of the contracts. The fact that the contract is called a professional services contract should not determine whether the prevailing wage requirement applies. The issue is whether the contract is to perform work covered under the definition of public construction. We conclude that these weatherization contracts do cover such work.

This determination does not end the inquiry. The construction work must be public construction for the prevailing wage requirement to apply. In AS 36.95.010(3), to be "public" construction, the work must be "under contract for the state, a political subdivision of the state or a regional school board." The professional services contracts awarded by C&RA are "under contract for the state."

We understand that these contracts can be awarded to political subdivisions, such as the Municipality of Anchorage and the North Slope Borough, nonprofit corporations, such as Rural Alaska Community Action Program (Rural CAP), and private businesses. A political subdivision is not required to pay workers prevailing wages if the work is performed by force account, i.e., by employees of the political subdivision. If the political subdivision, however, contracts the work, prevailing wages must be paid for all labor performed under the contract.^{3/}

^{3/} If the weatherization program had been a designated grant to a named recipient under AS 37.05.316, the result would be different. We previously have opined that designated grants to named recipients under AS 37.05.316 are covered by AS 36.05.010 only if the project involves the undertaking or provision of traditional government facilities, services, or activities. 1983 Op. Att'y Gen. at 2 (Mar. 11; 366-267-83). The reason why these grants are handled differently under AS 36.05.010 is that a nonprofit corporation, rather than a state agency or political subdivision, has primary responsibility for construction funded by the grant. The state, through C&RA, only retains minor oversight and accounting responsibility, and upon completion of the project, the state is not obligated to maintain or operate the facility. Under these grants any contract for construction is awarded by the nonprofit corporation. The state or political subdivision, therefore, is not a party to the actual construction
(Footnote Continued)

Robert Bacolas
Division of Labor Standards & Safety
166-229-86

December 30, 1985
Page 4

In summary, the low-income residential energy conservation program as it currently operates, through contracts awarded by C&RA, is subject to the prevailing wage requirement in AS 36.05.010, unless the work is performed by employees of a state agency or a political subdivision. Nonprofit corporations and private businesses, when awarded a contract for weatherization by C&RA or a political subdivision, must pay workers the prevailing rates. Major changes in the program would be needed to avoid the prevailing wage requirement in AS 36.05.010.

JHD:jg

cc: Janice Brewer
Donald R. Wilson

(Footnote Continued)

contract. AS 36.05.010 however, is not limited to projects under contract with the state or its political subdivisions. 1983 Op. Att'y Gen. at 4. The Alaska Supreme Court rejected this argument, extending the prevailing wage requirement to a timber sales contract, issued in conjunction with the construction of a dam to be built with public funds, in Sitka v. Construction and General Laborers Local 942, 644 P.2d 227 (Alaska 1982). Therefore, we have concluded that the prevailing wage requirement should apply if the project serves a traditional government function to avoid circumvention of the prevailing wage requirement through use of these grants and in recognition of the broad application given AS 36.05.010 in Sitka v. Construction and General Laborers Local 942.

Thus, a grant to a named recipient from the legislature to perform weatherization work would be covered only if weatherization of a privately owned home could be said to constitute a traditional government service. While the weatherization program serves a general public interest, for example in conserving fuel, the primary benefit is personal to the residents of the home who will reduce expenses and will own the weatherization materials. Moreover, historically, government has not provided this service. The state program began in 1983, and federal funds for weatherization have been available only since 1977. For these reasons we believe that weatherization is not a traditional government service. Thus, if the weatherization program were funded by a grant under AS 37.05.316 to a named recipient who was not the state or a political subdivision of the state, the prevailing wage requirement in AS 36.05.010 should not apply.

BILL ANALYSIS/POSITION PAPER

DEPARTMENT Environmental Conservation	DIVISION Facility Construction & Operation	BILL NUMBER HB 294	SPONSOR Representative Vezey
SHORT TITLE OF BILL Contracts for VSW Projects			
DEPARTMENT POSITION Oppose this Bill			
PREPARED BY	DATE 4/10/95	COMMISSIONER'S SIGNATURE	DATE

SUMMARY

OTHER AGENCIES AFFECTED BY BILL DOT/PF, AHFC, ARC, U of A, AADC	CONSTITUENT GROUP(S) AFFECTED BY BILL City, towns, villages, non-profit corporations, traditional governments
ORGANIZATIONAL SUPPORT FOR BILL Association of General Contractors	ORGANIZATIONAL OPPOSITION TO BILL Rural Alaska Sanitation Coalition Second Class Cities IRA Councils, Villages
FISCAL IMPACT: <input type="checkbox"/> NONE <input checked="" type="checkbox"/> FISCAL NOTE ATTACHED	

BACKGROUND/LEGISLATIVE INTENT

The sponsor would like to ensure that all village sanitation projects funded with State dollars be constructed by licensed contractors following competitive bidding requirements.

ANALYSIS OF BILL/PROGRAM EFFECTS

1. Construction costs will increase by at least 35%. Based on an average State appropriation of \$25.0 million for the last four years, contracting would cost up to \$9.0 million per year in the value of projects constructed. Fewer projects will be built because State and federal dollars won't be used in the most efficient manner.
 2. The responsibility for how a project is built will be taken away from the owner (the community), and be decided by the State of Alaska. This approach will undermine the concept of local ownership of public facilities because this important decision was made by authorities residing outside the community.
 3. Local jobs will be lost because contractors typically import the majority of workers into a community. This includes skilled jobs, as well as laborers.
 4. Contract workers are normally paid a high wage rate while local workers are paid the prevailing wage rate of the area. This disparity will create conflict and resentment within the communities.
- ***SEE ATTACHMENT***

AMENDMENTS PROPOSED

None

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS

ATTACHMENT

BILL ANALYSIS, HB 294 (continued)

5. There are several key but ambiguous terms in the bill that need clarification. The term "person" is not defined. Also "village" in Section 3 is not consistent with the definition in the VSW Act. The term "state agency" conflicts with the definition in the State Procurement Code.
6. This Bill requires all VSW grant recipients to comply with the competitive bidding requirements of the State Procurement Code. However, AS 36.30.850(b)(1) specifically exempts grants from this requirement.
7. The Little Davis Bacon Act entitles grantees to use force account labor to accomplish public construction projects. Yet the purpose of this bill is to prohibit grantees from using this method of construction in favor of competitively bid construction contracts.
8. The Procurement Code does not apply to political subdivisions of the State. Section 3 of the Bill conflicts with this position.

In summary, the Department feels this Bill will harm the VSW program while offering no improvement or advantages to the current way sanitation facilities are built. In a "typical" project, both force account and contract construction methods may be needed to accomplish the work. This responsibility must be retained by the local governing body who is in a better position to make this decision than an outside authority. Without this flexibility, project costs will escalate.

Enclosures: AG Analysis [April 7, 1995]
AG Opinions
Construction Article [Nov. 1994]
Contact/Force Account Cost Comparison
Private Contractors Funded

To: Keith Kelton, Director
Facilities Operation & Construction Div.
Dep't of Environmental Conservation

From: Marie Sansone
Assistant Attorney General
Natural Resources Section - Juneau

Date: April 7, 1995

Re: HB 294
Village Safe Water Program

At your request, I reviewed HB 294 concerning the Village Safe Water Program. Upon preliminary review, there are a number of serious legal concerns.

First, this bill would require Village Safe Water Program grant recipients to comply with the competitive bidding requirements of the State Procurement Code, AS 36.30. The Procurement Code, however, specifically exempts grants from its application: Alaska Statute 36.30.850(b)(1) states "This chapter applies to every expenditure of state money by the state, acting through an agency, under a contract, except that this chapter does not apply to (1) grants" Sections 1 - 3 of the bill therefore conflict with this provision of the Procurement Code. To enact sections 1 - 3 as proposed, it would also be necessary to amend the Procurement Code.

Second, under the current interpretation of the Little-Davis Bacon Act, AS 36.05, entities that receive grants under AS 37.05.316 or AS 37.05.317 may use "force account labor" to complete public construction projects and thus avoid costs associated with payment of "prevailing wages." 1983 Inf. Op. Att'y Gen. (May 9; 366-573-83). See also 1985 Inf. Op. Att'y Gen. (Dec. 30; 166-229-86); 1983 Inf. Op. Att'y Gen. (Apr. 19; 366-554-83); 1978 Inf. Op. Att'y Gen. (Oct. 11; J-66-195-79). By prohibiting grantees from using procurement methods other than competitive sealed bidding under the Procurement Code, this bill will preclude the use of force account labor.

Third, except for lease purchase agreements under AS 36.30.085 and the cooperative procurement procedures of AS 36.30.700 -- 36.30.790, the Procurement Code "does not apply to contracts between two or more agencies, the state and its political subdivisions, or the state and other governments." AS

36.30.850(c). Section 3 of the bill conflicts with this exemption from the Procurement Code, and an amendment to the Procurement Code would be necessary to enact the bill as proposed.

Fourth, the definition of "state agency" contained in section 3 of the bill, to be enacted in AS 46.07.100, differs from the definition of "agency" contained in AS 36.30.990(1) of the Procurement Code. This may present a source of confusion; it may also raise a question of redundancy and surplusage should its interpretation ever be in issue.

Finally, the definition of "village" contained in section 3 of the bill, to be enacted at AS 46.07.100, conflicts with the definition of "village" presently contained in AS 46.07.080(2). Under the current definition in AS 46.07.080(2), the Village Safe Water Program presently applies to first class cities with not more than 600 residents. Since Section 3 as proposed does not include these cities, it would create a conflict in the law.

Please let me know if you require further assistance.

cc: Larry Jones
Margie Vandor

NOV-10-94 THU 15:55

ALYESKA PUMP & EQUIPMENT

FAX NO. 344-8072

P. 01

Force Account Labor

Water and sewer programs in the Bush

CAN CONTRACTORS COMPETE?

By Jack E. Phelps

Water and sewer construction projects in rural Alaska are pumping millions of dollars every year into local economies. This year the state Legislature alone appropriated more than \$25 million in capital construction money for village sanitation. According to officials with the Alaska Department of Environmental Conservation (ADEC), total federal and state expenditures on village sanitation are now

averaging nearly \$80 million per year. A recent report by the U.S. Office of Technology Assessment suggests that an annual commitment of \$125 million over two decades is needed to address the needs of Alaska villages.

There are two principal funding sources for rural sanitation projects in Alaska. On the federal side is the Indian Health Service (IHS), operating

under the authority of Public Law 86-121, the Indian Sanitation Facilities Construction Act of 1959. As of May 1994, more than \$350 million has been provided for rural Alaska sanitation projects through IHS.

In Alaska, the Alaska Area Native Health Service, a division of IHS, handles rural sanitation issues through its Office of Environmental Health

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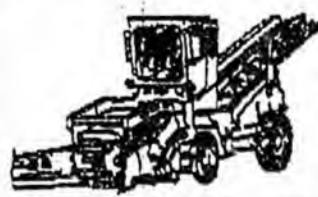
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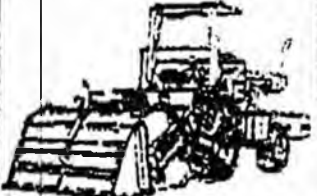
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