

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8669 HOUSE LABOR & COMMERCE

(Continuation of written testimony)

and exempt from being an
employee. that some restrictions
should be enacted to ensure
that an employee-employer-
relationship does not develop.

Signed:

M. Duncan
Testifier

Phone: 907 247-6326

Box 9511
Representing (Optional)
Wetlikan Alaska
Address



Amway Corporation, 2675 Fulton Street East, Ada, Michigan 49315-0001
Legal Division

March 27, 1995

VIA FACSIMILE: (907) 465-2819

The Honorable Pete Kott
Alaska State Legislature
State Capitol Bldg
Juneau, AK 99801-1182

Subject: House Bill 238 / Direct Sellers

Dear Representative Kott:

I understand House Bill 238, a bill proposing to exempt direct sellers from coverage under the state unemployment compensation law, may soon be heard in the House State Affairs Committee. While Amway understands the intent of the legislation, (on behalf of our many independent Alaska distributors) we must express our **opposition to the bill in its current form**.

By way of brief background, Amway Corporation is a manufacturer and distributor of a wide variety of home care and personal care products sold by thousands of independent distributors throughout the country. Alaska Amway distributors sell products to family, friends and neighbors, while interesting others to do the same, in an effort to supplement their family incomes. Amway distributorships are not only in the large cities of Anchorage and Fairbanks, but also in small towns and villages throughout the entire state. Certainly, Amway is concerned about legislation which could inadvertently impact these very small businesses.

Amway distributors are not employees of Amway Corporation but are instead independent contractors. They decide for themselves the hours during which they wish to pursue their opportunity and the amount of effort they wish to expend. They determine the prices at which they sell their products, are responsible for the business expenses they incur, they keep their own records and accounts, bear the risk of loss, and keep for themselves the fruits of their enterprise. They are truly independent business persons and their status as independent contractors is not disputed.

While HB 238 proposes to specifically exempt direct sellers from the state unemployment compensation law, unfortunately the bill's language is flawed. The language **should track existing law in some 25 states** which directly follow the language enacted in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). This language is time-tested and ensures that legitimate direct sellers are indeed exempted from coverage under the state employment laws.

HB 238's language, on the other hand, is limited to sales made at a prospective customer's home and does not cover sales made at either the direct seller's home or at any other location.

Alaska State Legislature

March 27, 1995

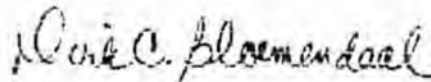
Page 2

However, Amway distributors, and many other direct sellers, may demonstrate, explain and sell their products at their own homes and other locations, including businesses, public halls, schools, churches and the like. It is unwise to limit the language to the customer's home; a direct seller's status should not depend upon where he or she makes a sale. It should instead key on the activity itself.

Second, HB 238's definition of "compensation" is unnecessarily specific. Amway distributors may earn money not only on their basic discount when products are bought and sold, but may also earn money through earning performance bonuses (which performance bonuses are based not only on one's own sales, but also on those of the distributor's downlines). However, HB 238's language deviates from the accepted language and could be narrowly interpreted to be limited to a distributor's own sales. Consequently, while the status of direct sellers such as Amway distributors is certainly not in dispute, we are concerned that a distributor's normal activity which falls outside the language of HB 238 could inadvertently subject them to state unemployment compensation law.

Therefore, Amway respectfully urges you to hold oppose HB 238 in its current form. If you wish to contact me directly, please call me at (616) 676 7010 or by fax at (616) 676-5624. Thank you for your attention.

Sincerely,



Dirk C. Bloemendaal, Counsel
Corporate Government Affairs

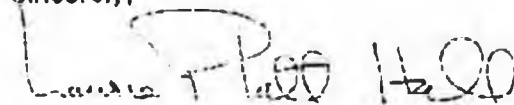
Attachment (TEFRA language)

cc: Members of the House State Affairs Committee
Joe Mariano, DSA

Alaska SB 122
March 24, 1995
Page two

simplest, most limited and effective manner of clarifying direct sellers' status under the law. In the absence of such an amendment, we oppose ultimate passage of SB 122. On behalf of the thousands of Alaskan direct sellers, I thank you for your consideration of our concerns.

Sincerely,



Lawrie Platt Hall
Director, External Affairs

cc: Joe Mariano (Direct Selling Association)

Corporate Office
1000 20th Street
Tupperware
Central Office
1000 20th Street
Tupperware
Central Office
1000 20th Street
Tupperware
Central Office

1000 20th Street
Tupperware
Central Office



March 27, 1995

The Honorable Norman Rokeberg
Representative Rokeberg
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

VIA FACSIMILE

RE: Alaska SB 122

Dear :

I write on behalf of Tupperware regarding Senate Bill 122, a bill dealing with direct sellers and unemployment compensation. It is unfortunate that the bill was passed and the hearing ended before any witnesses (other than the sponsor's staff) were called as Joe Mariano of the Direct Selling Association (DSA) was present and signed up to testify. The DSA is the national trade association that represents Tupperware and other companies which market their products through personal demonstration, primarily though not exclusively, in the home. The 150 corporate members represent almost 6 million people nationally who sell for them as independent contractors.

While we agree in principal with the intent of SB 122 to clarify that direct sellers are not currently covered by Alaska's unemployment compensation law, we are concerned that the legislation would do so in a manner inconsistent with Federal and other state laws. We hope to offer amendments which will make Alaska's law consistent with the other narrow laws which define direct sellers, as we believe such consistency is vital for direct sellers and the administrators of the law. Without amendment, the current draft of the bill does not accurately define all direct sellers and presents the undesirable possibility that some well known direct sellers would not be able to qualify under its provisions. We trust this serious flaw can be simply remedied by referral to the existing definition of "direct seller" used in the federal Internal Revenue Code. We hope to do so with the agreement of all interested parties. Federal language has been in place since 1982 and has proven to be an effective, limited definition for federal tax purposes. Only true direct sellers (Avon Representatives, Amway Distributors, Kirby salespeople, Mary Kay Beauty Consultants, etc. . .) have qualified under this Federal definition. We believe the reference to or incorporation of this language into Alaska's law will be the

Alaska SB 122
March 24, 1995
Page two

simplest, most limited and effective manner of clarifying direct sellers' status under the law. In the absence of such an amendment, we oppose ultimate passage of SB 122. On behalf of the thousands of Alaskan direct sellers. I thank you for your consideration of our concerns.

Sincerely,



Lawrie Platt Hall
Director, External Affairs

cc: Joe Mariano (Direct Selling Association)

Date: April 10, 1995

To: The Honorable Pete Kott, Chairman
Members, Alaska House Labor & Commerce Committee
Capitol Building
Juneau, Alaska 99801-1182

From: Anne Crews, Manager
Corporate Affairs
Mary Kay Corporation

Re: Support of HB 238

On behalf of Mary Kay Cosmetics, Inc. and its sales force in Alaska, let me express support of HB 238 which would amend the Alaska Unemployment Compensation Law to clarify the status of direct sellers, such as Mary Kay Beauty Consultants, as non-employees.

The Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 classified direct sellers as non-employees or independent contractors for federal tax purposes. They are, therefore, exempt from unemployment compensation coverage.

Through the years, Mary Kay Cosmetics, Inc., in conjunction with the Direct Selling Association and other member companies, has sought to statutorily clarify this non-employee status. To date, some 25 states have amended current law or adopted new legislation which specifically exempts direct sellers from unemployment compensation coverage.

The proposal is revenue neutral because no contributions are currently made to the unemployment compensation fund on behalf of direct sellers.

Conformity with federal law concerning unemployment compensation is desirable for all states, as the direct selling industry provides income earning opportunities for millions of Americans annually.

Direct sellers are independent small business people and value their independence as much as the income they earn. In fact, they were an integral part of the grassroots effort included in the passage of TEFRA in 1982. They treasure their status as independent consultants, operating their own businesses, maintaining their own records, inventories and expenses, and bearing risk of loss.

Page 2

The amendment would benefit Alaska's system by clarifying direct sellers' non-coverage and eliminate the need for costly administrative proceedings which might otherwise be necessary to determine employment status. It thus could save the system money and time by further defining who can file, benefiting those waiting to appropriately qualify for unemployment compensation. It does not change the substance of the law.

The language of the proposal is clear and concise, so as to address only direct sellers such as Mary Kay Beauty Consultants, Amway distributors, Avon representatives, etc., which is our only purpose.

Most Mary Kay Beauty Consultants enter the career to supplement family income, many times as a second job, in these challenging economic times. Addition of this language will give Alaska direct sellers additional security regarding their statutory classification as independent contractors.

Mary Kay joins the Direct Selling Association and others in endorsing passage of HB 238.

Thank you for your time.

DIRECT SELLING ASSOCIATION

1000 K Street, N.W., Suite 1010, Washington, DC 20006-2808
202/293-5760 • Fax 202/463-4569

April 11, 1995

The Honorable Pete Kott
Alaska House of Representatives
Juneau, AK 99801-1182

Dear Representative Kott:

I write on behalf of the Direct Selling Association (DSA) regarding House Bill 238 as amended by the House State Affairs Committee, a bill before the House Labor and Commerce Committee. The bill deals with direct sellers and unemployment compensation. As know, DSA is the national trade association that represents the companies which market their products through personal demonstration, primarily though not exclusively, in the home. Companies like Amway, Avon, The Kirby Company, Mary Kay, Shaklee and Tupperware are among our 150 corporate members. The almost 6 million people nationally (including more than 10,000 in Alaska) who sell for them are independent contractors. We are grateful for your efforts thus far to enact a clarification of Alaska law that direct sellers are not covered under the state's unemployment compensation law.

Of course, your bill was offered in an effort to address a current dispute which a specific group of direct sellers (Kirby vacuum cleaner salespeople) in Alaska has had with the Department of Labor about their status under existing law. Most direct sellers have not had a problem under existing law; there is unanimous agreement within our industry, however, that it is very important to pass legislation this year to deal with the problem experienced by the Kirby Distributors.

Direct sellers are universally treated as independent contractors, and not subject to unemployment insurance coverage. There is no one issue more important to direct sellers than their independent contractor status. Most people enter and exit the business frequently. Indeed, most of the 10,000 Alaskan direct sellers operate their small direct sales businesses on a part-time basis for a few weeks or months out of every year. Their earnings are generally quite small and meant to supplement their families' other income. Were direct selling considered to be "employment", the state and direct selling companies would be swamped by paperwork, most direct selling companies would go out of business because of the increased and unnecessary costs, and most individual direct sellers would lose their micro-enterprises.

Approximately twenty five states have laws which specifically exempt direct sellers from coverage. In those which do not, as in Alaska, a more general test (the so-called "ABC test") is used to determine unemployment coverage. Direct sellers are virtually never found to be covered.

The Honorable Pete Kott
April 11, 1995
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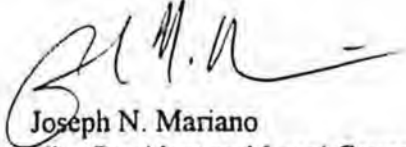
Unfortunately, the ABC test is subject to somewhat inexact interpretation and can sometimes result in administrative interpretation. Those administrative decisions can mean that direct sellers are occasionally found--wrongly--to be covered employees. This is what has happened in Alaska with some Kirby direct sellers. As a result, all of the parties can face lengthy and costly judicial proceedings to confirm what should have been obvious from the beginning--that the direct seller is an independent contractor and not covered by the uc law.

The State Affairs Committee substitute for H.B. 238 will avoid this result by making Alaska's law consistent with the other narrow state laws which define direct sellers. We believe such consistency and reliability is vital for direct sellers and the law, and can be accomplished by a simple referral to the existing definition of "direct seller" used in the federal Internal Revenue Code. Many other states have done just that. Such an amendment would clearly address the current problem. The federal language has been in place since 1982 and has proven to be an effective, limited definition for federal tax purposes. Only true direct sellers (Avon Representatives, Amway Distributors, Kirby salespeople, Mary Kay Beauty Consultants, etc...) have qualified under this federal definition.

The Department of Labor has indicated that it is rarely, if ever, supportive of this type of legislation but has acknowledged the need and its desire for legislation to assist the local Kirby distributors who are engaged in the dispute. We feel supremely confident that the cs for H.B. 238 is the simplest, most limited and effective manner of clarifying direct sellers' status under the law. Unfortunately, the original version of the legislation, which the Department supports, would have done so in a manner inconsistent with federal and other state laws. For example, the original language would have applied only to sellers who make the sale in the customer's home. Many direct sellers sell in their customers' offices, or the home of a third party hostess; they would not have qualified as direct sellers under the original terms of H.B. 238. Thus the original bill was not acceptable to most direct sellers. The House State Affairs Committee agreed with our position; thus their cs for H.B. 238 is now before you. We unequivocally support the cs as passed by State Affairs.

On behalf of the thousands of Alaskan direct sellers, I thank you for your consideration of our views.

Sincerely,



Joseph N. Mariano
Vice President and Legal Counsel

JNM:mlr

cc: Members of the House Labor and Commerce Committee



Amway Corporation, 7575 Fulton Street East, Ada, Michigan 49355-0001
Legal Division

April 7, 1995

The Honorable Pete Kott, Chairman
House Labor and Commerce Committee
Capitol Building
Juneau, AK 99801-1182

Subject: CS House Bill 238 / Direct Sellers

Dear Chairman Kott:

I understand House Bill 238, a bill under your sponsorship proposing to specifically exempt direct sellers from coverage under the state unemployment compensation law, may soon be heard in your Labor and Commerce Committee. On behalf of our thousands of independent Alaska distributors, Amway wishes to express our **support** of the bill.

By way of background, Amway Corporation is a manufacturer and distributor of hundreds of home care and personal care products sold by thousands of independent distributors throughout the country, including Alaska. Alaska Amway distributors sell products to family, friends and neighbors in an effort to supplement their family incomes, while interesting others to do the same. In Alaska, Amway distributors live and work not only in the large cities of Anchorage, Fairbanks and Juneau, but also in small towns and villages such as Big Lake, Eagle River, North Pole, Palmer, Sterling, Soldotna and Wasilla.

Direct sellers such as Amway distributors are not employees of Amway Corporation but are instead independent contractors. They decide for themselves the hours during which they wish to pursue their opportunity and the amount of effort they wish to expend. They determine the prices at which they sell their products, are responsible for the business expenses they incur, keep their own records and accounts, bear the risk of loss, and keep for themselves the fruits of their enterprise. They are truly independent business persons and their status as independent contractors is not disputed.

CS HB 238 proposes to specifically exempt direct sellers from the state unemployment compensation law. **The language mirrors laws enacted by some 25 states** which directly follow the language enacted in the U.S. Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). This language is time-tested and ensures that all legitimate direct sellers are indeed exempt from coverage under the state unemployment law (while ensuring that non-direct sellers are not exempted).

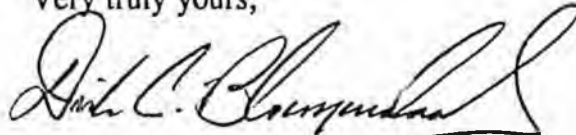
April 7, 1995
Page 2

The status of direct sellers as non-employees is not disputed. Nonetheless, Amway Corporation and the direct selling industry wish to have the Alaska Unemployment Compensation Law amended to statutorily clarify that non-employee status. Direct sellers such as Amway distributors are not like Amway employees, and would not participate in the unemployment compensation process because of this accepted status. However, the mere task of administering occasional meritless UC claims can be expensive for the state as well as the direct selling companies involved.

Usually an evidentiary hearing is required to resolve such claims, involving the expense of attorneys and administrative personnel. Although the common law is consistent in its treatment of direct sellers as being ineligible for unemployment compensation benefits, the standards set out in the proposed direct seller exemption are concise, precise, easy to prove and well accepted throughout the country. The proposal is revenue neutral and may even result in a savings of administrative expenses to the state. Future savings can be predicted attributable to an anticipated reduction in the number of meritless UC claims, which benefits those waiting to appropriately qualify.

Alaska CS HB 238's proposed test recognizes the Department of Labor's historical role in distinguishing this class of independent contractors from true employees. This test would make for an easier administrative determination of the facts and circumstances surrounding misfiled claims. Therefore, Amway urges your support of CS House Bill 238.

Very truly yours,



Dirk C. Bloemendaal, Counsel
Corporate Government Affairs

cc: Members of the House Labor and Commerce Committee
Joe Mariano, Direct Selling Association

Facsimile Cover Page

TO: Name: REP. PETE KOIF
 Company:
 Phone:
 Fax:

FROM: Sender: ERIC ELLMAN
 Phone: (202) 293-5760
 Fax: (202) 463-4569

Number of pages including cover: 7.

Message:

**Don't miss the 1995 Annual Meeting --- June 11-13 at the
Grand Traverse Resort, Michigan
REGISTER TODAY**

**DIRECT SELLING ASSOCIATION**

1666 K Street, NW, Suite 1010, Washington, DC 20006 2818
202/293-5760 • Fax 202/463-1569

March 16, 1995

The Honorable Pete Kott
Alaska House of Representatives
Juneau, AK 99801-1182

VIA FACSIMILE

Dear Rep. Kott:

As you know, we have been working with Steve Egli and others to promote an exemption for direct sellers from Alaska's unemployment compensation law. Although DSA agrees in principle with H.B. 238's goal to exempt direct sellers, we have several concerns with the bill draft.

DSA feels very strongly that the exemption should conform to the exemption language adopted by the federal government and dozens of other states. This language has been the result of thousands of hours of work by many parties to promote a level of consistency for our 150 multistate direct selling companies whose lives would otherwise be complicated by a myriad of state exemptions. To truly exempt all direct sellers, DSA requests amendments to your legislation to conform to the language used by other states and the U.S. Internal Revenue Code (enclosed).

Specifically, Section 23.20.526(a)(21)(A) would be of value only to direct sellers who are physically present in a consumer's home. As you know, many direct selling operations are multilevel in nature, meaning that a person can earn income not only from commissions as a result of their own sales, but also from override bonuses from the sales of others. As a result, Sec. (a)(21)(A) would not exempt direct sellers who are as independent as all other direct sellers, simply because they do not always sell directly to a consumer in his or her home.

Further, not all direct sales occur at the consumer's home, but could take place at the direct seller's home, someone else's home, or an office. Direct sales presentations are often made at parties, and these parties occur at a home, but not necessarily the buyer's home.

With regard to Section (a)(21)(B), direct sellers earn compensation by many means, including override bonuses from the sales of others, and other incentive bonuses, like pink Cadillacs. Section (a)(21)(B) does not recognize other methods of compensation that are vital to the direct selling industry.

Finally, Sec. (a)(21)(C) would require direct sales contracts to state that the seller would not be treated as an employee "for purposes of this section", thereby mandating that contracts with Alaskan direct sellers specifically cite Alaskan law. Direct sales contracts are printed for use in all 50 states. If each state were to require different printing requirements, tremendous costs would be imposed on national direct selling companies.

The Honorable Pete Kott
March 16, 1995
Page 2

For all of the above reasons, I suggest that the bill draft be amended to conform to federal and other states' laws. For your review, I have enclosed two alternative suggested amendments, as well as the section of the U.S. Internal Revenue Code that defines direct sellers.

I would be happy to discuss this further with you. Please feel free to call me with any questions.

Sincerely,



Eric J. Ellman
Associate Attorney/Manager, Government Relations

Enclosure

**DIRECT SELLING ASSOCIATION**

1666 K Street, NW, Suite 1010, Washington, DC 20006-2908
202/293-5760 • Fax 202/163-4569

**DSA SUGGESTED AMENDMENT
TO ALASKA'S LABOR AND WORKERS' COMPENSATION LAW
ALTERNATIVE #1**

Sec. 23.20.526(a) is amended by adding a new paragraph to read:

(21) service by a direct sellers if

(A) such person is:

(i) engaged in the trade or business of selling (or soliciting the sale of) consumer products, services or other intangibles to any buyer on a buy-sell basis or a deposit-commission basis for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment, or (ii) is engaged in the trade or business of selling (or soliciting the sale of) consumer products, services or other intangibles in the home or otherwise than in a permanent retail establishment,

(B) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in subparagraph (21)(A) is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

(C) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee for federal and state tax purposes.

**DSA SUGGESTED AMENDMENT
TO ALASKA'S LABOR AND WORKERS' COMPENSATION LAW
ALTERNATIVE #2**

Sec. 23.20.526(a) is amended by adding a new paragraph to read:

(21) services by a direct sellers as defined by 26 U.S.C. Section 3508.

Subtitle E—Employment Taxes

PART I—IN GENERAL

SEC. 26B. TREATMENT OF REAL ESTATE AGENTS AND DIRECT SELLERS.

(a) **GENERAL RULE.**—Chapter 25 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new section:

"SEC. 3308. TREATMENT OF REAL ESTATE AGENTS AND DIRECT SELLERS.

"(a) **GENERAL RULE.**—For purposes of this title, in the case of services performed as a qualified real estate agent or as a direct seller—

"(1) the individual performing such services shall not be treated as an employee, and

"(2) the person for whom such services are performed shall not be treated as an employer.

"(b) **DEFINITIONS.**—For purposes of this section—

"(1) **QUALIFIED REAL ESTATE AGENT.**—The term 'qualified real estate agent' means any individual who is a sales person if—

"(A) such individual is a licensed real estate agent,

"(B) substantially all of the remuneration (whether or not paid in cash) for the services performed by such individual as a real estate agent is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

"(C) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for Federal tax purposes.

"(2) **DIRECT SELLER.**—The term 'direct seller' means any person if—

"(A) such person—

"(i) is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary prescribes by regulations, for resale (by the buyer or any other person) in

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the home or otherwise than in a permanent retail establishment, or

"(ii) is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment.

"(B) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in subparagraph (A) is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

"(C) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for Federal tax purposes.

"(3) COORDINATION WITH RETIREMENT PLANS FOR SELF-EMPLOYED.—This section shall not apply for purposes of subtitle A to the extent that the individual is treated as an employee under section 401(c)(1) (relating to self-employed individuals)."

(b) AMENDMENT OF SOCIAL SECURITY ACT.—Section 210 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"Treatment of Real Estate Agents and Direct Sellers

"(p) Notwithstanding any other provision of this title, the rules of section 3508 of the Internal Revenue Code of 1954 shall apply for purposes of this title."

(c) INDEFINITE EXTENSION OF PROVISIONS RELATING TO EMPLOYMENT STATUS FOR EMPLOYMENT TAXES.—

(1) TERMINATION OF CERTAIN EMPLOYMENT TAX LIABILITY.—

(A) Subparagraph (A) of section 530(a)(1) of the Revenue Act of 1978 (relating to termination of certain employment tax liability for periods before July 1, 1982) is amended by striking out "ending before July 1, 1982".

(B) Paragraph (3) of section 530(a) of such Act is amended by striking out "and before July 1, 1982."

(C) The subsection heading of subsection (a) of section 530 of such Act is amended by striking out "FOR PERIODS BEFORE JULY 1, 1982".

(2) PROHIBITION AGAINST REGULATIONS AND RULINGS ON EMPLOYMENT STATUS.—Subsection (b) of section 530 of such Act is amended—

(A) by striking out "July 1, 1982 (or, if earlier.," and

(B) by striking out "taxes" and inserting in lieu thereof "taxes".

(3) CERTAIN REGULATIONS, ETC., PERMITTED.—Nothing in section 530 of the Revenue Act of 1978 shall be construed to prohibit the implementation of the amendments made by this section.

(d) CLERICAL AMENDMENT.—The table of sections for chapter 25 of such Code is amended by adding at the end thereof the following new item:

*Sec. 5508. Treatment of real estate agents and direct sellers.**(1) EFFECTIVE DATES.—*

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to services performed after December 31, 1982.

(2) SUBSECTION (C).—The amendments made by subsection (c) shall take effect on July 1, 1982.



Amway Corporation, 7575 Fulton Street East, Ada, Michigan 49355-0001
Legal Division

April 21, 1995

The Honorable Pete Kott, Chair
Labor and Commerce Committee
Alaska House of Representatives
Capitol Building
Juneau, AK 99801-1182

Subject: CS HB 238 & CS SB 122 / Direct Sellers

Dear Chairman Kott:

On behalf of our thousands of independent Alaska distributors, Amway wishes to express its strong support for CS House Bill 238 and CS Senate Bill 122.

As you know, Amway Corporation is a manufacturer and distributor of a wide variety of home care and personal care products sold by thousands of independent distributors throughout the country, including several thousand in Alaska. Alaskan Amway distributors sell products to family, friends and neighbors in an effort to supplement their family incomes, while interesting others to do the same. Alaskan Amway distributors live and work not only in the large cities of Anchorage, Fairbanks and Juneau, but also in small towns and villages such as Big Lake, Eagle River, North Pole, Palmer, Sterling, Soldotna and Wasilla.

Amway distributors are not employees of Amway Corporation but are instead independent contractors. They decide for themselves the hours during which they wish to pursue their opportunity and the amount of effort they wish to expend. They determine the prices at which they sell their products, are responsible for the business expenses they incur, keep their own records and accounts, bear the risk of loss, and keep for themselves the fruits of their enterprise. They are truly independent business persons and their status as independent contractors is not disputed.

CS HB 238 and CS SB 122 propose to specifically exempt direct sellers from the state unemployment compensation law. The language mirrors laws enacted by some 25 states which directly follow the language enacted in the U.S. Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). This language is time-tested, tight, precise, limited in scope and ensures that legitimate direct sellers are indeed exempt from coverage under the state unemployment law (while ensuring that non-direct sellers are not exempted).

April 21, 1995

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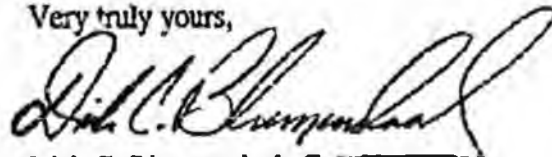
These bills codify the status of all direct sellers in Alaska and ensure that no misunderstandings or misinterpretations as to their status will arise in the future. No persons other than legitimate direct sellers selling consumer products in the home or otherwise than in a permanent retail establishment can qualify under this language. Further, its enactment would help all Alaska direct sellers, and not just a few.

This codification would track law now enacted in over half of the states. While it is true that the states have chosen to follow federal definitional language - it is also true that the reason for this is that it has proven beneficial to direct sellers, to the companies whose products they sell, and to the states seeking to preserve the free flow of interstate commerce.

Because Amway distributors sell products in all 50 states, it is vitally important that individual state laws be consistent. Companies - and their independent direct sellers - must be able to rely upon the fact that their status will not change when distributors cross state lines or do business in another state.

Alaska CS HB 238's and CS SB 122's proposed test recognizes the Department of Labor's historical role in distinguishing this class of independent contractors from true employees. This accepted test would make for an easier administrative determination of the facts and circumstances surrounding misfiled claims and prevent future misunderstandings concerning status. Therefore, Amway urges your support of CS House Bill 238 and CS Senate Bill 122.

Very truly yours,



Dirk C. Bloemendaal, Counsel
Corporate Government Affairs

NOEVIR

April 17, 1995

The Honorable Pete Kott
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

*Skunk Creek, Colorado
c/o National District*

Dear Representative Kott;

As an active member of the Direct Selling Association I am writing to express my support of H.B. 238. House Bill 238 accurately defines all direct sellers, in accordance with the federal definition of "direct seller" as found in the US Internal Revenue Code, yet would not allow non-direct sellers to escape the requirements of the unemployment law.

*Regional Office
Wankarem, Alaska
Dallas, Texas
Honolulu, Hawaii*

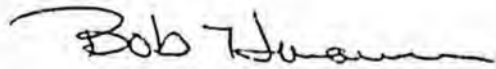
In the State of Alaska thousands of its citizens are trying to improve the quality of their lives through the pursuit of their own independent small businesses. Many of these citizens are doing this by becoming independent representatives of direct selling companies. Although some pursue direct selling on a full time basis the vast majority are part time; trying to earn a few extra dollars to improve their living standard, have money for a family vacation, or pay for college tuition. We believe that S.B. 122, if passed, could seriously impact the activities of direct sellers and could possibly put direct selling companies out of business.

April 17, 1995

Page 2

Your support of H.B. 238 is requested and greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Herrmann". The signature is written in a cursive style with a large initial "B".

Bob Herrmann
Executive Vice President
Chief Operating Officer

BH:cj

cc: H. Shoda
Board of Directors
Managers
D.S.A.

SHAKLEE CORPORATION

Shaklee Terrace
444 Market Street
San Francisco, CA 94111
Tel: (415) 954-7000
Fax: (415) 954-2155

FACSIMILE TRANSMITTAL

TO: Representative Pete Kott
Alaska Legislaturc

FROM: Evelyn Jarvis-Ferris
Vice President, Government Relations
SHAKLEE CORPORATION

DATE: March 24, 1995

RE: House Bill 238

Number of Pages being sent (including cover sheet): 3

If you have any problems receiving this transmittal, contact Jenifer at 415-954-2132

Shaklee Corporation

Shaklee Terraces 444 Market Street
San Francisco, CA 94111
Telephone 415/354-2010
FAX 415/354-2155

Evelyn Jarvis-Ferris

Vice-President
Government Relations

March 21, 1995

The Honorable Pete Kott
Alaska Legislative Building
State Capitol
Juneau, Alaska 99801

RE: House Bill 238

Dear Representative Kott

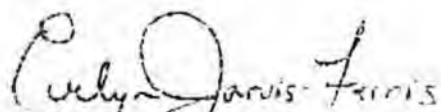
I am writing to express our concern with House Bill 238 dealing with direct sellers and unemployment compensation which has been referred to the Committees on Labor and Commerce and State Affairs. Shaklee, as you may know, is a direct selling company and a major manufacturer of nutritional personal care and household products that are sold through small business people working primarily out of their homes. As members of the Direct Selling Association (DSA), we support the attached amendment that they have offered which is consistent with federal and other state laws in clearly defining who direct sellers are.

Unfortunately, the language in H.B. 238 does not accurately define all direct sellers and therefore is incomplete and problematic. The amendment that we are suggesting was carefully crafted and incorporated into the Internal Revenue Code (26 U.S.C. Section 3508) in 1982 and has worked well in narrowly and clearly defining direct sellers. Since then, many other states, including California, have incorporated this same definition into state law.

Although we are pleased that the Legislature is considering clarifying the status of direct sellers as it relates to unemployment compensation, it is imperative that the definition be consistent with the attached language in order to cover our Shaklee Distributors and other direct sellers who live and work in your state.

I urge your support for this important amendment and thank you for your consideration.

Sincerely,



Evelyn Jarvis-Ferris
Vice President, Government Relations

DSA Suggested Amendment to Alaska's Labor and Workers' Compensation Law**Alternative #1**

Section 23.20.526(a) is amended by adding a new paragraph to read:

(21) service by a direct sellers if

(A) Such person is:

(i) engaged in the trade or business of selling (or soliciting the sale of) consumer products, services or other intangibles to any buyer on a buy-sell basis or a deposit-commission basis for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment, or (ii) is engaged in the trade or business of selling (or soliciting the sale of) consumer products, services or other intangibles in the home or otherwise than in a permanent retail establishment,

(B) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in subparagraph (21)(A) is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

(C) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee for federal and state tax purposes.

DSA Suggested Amendment to Alaska's Labor and Workers' Compensation Law**Alternative #2**

Section 23.20.526(a) is amended by adding a new paragraph to read:

(21) services by a direct sellers as defined by 28 U.S.C. Section 3508.

HB

243

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

STATE CAPITOL, JUNEAU, AK 99801-1182
(907) 465-4954



SPONSOR STATEMENT HB 243

Architects, engineers, and land surveyors, because of the nature of their work, are in the position to do a lot of good for the public when they perform competently. By the same token, if they do not perform competently, they can cause much suffering and financial loss to the public. Accordingly, it is vitally important to the state that only competent persons are allowed to work in these professions. In recognition of that fact, Alaska created the State Board of Registration for Architects, Engineers, and Land Surveyors. It charged this board with the responsibility of licensure and discipline of these professionals. State law also makes it illegal to practice the affected professions without being registered by the Board.

Currently, landscape architects are not within the Board's jurisdiction. HB 243, should it become law, would accomplish that end and subject landscape architects to the same licensure and disciplinary procedures as currently exist with respect to architects, engineers, and land surveyors.

Landscape architects perform tasks pertaining to the use of exterior spaces. This can involve parks, playgrounds, trails, scenic vistas, plazas, etc. To perform their job, landscape architects must be knowledgeable in a wide variety of different topics, including universal design standards, erosion control, environmental laws, irrigation, slip resistance, insecticides, and drainage. Obviously, when performed in a shoddy manner, landscape architecture constitutes a danger to public welfare and safety.

It is respectfully submitted that the same rationale which supports the regulation of architects, engineers, and land surveyors requires a similar approach with respect to landscape architects. This fact is recognized by 45 of our sister states, which license landscape architects. Your support of this bill will enhance the safety and welfare of Alaskans. I therefore commend it to you.

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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

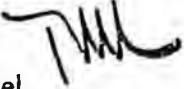
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 10, 1995

SUBJECT: Sectional Summary of HB 243. (An Act relating to licensure of landscape architects.)

TO: Representative Pete Kott
Attn: George Dozier

FROM: Terri Lauterbach 
Legislative Counsel

This memo is a sectional summary of the above-described bill. Please let me know if you have further questions.

Sections 1 - 33.

These sections make the changes necessary in AS 08 so that the current Board of Registration for Architects, Engineers, and Land Surveyors would have the authority to regulate landscape architects. Under sec. 3, a landscape architect would be added as a nonvoting member of the board. Under sec. 5, the landscape architect would not be entitled to per diem or travel expenses. The "practice of landscape architecture" is defined in sec. 32.

Sections 34 - 35.

These sections make the changes necessary outside of AS 08 to change the name of the board.

Sections 36 - 37.

These sections are transitional provisions.

TML:klb:glc
95-140.klb

FISCAL NOTE

STATE OF ALASKA

BILL NO. HB 243

1995 LEGISLATIVE SESSION

Revision Date: April 19, 1995 Department: Commerce and Economic Development
 Title: An Act relating to licensure of landscape architects. BRU: Occupational Licensing
 Sponsor: House Labor & Commerce Component: Operations
 Requestor: House Labor & Commerce COMPONENT SERIAL #: 1844

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	10.4	10.4	0.0	0.0	0.0	0.0
TRAVEL	0.8	0.8	0.8	0.8	0.8	0.8
CONTRACTUAL	6.5	4.0	4.0	4.0	4.0	4.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	18.7	16.2	5.8	5.8	5.8	5.8

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES	34.9	0.0	11.6	0.0	11.6	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts	18.7	16.2	5.8	5.8	5.8	5.8
1006 GF/MHTIA						
Other						
TOTAL	18.7	16.2	5.8	5.8	5.8	5.8

Estimate of any current year (FY 95) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

This fiscal note for HB 243 shows costs assuming the registration of landscape architects will be accomplished by adding one non-voting board member to the Board of Registration for Architects, Engineers, and Land Surveyors, assuming the examination will be administered twice each year, and no out-of-state travel provided. Also, no funding for investigative expenses are requested in this fiscal note. However, if numerous complaints are received, funding for investigative costs will be required in the future. (Continued on attached)

Prepared by: Jennifer Strickler, Admin. Officer Phone: 465-2144
 Division: Occupational Licensing Date: 4/19/95
 Approved by Commissioner: William L. Hensley Date: 4/24/95
 Agency: Commerce and Economic Development

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 243

ANALYSIS: (Continued)

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT FISCAL NOTE CALCULATIONS FOR HB 243

PERSONAL SERVICES

\$10.4

The Board of Registration for Architects, Engineers and Land Surveyors is presently understaffed. This fiscal note assumes that the duties for examination and registration of landscape architects will require at least one-fourth of a Licensing Examiner's position, Range 12, (\$10.4) for the first two years to implement the program.

TRAVEL

\$.8

STAFF TRAVEL TO ADMINISTER EXAMINATIONS, \$.8

The staff travel costs are based on the airfare and per diem for one staff person to travel from Juneau to Anchorage for one three-day examination annually to proctor the examination and provide examination security.

CONTRACTUAL SERVICES

\$ 6.5

The division is anticipating the charge for the national examination for landscape architect registration can be paid by the applicant directly to the examination agency. If the examination agency will not allow direct payment, additional funding of \$20.5 per exam will be required for examining at least 50 applicants at each exam. *(Note: The \$20.5 is not included in this fiscal note request since the division is anticipating payments to be made directly by the applicant to the examining agency.)*

HB 243, continued

Contractual services cover printing, postage, communications, and advertising costs (3.3); three days' room rental for examination administration (1.8); and membership fees to belong to the national organization for landscape architect registration (1.4). It is estimated that there will be higher costs in the initial year for regulations projects and examinations. In the following years it is estimated that the expenditures for contractual services may be reduced to \$4.0 due to decreased costs to develop regulations and lower room rental costs to examine fewer numbers of applicants.

SUPPLIES

\$ 1.0

TOTAL:

\$ 18.7

REVENUE/FUND SOURCE: In accordance with AS 08.01.065, all licensees are required to pay for the costs of regulating their profession. The revenue shown anticipates licensing fees to cover all costs associated with registration for landscape architects. If the number of potential registrants under this bill are few, for example 50, licensing fees must be set at \$700.00 biennially (\$350.00 per year) to fully cover its costs. If more individuals seek registration, individual licensing fees would be lower. Under the self-sufficiency mandate by statute, licensing fees will than be reviewed prior to the license renewal (in two years) and adjusted accordingly. This program is intended to be funded entirely by general fund/program receipts from fees.

FISCAL NOTE

Revision Date: 3/8/95
Title: "An Act relating to licensure of landscape architects."

Department Affected: DOT&PF
BRU: D & C

Sponsor: House Labor & Commerce Committee
Requestor:

Component: E & O
Component Serial Number: 547

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING:	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

1002 FEDERAL RECEIPTS	0	0	0	0	0	0
1003 GF MATCH	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/PROGRAM RECEIPTS	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	0	0	0	0	0	0

POSITIONS

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

Estimate of current year (FY95) impact: None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Loren Rasmussen, P.E.

Phone: 465-2960

Division: Engineering and Operations Standards

Date: March 14, 1995

Approved by Commissioner: Joseph L. Perkins, P.E.

Phone: 465-3901

Agency: Department of Transportation and Public Facilities

Date: March 14, 1995

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 243

Revision Date: March 16, 1995 Department: Commerce and Economic Development
 Title: An Act relating to licensure of landscape architects. BRU: Occupational Licensing
 Component: Operations
 Sponsor: House Labor & Commerce
 Requestor: House Labor & Commerce COMPONENT SERIAL #: 1844

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	10.4	10.4	0.0	0.0	0.0	0.0
TRAVEL	3.8	3.8	3.8	3.8	3.8	3.8
CONTRACTUAL	6.5	4.0	4.0	4.0	4.0	4.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	21.7	19.2	8.8	8.8	8.8	8.8

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES	40.9	0.0	17.6	0.0	17.6	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts	21.7	19.2	8.8	8.8	8.8	8.8
1006 GF/MHTIA						
Other						
TOTAL	21.7	19.2	8.8	8.8	8.8	8.8

Estimate of any current year (FY 95) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

This fiscal note for HB 243 shows costs assuming the registration of landscape architects will be accomplished by adding one non-voting board member to the Board of Registration for Architects, Engineers, and Land Surveyors, assuming the examination will be administered twice each year, and no out-of-state travel provided. Also, no funding for investigative expenses are requested in this fiscal note. However, if numerous complaints are received, funding for investigative costs will be required in the future. (Continued on attached)

Prepared by: Jennifer Strickler, Admin. Officer Phone: 465-2144
 Division: Occupational Licensing Date: 3/16/95
 Approved by Commissioner: William L. Hensley Date: 3/16/95
 Agency: Commerce and Economic Development

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CS FOR HOUSE BILL NO. 243(L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to licensure of landscape architects."**

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

3 *** Section 1. AS 08.01.010(2) is amended to read:**

4 (2) State Board of Registration for Architects, Engineers, [AND] Land
5 Surveyors, and Landscape Architects (AS 08.48.011);

6 *** Sec. 2. AS 08.03.010(c)(3) is amended to read:**

7 (3) State Board of Registration for Architects, Engineers, [AND] Land
8 Surveyors, and Landscape Architects (AS 08.48.011) - June 30, 1997;

9 *** Sec. 3. AS 08.48.011 is amended to read:**

10 **Sec. 08.48.011. BOARD CREATED. (a) There is created the State Board of**
11 **Registration for Architects, Engineers, [AND] Land Surveyors, and Landscape**
12 **Architects. The board shall administer the provisions of this chapter and comply with**
13 **AS 44.62 ([THE] Administrative Procedure Act [(AS 44.62)]).**

14 (b) The board consists of nine voting members appointed by the governor
15 having the qualifications as set out in AS 08.48.031 and one nonvoting member

1 appointed by the governor from persons recommended by the Alaska Chapter of
2 the American Society of Landscape Architects and having the qualifications set
3 out in AS 08.48.031. The voting members of the board consist [CONSISTS] of two
4 civil engineers, one land surveyor, one mining engineer, two engineers from other
5 branches of the profession of engineering, two architects, and one public member.

6 * Sec. 4. AS 08.48.031 is amended to read:

7 Sec. 08.48.031. QUALIFICATIONS. Each member of the board must have
8 been a resident in the state for three consecutive years immediately preceding
9 appointment and, except for the public member and the nonvoting member, must be
10 registered and have a minimum of five years of professional practice in the member's
11 respective field.

12 * Sec. 5. AS 08.48.061(b) is amended to read:

13 (b) Each voting member of the board is entitled to receive per diem and travel
14 expenses as authorized by law for other boards and commissions. The nonvoting
15 member of the board is not entitled to receive either per diem or travel expenses.

16 * Sec. 6. AS 08.48.061(c) is amended to read:

17 (c) The board may make expenditures from appropriated funds for any purpose
18 that is reasonably necessary for the proper performance of its duties under this chapter.
19 This may include the expenses of the board delegates to meetings of councils of
20 architect examiners, engineering examiners, [OR] land surveyor examiners, or
21 landscape architect examiners, or any of their subdivisions. The total amount of
22 warrants issued in payment of the expenses incurred under this chapter may not exceed
23 the amount of money appropriated by the legislature.

24 * Sec. 7. AS 08.48.071(f) is amended to read:

25 (f) The Department of Commerce and Economic Development shall assemble
26 statistics relating to the performance of its staff and the performance of the board,
27 including but not limited to,

28 (1) the number of architects, engineers, [AND] land surveyors, and
29 landscape architects registered over a five-year period;

30 (2) the rate of passage of examinations administered by the board;

31 (3) the number of persons making application for registration as a

1 professional architect, engineer, [OR] land surveyor, or landscape architect over a
2 five-year period;

3 (4) an account of registration fees collected under AS 08.01.065;

4 (5) a measure of the correspondence workload of any licensing
5 examiner employed by the department to carry out this chapter.

6 * Sec. 8. AS 08.48.091 is amended to read:

7 Sec. 08.48.091. WRITTEN EXAMINATIONS [AND EXAMINATION FEES].

8 Except as provided in (b) of this section, written [WRITTEN] examinations shall
9 be held at least twice each year at places determined by the board unless the
10 examination administered by the board is a national examination prepared only once
11 each year, in which case the examination shall be held at least once each year. A
12 candidate failing an examination may apply for reexamination.

13 * Sec. 9. AS 08.48.091 is amended by adding a new subsection to read:

14 (b) The board shall administer a written examination at least once each year
15 for applicants who are seeking to be registered as landscape architects.

16 * Sec. 10. AS 08.48.111 is amended to read:

17 Sec. 08.48.111. POWER TO REVOKE, SUSPEND, OR REISSUE
18 CERTIFICATE. The board may suspend, refuse to renew, or revoke the certificate of
19 or reprimand a registrant or corporation who is found guilty of (1) fraud or deceit in
20 obtaining a certificate; (2) gross negligence, incompetence, or misconduct in the
21 practice of architecture, engineering, [OR] land surveying, or landscape architecture;
22 or (3) a violation of this chapter, a regulation adopted under this chapter, or the code
23 of ethics or professional conduct as adopted by the board. The code of ethics or
24 professional conduct shall be distributed in writing to every registrant and applicant
25 for registration under this chapter. This publication and distribution of the code of
26 ethics or professional conduct constitutes due notice to all registrants. The board may
27 revise and amend its code and, upon doing so, shall immediately notify each registrant
28 in writing of the revisions or amendments. The board may, upon petition of the
29 registrant or corporation, reissue a certificate if a majority of the members of the board
30 vote in favor of the reissuance.

31 * Sec. 11. AS 08.48.171 is amended to read:

1 Sec. 08.48.171. GENERAL REQUIREMENTS AND QUALIFICATIONS FOR
2 REGISTRATION. An applicant for registration as an architect, engineer, [OR] land
3 surveyor, or landscape architect must be of good character and reputation and shall
4 submit evidence satisfactory to the board of the applicant's education, training, and
5 experience. However, an applicant for registration as a land surveyor may not be
6 required to submit evidence of more than eight years of any combination of education,
7 experience, or training.

8 * Sec. 12. AS 08.48.181 is amended to read:

9 Sec. 08.48.181. REGISTRATION UPON EXAMINATION. Except as
10 provided in AS 08.48.191, for registration as a professional architect, professional
11 engineer, [OR] professional land surveyor, or professional landscape architect, a
12 person shall be examined in this state in accordance with the regulations of procedure
13 and standards adopted by the board under AS 44.62 ([THE] Administrative Procedure
14 Act [(AS 44.62)]). The procedure and standards shall at least meet the requirements
15 adopted by recognized national examining councils for these professions.

16 * Sec. 13. AS 08.48.191 is amended by adding a new subsection to read:

17 (d) A person holding a certificate of registration authorizing the person to
18 practice landscape architecture in a state, territory, or possession of the United States,
19 the District of Columbia, or a foreign country, that in the opinion of the board meets
20 the requirements of this chapter, based on verified evidence, may upon application, be
21 registered under the regulations of the board. A person holding a certificate of
22 qualification issued by the Council of Landscape Architectural Registration Boards
23 may upon application be registered under regulations of the board.

24 * Sec. 14. AS 08.48.201(a) is amended to read:

25 (a) Application for registration as a professional architect, a professional
26 engineer, [OR] a professional land surveyor, or a professional landscape architect
27 shall

28 (1) be on a form prescribed and furnished by the board;

29 (2) contain statements made under oath, showing the applicant's
30 education and a detailed summary of the applicant's technical experience; and

31 (3) contain five references, three of whom must be architects for

1 architectural registration, engineers for engineering registration, [AND] land surveyors
2 for land surveying registration, and landscape architects for landscape architectural
3 registration, having personal knowledge of the applicant's architectural, engineering,
4 [OR] land surveying, or landscape architectural education, training, or experience.

5 * Sec. 15. AS 08.48.211 is amended to read:

6 Sec. 08.48.211. CERTIFICATE OF REGISTRATION. (a) An applicant who
7 fulfills the requirements set out by the board shall be awarded a certificate of
8 registration as a professional architect, engineer, [OR] land surveyor, or landscape
9 architect, authorizing the holder to offer or perform architectural, engineering, [OR]
10 land surveying, or landscape architectural services or work for the public, or to
11 certify or sign architectural, engineering, [OR] land surveying, or landscape
12 architectural documents. Certificates of registration issued under this section shall
13 be inscribed on their face in a manner determined by the board.

14 (b) The certificate of registration sealed by the board is prima facie evidence
15 that the person named in it is entitled to all rights and privileges of a professional
16 architect, professional engineer, [OR] professional land surveyor, or professional
17 landscape architect while the certificate remains unrevoked or unexpired.

18 * Sec. 16. AS 08.48.221 is amended to read:

19 Sec. 08.48.221. SEALS. Each registrant may obtain a seal of the design
20 authorized by the board, bearing the registrant's name, registration number, and the
21 legend, "Registered Professional Architect," "Registered Professional Engineer," [OR]
22 "Registered Professional Land Surveyor," or "Registered Professional Landscape
23 Architect." as appropriate. Final drawings, specifications, surveys, plats, plates,
24 reports, and other similar documents shall, when issued, be signed and stamped with
25 the seal. The board shall adopt regulations governing the use of seals by the registrant.
26 An architect, engineer, [OR] land surveyor, or landscape architect may not affix or
27 permit a seal and signature to be affixed to an instrument after the expiration of a
28 certificate or for the purpose of aiding or abetting another person to evade or attempt
29 to evade a provision of this chapter. The registrant, by affixing the registrant's seal to
30 final drawings, specifications, surveys, plats, plates, reports, and other similar
31 documents, and signing them, certifies that these documents were prepared by or under

1 the registrant's direct supervision, unless the registrant certifies on the face of the
2 document to the extent of the registrant's responsibility.

3 * Sec. 17. AS 08.48.241(a) is amended to read:

4 (a) This chapter does not prevent a corporation from offering architectural,
5 engineering, [OR] land surveying, or landscape architectural services; however, the
6 corporation shall file with the board

7 (1) an application for a certificate of authorization upon a form to be
8 prescribed by the board and containing information required to enable the board to
9 determine whether the corporation is qualified in accordance with the provisions of this
10 chapter to offer to practice architecture, engineering, [OR] land surveying, or
11 landscape architecture in this state;

12 (2) a certified copy of a resolution of the board of directors of the
13 corporation designating persons holding certificates of registration under this chapter
14 as responsible for the practice of architecture, engineering, [OR] land surveying, or
15 landscape architecture by the corporation in this state and providing that full
16 authority to make all final architectural, engineering, [OR] land surveying, or
17 landscape architectural decisions on behalf of the corporation with respect to work
18 performed by the corporation in this state is granted by the board of directors to the
19 persons designated in the resolution; however, the filing of this resolution does not
20 relieve the corporation of any responsibility or liability imposed upon it by law or by
21 contract;

22 (3) a designation in writing setting out the name of one or more
23 persons holding certificates of registration under this chapter who are in responsible
24 charge of each major branch of the architectural, engineering, [OR] land surveying, or
25 landscape architectural activities in which the corporation specializes in this state;
26 if a change is made in the person in responsible charge of a major branch of the
27 architectural, engineering, [OR] land surveying, or landscape architectural activities,
28 the change shall be designated in writing and filed with the board within 30 days after
29 the effective date of the change.

30 * Sec. 18. AS 08.48.241(b) is amended to read:

31 (b) Upon filing with the board the application for certificate of authorization,

1 certified copy of resolution, affidavit, and designation of persons specified in this
2 section, the board shall, subject to (c) of this section, issue to the corporation a
3 certificate of authorization to practice architecture, engineering, [OR] land surveying,
4 or landscape architecture in this state upon a determination by the board that

5 (1) the bylaws of the corporation contain provisions that all
6 architectural, engineering, [OR] land surveying, or landscape architectural decisions
7 pertaining to architectural, engineering, [OR] land surveying, or landscape
8 architectural activities in this state will be made by the specified architect, engineer,
9 [OR] land surveyor, or landscape architect in responsible charge, or other registered
10 architects, engineers, [OR] land surveyors, or landscape architects under the direction
11 or supervision of the architect, engineer, [OR] land surveyor, or landscape architect
12 in responsible charge;

13 (2) the application for certificate of authorization states the type of
14 architecture, engineering, [OR] land surveying, or landscape architecture practiced
15 or to be practiced by the corporation;

16 (3) the applicant corporation has the ability to provide architectural,
17 engineering, [OR] land surveying, or landscape architectural services;

18 (4) the application for certificate of authorization states the professional
19 records of the designated person who is in responsible charge of each major branch of
20 architectural, engineering, [OR] land surveying, or landscape architectural activities
21 in which the corporation specializes;

22 (5) the application for certificate of authorization states the experience
23 of the corporation, if any, in furnishing architectural, engineering, [OR] land surveying,
24 or landscape architectural services during the preceding five-year period;

25 (6) the applicant corporation meets other requirements related to
26 professional competence in the furnishing of architectural, engineering, [OR] land
27 surveying, or landscape architectural services as may be adopted by the board in
28 furtherance of the objectives and provisions of this chapter.

29 * Sec. 19. AS 08.48.241(d) is amended to read:

30 (d) The certificate of authorization shall specify the major branches of
31 architecture, engineering, [OR] land surveying, or landscape architecture of which

1 the corporation has designated a person in responsible charge as provided in this
2 section. The certificate of authorization shall be conspicuously displayed in the place
3 of business of the corporation, together with the names of persons designated as being
4 in responsible charge of the professional activities.

5 * Sec. 20. AS 08.48.241(e) is amended to read:

6 (e) If a corporation, organized solely by either a group of architects, a group
7 of engineers, [OR] a group of land surveyors, or a group of landscape architects,
8 each holding a certificate of registration under this chapter, applies for a certificate of
9 authorization, the board may, in its discretion, grant a certificate of authorization to the
10 corporation based on a review of the professional records of the incorporators, in place
11 of the required qualifications set out in this section. If the ownership of the
12 corporation is altered, the corporation shall apply for a revised certificate of
13 authorization, based upon the professional records of the owners, if exclusively
14 architects, engineers, [OR] land surveyors, or landscape architects, or otherwise under
15 the qualifications required by (b)(1) - (4) of this section.

16 * Sec. 21. AS 08.48.241(f) is amended to read:

17 (f) A corporation authorized to offer architectural, engineering, [OR] land
18 surveying, or landscape architectural services under this chapter, together with its
19 directors and officers for their own individual acts, is responsible to the same degree
20 as the designated individual registered architect, engineer, [OR] land surveyor, or
21 landscape architect, and shall conduct its business without misconduct or malpractice
22 in the practice of architecture, engineering, [OR] land surveying, or landscape
23 architecture as defined in this chapter.

24 * Sec. 22. AS 08.48.241(g) is amended to read:

25 (g) If the board, after a proper hearing, finds that a corporation holding a
26 certificate of authorization has committed misconduct or malpractice, the board shall
27 suspend or revoke the certificate of authorization. The board shall also suspend or
28 revoke the certificate of registration of any registered individual architect, engineer,
29 [OR] land surveyor, or landscape architect who, after a proper hearing, is found by
30 the board to have participated in committing the misconduct or malpractice.

31 * Sec. 23. AS 08.48.251 is amended to read:

1 Sec. 08.48.251. PARTNERSHIPS. This chapter does not prevent the practice
2 of architecture, engineering, [OR] land surveying, or landscape architecture by
3 partnership if all of the members of the partnership are architects, engineers, [OR] land
4 surveyors, or landscape architects legally registered under this chapter.

5 * Sec. 24. AS 08.48.281 is amended to read:

6 Sec. 08.48.281. PROHIBITED PRACTICE. A person may not practice or
7 offer to practice the profession of architecture, engineering, [OR] land surveying, or
8 landscape architecture in the state, or use in connection with the person's name or
9 otherwise assume or advertise a title or description tending to convey the impression
10 that the person is a registered architect, engineer, [OR] land surveyor, or landscape
11 architect unless the person has been registered under the provisions of this chapter or
12 is a person to whom these provisions do not apply, or, in the case of a corporation,
13 unless it has been authorized under this chapter.

14 * Sec. 25. AS 08.48.281 is amended by adding new subsections to read:

15 (b) Notwithstanding (a) of this section, this chapter does not prohibit the
16 practice of landscape architecture by a person who is not registered to practice
17 landscape architecture if the services being performed by the person are within the
18 scope of practice authorized by another license that is held by the person.

19 (c) Notwithstanding the definition of the "practice of landscape architecture"
20 in AS 08.48.341, a registered landscape architect may not perform or offer to perform
21 a service described as the practice of landscape architecture in AS 08.48.341 if that
22 service also requires registration as an architect or engineer unless the landscape
23 architect is also registered as an architect or engineer, as applicable.

24 * Sec. 26. AS 08.48.291 is amended to read:

25 Sec. 08.48.291. VIOLATIONS AND PENALTIES. A person who practices
26 or offers to practice architecture, engineering, [OR] land surveying, or landscape
27 architecture in the state without being registered or authorized to practice in
28 accordance with the provisions of this chapter, or a person presenting or attempting to
29 use the certificate or the seal of another, or a person who gives false or forged
30 evidence of any kind to the board or to a member of the board in obtaining or
31 attempting to obtain a certificate, or a person who impersonates a registrant, or a

1 person who uses or attempts to use an expired or revoked or nonexistent certificate,
2 knowing of the certificate's status, or a person who falsely claims to be registered and
3 authorized to practice under this chapter, or a person who violates any of the
4 provisions of this chapter, is guilty of a misdemeanor and upon conviction is
5 punishable by a fine of not more than \$10,000, or by imprisonment for not more than
6 one year, or by both.

7 * Sec. 27. AS 08.48.311 is amended to read:

8 Sec. 08.48.311. RIGHTS NOT TRANSFERABLE. The right to engage in the
9 practice of architecture, engineering, [OR] land surveying, or landscape architecture
10 is considered a personal and individual right, based on the qualifications of the
11 individual as evidenced by the individual's certificate of registration, which is not
12 transferable.

13 * Sec. 28. AS 08.48.321 is amended to read:

14 Sec. 08.48.321. EVIDENCE OF PRACTICE. A person practices or offers to
15 practice architecture, engineering, [OR] land surveying, or landscape architecture
16 who

17 (1) practices a branch of the profession of architecture, engineering,
18 [OR] land surveying, or landscape architecture as defined in AS 08.48.341;

19 (2) by verbal claim, sign, advertisement, letterhead, card, or other
20 means represents to be an architect, engineer, [OR] land surveyor, or landscape
21 architect, or through the use of some other title implies that the person is an architect,
22 engineer, [OR] land surveyor, or landscape architect; or

23 (3) holds out as able to perform or who does perform an architectural,
24 engineering, [OR] land surveying, or landscape architectural service recognized by
25 the professions covered by this chapter, and specified in regulations of the board, as
26 an architectural, engineering, [OR] land surveying, or landscape architectural
27 service.

28 * Sec. 29. AS 08.48.331 is amended to read:

29 Sec. 08.48.331. EXEMPTIONS. This chapter does not apply to

30 (1) a contractor performing work designed by a professional architect,
31 [OR] engineer, or landscape architect or the supervision of the construction of the

1 work as a supervisor or superintendent for a contractor;

2 (2) workers in building trades crafts, superintendents, supervisors, or
3 inspectors in the performance of their customary duties;

4 (3) an officer or employee of the United States government practicing
5 architecture, engineering, [OR] land surveying, or landscape architecture as required
6 by the person's official capacity;

7 (4) an employee or a subordinate of a person registered under this
8 chapter if the work or service is done under the direct supervision of a person
9 registered under this chapter;

10 (5) associates, consultants, or specialists retained by a registered
11 individual, a partnership of registered individuals, or a corporation authorized to
12 practice architecture, engineering, [OR] land surveying, or landscape architecture
13 under this chapter, in the performance of professional services if responsible charge
14 of the work remains with the individual, the partnership, or a designated representative
15 of the corporation;

16 (6) a person preparing drawings or specifications for

17 (A) a building for the person's own use and occupancy as a
18 single family residence and related site work for that building;

19 (B) farm or ranch buildings, unless the public health, safety, or
20 welfare is involved;

21 (C) a building that is intended to be used only as a residence
22 by not more than four families and that is not more than two stories high;

23 (D) a garage, workshop, or similar building that contains less
24 than 2,000 square feet of floor space to be used for a private noncommercial
25 purpose;

26 (7) a specialty contractor licensed under AS 08.18 while engaged in the
27 business of construction contracting or designing systems for work within the specialty
28 to be performed or supervised by the specialty contractor, or a contractor preparing
29 shop or field drawings for work that the specialty contractor has contracted to perform;

30 (8) a person furnishing drawings, specifications, instruments of service,
31 or other data for alterations or repairs to a building that do not change or affect the

1 structural system or the safety of the building, or that do not affect the public health,
2 safety, or welfare;

3 (9) a person who is employed by a postsecondary educational
4 institution to teach engineering, architectural, [OR] land surveying, or landscape
5 architectural courses; in this paragraph, "postsecondary educational institution" has
6 the meaning given in AS 14.48.210;

7 (10) a person who prepares plans and specifications for
8 revegetation, restoration, reclamation, rehabilitation, or erosion control for
9 disturbed land if the person has a bachelor's degree with specific education
10 relating to the activity for which the plans and specifications are prepared:

11 (11) a person who maintains or directs the placement of plant
12 material.

13 * Sec. 30. AS 08.48.341(2) is amended to read:

14 (2) "board" means the State Board of Registration for Architects,
15 Engineers, [AND] Land Surveyors, and Landscape Architects;

16 * Sec. 31. AS 08.48.341(4) is amended to read:

17 (4) "certificate of authorization" means a certificate issued by the board
18 authorizing a corporation to provide professional services in architecture, engineering,
19 [OR] land surveying, or landscape architecture through individuals legally registered
20 by the board;

21 * Sec. 32. AS 08.48.341 is amended by adding new paragraphs to read:

22 (16) "landscape architect" means a professional landscape architect;

23 (17) "practice of landscape architecture" means consultative,
24 investigative, reconnaissance, research, planning, design, and preparation services
25 relating to drawings and construction documents, observation of construction, and
26 location, arrangement, and design of incidental and necessary tangible objects and
27 features for the purpose of

28 (A) preservation and enhancement of land uses and natural land
29 features;

30 (B) location and construction of aesthetically pleasing and
31 functional approaches for structures, roadways, and walkways;

1 (C) establishing or maintaining trails, landscape irrigation,
2 landscape lighting, and landscape grading; or

3 (D) generalized planning of the development of land areas in
4 a manner that is sensitive to the area's natural and cultural resources;

5 (18) "professional landscape architect" means a person registered as a
6 professional landscape architect by the board.

7 * Sec. 33. AS 08.48.351 is amended to read:

8 Sec. 08.48.351. **SHORT TITLE.** This chapter may be cited as the Architects,
9 Engineers, [AND] Land Surveyors, and Landscape Architects Registration Act.

10 * Sec. 34. AS 14.43.310(b) is amended to read:

11 (b) To assist the administering authority in selecting eligible applicants for
12 award of each of the memorial scholarship loans under AS 14.43.250 - 14.43.325 and
13 in reviewing the memorial scholarship loan program, the following advisory
14 committees are established:

15 (1) three Alaska state troopers, each one to be selected from and to
16 represent a state trooper region of the state by the regional commander to serve for
17 three years, for the Michael Murphy memorial scholarship;

18 (2) three members of the Governor's Commission on the Administration
19 of Justice selected annually by the commission from among its membership, for the
20 Carroll L. "Butch" Swartz memorial scholarship;

21 (3) three members of the state Board of Registration for Architects,
22 Engineers, [AND] Land Surveyors, and Landscape Architects selected annually by
23 the board from among its engineer members, for the Harvey Golub memorial
24 scholarship; and

25 (4) three members of the state Board of Education, or of the staff of
26 the Department of Education, or any combination of these, selected annually by the
27 board, for the Robert L. Thomas memorial scholarship.

28 * Sec. 35. AS 44.62.330(a)(4) is amended to read:

29 (4) State Board of Registration for Architects, Engineers, [AND] Land
30 Surveyors, and Landscape Architects;

31 * Sec. 36. **TERMS OF NEW MEMBERS.** Notwithstanding AS 08.01.035, the initial term

1 of the new member appointed under AS 08.48.011(b), as amended by sec. 3 of this Act, is one
2 year.

3 * Sec. 37. TRANSITION. Notwithstanding this Act, a person may practice landscape
4 architecture without a certificate of registration issued under AS 08.48 until 60 days after the
5 first examination for landscape architects administered in the state under AS 08.48.181, as
6 amended by this Act, has been graded.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 243

ANALYSIS: (Continued)

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT FISCAL NOTE CALCULATIONS FOR HB 243

PERSONAL SERVICES

\$10.4

The Board of Registration for Architects, Engineers and Land Surveyors is presently understaffed. This fiscal note assumes that the duties for examination and registration of landscape architects will require at least one-fourth of a Licensing Examiner's position, Range 12, (\$10.4) for the first two years to implement the program.

TRAVEL

\$3.8

Staff travel identified below will be required for board meetings and examinations:

TRAVEL TO BOARD MEETINGS FOR STAFF, \$ 2.2

The board meets four times each year. The travel costs are based on the airfare and per diem for one additional staff person to travel to three meetings.

STAFF TRAVEL TO ADMINISTER EXAMINATIONS, \$1.6

The staff travel costs are based on the airfare and per diem for one staff person to travel from Juneau to Anchorage for two three-day examinations (\$.8 each) annually to proctor the examinations and provide examination security.

CONTRACTUAL SERVICES

\$ 6.5

The division is anticipating the charge for the national examination for landscape architect registration can be paid by the applicant directly to the examination agency. If the examination agency will not allow direct payment, additional funding of \$41.0 (\$20.5 per exam) will be required for examining at least 50 applicants at each exam. *(Note: The \$41.0 is not included in this fiscal note request since the division is anticipating payments to be made directly by the applicant to the examining agency.)*

Contractual services cover printing, postage, communications, and advertising costs (3.3); three days' room rental for examination administration (1.8); and membership fees to belong to the national organization for landscape architect registration (1.4). It is estimated that there will be higher costs in the initial year for regulations projects and examinations. In the following years it is estimated that the expenditures for contractual services may be reduced to \$4.0 due to decreased costs to develop regulations and lower room rental costs to examine fewer numbers of applicants.

SUPPLIES

\$ 1.0

TOTAL:

\$ 21.7

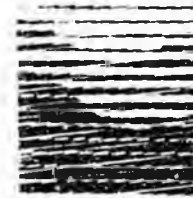
REVENUE/FUND SOURCE: In accordance with AS 08.01.065, all licensees are required to pay for the costs of regulating their profession. The revenue shown anticipates licensing fees to cover all costs associated with registration for landscape architects. If the number of potential registrants under this bill are few, for example 50, licensing fees must be set at \$818.00 biennially (\$409.00 per year) to fully cover its costs. If more individuals seek registration, individual licensing fees would be lower. Under the self-sufficiency mandate by statute, licensing fees will than be reviewed prior to the license renewal (in two years) and adjusted accordingly. This program is intended to be funded entirely by general fund/program receipts from fees.

March 22, 1995

Rep. Pete Kott
House of Representatives
State Capital
Juneau, AK 99801-1192

RE: H.B. 243, Registration of Landscape Architecture

Dear Pete,



ASLA

The Alaska Chapter of the American Society of Landscape Architects (ASLA) strongly supports HB 243 and greatly appreciates your support for the registration of our profession. The licensure of landscape architects is necessary to put them on an equal footing with professionals already licensed in this state to perform tasks traditionally performed by Landscape Architects.

Landscape Architecture expertise includes planning, design and management of the land with an eye towards ecosystem integrity, protecting the natural systems and habitats that provide for the health of communities and the planet. Professional qualifications for Landscape Architects include a professional 4 or 5 year degree from one of over 40 accredited college or university programs. The Landscape Architecture profession is licensed in 45 out of 50 states.

Landscape Architects are knowledgeable about, and work in the following areas where safety and welfare of the public is concerned:

- Planning issues involving floodplains, soil suitability, wetlands, wildlife habitat, wind patterns, avalanche hazard, river dynamics, hazard trees archeological sites and historic sites.
- Laws and regulations protecting the environment
- Signage and scenic road and trail pullout design
- Visual Analysis of impacts of roadway & utility corridors
- Trail alignment, geometry and user conflicts
- Erosion Control principles
- Consumer Product Safety Guidelines for playgrounds
- Relationship of Recreational Activities
- Universal Design Standards (UFAS & ADA)
- Slip resistant paving, drainage and icing of walk
- Fertilizers insecticides and irrigation
- Care & Maintenance of vegetation

The contribution of this profession to the health, safety and welfare of Alaskans warrants registration of the practice. ASLA members are currently employed in Alaskan private landscape architectural offices and multi-disciplined engineering and architectural offices. Publicly employed in federal offices of the Forest Service, National Park Service, Fish and Wildlife Service and the Bureau of Land Management. In addition they are employed in state offices of the Department of Natural Resources and Department of Environmental Conservation. Municipalities employ Landscape Architects in park and recreation departments.

Thank you again for your support, we look forward to working with you on this important legislation.

Sincerely,

Linda Cyra-Korsgaard
Linda Cyra-Korsgaard, ASLA
President, Alaska Chapter ASLA

c/o Tryck Nyman Hayes, Inc. 911 W. 8th Ave. Anchorage, Alaska 99501
phone (907) 279-0543 fax (907) 276-7679

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 24, 1995

FURTHER REFERRALS:

Date of Committee Action: 4-27-95

The LABOR AND COMMERCE Committee considered:

HB 243

HOUSE BILL NO. 243

LICENSING OF LANDSCAPE ARCHITECTS

"An Act relating to licensure of landscape architects."

recommends it be replaced with the following committee substitute _____ the same title
 a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____

fiscal note(s) Commerce & Eco. Dev.

zero fiscal note(s) DOT P/F

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Pete Felt</i>	✓			✓
<i>Nancy Wakeling</i>			✓	
<i>Jim S. SO</i>			✓	
<i>Gene Kuderer</i>		✓		
<i>Brian A. Porter</i>			✓	
<i>Beverly Maxwell</i>			✓	
<i>George Sanders</i>			✓	

CHAIR'S SIGNATURE *Pete Felt*

04/27/95

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

19:01:13

PARTICIPANT LIST (ALL PARTICIPANTS)

BY:PSG

TCN:50670

SCHEDULED FOR:04/27/95 19:00 TO 22:00

FOR:PSG

PUBLIC HEARING

HOUSE LABOR & COMMERCE

LOCATION:PETERSBURG

HB 243

MS.

DEIRDE___P. BUSCHMANN

TESTIFY

HB

248

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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

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

MEMORANDUM

March 30, 1995

SUBJECT: Sectional Summary of HB 248. (Application of PERA to municipalities and political subdivisions)

TO: Representative Al Vezey
Attn: Joe Ryan

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 provides that the Public Employment Relations Act (PERA) does not apply to a municipality or other political subdivision unless the voters have elected to become subject to its provisions. Under subsection (b), the voters in a municipality or other political subdivision that have elected to become subject to PERA may later vote to become exempt from PERA, and vice versa.

Sec 2 repeals the provision in the 1972 law establishing PERA that provided that municipalities could opt out of PERA. This provision is superseded by sec. 1 of the bill. Section 2 also repeals the provision of the 1992 law that prohibited school districts from opting out of PERA. Under sec. 1 of the bill, school districts would be able to opt out of PERA.

Sec 3 provides that the provisions of the bill do not terminate or modify an existing collective bargaining agreement. The bill would apply to those bargaining units after the current agreement expired.

TC:pl
95-075.plm

Legislative Research Agency

Alaska State Legislature



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

Phone: (907) 465-3991
Fax: (907) 463-3351

March 16, 1995

MEMORANDUM

TO: Representative Al Vezey

FROM: Carol R. Vandor *CRV*
Legislative Analyst

RE: **Public Employment Relations Act (PERA)**
Research Request 95.161

You asked about the number of state political subdivisions covered by the Public Employment Relations Act (PERA). Title 23, chapter 40 of the Alaska statutes governs PERA. There is no requirement for a political subdivision to report its status under PERA; therefore, the only way of knowing whether a political subdivision is covered under PERA or has opted-out is if a hearing has been held by the Alaska Labor Relations Agency or a suit has been filed in the courts. Below is a brief discussion of PERA and the Alaska Labor Relations Agency followed by a list of the 16 political subdivisions that are known to be covered by PERA and the 13 that have opted-out of PERA.

Public Employment Relations Act

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

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

Representative Vezey
March 16, 1995
Page 2

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

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

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

An appointed official, defined in 8 AAC 97.990, includes persons who exercise significant responsibilities for the public employer in the area of collective bargaining policy formulation and implementation.

The interpretation of PERA as it applies to political subdivisions has been litigated on several occasions since PERA was enacted. A recent decision, *Kodiak Island Borough v State of Alaska*, 853 P.2d 1111 (Alaska 1993) addressed the issue of the right of public employees to organize for the purpose of collective bargaining under PERA, and the right of a political subdivision to exempt itself. In this case, the borough had adopted an opt-out resolution in 1980 after it became aware of substantial organizational activities by its employees. The court ruled that a political subdivision may not opt out of PERA after becoming aware of organizational activity by employees.

Alaska Labor Relations Agency

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

Representative Vezey
March 16, 1995
Page 3

PERA Status

According to the Alaska Labor Relations Agency, employees of 16 political subdivisions are known to be covered under PERA and 13 political subdivisions have opted-out. These are listed below.

Covered

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

Opted-Out

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

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

Alaska State Legislature

House of Representatives

Official Business



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

House Majority Leader

March 14, 1995

SPONSOR STATEMENT

The intent of HB-248, "An Act relating to application of the Public Employment Relations Act to municipalities and other political subdivisions", is to allow municipalities the option of removing themselves from PERA. Under this proposed legislation, a municipality could make such a decision with the approval of the voters of the municipality.

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

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

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 248

Revision Date: _____
Title: Local exemption from PERA

Department Affected: Labor
BRU: Office of the Commissioner

Sponsor: Representative Vezey
Requestor: House Community & Regional Affairs

Component: _____
Alaska Labor Relations Agency
COMPONENT SERIAL NO. 1200

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

CHANGE IN REVENUE FUND SOURCE #						
--	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY95) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

HB 248 would exclude political subdivisions from coverage under the Public Employment Relations Act (PERA) unless the political subdivision, after election among voters, opts to be covered. The bill would also permit the rejection of PERA by election of the voters. The bill would remove a number of employers from the jurisdiction of the Alaska Labor Relations Agency (ALRA). This change should ultimately reduce the workload of ALRA, however the transition and initial disruptions will delay the decrease long past the effective date of the law.

Prepared by: Jan Hart DeYoung Phone: 269-4895
Division: Alaska Labor Relations Agency Date: 3/17/95

Approved by Commissioner: Tom Cashen, Commissioner
Agency: Department of Labor Date: 3/17/95

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NEA-ALASKA POSITION PAPER

HB 248

NEA-Alaska opposes HB 248. The bill will allow municipalities or other political subdivisions including school districts to conduct an election to determine if employees are to continue to bargain under the provisions of AS 23.40.070 - 23.40.260.

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

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

If HB 248 were to become law, labor relations between school districts and school employees would be disrupted. Good faith bargaining would give way to politics. Management and school boards would have greater latitude to delay and forestall the bargaining process. Some school districts could submit the question of continuance under PERA to voters annually or during each round of bargaining. In effect local governments could use this bill to become "right to work" employers. School, municipal, borough or state employees will lose. Inconsistency between units and school districts would occur. The bargaining process would be weakened and in some instances destroyed.

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

We live in a republic where representatives are elected to make decisions for their constituency in view of the public good. HB 248 proposes a poor approach to decision making. The issue of inclusion of school employees under PERA has been debated on the state level. A majority of the legislature, after weighing carefully the facts and information, decided it is good policy. In its declaration of policy, Sec. 23.40.070, "the legislature finds that joint decision-making is the modern way of administering government"

ASSOCIATION OF ALASKA SCHOOL BOARDS

316 W. 11th St. • Juneau, Alaska 99801-1510

(907) 586-1083 • Fax (907) 586-2995

POSITION PAPER HB 248-LOCAL EXEMPTION FROM P.E.R.A.

The Association of Alaska School Boards supports HB 248, An Act relating to application of the Public Employment Relations Act to municipalities and other political subdivisions, as an option to relieve financial pressure at the local level.

HB 248 allows municipalities and political subdivisions of the state, including school districts, to opt out of the Public Employment Relations Act (PERA) with a majority vote of the voters participating in the election. The bill also repeals the 1992 law that prohibits school districts from opting out of PERA. The bill does not terminate or modify the terms of a collective bargaining agreement in effect.

AASB supports allowing political subdivisions of the state (school districts) the same option that was made available to municipalities when they were placed under PERA. Currently, school employees are placed under Class A3, Title 23: PERA, with the unlimited right to strike. The recent strike in the Anchorage School District is an example of how the current statute places our schools at risk.

AASB's paramount concern is with school districts' inability to control their own revenue base through local taxation, thereby inhibiting their ability to achieve labor harmony.

AASB supports this effort to level the playing field as one option to address the imbalance that exists in school labor relations under Title 23: PERA.

City of Soldotna

Box 409 • 177 North Birch • Soldotna, Alaska 99669 • Phone: 262-9107



February 11, 1988

Alaska Senate State Affairs Committee
c/o Senator Ken Fanning
P.O. Box V - State Capital
Juneau, Alaska 99811

DHL DELIVERY

Re: SB 372

Ladies and Gentlemen:

I would like to add my name to the growing list of municipal officials who have supported Senator Ken Fanning's effort to provide an opportunity for municipalities to opt out of PERA.

The Soldotna City Council recently reconsidered whether we should opt back into PERA and unanimously concluded that we should retain the right to govern our labor relations at the local level. I am enclosing a few pages of our local collective bargaining ordinance. The preamble to the ordinance and Section 2.30.020 set forth our findings as to why we think a local collective bargaining ordinance is more appropriate to our particular situation.

Our ordinance prohibits closed shops and strikes, but it also provides a binding arbitration procedure as the final step of the collective bargaining process if all other impasse resolution steps fail. In Soldotna, however, our voters will be the final arbitrators. Final and best offers will be put to the test of a referendum at the next general election.

I encourage you to approve SB 372 and to oppose any legislative effort that would force municipalities to be subject to provisions of PERA.

Sincerely,

Dolly M. Farnsworth
Mayor of Soldotna

Enclosure (1)

cc Senator Paul Fischer
Representative Mike Navarre
Representative C.E. Swackhammer
Scott Burgess, Executive Director, Alaska Municipal League

City of Fairbanks

PERA Basics

RE: WAGE
Benefit
Reductions

MEMORANDUM

TO: Brian Phillips, City Manager
FROM: Jim Mullen, Deputy City Attorney *JM*
RE: PERA basics
DATE: October 16, 1987

Prior to 1983 the City of Fairbanks had no obligation to recognize or negotiate with any employee union although it did so voluntarily with some. In the 1970's the city had successfully demonstrated that it had legally opted out of coverage of the Alaska Public Employee Relations Act (PERA).

However, in 1983 the city council gave up this exemption and decided to be bound by and to PERA. Under current state law once in PERA the city cannot get out. So, absent a change in the law, the City of Fairbanks is forever bound by PERA.

PERA was modeled to a certain degree on the National Labor Relations Act (NLRA) and other states' public employee laws. It states essentially that city workers (currently including management, professionals and supervisory employees) can organize into unions and the city, if the union is validly formed according to state laws and regulations, must recognize the union. As a result, the city has an obligation to bargain in good faith over terms and conditions of employment. AS 23.40.070. This would include wages, hours, working conditions and other fringe benefits.

Being under PERA also subjects the city to the jurisdiction of the Alaska Department of Labor, Labor Relations Agency (SLRA), which is the state administrative body charged with implementing and enforcing PERA. The SLRA decides disputes regarding union formation, elections, strikes and allegations of unfair labor practices against either party. The city has an obligation to avoid interfering with the public employees' rights to organize or with their relationship with their unions once organized.

PERA divides employees into three classes. Essentially, Class I are public safety type workers, Class II are quasi-essential public employees and Class III are those generally nonessential to public safety.

Class I employees do not have the right to legally strike, slowdown or sickout, ever, under any circumstances. In exchange for losing this right they are assured of binding arbitration to resolve any possible dispute impasse that may arise regarding mandatory bargaining items in contract negotiations. Thus, if the city and the union cannot decide how much pay a Class I employee should get, the matter would be submitted to binding interest arbitration and the arbitrator would decide what the wage will be. In arbitration there are very few rules or guidelines that can be relied on so the results are usually very unpredictable.

Class II employees can legally strike but the city can have them ordered back if it becomes critical. However, if they are ordered back the city commits itself to binding arbitration as if they were Class I employees.

Class III employees can strike indefinitely and cannot be ordered back except if the strike was illegal or an unfair labor practice in some manner.

Before any public employee union can legally strike, a secret ballot strike vote must be conducted by the SLRA. Thus, the city would have short notice that a strike may be imminent. The city has the right to lockout Class II or III employees if true impasse has occurred in negotiations and mediation has been tried and failed.

If a contract is agreed upon it becomes the working agreement between the city and the employees covered, although certain provisions of the personnel code may also apply in limited cases. Once the contract is made it cannot be unilaterally altered by either party. Thus, if the city desires a wage reduction for some or all employees under a particular contract, it can ask the union to negotiate the matter but the union has absolutely no obligation to do so, and vice versa should the union want a wage increase. Thus, the contract is binding.

However, sometimes the contract itself calls for a "reopener" or a time when, before the contract expires, certain items (or all, if so specified) can be renegotiated. Thus, both sides are free to make proposals that must be negotiated in good faith.

This is a basic outline of what PERA is and how it is structured. Because it is a relatively new law, many issues that arise are of first impression to the SLRA and Alaska courts, so predicting the outcome is at this time difficult. However, the SLRA is by state regulation obligated to seriously consider the decisions of the National Labor Relations Agency and federal courts in deciding issues that arise within the state and municipalities.

bj

City of Fairbanks

PERA

File

MEMORANDUM

TO: Brian Phillips, City Manager
FROM: Herb Kuss, City Attorney *HK*
RE: Koslosky amendment
DATE: December 3, 1987

The information provided by Representative Boyer with respect to the Koslosky amendment to the Public Employees Relations Act is erroneous and confuses the Koslosky amendment with a bill introduced in 1983 by Senator Fahrenkamp with I believe the assistance of Mr. Boyer, who was an assistant to the senator at that time.

The Public Employee Relations Act (PERA) was signed into law on June 7, 1972, with an effective date of September 5, 1972. During the legislative session that year the two houses apparently struggled to get the act passed. In an effort to resolve the problem at a joint conference Representative Koslosky became a key vote and speaker for a coalition of votes which could dictate passage or failure of this legislation. In the course of negotiations, Rep. Koslosky agreed to support the act provided that an express amendment be made to exempt political subdivisions throughout the state. This led to the addition of subsection (4) of SLA Chapter 113 as follows:

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

and, of course, came to be known as the "Koslosky amendment." As you can see, this amendment creates a legal right for political subdivisions

in the state to opt out of the act. Although the amendment itself does not state so, subsequent judicial decisions interpreting this provision set time limits within which a political subdivision could properly opt out which depended largely on whether employees of a political subdivision had organized in reliance to the act. In August of 1972 the City of Fairbanks, by resolution, opted out of the act.

In 1983 the city reached a bargaining impasse with the employees of the Fairbanks police department and their respective representatives. As a result, representatives of that union urged Senator Fahrenkamp to introduce legislation which would effectively strike the Koslosky amendment and place all political subdivisions under the act's jurisdiction. Senator Fahrenkamp's bill gave political subdivisions basically two choices, namely: (1) subject themselves directly to the provisions of PERA, or (2) enact their own mini-PERA legislation which would grant municipal employees similar rights and privileges and leave the question of enforcement to local authority instead of the state department of labor.

Representative Boyer's comments seem to refer to the essential aspects and consequences of Senator Fahrenkamp's bill rather than the Koslosky amendment. However, even under Senator Fahrenkamp's bill there was no real option to reject binding arbitration.

Following the 1983 legislative session it appeared to all those close to the legislative scene that Senator Fahrenkamp's bill had enough support for passage in the 1984 session. Given what appeared to be no alternative under Senator Fahrenkamp's bill, the city council passed an ordinance opting into the Public Employee Relations Act. One of the

items discussed when opting in was whether the city should adopt a local scheme as required by Senator Fahrenkamp's legislation or to simply opt into PERA and let the state regulate all matters arising under PERA. Setting up a local bureaucracy to handle our own mini-PERA was viewed as a costly proposition and so allowing the state to enforce its provisions seemed a more cost effective means of operating under PERA.

The council has been unfairly criticized for opting into PERA when it appeared that under Senator Fahrenkamp's bill it had little other real choice. Facing the inevitability of the passage of Senator Fahrenkamp's bill, the council for its own reasons, decided to adopt the ordinance and opt in. There is no question but that Senator Fahrenkamp's bill was aimed directly at the City of Fairbanks. This became evident when Senator Fahrenkamp dropped her intense and keen interest in seeing her legislation pass in the 1984 session and let the bill die in committee.

bj

07/25/89

HISTORY OF LEGISLATION

R01-33F-3040

PAGE 0577

SB 154 AN ACT RELATING TO THE MUNICIPAL EXEMPTION OPTION TO THE PUBLIC EMPLOYMENT RELATIONS ACT

AMENDED TITLE: CS(MRLS)AM

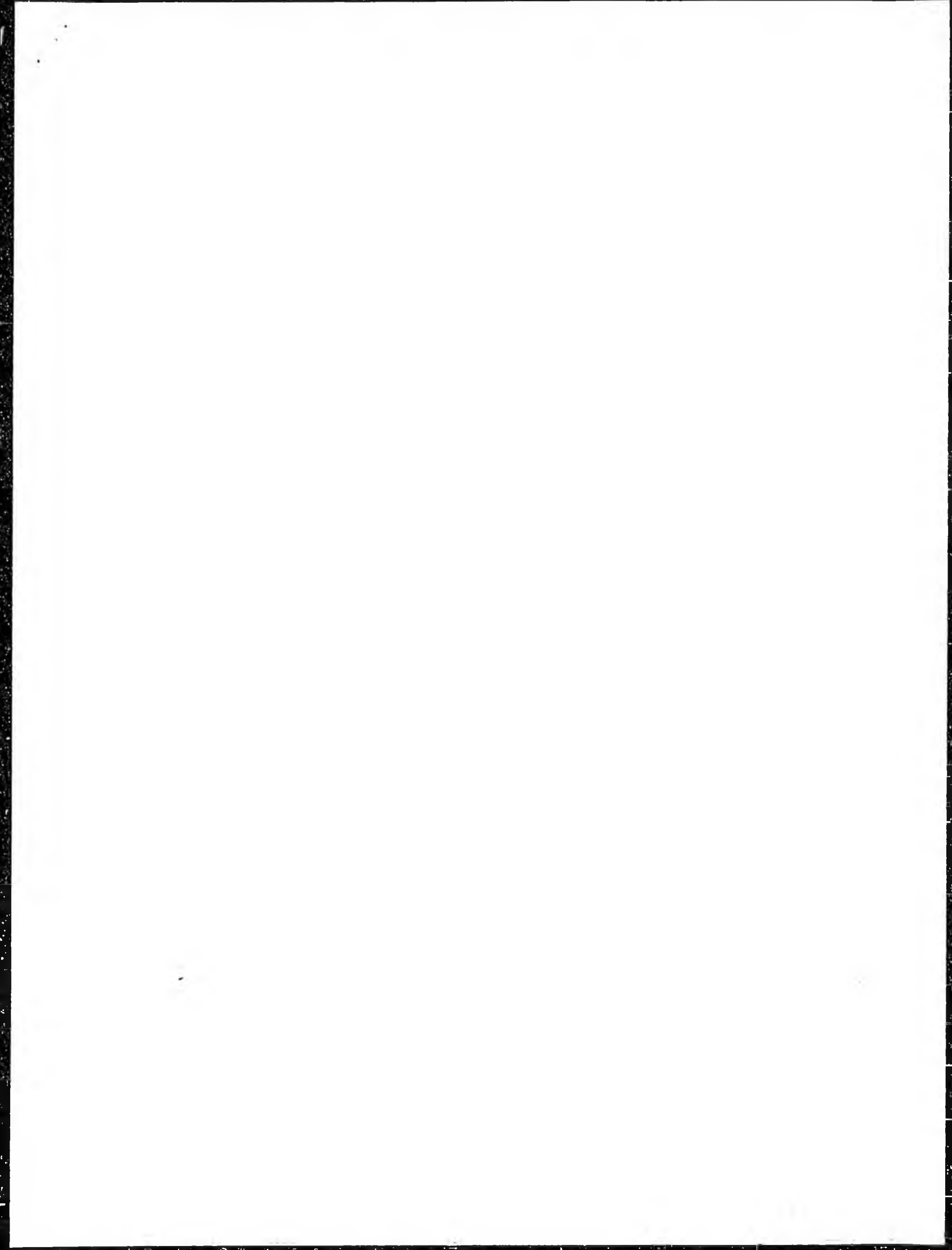
PRIME SPONSORS: FAHRENKAMP

CO-SPONSORS: MOSS

JAN 21 1980

DATE	SEQ. NO.	JOURNAL PAGE	SENATE ACTION	DATE	SEQ. NO.	JOURNAL PAGE	HOUSE ACTION
02/28/83	01	0282	FIRST READING -- COMMITTEE REPORTS				
04/25/83	02	0798	LIC -- CS02, HR03				
04/25/83	03	0798	MOVED FROM FIN TO RLS BY UHAW CONSENT				
06/02/83	04	1180	RLS -- CS04, OTHER04 TAKEN UP IMMEDIATELY				
06/02/83	05	1186	POSTPONED UNTIL 06/06/83 BY UHAW CONSENT RULES				
06/06/83	06	1215	SECOND READING				
06/06/83	07	1215	POSTPONED UNTIL 06/07/83 BY UHAW CONSENT				
06/07/83	08	1223	POSTPONED UNTIL 06/08/83 BY UHAW CONSENT				
06/08/83	09	0000	POSTPONED UNTIL 06/09/83 BY UHAW CONSENT				
06/09/83	10	1252	SECOND READING				
06/09/83	11	1252	RLS CS ADOPTED BY UHAW CONSENT				
06/09/83	12	1253	AM01 ADOPTED BY DIV 10-08-02				
06/09/83	13	1253	ADVANCED TO 3RD READING BY UHAW CONSENT				
06/09/83	14	1253	THIRD READING				
06/09/83	15	1253	POSTPONED UNTIL 06/10/83 BY UHAW CONSENT				
06/10/83	16	1261	POSTPONED UNTIL 06/13/83 BY UHAW CONSENT				
06/13/83	17	1281	RECOMMITTED TO RLS BY UHAW CONSENT				

3380
3/12/82
1/1/80
2/1/80
1/1/80
2/1/80



Alaska Municipal League

Policy Statement

1988



Adopted at the Business Meeting
of the 37th Annual Local Government Conference
of the
ALASKA MUNICIPAL LEAGUE
Anchorage, Alaska
November 13, 1987

and an amendment to the statutes governing these codes that would allow municipalities adopting these codes to provide for a transition period regarding licensing and certification requirements for plumbers and electricians working within their boundaries. The League supports the adoption of the national codes as the standards for Alaska.

9. Authorities: The League opposes any effort by the Legislature to restrict the method of establishment, form, powers, or other features of municipal port or other authorities. The League supports legislation that would clarify the authority of municipalities to form public corporations, authorities, and similar public entities through which they may exercise a power.

B. PUBLIC EMPLOYEE LABOR RELATIONS

1. Alaska Public Employees Labor Relations Act: The League strongly opposes any legislation that would force municipalities to be subject to the provisions of the Alaska Public Employees Labor Relations Act. The League opposes, just as strongly, any legislative efforts to dictate the provisions of local public employee labor relations ordinances. The League supports legislation to allow each municipality to reject or withdraw from the terms of the Alaska Public Employees Labor Relations Act at any time. The scope of decisions as to local government finance and labor policies is best left to the local governing body.

2. Binding Arbitration: The League opposes legislation imposing binding arbitration on local governments and school districts. Binding arbitration hinders local elected officials' ability to determine their personnel costs and prevents local governments from having complete control of determining the local tax rate. The scope of decisions with regard to what local government can afford for labor is best left to the local bodies possessing that knowledge.

C. UNORGANIZED BOROUGH

The League urges the Legislature to address the organization of the unorganized borough.

D. TRIBAL COUNCIL/LOCAL GOVERNMENT RELATIONS

The League supports and encourages efforts on the part of the Legislature and other concerned parties to address tribal/local government relations.

E. FORMATION OF NEW MUNICIPALITIES

1. State Policies: The League supports state policies that encourage rather than discourage the formation of new municipalities.

2. Funding: The League strongly supports legislation to provide adequate funds to assist in the study of the feasibility of forming new municipalities and in the unification and/or consolidation of borough and city governments. The League also supports increasing funds for the formation of newly organized municipalities.

Position Paper
of
AML Legislative
Subcommittee on Education
March 1986

RE: Proposed Legislation Relating to Local Governments
and Alaska Public Employees Labor Relations Act.

The 1986 Alaska Municipal League Policy, Part VIII, Local Government Powers, Section B(1), Alaska Public Employees Relations Act states "the League strongly opposes any legislation which would force municipalities to be subject to the provisions of the Alaska Public Employees Labor Relations Act. In addition, the League opposes just as strongly, any legislative efforts to dictate the provisions of local public employees labor relations ordinances. The League supports legislation to allow each municipality at anytime to reject or withdraw from the terms of the Alaska Public Employees Relation Act." In addition, Section B(2) states, that the League also opposes any legislation which forces municipalities to develop collective bargaining procedures ending in strike or binding arbitration. The following is in support of the League position:

1. Binding arbitration/PERA limits the authority of the Council/Assembly. If wages are set by binding arbitration, the Council/Assembly has to work any arbitration wage increases into the budget. If it is necessary to make cuts, cuts must be made in areas other than the arbitrated wages. The Council/Assembly would no longer have the authority to determine wages or control budgets.
2. Arbitrators tend to be from outside and do not have to deal with the overall budget or raise the funds to finance employee costs.
3. Municipal employees do have recourse -- the election process. They can influence voters to elect Council/Assembly members supportive of their positions. Also, employees still have the right to form employee organizations.
4. Each municipality is unique and should be allowed to handle collective bargaining in a manner that fits the community. Large communities have employee circumstances that are very different from small, and rural is different than urban. In addition, most of our local governments in Alaska are small, population under 1000, and there are not many staff members in any one category. This makes collective bargaining extremely impractical.
5. The provisions of PERA or binding arbitration are costly. There is the cost of the negotiation process itself. Municipalities in general do not have excess staff or staff time to prepare bargaining positions. Cost of hiring a negotiator is beyond most local budgets.

6. Government wages in Alaska tend to exceed those of private business and industry. Therefore, employees seem to be doing well without the added regulation.
7. In a time of funding cutbacks, increasing the cost of government doing business does not make much sense.
8. In regard to strikes, if a strike provision would ever be required, the municipality as an employer should have the same options that exist in private industry; for example, the employer (the municipality) should be able to continue services and hire others if employees strike.

In the end, it is, of course, the taxpayer who must bear any financial burden. The taxpayer now has control through the election process. With binding arbitration, the taxpayer gives up this control to the employee and arbitrator.



CITY OF FAIRBANKS

Office of City Manager
410 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
907-452-1881

February 3, 1988

Senator Ken Fanning
P.O. Box V
Juneau, Alaska 99811

RE: Support of Senate Bill #372

Dear Senator:

The City of Fairbanks has suffered economically, like the rest of the State, with the recent downturn in the economy. The City of Fairbanks attempted to reduce costs, to live within its means, through meaningful labor negotiations intended to reduce wage and benefit costs.

Due to the State's Public Employment Relations Act, the City's ability to reduce wage and labor rates is extremely limited. The Governor, likewise laboring under the terms and conditions of PERA, has found it nearly impossible to gain any meaningful reduction in wages and benefits in spite of the critical fiscal dislocation that governmental units in the State of Alaska have been experiencing.

While the City subscribes to the collective bargaining process, I can only point to the examples of the City's and State's bargaining results, under PERA, as an indictment of the PERA system. The ability of the City and the State to reduce wage costs is an impossible task under the procedures established by the PERA legislation.

Localities should be allowed to opt out or exempt themselves from the framework established by PERA. Local municipalities or political subdivisions should be allowed to establish its own rules and regulations to govern collective bargaining procedures. Local municipalities must gain control of its fiscal destiny, and be allowed to set wage and benefit rates at levels affordable to the local residents ability to pay. As Mayor of the City of Fairbanks, I wholeheartedly support SB372 as an act to give control of city finances back to the municipal government officials.

Very truly yours,


BILL WALLEY
Mayor, City of Fairbanks

Alaska
MUNICIPAL
League

TELEPHONE
(907) 586-1325

105 MUNICIPAL WAY, SUITE 301
SITKA, ALASKA 99801

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

FROM: Scott A. Burgess, Executive Director 

DATE: February 3, 1988

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

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

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

1. Alaska Public Employees Labor Relations Act: The League strongly opposes any legislation that would force municipalities to be subject to the provisions of the Alaska Public Employees Labor Relations Act. The League opposes, just as strongly, any legislative efforts to dictate the provisions of local public employee labor relations ordinances. The League supports legislation to allow each municipality to reject or withdraw from the terms of the Alaska Public Employees Labor Relations Act at any time. The scope of decisions as to local government finance and labor policies is best left to the local governing body.

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

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

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



City of Petersburg
P. O. Box 329
Petersburg, Alaska 99833

FEB 1 1988

January 29, 1988

Senator Fanning
P.O. Box V
Juneau, Alaska 99811

Dear Senator Fanning:

This letter is a follow-up to a discussion that I had with your aide, Mrs. Gail Thibodeau concerning the City of Petersburg's experience under the Public Employees Relations Act of 1972 (PERA).

Prior to my initial discussion with Ms. Gail Thibodeau, I became aware of your Senate Bill #372 through the Alaska Municipal League. I was very pleased to see that there is the possibility of some relief from this oppressive piece of legislation.

As you are aware, the Charter of the City of Petersburg authorized the institution of a "home rule" municipality. In other words, the citizens of Petersburg in a "charter election" chose to maintain as much "local control" over their own affairs as was possible under the state law at that time. Since our Charter was adopted by these voters, there has been no single piece of state legislation that has had, as oppressive an impact on this fundamental concept (local control) as the Public Employee Relations Act of 1972 (PERA).

The problem with PERA has been this single opt-out "window" and the courts restrictive interpretation of this concept.

As a practical matter PERA gave Petersburg six months from the time of its passage, to opt-out.

In my opinion, this "single window of time" was totally inadequate for a City Council to digest the implications of PERA and opt-out in an intelligent manner. In other words, with our own collective bargaining ordinance.

Coincidentally, during this time the "International Brotherhood of Electrical Workers" were actively "signing up" employees in our electric utility. Our City Council reacted to this "perceived threat", rather than the more fundamental issues, and passed a resolution to opt-out of PERA. The courts later interpreted this opt-out as invalid, because it was done concurrently with the unionizing efforts.

Compounding this, the court ruling did not address the rest of the employees, and whether or not, they were under PERA also, or under our existing ordinance. Ultimately, another large union

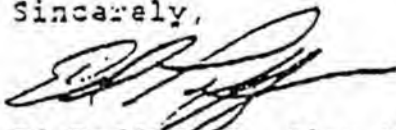
used this issue to organize the remaining employees and file suit against the city on the issue of "partial opt-out" or equity. After many thousands of dollars of legal expenses and employee consternation the court in 1987 ruled that there could not be a "partial opt-out" and consequently all our employees are under PERA.

Consequently, due to PERA we now have two large outside unions, IBEW and ASEA. Their "leadership" and their expectations comes from outside Petersburg, the process is controlled by outside state agencies that are use to dealing with state issues and state resources.

Consequently, the Petersburg taxpayer and rate payer has "lost control" of the single largest expenditure in their annual budget.

Please let me know if I can be of any future assistance in your effort to amend PERA.

Sincerely,



Ed Pefferman, City Manager
City of Petersburg

cc: Senator Jones
Representative Taylor
Representative Sund

Municipality of Anchorage

MEMORANDUM

William
RECEIVED
FEB 02 1987
Discussion Panel

DATE: February 1, 1987
TO: Lee Nunn, Executive Manager Government Affairs
THRU: Glenn Lundell, Employee Relations Director
FROM: Personnel Director *NR*
SUBJECT: Senate Bill No. 372

As requested, I have reviewed the proposed amendment to AS 23.40 under Senate Bill 372 to add a proposed new section, 23.40.235. The effect of this proposal would be to give municipalities and political subdivisions of the State the option to elect exemption from the provisions of PERA if they had missed the window period originally provided in the act or were currently covered and wished to withdraw.

The immediate impact of this legislation on Anchorage would be negligible as the Municipality has elected to withdraw from PERA and is not covered by the terms of that act. I would, however, recommend our commenting favorably on the proposed legislation as it provides flexibility to local governments that does not currently exist. Employers under PERA who wish to enact a local labor relations ordinance to govern their bargaining currently cannot do so but could under this proposal. Conversely, those finding administration of a local ordinance too onerous could opt to come under PERA. The three year minimum status period proposed under 23.40.235(b) provides a good vehicle for insuring some stability in employee relations while providing the local governments the flexibility in policy decision-making proposed under 23.40.235(a).

While I support this proposed legislation I am concerned about another piece of proposed PERA legislation that is currently in the House Judiciary Committee. That bill is CSFB 170 which proposes the addition of a new section 23.40.075 would have the net effect of requiring coverage under PERA for municipalities or political subdivisions who do not either provide their employees the right to strike or final and binding arbitration as the last step in the negotiation process. The effect of this proposed change is that municipalities (including Anchorage) who do wish to control their employee relations through local ordinance must provide their employees either the right to strike or binding arbitration to settle negotiation impasses. If they do not do so, their PERA exemptions would no longer be valid and their employee relations would have to be governed by PERA.

Currently our labor ordinance AMC 3.70 does provide the proposed impasse resolution mechanisms so we would not come under PERA if CSFB 170 were to pass in its present form. If, however, we found that those mechanisms were not effective for us or responsive to the interests of the community and wished to replace them with other options such as advisory arbitration which is also commonly used in the public sector, we could not do so.

In summation, I would recommend support or at least positive monitoring of SB 372. I would recommend opposition to CSFB 170. If further information or recommendations on these bills is desired, please let me know.

STATE of Alaska, Petitioner,

v.

CITY OF PETERSBURG, Alaska, and International Brotherhood of Electrical Workers, Local 1547, AFL-CIO, Respondents.

No. 2341.

Supreme Court of Alaska.

July 24, 1975.

The Superior Court, First Judicial District, Juneau, Thomas B. Stewart, J., upheld city's rejection of applicability to it of the Public Employment Relations Act, and the State and union petitioned for immediate review. The Supreme Court, Boochever, J., held that as to municipal power plant employees, city could not exempt itself from applicability of the Act at a time more than six months after its effective date and after becoming aware of fact that all such employees had authorized particular union to represent them.

Reversed and remanded.

Connor and Burke, JJ., filed separate dissenting opinions.

1. Appeal and Error ⇨363

Petition for review of order upholding city's rejection of application of the Public Employment Relations Act would be granted, though other issues remained to be determined in the case, where the order involved a controlling question of law as to which there was a substantial ground for difference of opinion and immediate decision might materially advance the ultimate termination of the litigation, and where the substance and importance of the order presented the need of present and immediate review. AS 23.40.070(1, 2); Rules of Appellate Procedure, rules 23(d), 24(a)(1, 2) 46.

2. Labor Relations ⇨52

Whether political subdivision may reject application of the Public Employment Relations Act turns on substantiality of or-

ganizational activities already undertaken by employees and the extent of the subdivision's awareness of those activities. AS 23.40.070(1, 2); Laws 1972, c. 113, § 4.

3. Labor Relations ⇨52

City could not exempt itself from applicability of the Public Employment Relations Act more than six months after its effective date, as to municipal power plant employees, after becoming aware of fact that all such employees had authorized particular union to represent them; city's prerogative to reject Act could not be used as a de facto veto against particular union, which would constitute interference with employees' freedom to choose, which collective bargaining association should represent them. AS 23.40.010, 23.40.070, 23.40.070(1, 2), 23.40.110(a)(1, 3); Laws 1972, c. 113, § 4.

4. Labor Relations ⇨52

Applying a liberal construction to the powers of local government cannot override express declarations of policy made a part of the Public Employment Relations Act that the Act be applicable to all political subdivisions unless rejected. Const. art. 10, §§ 1, 11; Laws 1972, c. 113, § 4.

5. Labor Relations ⇨677

Where review of decision of the Department of Labor presented question of statutory interpretation, trial court did not err in substituting its independent judgment for that of the hearing examiner.

Michael R. Peterson, Deputy Atty. Gen.,
Ronald W. Lorensen, Asst. Atty. Gen.,
Norman C. Gorsuch, Atty. Gen., Juneau,
for petitioner.

Robert B. Baker of Robertson, Monagle,
Eastaugh & Bradley, Anchorage, for ap-
pellee City of Petersburg.

Robert M. Goldberg, Anchorage, for ap-
pellee Local 1547, IBEW.

Before RABINOWITZ, C. J., and
CONNOR, ERWIN, BOOCHEVER and
BURKE, JJ.

For the proper deter-
mination of Const. art.

to be exercised with
providence of the jury
invaded. (People v.
12d 570, 577-578, 327
the fitting instrument
a jury needs to be
particular circum-
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dict. (See People v.
12d 645, 650, 58 Cal.
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firm.

INNER, SULLIVAN,
ARDSON, JJ., concur.

crime charged but rath-
the need for caution in
adduced at trial, i. e.,
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(cf. Evid.Code, § 750;
ite, fn. 7), which if be-
y have a bearing on the
aining witness.

OPINION

BOOCHEVER, Justice.

On June 7, 1972, the Governor of the State of Alaska approved the Public Employment Relations Act (hereinafter PERA) which conferred upon public employees the right to organize and to bargain collectively with their employers, and correspondingly required public employers to recognize collective bargaining units formed under the PERA.¹ The actual effective date of the PERA was September 5, 1972.² Of particular concern in this case is a provision whereby the legislative body of any political subdivision of the state may reject the Act thereby preventing its application to the public employees of that subdivision.³ Specifically, we are confronted with the issue as to whether the Petersburg City Council could validly reject application of the Act more than six

months after it became effective,⁴ and after the members of the Council had learned of the organizational activity of the City's power plant employees.

Early in 1973, employees of the City of Petersburg light and power plant began discussing the possibility of joining a union. As a result, on March 23 and 24, 1973, the entire eight-man work force signed cards authorizing the International Brotherhood of Electrical Workers Union Local 1547 (hereinafter IBEW) to act as their collective bargaining representative. A few nights later, the Petersburg City Council held a special meeting at which it passed Resolution 366-R purporting to exempt the City from the provisions of the PERA.⁵ At the time of this meeting, the members of the City Council then present were well aware of the activities of the power plant employees concerning the formation of a collective bargaining unit.⁶ In

1. AS 23.40.070(1) and (2).
2. SLA ch. 113 (1972).
3. SLA ch. 113, § 4 (1972) provides as follows:
This Act is applicable to organized boroughs and political subdivisions of the state, home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply.
4. In view of our holding in the instant case, we do not reach the issue of whether the City could act by means of passage of a resolution rather than by enactment of an ordinance.
5. Only four of six Council members were present at the meeting and only three voted for the resolution. Due to concern that procedural irregularities might have rendered the first resolution invalid, the Council met again on April 11, 1973 and passed a second resolution, 367-R, purportedly exempting the City of Petersburg from the applicability of the PERA.
6. This was indicated by testimony before the labor relations hearing officer. Paul Jones, an employee of the City testified that Councilman Ted Smith was aware that the employees of the power plant had signed pledge cards two or three days after the signing occurred. Doug Welde testified that on the day following the signing of the cards, Councilman Oines asked him "What's this I hear about the IBEW and the Union?" Councilman

Ted Smith testified that he was aware prior to the March 23, 1973 meeting that the employees of the power plant had signed something indicating that they were interested in a union. Smith further testified that the resolution passed at the March 23 special meeting was in response to the organizational activities at the power plant. Councilman Oines testified to a similar motivation for this meeting and stated that the signing of the IBEW cards could have been discussed at the meeting. Councilman Fred Haltiner admitted that, prior to the March 23 meeting, he had been told that possibly all of the power plant employees had signed pledge cards. However, Ms. Jerry Van Bleck, the Clerk-Treasurer for the City of Petersburg, testified that at the March 23 meeting there was no mention of the power plant employees having signed authorization cards. In his decision, the hearing examiner deemed the following conclusively proved by the evidence:

The right of the City to exempt itself from the operation of the PERA had existed and was notice to the world since the Act was signed by the Governor in June of 1972; but the City took no action to escape from the PERA until it learned that its eight power plant employees had signed pledge cards. It acted five days later on March 23, 1973, at which time the City passed Resolution 366-R for the purpose of exempting itself from the operation of PERA. (emphasis added)

...and after the Council had learned of the activities of the City's employees of the City of Petersburg began their ability of joining a union on March 23 and 24, 1973, eight-man work force representing the International Brotherhood of Electrical Workers Union (IBEW) to act as bargaining representative of the Petersburg City employees at which the Council presented Resolution 86-R purporting to amend the provisions of the Charter of this meeting, the Council then presented the activities of the employees concerning the formation of a bargaining unit.

Councilwoman Annie Taylor testified that, at the March 29 meeting and prior to the passage of Resolution 86-R, she told those members of the City Council then present that all of the power plant employees had signed pledge cards with the IBEW.

After an unsuccessful effort by the union to discuss the situation with the City Council, the matter was placed on the agenda for a meeting held on May 7, 1973.

At that meeting, the Council refused to deal with the union, asserting that because of the passage of its resolution, it was not required to recognize the IBEW as the bargaining agent of the power plant employees. As a result, the union representative advised the Council that a strike vote would be held that night, and at 11:00 p.m. the employees notified the Mayor that they would go on strike at 6:00 the next morning. Notice was also given to the fire department and the hospital. At approximately 6:30 a.m. on May 8, the power plant was shut down. The three men involved in shutting down the power plant were immediately fired, and the other five were terminated when they refused to return to their jobs.

On May 16, 1973, the union sent a telegram to the Alaska Department of Labor alleging that the actions of the City in refusing to recognize the union and in firing the power plant employees constituted unfair labor practices under the PERA and requesting an immediate investigation. A formal accusation was filed on June 13, 1973. The Deputy Commissioner of the Department of Labor, on the basis of his preliminary investigation, found that there

was probable cause to believe that the City had interfered with the rights of its employees to organize and had refused to bargain collectively in good faith with the IBEW, an organization which was the exclusive representative of employees in an appropriate unit. He concluded that such activities were in apparent violation of AS 23.40.110(a)(1) and (a)(3).

The City of Petersburg filed a complaint in the superior court on June 29, 1973 (CA No. 73-201) seeking damages from the local IBEW and the employees involved in the strike. Additionally, the City alleged that the Department of Labor was without jurisdiction over this labor dispute, and that, therefore, it should be enjoined with regard to any further proceedings. On July 18, 1973, the superior court denied the City's motion for a temporary restraining order thereby allowing the Department to proceed with formal hearings on the accusation that the City had committed certain unfair labor practices.

A hearing was held in Petersburg before Douglas L. Gregg, a hearing examiner of the state labor relations board, who, on January 14, 1974, issued an order requiring the City to recognize IBEW Local 1547 as the bargaining agent for the power plant employees. The hearing officer further ordered that no fines be imposed against any party and that all employees who were terminated be reinstated on their jobs at wage rates not less than those prevailing at the time they were terminated.

The City filed a notice of appeal to the superior court from this administrative order on January 24, 1974 once again raising the issue of the Department's jurisdiction

that was aware prior to the March 29 meeting that the power plant had signed cards that they were later used to support Resolution 86-R. Councilman Fred Smith further testified that he had been told that possibly some employees had signed cards. Councilman Van Block testified that he had been told that possibly some employees had signed cards. Councilman Van Block testified that he had been told that possibly some employees had signed cards. Councilman Van Block testified that he had been told that possibly some employees had signed cards.

City to exempt itself from the PERA had existed in the world since the Alaska Governor in June 1972. The City took no action under PERA until it learned that power plant employees had signed cards. It acted five days after the March 29 meeting, at which time the Council passed Resolution 86-R for the purpose of exempting the City from the operation of the PERA.

AS 23.40.110(a)(1) and (3) provide:

- (a) A public employer or his agent may not:
 - (1) interfere, restrain or coerce an employee in the exercise of his rights guaranteed in § 50 of this chapter;
 - (2) 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.

8. In denying the injunctive relief requested by the City, Judge Stewart reasoned that while there was a large degree of doubt as to the jurisdiction of the Department over this dispute, benefit might be derived from allowing the Department to deal with the question first, thereby taking advantage of whatever expertise it might possess, particularly since he felt there would not be a large or abnormal expense involved in allowing the administrative hearing to go forward.

over the matter (CA No. 74-00). The State of Alaska filed a notice of cross-appeal on February 1, 1974, claiming that the hearing officer's denial of back pay was an abuse of discretion.

Judge Stewart issued an interlocutory order in which he dealt with both the case originally filed in superior court by the City and the case there on appeal from the administrative hearing, these having been consolidated by stipulation of the parties in March 1974. He ordered that the City be given time for full consideration of whether to enact an ordinance for the purpose of rejecting application of the PERA to the City of Petersburg. The judge indicated that if the City properly rejected the application of the PERA by passage of an ordinance, a final judgment would be entered affirming that rejection. Judge Stewart also ordered that the City was not required to reinstate the employees involved in the strike but rather should offer them jobs to the extent available within the City's workforce at rates not less than those prevailing at the time of termination. No decision was made concerning the City's damages claim found in the original complaint filed with the superior court.

The State of Alaska on October 21, 1974, joined by the IBEW on October 28, filed a petition with this court seeking immediate review of the superior court's interlocutory order. The petition was denied.

[1] A motion for reconsideration of the petition was filed with this court on December 5, 1974. By this time, the City had rejected the application of the PERA by

9. For this reason, we initially decided to consider the petition for review as an appeal under authority of *In re E.M.D.*, 490 P.2d 659, 661 (Alaska 1971), and Alaska R.App.P. 46 permitting relaxation of rules. Due, however, to the fact that there are a number of issues remaining to be resolved by the trial court, we have determined that it is preferable to consider this matter as a petition for review.

10. Review is granted in accordance with Alaska R.App.P. 23(d) because the order involves a controlling question of law as

advance and, therefore, with respect to that portion of the case, the lower court order was final.⁹ We have now decided to grant the petition for review limited to the question of whether a municipality can exempt itself from applicability of PERA at a time more than six months after its effective date and after it knows about organizational activity such as that which occurred here.¹⁰

We thus must determine the proper construction of the PERA exemption provision making the Act applicable to 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". Of particular significance to the resolution of this issue is that portion of the statement of policies to be effectuated by the PERA which provides:

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

. . . .¹¹

to which there is substantial ground for difference of opinion, and an immediate decision may materially advance the ultimate termination of the litigation. Moreover, under Alaska R.App.P. 24(a)(1) and (2), the substance and importance of the order sought to be reviewed justify departure from normal appellate procedure and the sound policy behind the general rule of requiring appeals to be taken only from final judgments is outweighed by the need of a present and immediate review of the order.

11. AS 23.40.070.

With respect to the lower court we now decide to be limited to the municipality can exercise its authority of PERA at six months after its effective date. It is known that which occur...

the proper construction of the PERA exemption provision is a matter of public policy. "home rule or legislative body of a municipality by ordinance or resolution its provisions apply with effect to the result that portion of the Act to be effectuated by the City:

It is the policy of the State to promote harmonious relations between the State and its employees and to do so by assuring effectuation of government activities to be effectuated by the State.

The right of public employees for the purpose of organizing...

Public employees to negotiate written contracts with their organizations, hours, and other conditions of employment.

It is the policy of the State to promote harmonious relations between the State and its employees and to do so by assuring effectuation of government activities to be effectuated by the State.

Thus, the Act 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 the City could wait until the employees elected to be represented by a specific union, and then could exempt itself from the requirements of the Act if that union was not favored by the City.¹² In effect, this would give the City the right to control the organization to be selected by the employees. In fact, that is exactly what was attempted by the Petersburg City Council when, at a meeting held on April 4, 1973, it was suggested to the employees, who had been requested to attend the meeting, that they form their own union rather than join the IBEW.

[2.3] The critical point beyond which the right and power of the City to reject the Act become subordinated to the rights of the employees granted by the same legislation must be ascertained. We hold that the analysis must turn on both the substantiality of the organizational activities undertaken by the employees and the extent of the City's awareness of those activities. Prior to becoming aware of substantial organizational activity,¹³ the City could have exempted itself from the applicability of the PERA without interfering with the right of the employees to organize. Rejection of the PERA after becoming aware of such activity constitutes a gross and impermissible interference with the employees'

right to organize which collective bargaining organizations should represent them.

That the City's prerogative to reject the Act is not to be used as a de facto veto against particular unions is evidenced by a comparison of the exemption provision set forth in SLA ch. 113, § 4 (1972) with the prior provision expressly repealed by the 1972 Act.¹⁴ The earlier provision contained in AS 23.40.010¹⁵ specified that:

The state or any political subdivision thereof including (a) municipal corporation (b) may enter into union contracts with any labor organization whose members furnish services to the state or such political subdivision. (c) provided however that nothing contained in this Act shall be construed to require the state or any political subdivisions thereof to enter into union contracts. (emphasis added)

Under that provision, neither the state nor its political subdivisions were required to enter into union contracts. Prior to the 1972 Act, a municipality could wait until approached by a specific organization and still refuse to negotiate with or even recognize that union. The position advocated by the City in this case, that the exemption provision may be invoked at any time prior to an official demand by the particular organization of public employees for recognition, would constitute a reversion to the situation existing under the former statute, which expressly entrusted the local government with complete authority to block attempts by public employees to or-

12. Even the City admits that the exemption provision cannot be read as placing no time limit on the action of political subdivisions. Otherwise, even after recognizing an employee organization, a City could exempt itself from the provisions of the Act and thereafter refuse to negotiate.

13. The City contends that determination of when it becomes aware of substantial organizational activity is too imprecise a standard. While admittedly difficult factual situations may be conjured up, courts are constantly required to make similarly difficult deter-

minations (as, for example, whether a party has exercised due care in a negligence case). See also State v. Marathon Oil Co., 523 P.2d 293, 297-98 (Alaska 1974); United States v. Ragen, 314 U.S. 513, 523, 62 S.Ct. 374, 98 L.Ed. 333, 390 (1942). In any event, it is clear that substantial organizational activity has occurred when all of the employees of a particular unit of government have signed cards authorizing a specific union to represent them.

14. SLA ch. 113, § 5 (1972).

15. SLA ch. 108, § 1 (1959).