

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9782 HOUSE COMMUNITY & REGIONAL AFFAIRS



# Alaska State Legislature

## UTILITIES RESTRUCTURING COMMITTEE

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Bill Hudson Chair  
John Cowdery Vice Ch.  
Brian Porter  
Norman Rokeberg  
Pete Kott  
John Davies  
Ethan Berkowitz  
Joe Green Alt.

### AGENDA

March 29, 2000

8 a.m.

#### House Finance Committee Room

1. **HB 169 by Rep. Joe Green**  
*Relating to including the costs of expansion and political activities in rates of electric cooperatives.*
2. **Power Cost Equalization - Roundtable Discussion**  
*Joint Meeting with Community and Regional Affairs Committee, Rep. Carl Morgan and Rep. John Harris, Co-Chairs*

*What is the status of the PCE program for FY 00 and 01?  
What are potential funding options? Are there  
recommendations we can forward to the Finance Committee?*

## Special Rural Community, Schools & Municipal Supplement . . . .

-- Focus: Rural, municipal, and school legislative issues.

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Legislative Digest

-- A special supplement available only to  
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March, 17, 2000  
With Dig #11/00

## Power Cost Equalization: Tough problem, big consequences

Finding a way to sustain, for the long term, the rural Power Cost Equalization program is a tough problem that has serious consequences. There is simply no easy solution, and as much as people wish for an easy "black box" solution — new energy technologies as alternatives to diesel-generated power — the high capital cost of those make them unrealistic in many outlying Alaska communities. There appears to be the commitment in the Legislature to see the program through to the end of this fiscal year (the House included money in its fast-track supplemental budget, and the Senate seems favorably inclined toward some form of short-term funding), but there's no money for FY 2001, or for the long term.

Gov. Tony Knowles' position is clear. He wants the program extended, long-term. And despite the fiscal conservatism of the Legislature's current leadership, there seems little support among lawmakers for a flat cutoff to the payments because of the consequences. The governor is working on ideas for a long-term funding solution but so far there have been no solutions, no "breakthroughs."

If PCEs were to be just ended, utility bills for rural consumers would jump, and operating costs (and consumer charges) for new water and sewer systems being installed in many villages would increase sharply. This would jeopardize a massive state and federal investment in village clean water and sanitation. Also, many small rural utilities would simply fail, according to an analyses of the problem by the University of Alaska's Institute of Social and Economic Research.

### Cost of electric power

(average, per Kilowatt Hour)

Urban Alaska: 9.5 cents

PCE communities: 42 cents

*Continued on next page*

## How did we get into this? PCEs began in early 1980s

*Continued from preceding page*

Power Cost Equalization began in the early 1980s when the state Legislature established a priority on stabilizing energy costs (then rising rapidly, with oil prices) in the state, using "nonrenewable" resource income (from petroleum) to finance the needed capital expenditures for "renewable" power, of which hydro was the favored choice. Hydro was a good investment for parts of the state — coastal communities near good hydro sites, and railbelt communities which could be served through the intertie, the "railbelt" electric grid. The problem was fashioning a policy which helped the entire state. Since there was no single technological solution to help the state's many smaller, outlying communities, in 1984 the state Legislature established a subsidy program for rural utilities, Power Cost Equalization, modeled on a temporary program established in 1980.

There was a logic to it. The state had spent hundreds of millions of dollars with the "four dam pool," hydro facilities at Lake Tyee and Swan Lake in Southeast, Soloman Gulch near Valdez and Terror Lake on Kodiak Island, as well as Bradley Lake near Homer, which generates power for the utilities from the Kenai Peninsula to Fairbanks. An ambitious project to build a multi-billion dollar hydro project on the Susitna River between Anchorage and Fairbanks was also under way in the mid-1980s. It was halted by former Gov. Bill Sheffield when the project's economics began to look dubious and when oil prices turned down, but several hundreds of millions of dollars were spent on studies and feasibility work on the project.

Most of these investments were sunk costs. The state will never, for example, recoup its capital investment in the four dam pool, although five coastal utilities buying power from those facilities are repaying part of the cost. Thus, there is an ongoing subsidy to these communities. Bradley Lake is the one state hydro project which will be paid for through sales of power to railbelt utilities.

### Monthly electricity use

(Kilowatt Hours)

Urban Alaska:	688 kwh/month
Rural	326kwh/month

*PCE was attempt to share benefits of a statewide energy program*

PCE was an attempt to share the benefits of this statewide energy program with outlying communities. Since a technological solution wasn't feasible, in most cases, (involving a capital subsidy, as in hydro) the only practical alternative seemed a cash payment to lower rural rates. The federal

*Continued on next page*

## PCE program has undergone changes

program subsidizing high-cost rural telephone service across the nation is the closest analogy. Over the years, the PCE program has been changed. In 1993 the policy of straight general fund appropriations from the operating budget to cover PCE costs, about \$20 million per year, was ended. In its place, the Legislature established a PCE fund of about \$60 million, made an allocation of 40 percent of revenues received from the five coastal utilities buying power from the four-dam pool, and made a commitment to continue the program until 2013. It was known in 1993 that \$60 million wouldn't fund PCEs until 2013 even with 40 percent of the four-dam pool payments, but there was a hope that between that year and time the money ran out, other solution, or other funding, would be found. But it wasn't found. The fund ran out last year.

Faced with a cutoff of the PCE payments to rural utilities, in 1999 the Legislature cobbled together a patchwork scheme to fund the program for another year, and also made changes to reduce its cost. Schools (mostly state-supported REAA schools) and commercial users were excluded, so the program helped only residential users. The amount of monthly power usage to which the subsidy applied was also reduced from 700 kilowatt hours/month to 500 kWh/mo, and the "floor" (target rate for equalization) was raised from 9.5 cents to 12 cents. The effect of these changes reduced the Fiscal Year 2000 cost of the program from \$22 million to \$16 million, a \$6 million savings.

Funding sources for the one-year extension included a dedication of 60 percent of Four Dam Pool revenues (up from 40 percent), and use of lease revenues from National Petroleum Reserve - Alaska federal 1999 lease sale bonuses, the state's share of which was about \$40 million.

### Cost of electric power

(average, per Kilowatt Hour)

Alakanuk:	42 cents
Akiachak	50 cents
Dillingham	22 cents
Noatak	55 cents
Nome	20cents
Anchorage	9 cents

### *NPR-A leasing revenues for PCEs never materialized*

The flaw in this arrangement was that the NPR-A revenues never materialized. Federal law requires the state to give priority to grants to communities "impacted" by activity on NPR-A, meaning communities within the North Slope Borough near the

*Continued on next page*

## Supplemental appropriation of \$8 million is on a fast track

*Continued from previous page*

NPR-A lease area. The Legislature's thinking in 1999 was that there would be some money left over after grants were made to the NSB communities, and they directed these funds as PCE program fund sources. It should have been no surprise, however, that applications for grants from the NSB and its communities outstripped the shared leasing revenues, by about \$30 million, in fact. Thus, there was no money left over, and the PCE is short of funds for its current year.

Gov. Knowles proposed that \$8 million from the annual dividend paid by the Alaska Industrial Development and Export Authority (\$26 million this year) be appropriated to complete the FY 2000 funding for PCE. This is in the governor's supplemental budget request. The state House has approved this as part of the governor's "fast track" supplemental budget bill. If the Legislature does not approve this or find some other funding source, the PCE checks will stop going out to rural utilities by the end of March.

### Technology is not an easy solution

#### Capital costs for energy alternatives

Diesel (with fuel storage)	\$1,000 per kW
Wind/diesel combination	\$2,900 per kW
Hydroelectric (Old Harbor)*	\$5,000 per kW
Microturbines	\$3,459 per kW
Fuel Cells	\$3,000 — \$5,000 per kW

*\* Data from project in Old Harbor*

*Source: ARECA*

x

# POWER COST EQUALIZATION

Report and Recommendations

of the

Governor's Blue Ribbon Committee

February 1, 1999

## C. Universal Service Fund

The Committee recommends that the legislature enact a universal service fund for electric utility service, similar to the universal service fund already authorized for telephone service. Funding would be provided by a monthly surcharge on all electric utility bills statewide. The proceeds of the fund would be used solely to ensure that a lifeline supply of power will be available in all established communities at a designated "lifeline rate." The Committee considered setting the lifeline rate at either 100% or 150% of the statewide average residential rate. At 100%, a lifeline supply of power would be made available at approximately 11.3 cents per kWh. At 150%, a lifeline supply would be made available at approximately 17.0 cents per kWh.

The financial implications of these alternatives are as follows:

- At 150%, the estimated cost of the lifeline program is \$14.7 million per year. With 60% of Four Dam Pool debt service providing \$6.6 million in program revenue during a typical year, the annual amount needed from the universal service fund is estimated at \$8.1 million. Based on estimated electric utility sales of 5.0 billion kWh per year statewide, the required surcharge would be about 0.16 cents per kWh. This would cost an average residential customer in the Railbelt about \$14 per year.

The \$14.7 million estimated program cost is comparable to the estimated cost of PCE given the program changes recommended above. The estimated PCE cost net of recommended changes is as follows:

\$23,000.0 Preliminary estimate – full funding of PCE in FY 2000.

- 2,600.0 Remove commercial customers from eligibility.

- 3,700.0 Cut eligible kWh (residential) from 700 per month to one-half the monthly statewide average.

- 1,000.0 Limit community facilities to public health and safety.

\$15,700.0 FY 2000 PCE cost following proposed amendments.

Spreadsheets included in Attachment 6 show the estimated annual payments to utilities under three scenarios:

- i. The "lifeline rate" program benchmarked at 17.0 cents per kWh (i.e. 150% of the statewide average residential rate).
- ii. The "lifeline rate" program benchmarked at 11.3 cents per kWh (i.e. 100% of the statewide average residential rate).
- iii. The existing PCE program.

At the 17.0 cent per kWh benchmark, the lifeline rate program would cost an estimated \$14.7 million per year. A summary spreadsheet of Option 1A (the "150% option") is included in Attachment 7.

Only one additional community would be added to the program that is not currently eligible for PCE – Glennallen. A lower benchmark rate would add more communities.

If the lifeline rate were set at 100% of the statewide average (11.3 cents rather than 17.0 cents), the initial year program cost would be approximately \$22.9 million, \$16.3 million of which would come from the universal service fund. This would require a surcharge of about 0.32 cents per kWh on all electric utility bills statewide, and would cost an average residential consumer in the Railbelt about \$27 per year.

The "100% option" would add several communities to the list of those receiving benefits under the rate support program – communities which are not presently eligible for PCE but whose residential rates exceed 11.3 cents. One or more of these communities could be relatively large and might therefore be entitled to a relatively large payment for community facilities. (Presently, the maximum kWhs each month that can be claimed for community facilities is equal to the community population times 70.) If the 100% option were adopted, the Committee would recommend limiting the community population to 1,000 for purposes of this calculation based on the premise that the local tax base of larger communities can better support the operating costs of public facilities.

The concept of the 100% option more closely approximates the original concept of the PCE program, which was to "equalize" rural power costs with average rates in Anchorage, Fairbanks, and Juneau. In actual practice, however, PCE has not equalized rates – average rural rates for PCE-eligible usage are still about twice as

high as urban rates. A summary spreadsheet of Option 1B (the "100% option") is included in Attachment 8.

The Committee is aware of the natural resistance that will develop to any proposal that will increase rates. However, there are many precedents for cost pooling in which the benefits of lower cost enjoyed by some consumers are shared to a limited extent with those whose cost of service is higher. It occurs within any service territory that has standard rates and occurs on a larger scale within such structures as the Four Dam Pool. The Committee believes that the proposed level of surcharge, particularly at the 150% level, is an acceptable amount to ensure that a lifeline supply of power is available to all households and essential public facilities at a reasonably affordable price.

Recommendation #4 – A statewide organization or agency should be designated to establish rural utility operating standards. State support should be withheld from rural utilities unless the standards are met or are in the process of being met.

The Committee resolved that, in exchange for continuing public support of rural electricity lifeline rates, effective measures must be taken to ensure that small, single-village utilities are properly managed and that they become, as much as possible, self-reliant. This will require a combination of operating standards, assistance in meeting these standards, and enforcement of sanctions if utility management does not make satisfactory progress. An enforceable commitment to improved utility management must be part of any recommendation to continue providing public financial support.

#### DISCUSSION OF ALTERNATIVE OPTIONS

As noted at the outset, the Committee believes that other options to fund PCE or an alternative rate support program should also be brought to the attention of the Governor and legislature. These options are as follows:

##### OPTION 2

Option 2 would extend the modified PCE program through 2013, consistent with legislative intent enacted in 1993 to fund PCE for 20 years. In addition to the funding sources that all of the options have in common – the 60% share of Four Dam Pool debt service and the re-appropriation of the \$20 million Swan/Tyee intertie loan – Option 2 requires a \$75 million State general fund endowment in FY 2000 to carry the program the rest of the way. A summary spreadsheet showing Option 2 is included in Attachment 9.



**Matanuska Electric  
Association, Inc.**

P.O. Box 2929  
Palmer, Alaska 99645-2929  
Telephone: (907) 745-3231  
Fax: (907) 745-9328

FEB 3 2000

MEMO

TO: All Members, Alaska State Legislature

DATE: February 3, 2000

The Alaska Legislature and the Governor have expressed a continued interest in addressing the permanent funding of Power Cost Equalization (PCE) and in encouraging the most reliable and inexpensive power in the Railbelt. Toward those goals committees have met, agencies have debated and blue ribbon commissions have deliberated. No solution that benefits both the Railbelt and Rural Alaska has yet been offered for consideration.

With respect to the Railbelt, two independent studies by nationally recognized experts, Black and Veatch, International and CH2M Hill, recommended power pooling with centralized economic dispatch for the inter-connected Railbelt utilities. While the savings have been expressed as a relatively small percentage of total power costs, they represent significant sums of money due to the large quantities of energy involved. Power pooling would also spread the benefits from previous and future state or federal subsidies to consumers throughout the entire Railbelt power grid. In addition, power pooling would ease access to the market for new generation and new technology.

Matanuska Electric Association (MEA) has considered the potential benefits to the Railbelt from power pooling with centralized economic dispatch and recommends legislation to accomplish that goal. MEA also recognizes that PCE could be funded through a statewide 3 mils per kWh universal service charge adder. Collectively, the residents of the Railbelt would not pay more than they do now, but would simply be sharing some of the savings realized through greater efficiencies from power pooling with Rural Alaska.

Power pooling would also allow the development of a fund within the Railbelt that could provide funding for intertie and reliability enhancements. With a postage stamp rate for wholesale electricity throughout the Railbelt, improvements anywhere on the system benefit all equally, whereas today each utility jockeys for grants and subsidies to give itself an advantage. We have attached our November 30, 1999, proposal submitted to the Alaska Industrial Development and Export Authority as part of their effort to gather information to address statewide energy needs. MEA has also crafted draft legislation that could serve as a vehicle for implementing this solution to maximize efficiency in the Railbelt and provide a permanently funded PCE program.

Sincerely,

Tuckerman Babcock

Manager, Government and Strategic Affairs

Distributed by DEP Hall

**HB**

**1**

1-LS0020\H  
Cramer✓  
3/10/99

**CS FOR HOUSE BILL NO. 1(CRA)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVE BRICE**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to collective bargaining agreements and arbitration awards of  
2 municipal police and fire protection employees."

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

4 \* Section 1. AS 23.40.215(a) is amended to read:

5 (a) Except as provided in (d) of this section, the [THE] monetary terms of  
6 any agreement entered into under AS 23.40.070 - 23.40.260 are subject to funding  
7 through legislative appropriation.

8 \* Sec. 2. AS 23.40.215 is amended by adding a new subsection to read:

9 (d) An agreement negotiated by a municipal public employer and a bargaining  
10 organization as the representative of police or fire protection employees that has been  
11 approved by vote of the governing body of the municipality and by the bargaining  
12 organization constitutes a contract between the municipality and the bargaining  
13 organization. The monetary terms of an arbitration award made under AS 23.40.200(b)  
14 as a result of an impasse or deadlock in collective bargaining between a municipal

# Municipality of Anchorage



P.O. Box 196650  
Anchorage, Alaska 99519-6650  
Telephone: (907) 343-7968  
Fax: (907) 343-7978  
<http://www.ci.anchorage.ak.us>

*Rick Mystrom, Mayor*

March 10, 1999

OFFICE OF THE EXECUTIVE MANAGER

Representative Fred Dyson  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801

Re: House Bill 1, "Collective Bargaining Agreements & Arbitration Awards"

Dear Rep. Dyson:

This is in response to your memorandum of February 25 regarding our position on the referenced bill.

The Municipality of Anchorage does not bargain under PERA, so there would be no direct effect on existing bargaining agreements. However, we are concerned that the bill represents erosion of a crucial municipal power, the power of appropriation.

The Municipality has been confronted with several arbitration awards recently that have attempted to go far beyond the authority envisioned by the Municipality or the various unions. This bill would give an arbitrator powers that was not contemplated by either party to the contract and would have direct financial impacts on a municipality's operations.

There may also be constitutional issues surrounding the bill. Article IX, Section 1 says, "The power of taxation shall never be surrendered. This power shall not be suspended or contracted away..." Clearly this bill strips from the assembly the power to tax and gives it to an arbitrator.

We hope you will consider these points as you consider this bill. While it may be well intentioned, it clearly causes major problems for municipalities.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tim Rogers".

Tim Rogers  
Legislative Program Coordinator

Cc: House CRA members

I-LS0020\H  
Cramer ✓  
3/10/99

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14 as a result of an impasse or deadlock in collective bargaining between a municipal

**Subject: HB1**

**Date: Tue, 09 Mar 1999 11:16:13 -0900**

**From: The Taylors <gctaylor@gci.net>**

**To: Representative\_Andrew\_Halcro@legis.state.ak.us**

3/9/1999

Dear Representative Falco,

I am writing to you to urge your support of HB1, a bill that would provide for true binding arbitration for municipal class 1 employees. Your committee is currently considering this bill.

Passage of this legislation is important to me as a member for the Fairbanks Fire Fighters Association.

I urge you to vote for this bill because it would close the loophole in PERA and make both parties have to play by the same rules when an issue is submitted to binding arbitration. Currently, the municipality can wait for the decision by a neutral third party arbitrator, then if they lose, choose not to fund the decision.

I would appreciate your support of this position, and would like to know your views on this issue and how you intend to vote on this bill.

Thank you for taking the time to consider my views.

Sincerely,

Greg Taylor  
PO Box 82437  
Fairbanks, AK 99708  
gctaylor@gci.net  
(907) 479-4574  
Fax (907) 452-2322

# CORRECTION

THE FOLLOWING DOCUMENT(S)  
HAVE BEEN REFILMED TO  
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services  
Department of Education & Early Development  
State of Alaska

1-LS0020\H  
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3/10/99

**CS FOR HOUSE BILL NO. 1(CRA)**

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1 public employer and police or fire protection employees shall be treated as a contract  
2 between the municipality and the bargaining organization representing the police or fire  
3 protection employees.

4 \* Sec. 3. This Act applies to agreements reached on or after the effective date of this Act  
5 and to arbitration awards in cases of deadlocks or impasses submitted to arbitration under  
6 AS 23.40.200(b) on or after the effective date of this Act.

**Subject: HB1**

**Date: Tue, 09 Mar 1999 11:16:13 -0900**

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**To: Representative\_Andrew\_Halcro@legis.state.ak.us**

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I would appreciate your support of this position, and would like to know your views on this issue and how you intend to vote on this bill

Thank you for taking the time to consider my views.

Sincerely,

Greg Taylor  
PO Box 82437  
Fairbanks, AK 99708  
gctaylor@pci.net  
(907) 479-4574  
Fax (907) 452-2322

Introduced By: Council Member Cleworth  
Date: January 25, 1999

RESOLUTION NO. 3803  
A RESOLUTION RELATING TO HOUSE BILL No. 1,  
AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Public Employment Relations Act ("PERA") provides that the monetary terms of a collective bargaining agreement for state employees are subject to funding by the legislature, and

WHEREAS, as a result of litigation initiated by the City, the Alaska Supreme Court ruled that the City Council has the same authority regarding the funding of City collective bargaining agreements, a ruling which provides an opportunity to control spending, and

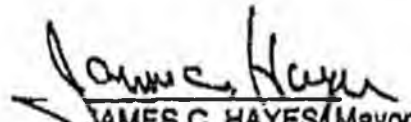
WHEREAS, House Bill No. 1, in its current form would eliminate the City Council's authority regarding funding of City collective bargaining agreements - without changing the Legislature's authority regarding state contracts, and

WHEREAS, passage of House Bill No. 1 would reduce City Council control over labor costs.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA as follows:

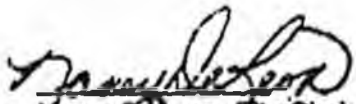
Section 1. The City Council opposes adoption of House Bill No. 1, unless the Bill is amended to reinstate the right of a municipality to "opt out" of PERA by ordinance as other municipalities have been permitted.

Section 2. That the effective date of this Resolution shall be the 25<sup>th</sup> day of January 1999.

  
JAMES C. HAYES, Mayor

AYES:  
NAYS:  
ABSTAIN:  
ABSENT:  
ADOPTED: 1/25/99

ATTEST:

  
Nancy D. Leon, City Clerk

APPROVED AS TO FORM:

HERBERT P. KUSS, City Attorney

I-LS0020\G.1  
Cramer  
3/5/99

*Brice*  
3/5/99

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 1

1 Page 1, lines 10 - 12:

2 Delete "representing employees of the municipality who are members of the class in  
3 AS 23.40.200(a)(1)"

4 Insert "as the representative of police or fire protection employees"

5 Page 2, lines 1 - 2:

6 Delete "employees of the municipality who are members of the class in  
7 AS 23.40.200(a)(1)"

8 Insert "police or fire protection employees"

*Amdt G.1*  
*HB 1*

PUBLIC SAFETY EMPLOYEES ASSOCIATION

4300 Boniface Parkway, #116  
Anchorage, AK 99504-4387  
(907)337-1979 FAX:(907)337-1753

House Labor & Commerce Committee  
Alaska State Legislature  
Juneau, AK 99801-1182

February 25, 1999

Dear Representatives Rokeberg, Halero, Harris Murkowski, Sanders, Brice and Cissna.

The Public Safety Employees Association supports the passage of House Bill one.

Our Association represents several Municipal employee groups. One of these groups currently collectively bargains under the Public Employee Relations Act (PERA) as class I employees.

Under PERA, class I employees, who are mainly made up of police officers, fire fighters, correctional officers, and probation officers, cannot strike should they reach an impasse in negotiating a contract. Under PERA, these class I public safety employees have the right to binding arbitration should an impasse occur. The right of binding arbitration is in Lieu of not being able to strike.

The Alaska Supreme Court has ruled that PERA, in it's current form, does not necessarily bind the legislative body of a municipality or city to follow an arbitrator's decision in the case of monetarily funding a contract.

This effectively means that there is no "binding arbitration". There is only an arbitrator's decision, which according to the intent of this law, both parties are supposed to recognize as part of the contract in whole. Under this current miscue in the law, the employer can essentially pick and choose which parts of the arbitrator's decision they like, and simply ignore the monetary parts. This only tends to lead to never ending, unproductive contract negotiations. There is no finality to any meaningful collective bargaining.

HB 1 addresses this issue by giving the law the intent it needs to be fair to the employer and employee by making sure both parties adhere to the rules.

I urge you to pass HB 1 out of your committee, and begin restoring good faith collective bargaining for class I municipal and city employees.

Sincerely,

Craig Persson  
PSEA Legislative Liaison



# FAIRBANKS POLICE DEPARTMENT EMPLOYEES ASSOCIATION

856 7TH AVENUE FAIRBANKS ALASKA 99701



Representative Tom Brice  
Alaska Legislature  
State Capitol Building  
Room 426  
Juneau, Alaska 99801

February 6, 1999

Re: HBI

Representative Brice,

The Fairbanks Police Department Employees Association strongly supports HBI.

The present language in the Public Employees Relations Act (PERA) does not provide for a means to compel agreement between municipal employers and class one (police and fire) employees. If an impasse occurs in negotiations there must be a way to resolve the differences. For most public and private employees one tool available to break an impasse is the ability to strike. Although the use of a strike action is seldom used, the employer knows that this is a real possibility thereby compelling serious negotiations.

The original architects of PERA recognized that the services provided by some employees, primarily police and fire, are of such an essential nature that the ability to strike should not be an option for these class one employees. The Fairbanks Police Department Employees Association is in agreement with this belief. The designers of PERA recognized the dilemma created by this restriction and provided for differences between the parties to be settled through binding interest arbitration. In interest arbitration, the parties present their positions to a neutral arbitrator, and that arbitrator then reaches a decision based on the information presented. The decision of the arbitrator is then binding on both parties. Under the present language of PERA the municipal public employer is not compelled to fund the arbitrator's award. Thus, binding

employees the municipal employer may implement that award. This creates an unfair relationship between the employer and employees, one that is strongly in favor of the employer. The employer is under no obligation to abide by the arbitrator's decision while the employees have no such ability. What was intended to be a level playing field is now tilted at a very steep angle in favor of the employer. What was intended to be binding arbitration is binding only on the employees.

As police officers we take great pride in the profession we have chosen. We are called upon every day to risk our lives to protect the citizens of our community, including being asked to make the ultimate sacrifice and lay down our lives. This is our job and we accept the risks involved. We strive to provide the highest level of service to the community that we can. We do not want, nor are we asking for special treatment. What we want is a level playing field when it comes time to negotiate contracts. HBI would provide that level playing field and make the arbitration process binding on both parties.

The collective bargaining agreement between our Association and the City of Fairbanks expired on June 30, 1993. Negotiations continued on a successor agreement until impasse was reached over wages to be paid officers. No settlement could be negotiated and the matter was heard before an arbitrator. The arbitrator ruled in favor of the Association. The City of Fairbanks refused to fund the arbitrator's award and has gone as far as the Alaska Supreme Court in defending their 'right' not to abide by the arbitrator's decision.

The City of Fairbanks has used the same tactics in dealing with their fire department employees. Wages for starting fire fighters has remained at the same level since 1990. There exists no incentive for the City to



# FAIRBANKS POLICE DEPARTMENT EMPLOYEES ASSOCIATION

1000 7TH AVENUE FAIRBANKS ALASKA 99701



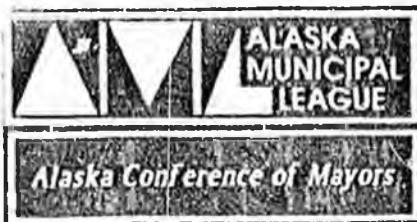
negotiate in good faith. They know that should a matter go to arbitration they can only win and we can only lose. The City appears committed to continuing to exercise what they see as their right under PERA to negotiate in bad faith.

We support HBI in the interest of true collective bargaining. Those who oppose this bill are opposed to the very concept of collective bargaining.

Sincerely,

A handwritten signature in cursive script, appearing to read "Matthew L. Soden".

Matthew L. Soden  
President  
Fairbanks Police Department Employees Association



217 Second Street Suite 200 • Juneau, Alaska 99801 • Tel (907)586-1325 Fax (907)-463-5480

March 5, 1999

Representative Andrew Halcro, Co-Chair  
Representative John Harris, Co-Chair  
House Community & Regional Affairs Committee  
State Capitol  
Juneau, AK 99811

Dear Co-Chairs Halcro and Harris:

Thank you for the opportunity to discuss HB 1 with our members to develop a position on the legislation. We discussed the issue with several municipal attorneys, other municipal officials, the state Department of Law, and a union representative.

On March 5, the Education and Local Government Subcommittee of the AML Legislative Committee met by teleconference and unanimously voted to:

1. Oppose the adoption HB 1, primarily because only an elected state or local legislative body can make appropriation or tax decisions. This is both a constitutional issue, as well as a practical issue in regard to the public expectation that the "best towns" with their elected representatives.
2. Suggest the option of developing a new approach by creating standards for interest arbitrators to improve current state statute. This would reduce instances when state or local governing bodies feel that an interest arbitrator's decision did not adequately consider the tax and service impacts of a decision or other critical issues.

Labor negotiations are obviously a highly complex and important area of law. In regard to the power of elected bodies to not fund an interest arbitrator's decision, the current system is balanced by the election process. While a council, assembly, or legislature cannot be forced to appropriate funds, the elected body is, of course, subject to the will of the voters. Therefore, non-appropriation powers are never exercised lightly, whether by the state legislature or a local governing body.

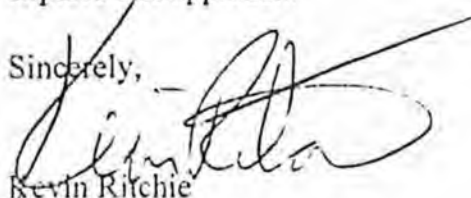
The Constitution says (Art IX sec 1), "The power of taxation shall never be surrendered. This power shall not be suspended or contracted away....". The bill gives the power to determine a local appropriation or public service levels to an arbitrator. This could also essentially be the power to tax. Alaska (as well as other states) guards the power of

appropriation, and has asserted the power to non-appropriate negotiated contracts and even court judgments, when deemed necessary.

Current state law presently sets no standards for interest arbitrators. Many states have such standards. If standards were set (e.g. consider local tax rates, etc.) it could reduce the occurrence of arbitrator's decisions that conflict with local appropriation and tax policy. An arbitrator may consider whatever issues they want to and many may have little or no knowledge of local financial issues.

The development of draft changes to state statutes regarding interest arbitration would require significant work and negotiation by state and local government and labor officials. AML would be pleased to participate in this effort if the decision is made to explore this approach.

Sincerely,



Kevin Ritchie  
Executive Director

cc: Representative Tom Brice  
AML Board of Directors  
Legislative Committee Chairs  
Education and Local Government Subcommittee

D:\KEVIN\Legcomm99\399HB1LetterHCRA

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Sincerely,



Kevin Ritchie  
Executive Director

cc: Representative Tom Brice  
AML Board of Directors  
Legislative Committee Chairs  
Education and Local Government Subcommittee

Introduced By: Council Member Cleworth  
Date: January 25, 1999

RESOLUTION NO. 3803  
A RESOLUTION RELATING TO HOUSE BILL No. 1,  
AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Public Employment Relations Act ("PERA") provides that the monetary terms of a collective bargaining agreement for state employees are subject to funding by the legislature, and

WHEREAS, as a result of litigation initiated by the City, the Alaska Supreme Court ruled that the City Council has the same authority regarding the funding of City collective bargaining agreements, a ruling which provides an opportunity to control spending, and

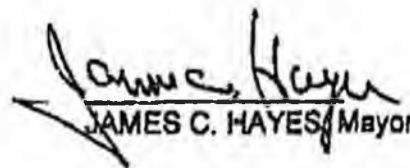
WHEREAS, House Bill No. 1, in its current form would eliminate the City Council's authority regarding funding of City collective bargaining agreements - without changing the Legislature's authority regarding state contracts, and

WHEREAS, passage of House Bill No. 1 would reduce City Council control over labor costs.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA as follows:

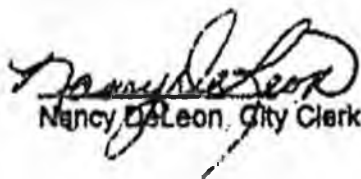
Section 1. The City Council opposes adoption of House Bill No. 1, unless the Bill is amended to reinstate the right of a municipality to "opt out" of PERA by ordinance as other municipalities have been permitted.

Section 2. That the effective date of this Resolution shall be the 25<sup>th</sup> day of January 1999.

  
JAMES C. HAYES Mayor

AYES:  
NAYS:  
ABSTAIN:  
ABSENT:  
ADOPTED: 1/25/99

ATTEST:

  
Nancy DeLeon, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
HERBERT P. KUSS, City Attorney



217 Second Street, Suite 200 ■ Juneau, Alaska 99801 ■ Tel (907)586-1325, Fax (907)-463-5480

March 5, 1999

Representative Andrew Halcro, Co-Chair  
Representative John Harris, Co-Chair  
House Community & Regional Affairs Committee  
State Capitol  
Juneau, AK 99811

Dear Co-Chairs Halcro and Harris:

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Sincerely,



Kevin Ritchie  
Executive Director

cc: Representative Tom Brice  
AML Board of Directors  
Legislative Committee Chairs  
Education and Local Government Subcommittee

02/25/99  
09:52:48

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
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LTN1150  
BY:FBX  
FOR:FBX

TCN:90208 SCHEDULED FOR:02/25/99 08:00 TO 10:00  
PUBLIC HEARING HOUSE COMMUNITY AND REGIONAL AFFAIRS

LOCATION: FAIRBANKS

HB	1	MR.	MARK	DRYGAS	FBX FIRE FIGHTER	TESTIFY
HB	1	MR.	DAN	HOFFMAN	FBX POLICE DEPT	TESTIFY
HB	1	MR.	MATT	SODEN	FNX POLICE DEPT	TESTIFY
HB	1	MR.	RANDY	COFFEY	FBX POLICE DEPT	TESTIFY
HB	1	MR.	DAVE	MAITLEN	FBX POLICE DEPT	TESTIFY
HB	1	MR.	PERRY	WILLIAMSON	FBX POLICE DEPT	TESTIFY
HB	1	MR.	LEONARD	BROWN		TESTIFY
HB	1	MR.	PATRICK	COLE	CITY OF FBX	TESTIFY

02/25/99  
08:44:24

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
PARTICIPANT LIST (TESTIFIERS ONLY)

LTN1150  
BY:JNU  
FOR:FBX

TCN:90208 SCHEDULED FOR:02/25/99 08:00 TO 10:00  
PUBLIC HEARING HOUSE COMMUNITY AND REGIONAL AFFAIRS

LOCATION: FAIRBANKS

HB	1	MR.	MARK	DRYGAS ✓	FBX FIRE FIGHTER	TESTIFY
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HB	1	MR.	PERRY	WILLIAMSON ✓	FBX POLICE DEPT	TESTIFY
HB	1	MR.	LEONARD	BROWN ✓		TESTIFY

*MOST CURRENT*

02/25/99  
08:00:33

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
PARTICIPANT LIST (TESTIFIERS ONLY)  
TCN:90208 SCHEDULED FOR:02/25/99 08:00 TO 10:00  
PUBLIC HEARING HOUSE COMMUNITY AND REGIONAL AFFAIRS

LTN1150  
BY:JNU  
FOR:ALL

LOCATION: ANCHORAGE/

HB 76

STEVE

VAN SANT

TESTIFY

LOCATION: HOMER/

~~HB 19~~

~~MR~~

~~JIM~~

~~BRADY~~

~~INDEPENT LIVING TESTIFY~~



# Representative Tom Brice

## ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205  
Fairbanks, AK 99701  
907-456-7423 / Fax: 451-9293

*While in Juneau*  
State Capitol  
Juneau, AK 99801-1182  
907-465-3466

### REPRESENTATIVE TOM BRICE SPONSOR STATEMENT for HB 1

HB1 puts meaning back into the term binding arbitration. There are two tools available to employees to achieve finality when bargaining collectively, binding arbitration and the strike. Class (a) (1) public employees are not allowed to strike by law. Instead they have been statutorily given the right to go through binding arbitration as an alternative.

Problems arise when a contract is placed before a governing board such as a city council, which either approve or disapprove the contract. If the council disapproves the contract, the employees have no avenue to seek redress. They are left without a contract. Employees that have the right to strike have that option to compel further discussion of their contracts. HB 1 will give a contract to those employees who do not have legal authority to strike.





# Representative Tom Brice

## ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205  
Fairbanks, AK 99701  
907-456-7423 / Fax: 451-9293  
*While in Juneau*  
State Capitol  
Juneau, AK 99801-1182  
907-465-3466

### Memorandum

To: Representative Andrew Halcro, Co-chairman Community & Regional Affairs

From: Representative Tom Brice 

Date: January 26, 1999

RE: HB 1: Municipal collective bargaining contracts

I respectfully request that this bill be scheduled for a hearing in your committee. Attached are all the pertinent backup materials requested.






**Representative Tom Brice**  
**ALASKA STATE LEGISLATURE**

119 N. Cushman, Ste. 205  
Fairbanks, AK 99701  
907-456-7423 / Fax: 451-9293  
*While in Juneau*  
State Capitol  
Juneau, AK 99801-1182  
907-465-3466

**Memorandum**

To: Representative Andrew Halcro, Co-chairman, Community & Regional Affairs  
From: Representative Tom Brice   
Date: January 26, 1999  
Re: Sectional Analysis, HB 1

**Section 1** amends AS 23.40.215 labor funding and legislative approval, to provide that there is an exception to the section listed under a new subsection (d).

**Section 2** is subsection (d) of 23.40.215. It states that an agreement negotiated between class (a) (1) public employees and a municipality constitutes a contract whether or not it is funded. It also specifies that if the two groups are not able to come to an agreement and call in an arbitrator, the monetary terms of an arbitration award constitutes a contract, whether or not they are funded.

**Section 3** provides that the act applies to agreements and arbitration that take place after the effective date.



# FISCAL NOTE

Revision Date: \_\_\_\_\_ Dept. Affected: Community & Regional Affairs  
 Title: An Act relating to collective bargaining BRU: \_\_\_\_\_  
agreements and arbitration awards Component: \_\_\_\_\_  
 Sponsor: REPRESENTATIVE BRICE  
 Requestor: House CRA Committee COMPONENT SERIAL NO. \_\_\_\_\_

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current (FY99) impact \$ none

**ANALYSIS:** (Attach a separate page if necessary)

Enactment of this legislation would not have significant fiscal impact on the department

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4709  
 Division: Division of Administrative Services Date: 2/22/99  
 Approved by Commissioner *Nina Miller* Date: 2/22/99  
 Agency: Community & Regional Affairs

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# ANCHORAGE POLICE DEPARTMENT EMPLOYEES ASSOCIATION

4501 South Bragaw Street

Anchorage, Alaska 99507-1599

Representative Tom Brice  
Alaska Legislature  
State Capital Building  
Room 426  
Juneau, Alaska 99801

Feb13,1999

Re: HB1

Dear Representative Brice:

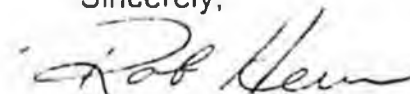
The Anchorage Police Department Employees Association strongly supports HB1.

As the sole representative for law enforcement professionals employed by the Municipality of Anchorage and not subject to the parameters of the Public Employees Relations Act (PERA), we presently bargain collectively under Anchorage Municipal Code 3.70, which provides for binding arbitration for public safety employees. This ordinance, with its provisions for binding arbitration as a means of impasse resolution, has ensured stable and continued deliverance of public safety services and allowed for a fair and equitable determination of wages, hours and working conditions.

Though the APDEA has used interest binding arbitration as a culmination of the collective bargaining process only twice since 1975, both times it was before reputable arbitrators who were mutually selected by the parties. Those arbitrators considered social and economic impacts, surveys of comparable jurisdictions, and other evidence put forth in formal fact finding hearings. The arbitrators then determined which party had the strongest standing, based on the findings of fact, on an issue by issue basis.

While the spirit of the law is intended to guarantee binding acceptance of the arbitrator's decision by both parties, such intent is worthless without inherently guaranteed funding to implement the decision. HB1 would encourage both parties to bargain in good faith, and provide to class one employees of municipalities subject to the parameters of PERA assurances that an arbitrated agreement under PERA is, indeed, binding on both parties.

Sincerely,



Rob Heun  
President, APDEA



# Fairbanks Fire Fighters Association

Local 1324

*International Association of Fire Fighters*

POST OFFICE BOX 71739, FAIRBANKS, ALASKA 99707

Representative Tom Brice  
Alaska Legislature  
State Capitol Building  
Room 426  
Juneau, Alaska 99801

February 3, 1999

Re: HB1

Representative Brice,

The Fairbanks Fire Fighters Association strongly supports HB1.

The present language in the Public Employees Relations Act (PERA) does not provide for a means to compel agreement between municipal employers and class one (police and fire) employees. If the parties negotiate to impasse, there must be a way to resolve the differences. For most public and private employees this can involve a strike. Although the use of a strike action is seldom used, the employer knows this is a real possibility and therefore compels serious negotiations.

The original architects of PERA recognized that the services provided by some employees, primarily police and fire, are of such an essential nature that the ability to strike should not be an option available for these 'class one' employees. On this point, the Fairbanks Fire Fighters Association could not agree more. So, how do we break impasse in bargaining? The designers of PERA also recognized this dilemma and provided for differences between the parties to be settled through binding interest arbitration. In interest arbitration, the parties present their positions to a neutral arbitrator, and that arbitrator then reaches a decision. This decision is then binding on the parties. Now comes the need for HB1 – under the present language in PERA, the municipal public employer is not compelled to fund the arbitrator's award. Thus, binding arbitration is not binding on the employer. However, should the arbitrator decide to reduce the pay or benefits of the employees, his decision is now binding. This is not fair. Obviously, there is no incentive for a class one employee group to pursue 'binding' arbitration. The playing field, which was intended to be level, is now tilted, at a very steep angle, in favor of the employer. What was intended to be collective bargaining is reduced to collective begging.

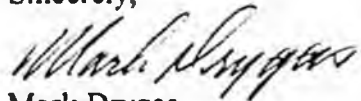
As firefighters, we take great pride in the profession we have chosen. We risk our lives daily to save lives and protect property. This is our job, and we strive hard to provide the best service possible to the public we serve. We do not ask for special treatment. What we want is a level playing field. HB1 would do just that – level the field. It certainly does not shift the balance in favor of employee groups as some would argue.

The collective bargaining agreement between our Association and the City of Fairbanks expired on December 31, 1995. Negotiations for a successor agreement have continued for more than three years. Our last wage rate increase was in 1990. At that time, a starting firefighter made \$11.69 per hour. In 1999, a starting firefighter earns the same \$11.69 per hour. There exists no incentive for the City to negotiate in good faith. They know that if we go to arbitration, they can only win and we can only lose. At the negotiation table, the City negotiators have repeatedly reminded us of this in an effort to extract concessions from our Members.

We are not alone. The City of Fairbanks has used the same tactics in dealing with their police employees. The City went as far as going to the Alaska Supreme Court in defending their 'right', under PERA, to not fund an arbitrator's award and thereby continuing what they see as their right to bargain in bad faith.

We support HB1 in the interest of true collective bargaining. Those that oppose this bill are opposed to the very concept of collective bargaining.

Sincerely,



Mark Drygas  
Business Agent

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Notice: This opinion is subject to correction before publication in the Pacific Reporter. Readers are requested to bring errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, phone (907) 264-2607, fax (907) 264-0878.

THE SUPREME COURT OF THE STATE OF ALASKA

FAIRBANKS POLICE DEPARTMENT )  
CHAPTER, ALASKA PUBLIC )  
EMPLOYEES ASSOCIATION, )

Appellant, )

v. )

CITY OF FAIRBANKS, )

Appellee. )

Supreme Court No. S-7060

Superior Court No.  
4FA-94-865 CI

O P I N I O N

[No. 4365 - June 28, 1996]

NOTICE TO COUNSEL: This opinion will be released to the press and public at 12:30 p.m. (Alaska time) on the date indicated. This copy is provided to counsel of record in advance. Plus to their release time, please do not inform persons other than your clients in this case of the outcome.

Clerk of the Appellate Courts

Appeal from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Mary E. Greene, Judge.

Appearances: William K. Jermain and James A. Gasper, Jermain, Dunnagan & Owens, P.C., Anchorage, for Appellant. Paul J. Ewers, Deputy City Attorney, and Herbert P. Kuss, City Attorney, Fairbanks, for Appellee.

Before: Compton, Chief Justice, Rabinowitz, Matthews, Eastaugh, Justices, and Shortell, Justice, pro tem.

SHORTELL, Justice pro tem.

RABINOWITZ, Justice, concurring.

I. INTRODUCTION

A chapter of the Alaska Public Employees Association (APEA), a labor organization that represents employees of the Fairbanks Police Department, sued the City of Fairbanks (the City)

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Sitting by assignment made pursuant to article IV, section 16 of the Alaska Constitution.

for failure to comply with the result of mandatory interest arbitration during collective bargaining between the parties. APEA appeals the superior court's grant of summary judgment in favor of the City. We affirm the superior court's decision.

## II. FACTS AND PROCEEDINGS

APEA exclusively represents certain employees of the Fairbanks Police Department. The collective bargaining relationship between APEA and the City is governed by the Public Employment Relations Act (PERA), AS 23.40.070 - .260.

PERA divides public employees into three classes. AS 23.40.200(a). APEA represents police employees, who by statute belong to the first class: those employed to perform "services which may not be given up for even the shortest period of time." AS 23.40.200(a)(1), .200(b). PERA flatly prohibits this class of employees from engaging in strikes and compels submission of their unresolved collective bargaining issues to arbitration. AS 23.40.200(b).

In collective bargaining that began in 1990, APEA and the City could not resolve three outstanding issues, one of which concerned meal and clothing (or uniform) allowances. Under the terms of PERA, the outstanding issues were submitted to arbitration. On May 8, 1991, the arbitrator, John Abernathy, issued a decision. In addition to awarding pay raises, Abernathy awarded four percent increases in the meal and clothing allowances to become effective on July 1, 1991 and on July 1, 1992.

Under PERA, monetary terms of collective bargaining agreements are subject to legislative appropriation. AS 23.40.215(a). The City's executive branch sought and obtained approval for the pay increases from the Fairbanks City Council (the Council). The Council never funded the future meal and clothing allowance increases.

In 1993 a police employee noticed that employees had not received the increases in meal and clothing allowances. APEA demanded them. The City responded that under § 215(a) of PERA, implementation of the arbitrator's award is subject to legislative appropriation. Because the Council had never funded the allowance increases, the City took the position that it did not have to comply with the arbitral award.

APEA filed suit to enforce the award. The superior court granted summary judgment in favor of the City, finding that arbitration awards are subject to legislative funding under § 215(a), that this award had not been funded, and that employees were therefore not entitled to it.

APEA appeals. At issue is a narrow question of statutory interpretation. APEA urges us to find § 215(a) inapplicable to arbitration results reached under § 200(b). The City urges us to uphold the superior court's finding that § 215(a) applies to the results of arbitration.

III. DISCUSSION<sup>1</sup>

A. Subsection 215(a) Applies to Arbitration Awards.

APEA asserts that § 215(a), the statute requiring legislative approval, does not apply to arbitration awards established under § 200(b). After the superior court issued its opinion, this court clearly settled the law on the question. Public Safety Employees Ass'n. Local 92 v. State, 895 P.2d 980, 986 (Alaska 1995), aff'd on reh'g, 902 P.2d 1334 (Alaska 1995) (citing State v. Public Safety Employees Ass'n. 798 P.2d 1281, 1285 n.7 (Alaska 1990)). Subsection 215(a) does apply to arbitration awards. Id.

This interpretation is dictated by the explicit provision that § 215(a) applies to "any agreement entered into under AS 23.40.070 - 23.40.260." AS 23.40.215(a). Moreover, this interpretation is in keeping with the purpose of § 215(a): to preserve legislative authority over governmental appropriations. Public Employees' Local 71 v. State, 775 P.2d 1062, 1064 (Alaska

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<sup>1</sup> In reviewing a lower court's grant of summary judgment, this court "determine[s] whether any genuine issue of fact exists and whether the moving party is entitled to judgment on the law applicable to the established facts." R.E. v. State, 878 P.2d 1341, 1345 (Alaska 1994) (quoting Wright v. State, 824 P.2d 718, 720 (Alaska 1992)). In questions involving statutory interpretation, this court substitutes its independent judgment for that of the trial court. Journey v. State, 895 P.2d 955, 957 n.5 (Alaska 1995).

1989). The alternative would ignore the purpose of § 215(a) and would fail to interpret PERA as a consistent whole.<sup>2</sup>

Legislative approval is a common requirement in public sector collective bargaining. See State v. Florida Police Benevolent Ass'n, Inc., 613 So. 2d 415, 417 (Fla. 1992) (public employees' unions may need "to, in effect, obtain approval of a proposed contract by a legislative body through appropriation") (quoting Antrv v. Illinois Educ. Labor Relations Bd., 552 N.E.2d 313, 343 (Ill. App. 1990)). The requirement ensures legislative control over fiscal appropriations.

The superior court concluded, based on the statute's plain meaning and purpose, that the legislative funding requirement of § 215(a) applies to collective bargaining agreements reached through arbitration under § 200(b). We reach the same conclusion as did the superior court. The legislative appropriation requirement of § 215(a) applies to arbitration awards under § 200(b). Public Safety Employees Ass'n, Local 92, 895 P.2d at 986.

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<sup>2</sup> Although the superior court reached this conclusion, it determined that public policy might support the opposite result, because PERA as written creates unequal bargaining power; § 215(a) allows the legislature to choose whether to accept or reject a negotiated result, but § 200(b) prohibits essential employees from striking, thereby denying them the same choice. Subsection 215(a) also allows the legislature to make that choice in several stages, as each item of a negotiated result requires funding. Because on its face § 215(b) applies only to the state government, this problem may be heightened where the dispute involves a municipality.

B. Subsection 215(a) Applies to Political Subdivisions of the State.

APEA suggests that § 215(a) does not apply "to political subdivisions of the State." This interpretation contradicts PERA. Both sides agree that other provisions of PERA apply to this agreement and that the City is a public employer under PERA.<sup>3</sup> Subsection 215(a) states, "[t]he monetary terms of any agreement entered into under [PERA] are subject to funding through legislative appropriation." The word "legislative" can describe the Council, and nothing else in § 215(a) indicates inapplicability to political subdivisions of the state. Although the terms of § 215(b) refer only to the state, the superior court correctly noted that § 215(a) predates § 215(b) and nothing indicates an intent to make § 215(a) inapplicable to municipalities.

C. The City Is Not Estopped from Applying Subsection 215(a).

Arguing in the alternative, APEA claims that equitable estoppel bars the City from applying § 215(a) to the arbitrator's award.<sup>4</sup> The City conceded in oral argument that APEA raised equitable estoppel at the superior court level; therefore APEA is not deemed to have waived this argument. Zeman v. Lufthansa German Airlines, 699 P.2d 1274, 1280 (Alaska 1985).

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<sup>3</sup> PERA defines a "public employer" to include "the state or a political subdivision of the state." AS 23.40.250(7). The City exempted itself from PERA in 1972, but waived its exemption in 1983, making PERA applicable to its labor relations. Fairbanks Ordinance 4264 (Sept. 12, 1983).

<sup>4</sup> APEA has only argued that the equitable estoppel doctrine applies here. It asserts no other aspect of estoppel doctrine.

The elements of estoppel are assertion of a position by word or conduct, reasonable reliance on that assertion, and resulting prejudice. Municipality of Anchorage v. Schneider, 685 P.2d 94, 97 (Alaska 1984). APEA contends that the City asserted a position when the City Council resolved that the disputed issues "are to be submitted to binding arbitration." APEA interprets this resolution as establishing that the City would consider itself bound by the arbitration results and would comply with them.

APEA had notice by virtue of the plain language of § 215(a) that the "monetary terms of any agreement entered into under AS 23.40.070 - 23.40.260 (would be) subject to funding through legislative approval." In addition, this court in 1989 said "it is clear that the monetary terms of a collective bargaining agreement are not effective until the funds are appropriated by the legislature." Public Employees' Local 71, 775 P.2d at 1064. In 1990, the court reiterated that finality in interest arbitrations could not be achieved until legislative funding took place. Public Safety Employees Ass'n, 798 P.2d at 1285 n.7 (recognizing that, although finality is an important consideration in interest arbitration, "the legislature eventually might decide not to fund an arbitrator's award"). Other jurisdictions have also upheld the discretionary power of state legislatures to veto collective bargaining agreements by refusing to fund them. See Florida Police Benevolent Ass'n, 613 So. 2d at 420 ("the vast majority of courts have held that the agreements were subject to this contingency") (citing District 2A, Transp., Tech., Wrbse., Indus. & Serv.

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Employees Union v. Government of the Virgin Islands, 794 F.2d 915 (3d Cir. 1986)); Public Employees' Local 71, 775 P.2d at 1062; Suffolk County v. Labor Relations Comm'n., 444 N.E.2d 953 (Mass. App. 1983), rev. denied, 447 N.E.2d 670 (Mass. 1983); Minnesota Educ. Ass'n v. State, 292 N.W.2d 915 (Minn. 1979), appeal dismissed, 444 U.S. 1062 (1980); Stephen F. Befort, Public Sector Bargaining: Fiscal Crisis and Unilateral Change, 69 Minn. L. Rev. 1221, 1243-45 (1985)).

In the face of clear statutory language requiring legislative funding of the arbitrator's award, Alaska case law requiring legislative funding as the last step in the collective bargaining process, and the "vast majority" of decisions from other jurisdictions upholding legislative funding requirements, APEA agreed to submit its proposals to arbitration. The City also agreed to arbitration. Neither party explicitly agreed to waive the funding requirement of AS 23.40.215(a), but the Council called the agreed-upon arbitration "binding" in an ordinance ratifying the agreements the parties had entered into before the arbitration. Fairbanks Ordinance 4977 (Mar. 25, 1991). Use of that word without further definition or explanation does not amount to an assertion that the council would waive its statutory right to refuse to fund all or part of the arbitration award.

APEA has not shown conduct or words amounting to assertions by the City that the Council would not exercise its prerogative not to fund the award. Nor has APEA demonstrated that it reasonably relied on any such assertions as it claims to have

understood them. Finally, APEA has not specified any evidence showing prejudice to it that resulted from its resubmission of the contested issues to arbitration, except the prejudice that normally results from the clear legal requirement that no arbitration awards are final until they are legislatively funded.

#### IV. CONCLUSION

Alaska Statute 23.40.215(a) applies to arbitration agreements. APEA's claim that § 215(a) is inapplicable to political subdivisions of the state has no basis in the statutory language and is incorrect. APEA's final argument, that equitable estoppel bars the City from invoking § 215(a) to reject the arbitration result, fails because APEA did not establish any of the elements of equitable estoppel as a matter of law or fact. Therefore, we AFFIRM the superior court's decision.

RABINOWITZ, Justice, concurring.

I agree with the holdings set forth in sections III. A. and B. of the court's opinion. Because I believe APEA waived the equitable estoppel issue by failing to raise it in the superior court, I concur in the court's rejection, in Section III. C., of APEA's equitable estoppel argument. The court reaches the merits of the argument and concludes that the record does not support APEA's contention that equitable estoppel bars the City from applying section 215(a) to the arbitrator's result.

The court reaches the merits of the equitable estoppel issue because "The City conceded in oral argument that APEA raised equitable estoppel at the superior court level; therefore APEA is not deemed to have waived this argument." My study of the record leads me to the conclusion that the issue was not adequately raised before the superior court. Thus I would hold that equitable estoppel has been waived by APEA for purposes of this appeal.<sup>1</sup> In short, I would not accord controlling significance to counsel for the City's concession at oral argument before this court that APEA had "tangentially" raised equitable estoppel at the superior court level, because record support is lacking for such concession.

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<sup>1</sup> Nenana City Sch. Dist. v. Coghill, 898 P.2d 929, 934 (Alaska 1995); Carvalho v. Carvalho, 838 P.2d 259, 261 n.5 (Alaska 1992); Gates v. City of Tenakee Springs, 822 P.2d 455, 460 (Alaska 1991).

The legislature gave the teachers the right to strike about 6 years ago, mainly because they didn't want them to get binding arbitration.

# Alaska State Legislature

## House of Representatives



Official Business

State Capitol  
Juneau, AK. 99801-1182

COMMITTEE ON COMMUNITY AND REGIONAL AFFAIRS  
REPRESENTATIVE ANDREW HALCRO, REPRESENTATIVE JOHN HARRIS, CO-CHAIRMEN  
STATE CAPITOL, ROOM 418  
JUNEAU, ALASKA 99801-1182  
(907) 465-3882

### AGENDA

FEBRUARY 25, 1999

1. Call Meeting To Order
2. Call Roll
  - a. Morgan
  - b. Murkowski
  - c. Dyson
  - d. Joule
  - e. Kookesh
  - f. Halcro
  - g. Harris
3. HB 76 - Property Tax Exemption for Deteriorated Properties
  - a. Sponsor - Representative Halcro
  - b. Public Testimony
    1. Marc Marlow
    2. Other Public Testimony
4. HB 1 - Binding Arbitration for Municipal Employees
  - a. Sponsor - Representative Brice
  - b. Public Testimony
    1. Mark Drygass, Fairbanks Fire Fighters Association (By Phone from Fairbanks)
    2. Matt Soden, Fairbanks Police Department Association (By Phone from Fairbanks)
    3. Kevin Ritchie, Alaska Municipal League
    4. Other Public Testimony
5. Any announcements from other members of the Committee
6. Motion to Adjourn

HB

19



# Representative Tom Brice

## ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205  
Fairbanks, AK 99701  
907-456-7423 / Fax: 451-9293

*While in Juneau*  
State Capitol  
Juneau, AK 99801-1182  
907-465-3466

To: Representative Andrew Halcro, Co-chairman Community and Regional Affairs

From: Representative Tom Brice 

Date: January 19, 1999

Re: HB 19: Access to Curb Cuts and Ramps

I respectfully request that this bill be scheduled for a hearing in your committee.  
Attached are all of the pertinent backup materials requested.

District 30





# Representative Tom Brice

## ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205  
Fairbanks, AK 99701  
907-456-7423 / Fax: 451-9293

*While in Juneau*  
State Capitol  
Juneau, AK 99801-1182  
907-465-3466

### Representative Tom Brice Sponsor statement for House Bill 19

Currently there are more than 40 million Americans that have some kind of physical, sensory, cognitive, or mental disability. In Alaska we have over 87,000 disabled citizens. These numbers tell why the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 were enacted. These two acts were established to ensure all citizens of the United States equal unobstructed access to employment, state and local government, transportation, public accommodation, and telecommunications.

HB 19 would give state law enforcement officers the authority to issue \$100 citations to governmental entities and private businesses that fail to maintain pedestrian ramps and curb cuts on their property. The intent of House Bill 19 is to help our disabled community move another step closer to clear and equal access in Alaska.





# Representative Tom Brice

## ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205  
Fairbanks, AK 99701  
907-456-7423 / Fax: 451-9293

*While in Juneau*  
State Capitol  
Juneau, AK 99801-1182  
907-465-3466

To: Andrew Halcro, Co-chairman Community and Regional Affairs Committee

From: Representative Tom Brice

Date: January 25, 1999

Re: Sectional Analysis for HB 19 Access to Curb Cuts and Ramps

Section 1 Amends statute 12.25.190 (c) to exclude certain citations from the written promise requirement list. A written promise requirement means when a person is cited for a crime the person shall give a written promise to appear in court by signing at least one copy of the written citation prepared by a peace officer. The officer must deliver a copy of the citation back to the person. Citations excluded from this list include motor vehicle, traffic, fish and game, state parks and recreational facilities and with this legislation access to curb cuts and ramps.

Section 2 Adds a new section AS 18.35.400

- (A) Explains that governmental entities and a person engaged in business shall remove ice and snow from access ramps and curb cuts on their facilities as is necessary to maintain the ramps in a safe and usable condition during normal hours of operations.
- (B) Explains that a state agency or municipality shall remove ice and snow from access ramps and curb cuts on their facilities as is necessary to maintain the ramps in a safe and usable condition.
- (C) Contains the pertinent definitions in this section.
- (D) AS 18.35.400 Explains the penalty for this citation and what constitutes an affirmative defense to a prosecution for this citation.
- (E) AS 18.35.410 Addresses issuing citations.
- (F) AS 18.35.415 defines violation.



**HB**

**22**

CS FOR HOUSE BILL NO. 22(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVE OGAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to investigations of property by a municipal assessor or the  
2 assessor's agent; and providing for an effective date."

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

4 \* Section 1. AS 29.45.130(b) is amended to read:

5 (b) For investigation, the assessor or the assessor's agent may enter real  
6 property [A PREMISE] during reasonable hours to [AND MAY] examine visible  
7 personal property and the exterior of a dwelling or other structure on the real  
8 property. The assessor or the assessor's agent may enter and examine the interior  
9 of a dwelling or other structure or the personal property in it only (1) if the  
10 structure is under construction and not yet occupied; (2) with the permission of  
11 a person in actual possession of the structure; or (3) in accordance with a court  
12 order to compel the entry and inspection [PREMISE]. The assessor or the assessor's  
13 agent may examine all property records involved. A person shall, on request, furnish  
14 to the assessor or the assessor's agent [EVERY FACILITY AND] assistance for the

1  
2  
3  
4  
5

investigation and permit the assessor or the assessor's agent to enter a dwelling or other structure to examine the structure or personal property in it during reasonable hours. The assessor may seek a court order to compel entry and production of records needed for assessment purposes.

\* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

# The Constitution of the State of Alaska

## Preamble

*We the people of Alaska, grateful to God and to those who founded our nation and pioneered this great land, in order to secure and transmit to succeeding generations our heritage of political, civil, and religious liberty within the Union of States, do ordain and establish this constitution for the State of Alaska.*

*Ed Martin Cooper Lovelace*

## ARTICLE I. DECLARATION OF RIGHTS

**SECTION 1. INHERENT RIGHTS.** This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

**SECTION 2. SOURCE OF GOVERNMENT.** All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole.

**SECTION 3. CIVIL RIGHTS.** No person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex, or national origin. The legislature shall implement this section.

**SECTION 4. FREEDOM OF RELIGION.** No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof.

**SECTION 5. FREEDOM OF SPEECH.** Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right.

**SECTION 6. ASSEMBLY; PETITION.** The right of the people peaceably to assemble, and to petition the government shall never be abridged.

**SECTION 7. DUE PROCESS.** No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.

**SECTION 8. GRAND JURY.** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the armed forces in time of war or public danger. Indictment may be waived by the accused. In that case the prosecution shall be by information. The grand jury shall consist of at least twelve citizens, a majority of whom concurring may return an indictment. The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended.

**SECTION 9. JEOPARDY AND SELF-INCRIMINATION.** No person shall be put in jeopardy twice for the same offense. No person shall be compelled in any criminal proceeding to be a witness against himself.

**SECTION 10. TREASON.** Treason against the State consists only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of

treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

**SECTION 11. RIGHTS OF ACCUSED.** In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury of twelve, except that the legislature may provide for a jury of not more than twelve nor less than six in courts not of record. The accused is entitled to be informed of the nature and cause of the accusation; to be released on bail, except for capital offenses when the proof is evident or the presumption great; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

**SECTION 12. CRIMINAL ADMINISTRATION.** Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Criminal administration shall be based upon the following: the need for protecting the public, community condemnation of the offender, the rights of victims of crimes, restitution from the offender, and the principle of reformation.

**SECTION 13. HABEAS CORPUS.** The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or actual or imminent invasion, the public safety requires it.

**SECTION 14. SEARCHES AND SEIZURES.** The right of the people to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated. No warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**SECTION 15. PROHIBITED STATE ACTION.** No bill of attainder or ex post facto law

shall be passed. No law impairing the obligation of contracts, and no law making any irrevocable grant of special privileges or immunities shall be passed. No conviction shall work corruption of blood or forfeiture of estate.

**SECTION 16. CIVIL SUITS; TRIAL BY JURY.** In civil cases where the amount in controversy exceeds two hundred fifty dollars, the right of trial by a jury of twelve is preserved to the same extent as it existed at common law. The legislature may make provision for a verdict by not less than three-fourths of the jury and, in courts not of record, may provide for a jury of not less than six or more than twelve.

**SECTION 17. IMPRISONMENT FOR DEBT.** There shall be no imprisonment for debt. This section does not prohibit civil arrest of absconding debtors.

**SECTION 18. EMINENT DOMAIN.** Private property shall not be taken or damaged for public use without just compensation.

**SECTION 19. RIGHT TO KEEP AND BEAR ARMS.** A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. The individual right to keep and bear arms shall not be denied or infringed by the State or a political subdivision of the State.

**SECTION 20. QUARTERING SOLDIERS.** No member of the armed forces shall in time of peace be quartered in any house without the consent of the owner or occupant, or in time of war except as prescribed by law. The military shall be in strict subordination to the civil power.

**SECTION 21. CONSTRUCTION.** The enumeration of rights in this constitution shall not impair or deny others retained by the people.

**SECTION 22. RIGHT OF PRIVACY.** The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

computing reconstruction cost and depreciation of dissimilar buildings. — Where two buildings are dissimilar in size, age, and basic construction, it would be entirely reasonable for the assessor to use different factors in computing reconstruction cost and depreciation, and thus achieve substantial equality of fair equivalence. *Hoblit v. Greater Anchorage Area Borough*, 473 P.2d 630 (Alaska 1970).

Differences in construction materials between given structures are obvious distinctions sufficient to warrant the difference in treatment accorded by the assessor, and to nullify the charge that his actions were arbitrary and resulted in a lack of uniformity. *Hoblit v. Greater Anchorage Area Borough*, 473 P.2d 630 (Alaska 1970).

Assessor is empowered to reduce assessments in later years where the results of disasters have reduced market value. *Hoblit v. Greater Anchorage Area Borough*, 473 P.2d 630 (Alaska 1970).

The borough assessor had the power to grant earthquake decrements. *Hoblit v. Greater Anchorage Area Borough*, 473 P.2d 630 (Alaska 1970).

Property was not entitled to an earthquake increment for tax assessment purposes where there was an absence of evidence indicating that its market value was reduced. *Hoblit v. Greater Anchorage Area Borough*, 473 P.2d 630 (Alaska 1970).

Appraiser erroneously failed to consider DIC auction purchase prices paid for the properties in question by the property owners. Thorough analysis of the subject sales might have indicated that the auction prices paid did not represent true market value, but the appraiser's total failure even to con-

sider the subject properties' prior sales was arbitrary. *CH Kelly Trust v. Municipality of Anchorage, Bd. of Equalization*, 909 P.2d 1381 (Alaska 1996).

Statutory deadlines are directory. — Statutory deadlines for assessment of taxes, setting of mill levy, and mailing of tax statements should be construed as directory; and a city's failure to meet such statutory deadlines does not automatically invalidate its decisions. *City of Yakutat v. Ryman*, 654 P.2d 785 (Alaska 1982).

Burden of proof. — When a taxpayer establishes a violation of "directory" procedures regarding assessment of taxes, setting of mill levy, and mailing of tax statements, the burden should be on the taxing authority to demonstrate substantial compliance with requirements and purposes of the statute; but once a showing of substantial compliance has been made, the taxing authority's action will be upheld unless the taxpayer is able to demonstrate that the noncompliance resulted in substantial prejudice to his interests. *City of Yakutat v. Ryman*, 654 P.2d 785 (Alaska 1982).

Where in 1974 city made no attempt to comply with statutory requirements regarding assessment of taxes, setting of mill levy, and mailing of tax statements, in that assessment notices and tax statements were not provided and there were no equalization hearings, and where the city did not set the 1974 levy until September 1975, and tax statements were not mailed until October 1975, 15 months after the statutory deadline, there was no substantial compliance with such requirements, and the 1974 tax was invalid. *City of Yakutat v. Ryman*, 654 P.2d 785 (Alaska 1982).

**Sec. 29.45.120. Returns.** (a) The municipality may require each person having ownership or control of or an interest in property to submit a return in the form prescribed by the assessor, based on property values of property subject to an ad valorem tax existing on January 1, except as otherwise provided in this chapter.

(b) The assessor may, by written notice, require a person to provide additional information within 30 days. (§ 12 ch 74 SLA 1985; am § 4 ch 40 SLA 1995)

**Effect of amendments.** — The 1995 amendment, effective August 23, 1995, inserted "of property subject to an ad valorem tax" in subsection (a).

#### NOTES TO DECISIONS

**Date of accrual.** — Pursuant to this section, AS 29.45.110, and AS 29.45.300, the tax "accrues" in full each year on January 1; thus, a vessel's tax status became fixed for the full tax year on the date of its

assessment, and no adjustment was required for post-assessment changes in its value, situs, and ownership. *Kenai Peninsula Borough v. Arndt*, 958 P.2d 1101 (Alaska 1998).

**Collateral references.** — 71 Am. Jur. 2d, State and Local Taxation, §§ 725 — 730.

64 C.J.S., Municipal Corporations, §§ 2045 — 2050; 84 C.J.S., Taxation, § 390 et seq.

**Sec. 29.45.130. Independent investigation.** (a) The assessor is not bound to accept a return as correct. The assessor may make an independent investigation of property returned or of taxable property on which no return has been filed. In either case, the assessor may make the assessor's own valuation of the property subject to an ad valorem tax and this valuation is prima facie evidence of the value of the property.

(b) For investigation, the assessor or the assessor's agent may enter a premise during reasonable hours and may examine property on the premise. The assessor or the assessor's agent may examine all property records involved. A person shall, on request,

furnish to the assessor or the assessor's agent every facility and assistance for the investigation. The assessor may seek a court order to compel entry and production of records needed for assessment purposes.

(c) An assessor may examine a person on oath. On request, the person shall submit to examination at a reasonable time and place selected by the assessor. (§ 12 ch 74 SLA 1985; am § 5 ch 40 SLA 1995)

**Effect of amendments.** — The 1995 amendment, effective August 23, 1995, substituted "property sub- ject to an ad valorem tax" for "taxable property" in subsection (a).

**NOTES TO DECISIONS**

**Tax assessments as evidence in condemnation proceedings.** — A former, similar provision did not furnish the basis for the admissibility of tax assessments as evidence in condemnation proceedings. Given the limited purpose of the act, there was no indication that the legislature intended to make tax assessments prima facie evidence of value in condemnation proceedings. *State v. 45,621 Square Feet of Land*, 475 P.2d 553 (Alaska 1970).

**Sec. 29.45.140. Violations; authorization to prescribe penalties by ordinance.** For knowingly failing to file a tax statement required by ordinance or knowingly making a false affidavit to a statement required by a tax ordinance relative to the amount, location, kind, or value of property subject to taxation with intent to evade the taxation a municipality may by ordinance prescribe a penalty not to exceed a fine of \$1,000 or imprisonment for 90 days. (§ 12 ch 74 SLA 1985)

**Sec. 29.45.150. Reevaluation.** A systematic reevaluation of taxable real and personal property undertaken by the assessor, whether of specific areas in which real property is located or of specific classes of real or personal property to be assessed, shall be made only in accordance with a resolution or other act of the municipality directing a systematic reevaluation of all taxable property in the municipality over the shortest period of time practicable, as fixed in the resolution or act. (§ 12 ch 74 SLA 1985)

**Sec. 29.45.160. Assessment roll.** (a) The assessor shall prepare an annual assessment roll. The roll must contain

- (1) a description of all property subject to an ad valorem tax;
- (2) the assessed value of all property subject to an ad valorem tax;
- (3) the names and addresses of persons with property subject to an ad valorem tax.

(b) The assessor may list real property by any description that may be made certain. Real property is assessed to the record owner. The district recorder shall at least monthly provide the assessor a copy of each recorded change of ownership showing the name and mailing address of the owner and the name and mailing address of the person recording the change of ownership. Other persons having an interest in the property may be listed on the assessment records with the owner. The person in whose name property is listed as owner is conclusively presumed to be the legal record owner. If the property owner is unknown, the property may be assessed to "unknown owner". An assessment is not invalidated by a mistake, omission, or error in the name of the owner, if the property is correctly described. (§ 12 ch 74 SLA 1985; am § 6 ch 40 SLA 1995)

**Effect of amendments.** — The 1995 amendment, effective August 23, 1995, in subsection (a), substituted "property subject to an ad valorem tax" for "taxable property" in paragraphs (1) and (2) and "property subject to assessment and taxation" in paragraph (3).



## **SPONSOR STATEMENT HB -22**

### **Permission to enter private property**

I have introduced HB-22 because of an incident in my district involving a tax assessor entering a private dwelling before gaining clear permission from the owner.

In this particular case there is a difference of opinion on the exact circumstances, but it is clear our statutes could be strengthened to protect due process and our constitutional rights to privacy. HB-22 is intended to accomplish this by requiring an assessor to gain permission before entering private property.

Even under this change, if permission, for some reason, can not be obtained, a court order will still allow entry.

This bill does not prevent public officials from doing their duties. What it does do is to require that a tax assessor respect the private property rights set out in Article I, of our State Constitution.

## Questions regarding HB 22

- The new language appears to recognize the assessor's right to go onto real property and do a visual inspection and assessment, and separates that act from his entry into the buildings on the property. While the assessor would not have to obtain the property owner's permission to walk or drive onto the property for an outside inspection, he would have to do so before entering a dwelling. Is that a correct understanding of the basic intent of this bill?
- Are mobile homes covered in the reference to personal property?
- Should we consider a conceptual amendment to require assessors or their agents to display a photo id badge, similar to those airport workers wear, anytime they are on a taxpayer's private property?

HOUSE BILL NO. 22

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE OGAN

Introduced: 1/19/99

Referred: Community and Regional Affairs

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to investigations of property by a municipal assessor or the  
2 assessor's agent; and providing for an effective date."

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

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7 personal property and the exterior of a dwelling or other structure on the real  
8 property. The assessor or the assessor's agent may enter and examine the interior  
9 of a dwelling or other structure or the personal property in it with the permission  
10 of a person in possession of the structure or in accordance with a court order to  
11 compel the entry and inspection [PREMISE]. The assessor or the assessor's agent  
12 may examine all property records involved. A person shall, on request, furnish to the  
13 assessor or the assessor's agent [EVERY FACILITY AND] assistance for the  
14 investigation and permit the assessor or the assessor's agent to enter a dwelling or

1 other structure to examine the structure or personal property in it during  
2 reasonable hours. The assessor may seek a court order to compel entry and  
3 production of records needed for assessment purposes.

4 \* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

# MIDWEEK

Volume 51, Number 20 November 3, 1998

1 section, 18 pages



## LETTERS TO THE EDITOR

### Borough appraiser gives owner a start

Editor:

Recently, while I was home alone, a voice from inside my house said, "Hello." I looked downstairs and was startled to see a stranger had opened the door and let himself in. His T-shirt had a triathlon logo on it. I wondered what I should do.

He came toward me and said, "I'm an appraiser for the Mat-Su Borough."

He yielded a small parcel map. I asked his name. "Gary Hessmer," he replied. He looked throughout and politely talked of putting a tax value on my new home.

The next day, feeling violated, I went to Mat-Su Borough and spoke with him again. I asked if walking into someone's house is acceptable conduct for tax appraisers.

He claimed he is in new homes often and said no trespassing signs mean nothing to Mat-Su Borough assessors.

As a taxpayer, I think identification badges or uniforms should be worn by these intruders for their own safety. Privacy is no longer respected by the Mat-Su Borough.

Are we to assume that all intruders are government officials?

David Skalisky  
Palmer

THIS ARTICLE  
APPEARED IN THE FRONTIERSMAN  
ON 11/3/98

THE APPRAISER ENTERED MY  
HOME ON SEPT 29<sup>TH</sup> 1998

WE WENT TO MSB BUILDING  
ON SEPT 30<sup>TH</sup> 1998

I WROTE THIS "LETTER TO EDITOR"  
AND DELIVERED IT TO THE  
FRONTIERSMAN ON OCT 2ND 1998



# Alaska State Legislature

Please enter into the record my testimony to the COMMUNITY AND REGIONAL AFFAIRS committee name

committee on HOUSE BILL 22, dated FEB, 2 1999

bill/subject

I BELIEVE H.B. 22 IS VERY IMPORTANT AND SHOULD BE PASSED. REPRESENTATIVE SCOTT OGAN HAS WORDED THE ATTENDMENT POLITELY AND THESE CHANGES WILL NOT HINDER THE ASSESSORS ABILITY TO ACCURATELY DETERMINE REAL PROPERTY VALUES. THE BILL WILL CREATE A SAFER WORK ENVIRONMENT FOR ASSESSORS. IT AMAZES ME THAT ASSESSORS ARE BRAVE ENOUGH TO OPEN DOORS, NOT KNOWING WHO OR WHAT COULD BE INSIDE, AND ENTER PRIVATE RESIDENCES WITHOUT INVITATION. I, MYSELF WOULD NEVER BE SO BRAVE.

ON SEPT 29 1998 A MAT-SU ASSESSOR ENTERED MY HOME UNINVITED AND UNEXPECTED. HE WAS WELL INSIDE BEFORE I REALIZED SOMEONE WAS IN MY HOUSE. WHEN I MADE EYE CONTACT WITH HIM, HE HAD ALREADY CLOSED THE DOOR BEHIND HIMSELF AND WAS APPROXIMATELY 10-15 FEET INSIDE. IT WAS SHOCKING TO SEE AN UNIDENTIFIED STRANGER INSIDE. MY ADRENALINE STARTED TO RUSH AND FOR A SPLIT SECOND I HAD QUICK THOUGHTS OF HOW TO DEFEND MYSELF PHYSICALLY. HE THEN SPOKE AND SAID "I AM AN APPRAISER FOR THE MAT-SU BOROUGH". I MUST ADMIT, I WAS RELIEVED TO KNOW I WOULDN'T HAVE TO DEFEND MYSELF AND THE ADRENALINE RUSH WENT AWAY. HE BEGAN TALKING OF MY HOMES VALUE AND MEASURED ROOMS ETC. HE HAD NO I.D. AND WHEN I ASKED HIM FOR A CARD HE SAID "I HAVE ONE OUT IN MY TRUCK". HE DID GIVE ME A PARTLY MUTILATED BUSINESS CARD AFTER I WALKED TO HIS TRUCK WITH HIM.

IT WAS THE NEXT DAY WHEN I REALLY BEGAN FEELING UNSURE. (PLEASE SEE PAGE 2) TO CONTINUE

Signed: DAVID SKALISKY *David Sk*  
Testifier

Representing (Optional)  
P.O. BOX 3134 PALMER AK 99645  
Address  
(907) 746-6100  
Phone No.

PAGE 2 of 3

TESTIMONY CONTINUED FROM PAGE 1

I THOUGHT, WHAT IF THIS WASN'T AN APPRAISER AT ALL? MY WIFE AND I DROVE TO THE MAT-SU GOROUGH BLDG TO BE SURE. I WAS ACTUALLY RELIEVED TO SEE HIM BEHIND THE COUNTER IN THE ASSESSORS OFFICE. I THEN ASKED HIM IF IT IS ACCEPTABLE TO ENTER HOMES UNINVITED AND ASKED HOW HE WOULD HAVE FELT IF MY WIFE HAD JUST GOT OUT OF THE BATH, UNDRESSED, WHEN HE ENTERED OUR HOME. HE BLUSHED AND DEFENSIVELY SAID - "I'VE BEEN DOING THIS FOR 25 YEARS, I KNOW WHAT I'M DOING". HE SHOWED ME THE FILE ON MY PROPERTY AND WE DISCUSSED TAX VALUES, ETC. HE TOLD PRIVATE PROPERTY SIGNS MEAN NOTHING TO ASSESSORS.

IT WAS THE FEELING OF BEING VIOLATED THAT PROMPTED ME TO WRITE THE EDITOR OF "THE FRONTIERMAN". WE LOCK OUR DOORS NOW, EVEN WHEN WERE HOME, AND ESPECIALLY WHEN WERE GONE.

I THINK H.B. 22 WILL HELP MY FRIENDS AND NEIGHBORS SLEEP BETTER KNOWING THIS WON'T HAPPEN TO THEM. I WOULD ALSO LIKE TO SEE UNIFORMS OR I.D. WORN BY ASSESSORS.

REPRESENTATIVE OGAN'S H.B. 22 IS BY ALL MEANS FAIR TO HOMEOWNERS AND ASSESSORS ALIKE, AND SHOULD BECOME LAW.

SINCERELY,

David Lj  
DAVID SKALISKY

# FISCAL NOTE

Revision Date: \_\_\_\_\_ Dept. Affected: Community & Regional Affairs  
 Title: An Act relating to investigations of BRU: none  
property by a municipal assessor ... Component: none  
 Sponsor: Rep. OGAN  
 Requestor: House C&RA Committee **COMPONENT SERIAL NO.** \_\_\_\_\_

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current (FY99) impact \$ none

**ANALYSIS:** (Attach a separate page if necessary)

This legislation would have no fiscal impact on the department.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708  
 Division: Division of Administrative Services Date: 1/26/99  
 Approved by Commissioner: *Mike Owen* Date: 1/26/99  
 Agency: Community & Regional Affairs

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**HB**

**24**



## REPRESENTATIVE ERIC CROFT

### Sponsor Statement

House Bill 24 would use a revolving loan fund from the Alaska Housing Finance Corporation to pay for the current senior property tax exemption mandated in statute AS 29.45.030.

This legislation was prompted by cries from municipalities that the exemption was an unfunded mandate from the Legislature. With the current political and fiscal realities of Alaska's oil revenue future, this exemption has indeed remained unfunded. This exemption is reasonable and appropriate; Alaska's seniors should be exempt from the first \$150,000 value of their houses not only because many are on limited incomes but because the value of their houses has risen in the many years they have resided in the state. In practice though, by not acknowledging the state's fiscal obligation to this statute, we are shortchanging local communities.

Recently, proposals have been put forth to make that exemption a local option for communities. With more attention to this exemption, I believe HB 24 will create solutions beneficial to seniors, local communities and the state.

I urge your support for HB 24.





## REPRESENTATIVE ERIC CROFT

### Memorandum

To: Representative Andrew Halcro, Chair  
Community and Regional Affairs Committee

From: Rep. Eric Croft *Eric Croft*

Re: HB 24 Relating to Senior Property Tax Exemptions

Date: 5/5/99

I am requesting a hearing for HB 24 before your committee. As you know, the senior property tax exemption in Alaska has been an issue of contention among the public, legislators and municipalities. In answer to that unfunded mandate, some have proposed eliminating the exemption. This would be a substantial hardship to Alaska's seniors. Instead of eliminating this exemption, HB 24 would create a new revolving funding source that would lift the burden off municipalities. I believe it is an appropriate response to a complex and difficult issue.

I believe a hearing would allow this issue to come under insightful and educational discussion. I have included a sponsor statement for your information.



# FISCAL NOTE

Revision Date: \_\_\_\_\_ Dept. Affected: Community & Regional Affairs  
 Title: An Act relating to reimbursement to a BRU: Local Gov't Assistance  
municipality for certain property tax ... Component: State Assessor  
 Sponsor: REPRESENTATIVES Croft, Kemplen  
 Requestor: House CRA Committee COMPONENT SERIAL NO. 673

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 00	FY 01	FY 02	FY 03	FY04	FY 05
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	27,114.7	29,826.2	32,808.8	36,089.7	39,698.6	43,668.5
<b>TOTAL OPERATING</b>	<b>27,114.7</b>	<b>29,826.2</b>	<b>32,808.8</b>	<b>36,089.7</b>	<b>39,698.6</b>	<b>43,668.5</b>

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	27,114.7	29,826.2	32,808.8	36,089.7	39,698.6	43,668.5
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>27,114.7</b>	<b>29,826.2</b>	<b>32,808.8</b>	<b>36,089.7</b>	<b>39,698.6</b>	<b>43,668.5</b>

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current (FY99) impact \$ none

**ANALYSIS:** (Attach a separate page if necessary)

This legislation provides for funding of the Senior Citizen's/Disabled Veterans Property Tax Exemption municipal reimbursement program using receipts from the Alaska Housing Finance Corporation. The projected program funding needs for the next six years reflect an estimated 10% yearly increase, based on program history over the previous six years.

Prepared by: Yvonne Chase, Acting Director Phone: 465-4709  
 Division: Division of Administrative Services Date: 5/10/99  
 Approved by Commissioner: *Mike Durin* Date: 5/10/99  
 Agency: Community & Regional Affairs

# FISCAL NOTE

**STATE OF ALASKA**  
**1999 LEGISLATIVE SESSION**

**BILL NO. HB24**

Revision Date/Time (Note if correction) 5/10/99 Dept. Affected Revenue  
 Title AHFC Fund: Reimburse BRU Revenue Operations  
Senior Citizen Property Tax Component AHFC Operations  
 Sponsor Representative Croft  
 Requester House C&RA Component Serial No. 110

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	27,114.7	29,826.2	32,808.8	36,089.7	39,698.6	43,668.5
<b>TOTAL OPERATING</b>	<b>27,114.7</b>	<b>29,826.2</b>	<b>32,808.8</b>	<b>36,089.7</b>	<b>39,698.6</b>	<b>43,668.5</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1103 AHFC Corporate Receipts	27,114.7	29,826.2	32,808.8	36,089.7	39,698.6	43,668.5
<b>TOTAL</b>						

Estimate of current year (FY99) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Section 1 requires that the amount necessary to fund the Senior Citizen Property Tax Exemption "shall" be transferred from the Alaska Housing Finance revolving fund. Estimated amounts of the transfer are shown above based on the assumptions of DCRA.

This legislation does not address the method by which such a transfer would be conducted in consideration of AHFC's bond ratings, financial health, or the impact on other programs administered or paid for by AHFC. As such, the potential for loss of revenue to the corporation is unknown at this time.

Prepared by John Bitney Phone 330-8445  
 Division Alaska Housing Finance Corporation Date/Time \_\_\_\_\_  
 Approved by Wilson L. Condon Date 5/10/99  
 Commissioner \_\_\_\_\_  
 Agency Department of Revenue

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