

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 21, 2018

SUBJECT: Retail Bag Fee; Equal Protection
(Amendment J.1 to HB 264; Work Order No. 30-LS1178J.1)

TO: Representative Justin Parish

FROM: Emily Nauman 
Legislative Counsel

Please find the abovementioned amendment attached. I have three notes.

1. Communities. Does the exemption capture the communities you intended? Would you like to further define community? The term "community" is defined in several statutes for specific purposes: under AS 04.06.020(d) to mean "a city as that term is defined in AS 29.71.800, and an established village that is located in a borough or the unorganized borough"; under AS 06.05.990(8), for the purpose of AS 06.05, to mean "a city, town, unincorporated village, or, in the absence of one of the foregoing, a trade area"; under AS 29.60.879, for the purposes of AS 29.60.850 - 29.60.879, and under AS 44.42.400(d), to mean "a place in the unorganized borough, in a borough, or in a unified municipality that is not incorporated as a municipality, that is not a reserve, and in which 25 or more individuals reside as a social unit"; under AS 42.45.299(1), for the purposes of AS 42.45.250 - 42.45.299, to mean "an organized municipality or an unincorporated village that is a social unit if the organized municipality or unincorporated village has a population of less than 2,000 people"; and under AS 44.88.610(a), to mean "a city as defined in AS 29.71.800 or a place in the unorganized borough that is not incorporated as a city and in which 25 or more individuals reside as a social unit." Please let me know if you would like the amendment changed.

2. Recycling Requirements. You did not specify whether you wanted retail sellers in communities of under 5,500 people to be exempt from the bag recycling and reusable bag requirements in sec. 46.06.145, added by sec. 2 of the bill. The amendment adds an exemption to these requirements. Please let me know if this is not what you intended.

3. Equal Protection. Exempting retail sellers in communities under a certain size from the retail bag fee and recycling and reusable bag requirements of the bill triggers an equal

¹ In addition, "rural community" is defined under AS 18.20.499 and "small community" is defined under AS 18.56.600.

Representative Justin Parish
February 21, 2018
Page 2

protection concern under the state and federal constitutions. "The common question in addressing equal protection cases is whether two groups of people who are treated differently are similarly situated and thus entitled to equal treatment."² In order for an exemption from tax to be valid under the state's equal protection test, it must be reasonable, not arbitrary, and must bear a fair and substantial relation to a legitimate governmental objective.³ To survive judicial scrutiny, at a minimum, a legitimate governmental purpose must be served. You will be responsible for building a legislative record that demonstrates both the governmental purpose in the exemption provided to retail sellers in the amendment and how the exemption fairly relates to the purpose. The outcome of a challenge to the exemption may very well depend on the record you build.

If I may be of further assistance, please advise.

ELN:dls
18-076.dls

Attachment

² *Anderson v. State ex rel. Cent. Bering Sea Fishermen's Ass'n*, 78 P.3d 710, 718 (Alaska 2003).

³ *Wilson v. Municipality of Anchorage*, 669 P.2d 569, 572 (Alaska 1983).