

COMMITTEE REPORT

SENATE

2/11/75

Mr. President:

Date _____

The Committee on FINANCE has had SB 158
transition to borough or city government - grants and loans
under consideration. A Majority of the members of the Committee

- () recommends it DO PASS
- () recommends it DO NOT PASS
- () recommends it DO PASS WITH ATTACHED AMENDMENT(S)
- () recommends it BE REPLACED WITH CS FOR _____ AND THAT
CS FOR _____ DO PASS
- () "and" recommends it BE REFERRED TO THE _____
COMMITTEE
- () reports it back WITHOUT RECOMMENDATION
- () "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:
 _____ recommends:
 _____ recommends:
 _____ recommends:
 _____ recommends:

_____ Chairman

Introduced: 2/11/75
Referred: Finance

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

1 IN THE SENATE

2 SENATE BILL NO. 158

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to organization grants and loans
7 to defray the cost of transition to borough or city
8 government; and providing for an effective date."

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

10 * Section 1. AS 29.18.180(a) is amended to read:

11 (a) For the purpose of defraying the cost of transition to borough
12 or city government and in order to provide for development and interim
13 governmental operations, each borough and city incorporated after
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23 * Sec. 2. AS 29.18 is amended by adding a new section to read:

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1 operations. The commissioner of revenue shall set the terms and condi-
2 tions of the loan.

3 * Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-
4 070(c).

ALASKA STATE LEGISLATURE

NTH... Legislature FIRST... Session

SENATEBILL..... NO.158.....

By THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

"An Act relating to organization grants and loans to defray the cost of transition to borough or city government; and providing for an effective date."

transition borough to city govt

Introduced in the Senate2/11/75

HISTORY IN THE SENATE

1975 Read first time and referred to Committee on

2 11

Finance

Reported back with recommendation that

Read second time and

Read third time and

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reconsideration

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reported correctly engrossed
Signed by President
Sent to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19 Read first time and referred to Committee on

Reported back with recommendation that

Read second time and

Read third time and

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
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Reconsideration

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Reported correctly engrossed
Signed by Speaker
Returned to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19 Received from House

Reported correctly enrolled

Sent to Governor

..... By Governor

Filed with Lt. Governor

Chapter No.

Introduced: 2/11/75
Referred: Finance

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STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

POUCH B--JUNEAU 99801

JAY S. HAMMOND, Governor

February 13, 1975

Mr. Jay H. Hogan, Director
Division of Legislative Finance
Pouch WF
Juneau, Alaska 99811

Dear Mr. Hogan:

Re: SB 158

Mr. Jim Fennel of your staff has requested preparation of a fiscal note on the cited bill. As section 1 of the bill merely amends current language authorizing payment of an organization grant, we see section 2, an "Organization Loan" authorization, as the operative provision. Terms and conditions of any loans made are the concern of the Commissioner of Revenue; we cannot speak for him as to reasonable terms--including limitations on loans--which he foresees.

Our Fiscal Year 1976 budget submission for organizational grants is predicated on an assumption that one new borough and one first-class city will be established during the period. We have also assumed incorporation of ten second-class cities. As it is likely that only larger municipalities--boroughs and first-class cities--would have need of transitional assistance by way of a loan, you may assume that the number of such loans should be limited to not more than two in a given fiscal year, current conditions and interest in new local government units being constant. I have no estimate of the principal amounts required by way of loans to defray costs of transition.

Mr. Jay H. Hogan

-2-

February 13, 1975

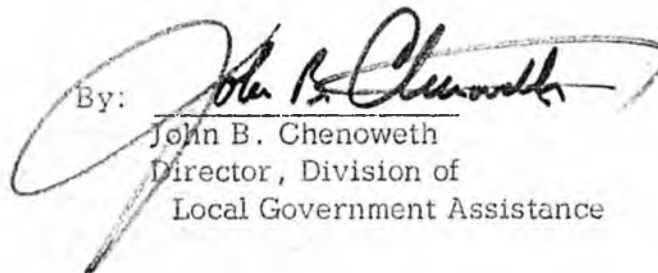
For FY 75 and FY 76, the Committee should be aware of the pending Chugiak - Eagle River assistance request. We have, also, an expression of interest in a division of the Matanuska-Susitna Borough, but no petition as yet seeking incorporation of separate borough governments for that area.

If you require further information please contact us.

Very truly yours,

Lee McAnerney
Commissioner

By:



John B. Chenoweth
Director, Division of
Local Government Assistance

LMcA:JBC:mw

cc: Chairman, Senate Finance Committee

Director, Division of Budget and Management

STATE OF ALASKA
Inter-Department Route Slip

TO:
MAIL STATION NUMBER 3100

DEPARTMENT State Senate

ATTENTION Chairman, Finance Committee

- | | |
|--|--|
| <input type="checkbox"/> Approval | <input type="checkbox"/> Note & Return |
| <input type="checkbox"/> Signature | <input type="checkbox"/> Initial & Return |
| <input type="checkbox"/> Comment | <input type="checkbox"/> Return As Requested |
| <input type="checkbox"/> Contact Me | <input type="checkbox"/> Return For Approval |
| <input type="checkbox"/> Prepare Reply | <input checked="" type="checkbox"/> Necessary Action |
| <input type="checkbox"/> For Your File | <input checked="" type="checkbox"/> Your Information |

Remarks:

Jim FENNEL

FROM:
MAIL STATION NUMBER 3100

DEPARTMENT PA

BY Joe McLaughlin DATE 2/13

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

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OFFICE OF THE COMMISSIONER

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Director, Division of
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LMcA:JBC:mw

cc: Chairman, Senate Finance Committee

Director, Division of Budget and Management

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

February 19, 1975 (II)

MEMORANDUM

TO: Senator John Sackett

FROM: Stuart C. ~~Kell~~^{SPAD}, Legislative Counsel

SUBJECT: Eagle River-Chugiak Borough
Loan: Addenda

This morning, subsequent to dispatching my memorandum of this same date, I have had further discussions with the Commissioner of Revenue and, at my suggestion, with Mr. Eric Wohlforth, former Commissioner of Revenue, Anchorage attorney and expert on municipal law and finance. Together we reviewed both the Attorney General's Opinion of February 18, and the bills I drafted for you.

While I continue to concede the usefulness of the Attorney General's Opinion by Mr. LeBlond, I believe that he artfully papers over the key issues which are: (1) Can the state make a loan to the borough and (2) can the borough accept the loan, i.e., borrow the money?

(1) As to the state's (commissioner of revenue's) power to make a loan: Commissioner Gallagher cites AS 37.10.070(6) which empowers him to invest in securities, "including corporate securities." He insists this is sufficiently broad to include a note issued by a municipality. I believe that the quoted phrase, above, is language of limitation, and not illustrative or expansionary in concept. Commissioner Gallagher also cites AS 37.10.079 which authorizes purchase of bonds of political subdivisions, and insists that expert bond counsel would hold that the suit challenging the existence of the borough was not designed or contrived to affect the validity of the bonds (and for "bonds," Gallagher substitutes the word "note," arguing that in the lexicon of the bankers one word is "fungible" for the other). I am no expert in municipal finance, but I think our able Commissioner's reliance on and analysis of these

February 19, 1975

sections smacks of "bootstrapping." I still strongly prefer the language of proposed AS 29.18.185 which I have drafted for you in the form of CS for SB 158; it is clear, direct authority for the loan.

(2) Even if the state has the power to make the loan, does the borough have the power to accept it by issuing its note? It is very doubtful. Mr. Wohlforth is in agreement. The Assistant Attorney General's reliance on art. II, sec. 19, is inapposite. That section was designed to prevent the legislature from imposing a costly duty, by statute, on a municipality which would necessitate the latter's appropriating, or raising from taxation, a substantial sum to fund the new duty or obligation. It was not designed, as Assistant Attorney General LeBlond suggests, to get around the prohibition against a municipality borrowing funds for a term in excess of the constitutional limit prescribed in art. IX, sec. 10, namely that the debt created by borrowing in anticipation of revenues must be paid back by the end of the fiscal year following that in which the debt was contracted. In short, the point quite properly raised by Rep. Cowper at the House Finance Committee meeting last Friday (16 February) still is before us: the proposed loan probably cannot be made for a period of five years. It may, IF it can be made now, be made for a period not beyond June 30, 1976. However, the stipulation entered into by the attorneys for the parties to the suit involving the legal status of the Eagle River-Chugiak Borough precludes that entity from borrowing in anticipation of revenue because it cannot exercise its assessing and taxing powers (one of the three powers that may be exercised by a second class borough). Moreover, while the Municipal Code, in AS 29.48.010(12), authorizes municipalities to "borrow money and issue evidences of indebtedness," those two powers must be read in conjunction with one another and not separately. The ONLY evidences of indebtedness that can be issued by municipalities under AS 29.58 are: revenue anticipation notes, bond anticipation notes, general obligation bonds and revenue bonds. While it is true both the Alaska Constitution (art. X, sec. 1) and the Municipal Code (AS 29.48.310) indicate that a liberal construction is to be given all powers and functions of boroughs conferred by the Code, nevertheless the majority rule in the law of Municipal Corporations is that the powers of municipalities are to be construed strictly against them. Thus, despite the legal largesse of AS 29.48.310, I do not believe the ER-C Borough can issue its note to obtain this loan -- UNLESS the parties to the suit are willing to modify the stipulation to allow it to exercise its power of assessment and taxation -- at least for this purpose, subject to whatever conditions concerning repayment the commissioner of revenue may wish to impose. Mr. Wohlforth and I are in agreement on the foregoing points.

Senator Sackett

-3-

February 19, 1975

It is, therefore, my final recommendation to you and your colleagues that the legislature take NO action whatsoever until the State Supreme Court has rendered its judgment as to the legal status of the borough. That decision is expected momentarily. In the interest of keeping my clients, the members of the legislature, out of court, I urgently recommend a "hands off" policy until the Court rules.

There can be no doubt that the state can make an additional grant to the ER-C Borough by (1) appropriating the money to the Department of Community and Regional Affairs and (2) modifying AS 29.18.180 to permit a second or additional grant and changing the dates mentioned in that section to prevent boroughs or cities formed during the five-year period between 1968 and 1973 from taking advantage of the subsequent grant. I have drafted legislation to that effect as well: SB 158, as introduced.

cc: Sen. Pat Rodey
Rep. Steve Cowper
Rep. Hugh Malone

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

February 19, 1975 (II)

MEMORANDUM

TO: Senator John Sackett

FROM: Stuart C. ~~Mail~~^{SEND}, Legislative Counsel

SUBJECT: Eagle River--Chugiak Borough
Loan: Addenda

This morning, subsequent to dispatching my memorandum of this same date, I have had further discussions with the Commissioner of Revenue and, at my suggestion, with Mr. Eric Wohlforth, former Commissioner of Revenue, Anchorage attorney and expert on municipal law and finance. Together we reviewed both the Attorney General's Opinion of February 18, and the bills I drafted for you.

While I continue to concede the usefulness of the Attorney General's Opinion by Mr. LeBlond, I believe that he artfully papers over the key issues which are: (1) Can the state make a loan to the borough and (2) can the borough accept the loan, i.e., borrow the money?

(1) As to the state's (commissioner of revenue's) power to make a loan: Commissioner Gallagher cites AS 37.10.070(6) which empowers him to invest in securities, "including corporate securities." He insists this is sufficiently broad to include a note issued by a municipality. I believe that the quoted phrase, above, is language of limitation, and not illustrative or expansionary in concept. Commissioner Gallagher also cites AS 37.10.079 which authorizes purchase of bonds of political subdivisions, and insists that expert bond counsel would hold that the suit challenging the existence of the borough was not designed or contrived to affect the validity of the bonds (and for "bonds," Callagher substitutes the word "note," arguing that in the lexicon of the bankers one word is "fungible" for the other). I am no expert in municipal finance, but I think our able Commissioner's reliance on and analysis of these

sections smacks of "bootstrapping." I still strongly prefer the language of proposed AS 29.18.185 which I have drafted for you in the form of CS for SB 158; it is clear, direct authority for the loan.

(2) Even if the state has the power to make the loan, does the borough have the power to accept it by issuing its note? It is very doubtful. Mr. Wohlforth is in agreement. The Assistant Attorney General's reliance on art. II, sec. 19, is inapposite. That section was designed to prevent the legislature from imposing a costly duty, by statute, on a municipality which would necessitate the latter's appropriating, or raising from taxation, a substantial sum to fund the new duty or obligation. It was not designed, as Assistant Attorney General LeBlond suggests, to get around the prohibition against a municipality borrowing funds for a term in excess of the constitutional limit prescribed in art. IX, sec. 10, namely that the debt created by borrowing in anticipation of revenues must be paid back by the end of the fiscal year following that in which the debt was contracted. In short, the point quite properly raised by Rep. Cowper at the House Finance Committee meeting last Friday (16 February) still is before us: the proposed loan probably cannot be made for a period of five years. It may, IF it can be made now, be made for a period not beyond June 30, 1976. However, the stipulation entered into by the attorneys for the parties to the suit involving the legal status of the Eagle River-Chugiak Borough precludes that entity from borrowing in anticipation of revenue because it cannot exercise its assessing and taxing powers (one of the three powers that may be exercised by a second class borough). Moreover, while the Municipal Code, in AS 29.48.010(12), authorizes municipalities to "borrow money and issue evidences of indebtedness," those two powers must be read in conjunction with one another and not separately. The ONLY evidences of indebtedness that can be issued by municipalities under AS 29.58 are: revenue anticipation notes, bond anticipation notes, general obligation bonds and revenue bonds. While it is true both the Alaska Constitution (art. X, sec. 1) and the Municipal Code (AS 29.48.310) indicate that a liberal construction is to be given all powers and functions of boroughs conferred by the Code, nevertheless the majority rule in the law of Municipal Corporations is that the powers of municipalities are to be construed strictly against them. Thus, despite the legal largesse of AS 29.48.310, I do not believe the ER-C Borough can issue its note to obtain this loan -- UNLESS the parties to the suit are willing to modify the stipulation to allow it to exercise its power of assessment and taxation -- at least for this purpose, subject to whatever conditions concerning repayment the commissioner of revenue may wish to impose. Mr. Wohlforth and I are in agreement on the foregoing points.

Senator Sackett

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February 19, 1975

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