

HB-587



THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

DATE: February 10, 1976

FILE NO. Legislature - 1976 Session

SUBJECT: House Bill 587 (Senior
Citizen Exemption to
Special Assessments).

The Honorable Sam Cotten, Chairman
House Committee on Community and Regional Affairs
Alaska State House of Representatives
Fouch V
Juneau, Alaska 99811

Dear Representative Cotten:

Enclosed is a copy of proposed language which, if substituted for the present language in Section 1 of House Bill 587 would carry through the effect of the presently proposed amendments to the statute and would also eliminate some interpretative and administrative problems which have arisen since the adoption of the exemption last year.

The first change which is proposed is to eliminate the section of the statute which makes reference to determining special assessment exemptions in the same manner as real property exemptions are determined. The problem which arises by using the real property exemption procedures for the determination of special assessment exemptions comes about from the fact that real property exemptions are based on property ownership and senior citizen status as of January 1 of the tax year. As special assessments may be levied at any time during the year, determinations made as of January 1 may or may not be applicable at some later date during that year. For example, property which qualifies on January 1 may be sold to a non senior citizen before the special assessment is levied. Also, a person who is 64 1/2 will not qualify for a real property exemption on January 1. However, if a special water or sewer assessment is levied against his property in September, he will be 65 on the date upon which the levy is made. If the intent of the law is to exempt those who, on the date of assessment, are 65 and own and occupy the property assessed, then application procedures and eligibility determinations should not be made under AS 29.53.020(e) -- (i) as provided in the subject special assessment exemption act adopted last session. If you delete the part of the statute which ties the special exemption determination procedures to real property tax exemption procedures and replace it with the proposed language which would permit Community and Regional Affairs to adopt regulations to implement the section, you will eliminate the

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interpretative and administrative problems which the present language creates. By allowing Community and Regional Affairs to adopt regulations to implement this section, problems of notice to property owners of their rights under the Act, form and date of applications, reimbursement proceedings, applications and procedures needed to insure that the property is still owned by a person entitled to the exemption, problems which may arise because of different assessment procedures used in various home rule municipalities, etc., may be dealt with by Community and Regional Affairs when it has such regulations under consideration.

The second substantive change suggested relates to the method of recording of the lien in favor of the state. At the present time, all long-term encumbrances on real property are recorded in the district recording office. The lien which will run in favor of the state under the existing statute may run for an indeterminate period into the future. The recording office is a much more appropriate place to record such a lien. The assessment roll of the municipality is made up anew each year. If the record of the lien is not brought forward during any particular year, it will be lost for the purpose of notice to subsequent purchasers. If the lien is recorded in the district recording office it cannot be lost through such administrative oversights, and further, it is recorded in the place where those who search the records for such encumbrances expect to find such matters recorded. Because these liens may run for such a long time, it would be much more fair to subsequent purchasers to make the lien ineffective until it is actually recorded. When recorded it would become effective and superior to all other liens except those for general taxes and other special assessments. While it is admitted that there is no necessity to record liens for general property taxes, it should be noted that such liens come into being annually and must be paid annually or the lien is foreclosed. Real property tax liens are due and payable immediately. The lien under the subject section may not be due and payable for many, many years.

A minor change proposed is deletion of the implication that installments of the assessment are subject to the exemption. See lines 4 and 5 of page 2 of the bill as introduced. The levy of an assessment is a single act which establishes the full amount due. If the property is exempt from the levy, no payment of the amount levied or any part thereof will ever be due. The exemption runs to the entire levy. The fact that the municipality may permit those who own non-exempt property to pay the amount of the assessment levied over a period of several years has no effect on the amount of the levy. Thus, it would seem to be appropriate to

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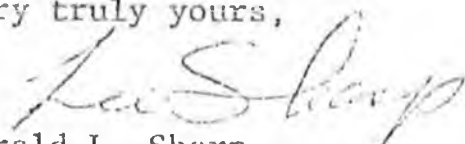
eliminate from the present section of the law what appears to be an implication that the exemption goes only to time payments which might otherwise have been due on the property had it not been exempt from the levy.

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While I am not suggesting a change in the statute, you may want to consider whether the legislature has accomplished its purpose if, as provided under the subject section, the original applicant must own and occupy the property in order to qualify for the exemption while the widow, widower or minor heir of the original applicant need merely own the property to continue to qualify for the exemption. You may also want to consider what sort of policy the legislature intended by providing that when exempt property passes to a minor heir the exemption is effective until the heir reaches the age of 25 or transfers the property while exempt property which passes to an heir who is not a minor but nevertheless under the age of 25 loses its exemption.

Thank you very much for your time and attention to the foregoing matters. I urge your serious consideration of the changes proposed to House Bill 587. If you have any questions relating to my suggestions or to the bill, please do not hesitate to call me. I can be reached at 586-3300.

Very truly yours,



Gerald L. Sharp
City/Borough Attorney

Enclosure

- cc: M. B. Winegar, Manager
- Don Berry, Executive Director, AML
- Bob Dozier, State Assessor, Comm. & Reg. Affairs
- Community and Regional Affairs House
- Committee Members

GLS:umb