HB

87

Do not tax Residents
Pass-Costs-

Introduced: 1/21/77
Referred: Community & Regional Affairs and Judiciary

IN THE HOUSE BY MALONE

HOUSE BILL NO. 87

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to appropriations and grants from boroughs to service areas and cities; and providing for an effective date."

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

* Section 1. AS 29.63.090(b) is amended to read:

(b) The assembly may levy or authorize the levying of taxes, charges, or assessments in service areas to finance the special services or may by ordinance authorize appropriations from areawide taxes or other areawide revenues to finance all or part of the special service and, after enactment of an authorizing ordinance, may make appropriations for the purpose authorized.

* Sec. 2. AS 29.73 is amended by adding a new section to read:

Sec. 29.73.070. REVENUE SHARING GRANTS BY BOROUGHS. A home rule or general law borough of any class may make grants from areawide taxes or other areawide revenues to cities within the borough or service areas of the borough for a function the city or service area is authorized to perform. Grants so made shall be authorized by borough ordinance.

* Sec. 3. AS 29.13.100 is amended by adding a new subsection to read:

(37) AS 29.73.070 (revenue sharing by boroughs)

* Sec. 4. AS 29.48.210 is amended to read:

Sec. 29.48.210. EXPENDITURE OF BOROUGH REVENUES. Borough revenues levied and collected on an areawide basis by a home rule or general law borough may be expended on general administrative costs, [AND] on areawide functions, and as authorized in AS 29.63.090(b) and 29.73.070 only.

Revenues levied and collected in the area outside cities only may be expended on general administrative costs and functions which render service to the area outside cities only.

* Sec. 5. AS 29.53.010 is amended to read:

Sec. 29.53.010. GENERAL PROPERTY TAX. Home rule and general law boroughs may levy (1) an areawide property tax for areawide functions, for appropriations authorized under AS 29.63.090(b), for grants authorized under AS 29.73.070; and (2) a property tax limited to the area outside cities for functions limited to the area outside cities. A property tax if levied must be assessed, levied and collected on real and personal property as provided in this chapter.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-070(c).

Amendment - adopted

~~A~~ Before passes would assume there would be a vote of the people.

DUAL

MAJORITY / INSIDE & outside cities

Introduced: 1/21/77
Referred: Community & Regional Affairs and Finance

IN THE HOUSE BY MALONE

HOUSE BILL NO. 85

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to residential property exemption from real property tax."

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

* Section 1. AS 29.53.025(a) is amended to read:

Amend: (a) Municipalities may exclude or exempt or partially exempt REAL OR PERSONAL residential property from taxation by ordinance ratified by the voters at a regular or special election. [AN EXCLUSION OR EXEMPTION AUTHORIZED BY THIS SECTION MAY NOT EXCEED $10,000 FOR ANY ONE RESIDENCE.]

December 8, 1975

PROFIT SHARING

Senator Genie Chance
310 "K" Street
Suite 701
Anchorage, Alaska 99501

Dear Senator Chance:

I am pleased to enclose with this letter two pieces of proposed legislation which represent the recommendations of this interim committee in the area of shared revenues with municipalities. The proposed legislation is the product of a number of meetings of the committee in the months since the adjournment of the legislature plus two public hearings. One of these public hearings was held in conjunction with the October convention of the Alaska Federation of Natives, in order to receive bush community viewpoints. The other hearing was held in conjunction with the October conference of the Alaska Municipal League. In addition, suggestions and constructive criticism were requested by mail and received from a wide variety of cities and communities throughout the State of Alaska.

It was considered crucial, since revenue sharing has been created solely for the purpose of assisting municipalities in the funding of needed local services, that the final product of the committee take maximum note of the views and suggestions of the various municipalities across the state. The enclosed bill represents what the committee considers to be the most beneficial and most feasible of those suggestions.

Perhaps some review might be in order concerning the need for revision of the current shared revenue program. Although the program in concept currently enjoys the unanimous and enthusiastic support of every municipality in the state, the following were considered deficiencies which new legislation could correct.

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MEMBER, RULES COMMITTEE
MEMBER, COMMITTEE ON COMMITTEES

First, it was felt that a "foundation" approach might be useful in the field of revenue sharing--"foundation" approach meaning a formula with a foundation amount similar in concept to that utilized in the school foundation statutes. The beauty of such an approach is that whenever a legislature wishes to raise the foundation amount (to recognize increases in the cost of doing business) it is necessary merely to amend one word in the statutes. Absent the foundation approach it is necessary, whenever you wish to recognize the increase in the cost of doing business, to go into the statutes and revise the per capita dollar figure for each of the various categories in which shared revenue assistance is given to municipalities. This is both cumbersome and, in practice, inequitible. Some categories tend to get raised, others do not and the system can easily get out of balance.

It was felt, too, that the amount of shared revenues being designated for small communities was much too small. It was recognized that the present purely per capita approach just did not offer the very small communities enough money to assist in any meaningful way in meeting the obligations of local government. It was recognized that whether a second class city had 25 residents, or 75 residents, or 125 residents there was nonetheless an irreducible minimum cost of doing business, and that that minimum was just as great for very small villages as it was for medium sized second class cities. It was, therefore, considered desirable that a minimum grant base be established for these communities and it was further considered desirable that the base amount agreed upon be as generous as possible in order that the benefits of government on the local level be economically feasible for the communities.

Another deficiency in the current statutes was the lack of the requirement for standards and criteria by which the Department of Community and Regional Affairs could determine whether communities were actually entitled to shared revenues in the various categories under which they were seeking aid. This deficiency has long been recognized by the Department of Community and Regional Affairs and has been recognized additionally by the Legislative Budget and Audit staff. This is not to say that the shared revenue monies alloted to the communities should be required to be spent in the categories designated--far from it. It was and still is the consensus of the committee and of the municipalities that local discretion should continue in the spending of shared revenue receipts. It was felt, however, that in order to receive shared revenue monies in, for example the fire department category it should be demonstrated that the community can meet minimum standards in that category.

> Finally, there was a question projected by some communities as to whether the use of categories in sharing state revenues was even appropriate. It was thought perhaps more appropriate simply to allocate available dollars to the municipalities and let each local government establish its own priorities without regard to existing municipal services.

In order to correct these deficiencies the committee drafted three alternate pieces of legislation for consideration by the committee and the municipalities of Alaska. With considerable--and greatly appreciated--assistance from the University of Alaska/Anchorage, we were able to develop extensive data showing the practical results (i.e., the dollars to be received) for each community in the state under the various alternatives. We developed similar data based on proposed legislation already in the house (legislation which, incidently, had been previously endorsed by the Alaska Municipal League) and also on a simple per capita allocation of funds to municipalities. Four of these five total alternative were specifically noncategorical in approach. All of the alternatives and all of the data were presented to delegates of the Alaska Federation of Natives Convention and delegates to the Alaska Municipal League Conference. In addition, this material was mailed to virtually every municipality, large and small, in the state with requests for evaluations and suggestions.

I think it would be fair to say that prior to the hearings and mialings there was a strong feeling among the larger communities, in partiuclar, that revenue sharing should be based on tax effort. The feeling was that those who tax themselves the most should receive the most additional state aid. This was the principle thrust of the existing proposed legislation which the Alaska Municipal League had previously endorsed. The committee recognized this concept in two of the alternatives they proposed, but built in additional factors including the availability of tax resources plus tax effort in relation to those resources. Interestingly, when all the facts--in the form of state-wide computerized readouts--were laid before the communities a very noticable modification of opinion became apparent during the hearings and in countless conversations afterward. Committee memebers noted a discernible reluctance on the part of communities, large and small, to terminate the categorical approach. What was needed, several elected officials indicated, was a bill which more or less continued the "tried and true" categorical approach, in the present revenue sharing system but which <u>also</u> incorporated the "foundation approach".

Basically, then, this is the bill which the interim subcommittee has proposed:

First, the bill does create a municipal "foundation approach" to revenue sharing. It does so by allocating varying numbers of units to various categories of municipal services and then multiplying those units times population, and then multiplying this product times a "foundation" base figure. For this bill the committee established a foundation base at $1.00. In future years if the cost of doing business goes up, for instance 11%, the legislature may, if it chooses, raise the foundation amount by simply changing the figure $1.00 to $1.11.

In establishing categories and establishing unit values within each category, the committee did indeed stick by the "tried and true" categories of past years. Police protection, for instance, which in previous years earned communities shared revenue at the rate of $12.00 per capita will earn units within the foundation formula at the rate of 12 units. Fire protection is 7.5 units (as opposed to $7.50 per capita under the present system). Additional ingredients include air or water pollution control (2 units), land use planning (2 units), parks and recreation (5 units). Two important changes have been made in the categorical designations. Under present law a community can receive $5.00 per capita for operating either a small boat harbor/ port or for operating mass transit or for operating an airport. In the proposed bill 5 units can be accumulated in <u>each</u> of these categories. The second important difference is the addition of solid waste disposal as a new category, which in the proposed bill will be valued at 2 units.

The proposed legislation establishes a $25,000 minimum grant for municipalities whose low per capita standing would otherwise earn them only small amounts of revenue. The committee felt the $25,000 figure was a generous but nonetheless fair amount. It was interesting to note that at neither public hearing was there any critism of this amount. At one meeting of the committee, a single individual did observe that he thought the figure was pretty high for the very smallest communities. He did not, however, seek to have the committee change the amount.

Additional features of the bill include the following:

Special start-up grants have been established in various categories for municipalities who do not currently offer such services as police protection, fire protection, air

and water pollution control, land use planning, parks and recreation, small boat harbors/ports, air ports or mass transit systems. The Department of Community and Regional Affairs is specifically charged with creating minimum standards of service in the various categories for which municipalities can receive revenue sharing. Revenue sharing for hospitals remains virtually the same as under current law except that responsibility for administering this section is transferred to the Department of Health and Social Services. Additionally, in the area of health, a paragraph specifies that no hospital or health facility shall be eligible for revenue sharing unless the facility has received a Certificate of Need from a municipality or the state. This paragraph anticipates that "Certificate of Need" legislation will be passed in this session of the legislature. Another interim committee is studying the whole broad area of health facilities so this section may undergo substantial modification when that interim committee completes its deliberations. Shared revenues for road maintenance remains virtually the same as current law. A very important feature of the new legislation is that if a new second class city is created in an organized borough after passage of this law, the city would not be eligible for the $25,000 minimum grant. This feature is designed to preclude small gatherings of 25 people or more from incorporating simply to take advantage of the $25,000 revenue sharing opportunity. Finally, a very important feature of the proposed legislation is the clause which guarantees each municipality that it will not receive less money than it is receiving under the current statutes.

There, of course, are many additional features to the legislation, but this summary covers most of the major changes.

As noted earlier, the committee is submitting two bills for introduction and for consideration by the legislature. One is quite large and comprehensive and is described in the report above. The other bill consists of only one paragraph and this paragraph constitutes one of the many provisions of the larger bill.

The provision, drafted at the request of the Department of Community and Regional Affairs, simply mandates that the department create minimum standards and criteria to qualify municipalities for grants in each category of shared revenue. If the major bill should run into difficulties and if passage does not seem assured, then it is recommended that the legislature consider and enact the oneparagraph small piece of "clean-up" legislation.

The fiscal impact of the legislation will be to raise the state shared revenue allocation from a current level of about $15 million to a level of approximately $20 million--if the bill is fully funded. The raise, of course, comes from creating the $25,000 minimum grants to small cities, from creating a new category (solid waste) and from separating the now-combined port/harbor-airport-mass transit category into three separate categories.

This report would not be complete without making special acknowledgement of the work of the several individuals and agencies. The committee is extremely appreciative of the hours of work, both during committee sessions and out of session, by Dr. Garth Jones and P. J. Hill, both of the University of Alaska/Anchorage. The vast volume of computerized data that both Dr. Jones and Mr. Hill provided was crucial in the final deliberations and directions of the committee.

Similarly, we would like to give a special thanks to Mr. Rich Wilson and Mr. Sam Coxson, both of the City of Anchorage who helped in obtaining and analyzing the data, and who attended most of the sessions and hearings of the committee and contributed greatly to the deliberations. We are indebted as well to the Alaska Federation of Natives who made time available for us during the annual AFN convention in Anchorage, and the Alaska Municipal League who similarly made time available during its annual conference in that same city. The League, as well, was most helpful to the committee in circularizing its membership and alerting municipalities of Alaska to the work of the committee. Finally, I would like to acknowledge the fine work of the staff of the Legislative Affairs Agency, and Bill Berrier in particular, plus the membership of the interim committee. Interest was lively, suggestions were broad and imaginative and attitudes were positive throughout the course of the committee's deliberations. It has been a pleasure to chair this committee and of course all of us on the committee stand ready to answer any questions which you or other members of the legislature might have concerning the recommended legislation. Thank you for your own fine support of the committee.

Sincerely,

Mike Miller, Chairman, Interim Committee on Shared Revenues with Municipalities

MM:smh

Enclosures

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Richard W. Garnett, III is Assistant Attorney General, Department of Law, State of Alaska.

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Price $1.00

Victor Fischer, Director of the Institute

EQUALIZATION OF LOCAL GOVERNMENT REVENUES IN ALASKA

by

Richard W. Garnett, III

> Now fine and just actions, which political science investigates, admit of much variety and fluctuation of opinion, so that they may be thought to exist only by convention and not by nature.... We must be content, then, in speaking of such subjects and with such premises to indicate the truth roughly and in outline.... In the same spirit therefore should each type of statement be *received*; for it is the mark of an educated man to look for precision in each class of things just so far as the nature of the subject admits.
>
> Aristotle, *Ethics*.

Introduction

As the development of natural resources in Alaska accelerates, the need to determine how the taxable wealth of the state is to be distributed becomes increasingly important. This paper discusses revenue sharing in Alaska as a means toward equalizing, rather than simply augmenting, revenues of local governments.[1] First, the general problem of financing municipal services is

[1] The term "revenue sharing" ordinarily is applied to transfer downward from one level of government to another, as in the federal-state program recently enacted (H.R. 11950) or the state municipal services revenue sharing program (AS 43.18).

reviewed briefly. Then a description of the Alaska case provides background for discussion of recent legislative efforts in Alaska and suggestions for future policy approaches.

This paper does not discuss fully every aspect of revenue equalization among localities. Rather, it focuses primarily on technical and legal problems involved with such a program. Nevertheless, a realistic approach to this topic cannot ignore the influence of strong social and political forces at work in Alaska on any effort to readjust local tax revenues.

One of these forces is related to the widely accepted, anthropomorphic idea that towns and regions have rights and interests of their own apart from the sum of the rights and interests of the individuals involved. Consequently, a program that takes from one governmental unit and gives to another suggests to many a form of economic egalitarianism that they find unacceptable at both individual and corporate levels.

Further, a comprehensive equalization program involves creation of new taxing units and, perhaps, a state tax to eliminate tax havens. Naturally, the businesses and individuals who benefit from the present situation will oppose changes that subject them to additional taxation and government control.

Race is another factor affecting the situation in Alaska. Rural Alaska is inhabited primarily by Indian and Eskimo people. The growth of political consciousness among Alaska Natives, dramatically symbolized by passage of the Alaska Native Claims Settlement Act, has paralleled a tremendous increase in the wealth and the prospect of wealth in rural Alaska and in the North Slope region in particular. Many regional Native leaders are distinctly wary of any state government activity that might affect the economic prospects of their constituents. Moreover, ther is a general fear that local government in rural areas may somehow compete with or impede full implementation of the Claims Act.

By definition, an adequate local government revenue equalization program will result in less economic power for those regions

most extraordinarily endowed with natural wealth.[2] The justification, if any, for reduction of economic power of the North Slope or other regions is the corresponding benefit to other, equally needy and deserving areas where nature was less generous.

The General Problem

Municipal services in the United States are financed largely by revenues from an ad valorem tax on property located within the taxing jurisdiction. The level and quality of services therefore depends on the value of the tax base, which varies widely among different communities and regions. As a result, areas with low valuation per capita must tax themselves at a higher rate than more wealthy areas in order to raise the same revenue.

The value of the local tax base has not always varied so widely. One writer describes the typical composition and effects of the tax base before World War II this way:

> The important thing to remember is that in the pre-war days the total tax base of the community was there to support the needed services. It allowed a logical concentration of commercial and industrial property. It allowed a section of town to be low-value housing without a diminution of services in that area or a severe tax penalty. The tax base to educate the children of the area was the rich man's home, the poor man's home, the places where they both worked and where they shopped. When land was taken off the tax rolls for parks or for other purposes, everyone was affected.

He goes on to note an important structural change in local government organization since the war, and describes the disparity in

[2] It should be noted that the loss may be more theoretical than real, as in the case where taxable property provides potential revenue far in excess of the needs of the local jurisdiction. For example, the North Slope Borough proposes to levy a very small tax on the vast property at Prudhoe Bay. Additional revenue raised from a state tax on this property could benefit other rural areas of the state without undue burden on the owners or loss to the North Slope.

wealth and its effects among local areas which have resulted from this change:

> The post-war experience has been vastly different. The interdependent neighborhoods of the actual total community have become legally independent municipalities . . .
>
> Suburban communities that happen to have the shopping centers and the commercial property—and if they are lucky, the wealthy homes—can live "high on the hog." On the other hand, those communities which are carved out of the northern sand plains in our region, flat and relatively uninteresting, may be in trouble.[3]

The tax-service inequity problem has been challenged in the courts. In *Serrano v. Priest*,[4] the Supreme Court of California held that the state could not maintain a system of financing public education which made the quality of education largely dependent on the taxable wealth of the local school district. In spite of a certain amount of state aid, it was shown at trial that certain areas with low property valuation could not achieve a level of financing for education, even with a relatively high tax rate, that others could achieve with low tax rates.

The court reached its conclusion by characterizing education as a "fundamental interest" and wealth as a "suspect category"[5] when dealing with education. In light of these determinations, the court found that the state must show a "compelling state interest"

[3]Charles R. Weaver, "Urban Fiscal Capacity," *State Government*, Council of State Governments, Lexington, Kentucky (Spring 1972) p. 100-01.

[4]487 P. 2d 1241 (Cal. 1972).

[5]Ordinarily, in reviewing classifications created by state law, courts accord very wide latitude to legislative discretion. However, where the classification relates to certain specially protected areas, such as free speech or voting, and where the basis of the classification appears invidious on its face, as in the case of distinctions according to race or religion, the presumption of validity is replaced by a burden on the state to show that the classification is necessary.

rather than the usual "rational basis" in order to justify its financing system.

In considering wealth a "suspect category" with respect to education, *Serrano* and related cases have alluded to the special nature of education, distinguishing it from other municipal services. Thus, the *Serrano* line of cases has not yet provided direct support for the view that the level of other local government services, such as water supply and sanitation or police protection, also may not be tied to the local tax base.

Nevertheless, when courts enunciate a principle in a particular context it may subsequently be extended to its logical limit. Note, for example, the extension of the one man, one vote principle from the state level to units of general and specialized local government and the progressive elimination of durational residence requirements. If local wealth is a "suspect category" in determining education services, past experience suggests that it will not long remain a legitimate determinant of the level of other local services.

It has already been held that differences in the level of any public service available in a municipality cannot be based on race. In *Hawkins v. Town of Shaw*,[6] the court found that the town provided better services of all kinds to white areas than to black, and held that such a pattern denies equal protection of the laws.

As wealth increasingly becomes a category as suspect as race, it is difficult to see how the courts will be able to avoid extending the "compelling state interest" test beyond education to a broader range of public service disparities. It can be argued that hospitals and police, in their spheres, are as important to local well-being as is public education, and that their availability, too, should not depend on how much wealth a particular community happens to have.

[6]437 F. 2d 1286 (5th Cir. 1971).

In any case, it is clear that local government spending is not immune from equitable constraints, at least in the educational field. Regardless of whether judicial activism carries the *Serrano* principle all the way, that principle deserves serious consideration in legislative policy making for state and local government services and taxation.

The Problem in Alaska

The Alaska constitution calls for "maximum local self-government with a minimum of local government units"[7] and for avoiding "duplication of tax levying jurisdiction."[8] It also directs that "the entire state shall be divided into boroughs, organized or unorganized"[9] and that the legislature "shall provide for the performance of services it deems necessary or advisable in unorganized boroughs . . . "[10]

There are 11 organized boroughs in Alaska, located, with two exceptions,[11] in the more developed areas of the state. A single unorganized borough comprises the rest of the state, an area several times larger than all of the organized boroughs combined (see map on following page).

Organized boroughs levy a property tax inside their boundaries. Cities within the boroughs may also levy taxes, but assessment and collection are exclusively borough responsibilities. Outside organized boroughs, no property tax is levied except within cities that have taxing power.

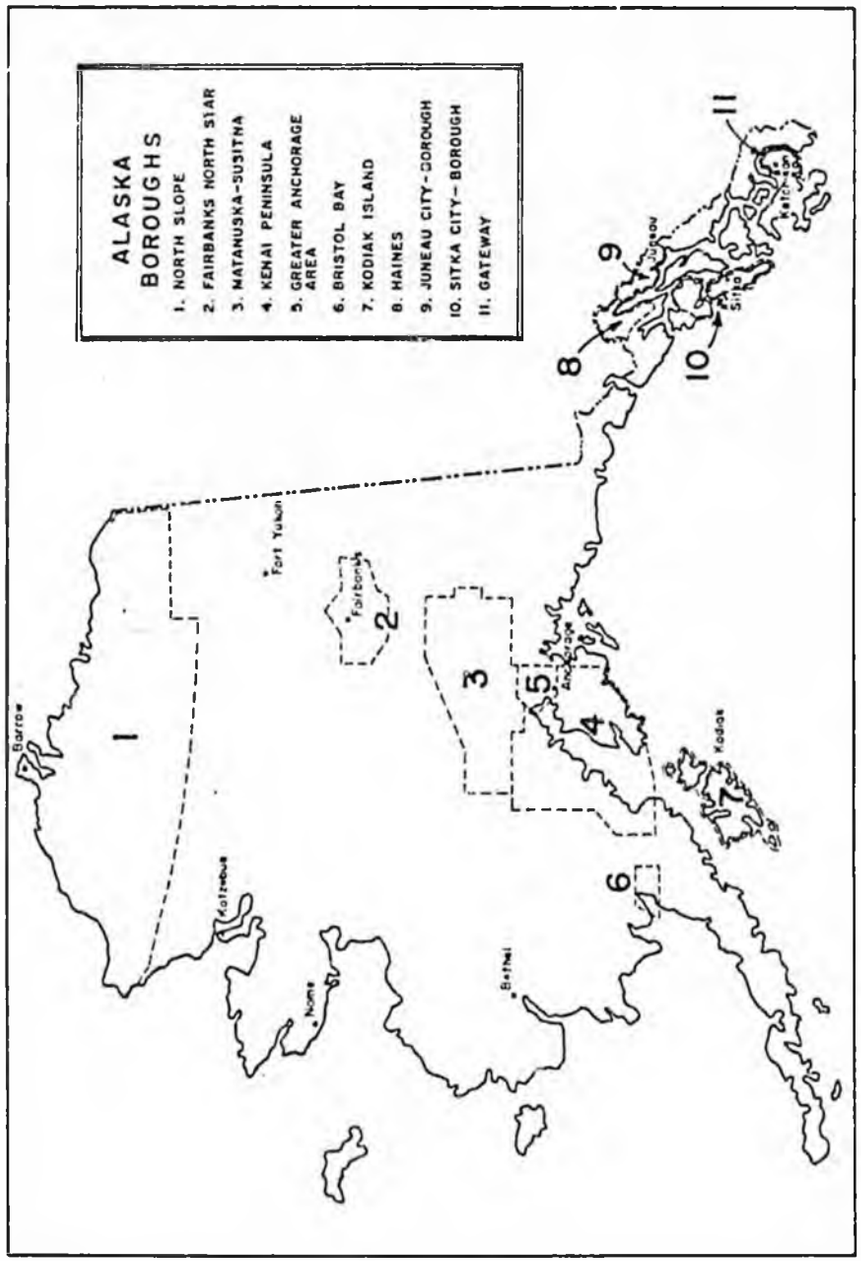
[7] Art. X, Sec. 1, Constitution of Alaska.

[8] *Ibid.*

[9] Art. X, Sec. 3, Constitution of Alaska.

[10] Art. X, Sec. 6, Constitution of Alaska.

[11] The North Slope and Bristol Bay boroughs.



The boroughs are typically quite large relative to local government units in other states. Generally, boroughs encompass one or more core communities, scattered settlements, and a considerable amount of vacant territory. Responsibility for education and other basic services is borough-wide. Accordingly, the whole borough tax base supports certain services for all borough residents.[12] The problem of tax and service equity is therefore on a different scale in Alaska than in the more developed states.

In Alaska the major disparities are among rather than within regions. Taxable wealth per capita in 1967 varied from $3,182 in the Bristol Bay Borough to $16,067 for the Kenai Peninsula Borough.[13] Although assessment figures for the newly organized North Slope Borough have not yet been established, the concentration of property in the Prudhoe Bay area is conservatively estimated at $300 million, yielding a North Slope Borough tax base per capita of approximately $98,000.

No comprehensive assessment of the unorganized borough has been made. However, the present per capita tax base in the unorganized borough is well below the average for organized boroughs, partly because much of the real estate in the unorganized area is tax exempt but more so because the area lacks appreciable commercial and industrial development.

In the more developed and populated states, where the bulk of the tax base is residential, commercial, or manufacturing-industrial, there is at least some correlation between the taxable

[12]It is said with some justification that cities may carry more than their share of the revenue burden by taxing themselves to provide nonareawide services, such as police protection and parks and recreation, which noncity residents utilize. Nevertheless, the system of allocating powers between borough and city contains, however imperfectly, the mechanism for equitable distributions of tax burdens and services.

[13]Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska*, Institute of Social, Economic and Government Research, University of Alaska, ISEGR Report No. 29 (1971) p. 162.

value of the property and the service requirements that arise from the property itself. (However, such correlation, as the *Serrano* case testifies, is not sufficiently close to avoid constitutional difficulty.) By contrast, the major taxable properties in Alaska are and will be related to mineral extraction. Such activity normally emphasizes capital rather than labor, generating less need for public services than does other revenue-producing activity. Accordingly, it may be anticipated that Alaska local government financing as presently organized, will reflect a significant disparity between the taxable wealth available and the level of services required.

North Slope oil development and the trans-Alaska oil pipeline dramatize this point. Taxable value of the pipeline alone will exceed the total assessed value of property in all organized areas of the state.[14] Moreover, neither the pipeline nor oil production facilities will demand heavy public services. Unlike hotels, shopping centers, factories, and homes, the pipeline will need no sewers, no playgrounds, no schools. It is, in this regard, the ideal addition to a local tax base.

The prospective mining operation at Lost River on the Seward Peninsula is another of several developments that will add to the taxable wealth of the state. At around $50 million, its probable value is small compared to the pipeline, but immeasurably significant relative to the present situation on the peninsula. Comparable mineral development, including oil, may occur in other rural areas of the state as well.

Most of the valuable taxable property that will appear in the unorganized borough will be located in accordance with the distribution of natural resources. Because this distribution bears little relation to the pattern of local jurisdictions and fiscal needs, there will be increasing variation in wealth and services among regions unless an equitable statewide distribution of revenue from Alaska resources can be achieved.

[14]Robert Dozier, *Alaska Taxable*, Local Affairs Agency, Juneau, Alaska (1971) p. 36.

Wealth Distribution and New Boroughs

The disparity in wealth among boroughs that follows from the pattern of development described above has several consequences. The likelihood of severe disparity in service levels among regions has been noted. A less obvious consequence stems from the unfinished nature of the Alaska local government system.

The local government article of the state constitution calls for the division of the state into boroughs, organized and unorganized. The language of the article presupposes plural unorganized units. The specific reference in Section 6 to "maximum local participation and responsibility" in unorganized boroughs indicates that manageable units encompassing communities of interest were contemplated for unorganized as well as organized boroughs.[15]

It is difficult to believe that the single unorganized borough that now exists complies with the intention expressed in the constitution. All indications are that a division of the state into natural socioeconomic units was contemplated. These units would achieve organized status at varying rates. But from the beginning, the people of rural Alaska were to have a governmental framework under state law for identifying regional problems and participating in their solution. Partly as a result of the absense of state-created units and partly for fiscal and political reasons, to be discussed further, the unorganized areas, with the exception of the North Slope, have so far made only negligible movement toward regional governmental organization.

The Need for Organization

Some form of governmental organization should come to rural Alaska as soon as possible. There are several reasons for

[15]See Appendix A for the local government article of the Alaska constitution.

urgency. The first reason is political and social unity. The governmental vacuum in rural Alaska has been occupied in part by the Native corporations established under the Alaska Native Claims Settlement Act. But the claims corporations are private entities outside the framework of state government. If state-ordained forms of local government with appropriate governmental powers remain unavailable to help solve problems in rural Alaska, disenchantment with state government, already evident, may increase and persist to the point of polarization. The potential problem will become more threatening as the contrast continues and increases between regional corporation activity and orthodox local government inactivity.

The terms of the Claims Act certainly are not hostile to the growth of local government. Sec. 2(c) provides that the Act is not intended to diminish the obligation of the state to promote the welfare of Native citizens. In a very real sense, the legacy of local government power is a means by which the state promotes the welfare of its citizens. If services are not provided by local government, the tendency will be to use claims money for this purpose. But this money was intended for payment in settlement of private rights, not in lieu of public services. Also more directly, Sec. 14(c)(3) of the Act provides for transfer to the local (village) municipality of title to the surface estate of land where the municipality is located. Where a municipality has not been formed, the state holds the same land in trust until incorporation.

Another reason for deliberate speed lies in the accelerated pace of economic development anticipated in rural areas, partly as a result of the claims settlement, and partly on the initiative of the private sector. The general welfare in Alaska will be advanced if local government organization precedes rather than follows economic development. New industrial development will create stresses manageable only by application of governmental powers. Planning and zoning will be particularly important in reconciling industrial development with subsistence living, and taxing power will be needed to insure local benefit from development activity. Municipalities which form after major economic interests have become

established may be too late to influence significantly the activities of those interests.[16]

On the other hand, it may be futile to extoll the desirability for self-determination to people who presently lack the economic resources necessary to the effective exercise of local government power. In fact, Native leaders wisely may have sensed that organization under such circumstances would only increase frustration as expectations went unsatisfied.

To summarize, a power vacuum presently exists in rural Alaska, where vast resources, actual and anticipated, are unevenly spread across the state, requirements for government services are increasing as the pace of development accelerates, and many areas are financially unable to organize prior to development. In this context, the absence of a mechanism for more efficient and equitable distribution of public revenues is a problem requiring state initiative.

1972 Legislative Program

The Governor introduced to the second session of the Seventh Legislature a series of bills dealing with local government.[17] Five bills were designed to function together as a coherent program to:

- Provide for subdivision of the unorganized borough (HB 596).
- Create a Department of Community and Regional Affairs (HB 552).

[16]The canned salmon, copper, and lumber industries have each furnished examples of economic power wielded in Alaska without effective governmental restraint, with resultant hardship for resident Alaskans.

[17]These bills resulted from extended problem analysis, drafting, and policy review at several levels of state government.

- Levy a 15 mill tax on property located in unorganized boroughs, with distribution of revenue among unorganized boroughs (HB 597).
- Levy a 20 mill tax on the pipeline, with distribution to local governments, organized and unorganized (HB 598).
- Provide for a general equalization of new taxable property, wherever located (not introduced).[18]

The following sections review the bills, discuss their intended operation, and point out the areas of greatest difficulty encountered. The bills are discussed in their final versions, which include committee amendments.

Subdivision of the Unorganized Borough

An essential starting point to organization, HB 596 provided for establishing borough boundaries in the unorganized borough which would conform to statutory and constitutional standards.[19] The unorganized boroughs so formed would serve as units for administering state services and the revenue sharing features of the proposed property and pipeline taxes. The people within each unorganized borough might at their option proceed toward organization either as boroughs of a particular class or as home rule boroughs. This bill was reported favorably by the House Local Government Committee, but died in the House Finance Committee.

[18]See Appendix B through Appendix F for copies of these bills.

[19]A number of previous bills had attempted a similar division into borough units, but they have not provided for charter organization. The Mandatory Borough Act, 52 SLA 1963, sponsored by Senator John Rader, was the only effective state initiative to actually establish boroughs in the unorganized area of the state.

formula based on population, present wealth, and the cost of providing services. In other words, if the cost of services were twice as great in one area as in another, the first area would receive twice the revenue per capita in order to insure the same level of service. If the first area also had only half the taxable revenue per capita as the second area, the share of the first area would again double per capita with respect to the second area.

The 15 mill tax was withdrawn by the Governor for further study prior to final action.

Pipeline Tax

Designed to complement the 15 mill general property tax, HB 598 provided for a 20 mill tax on property used in oil and gas transportation. Property subject to this tax was limited to oil and gas pipelines over 21 inches in diameter. The 20 mill rate, which approximates the existing tax level for such property in organized boroughs and cities, was to be in lieu of any other state and local taxes on the same property, including the 15 mill tax under HB 597. However, local governments that already taxed property affected by HB 598 would continue to do so with respect to property taxed as of January 1, 1972 (e.g., oil and gas transportation facilities on the Kenai Peninsula). Property that became taxable under HB 598 after January 1, 1972 (e.g., trans-Alaska oil pipeline) would be subject only to the 20 mill state tax.

The rationale for the state tax as the exclusive tax on the oil pipeline was that such property provides immense taxable value to certain areas without regard to the level of services required in those areas. It was believed that the revenue anticipated from taxation of oil and gas pipelines is properly considered a state resource rather than the exclusive property of the area where the property happens to be located. At the same time, it was also felt that this revenue, like other property tax revenue, should be used for the benefit of local governments. Accordingly, the revenue from the state oil and gas pipeline tax would be distributed to all local government units, including cities, organized boroughs, and

unorganized boroughs, in accordance with a formula similar to that which governed distribution of the general property tax revenue under HB 597.

The pipeline tax bill passed the House but died in the Senate Finance Committee.

Tax Equalization

The tax equalization bill (not introduced) was simple in concept. It provided for a determination of the *annual increase* in assessed valuation of property in all "governmental units," defined to include cities and boroughs, organized and unorganized. Sixty percent of the new revenue from this increased valuation, raised by application of the mill rate of each jurisdiction, including the 15 mill rate applicable to unorganized boroughs under HB 597, would be remitted to the state. The Department of Community and Regional Affairs would administer this revenue pool. The department would distribute the funds directly to organized units of local government, and, as trustee for unorganized units, would expend amounts to be determined by a distribution formula. The formula was similar to the HB 598 formula, except that a "local effort" provision insured that areas which taxed themselves heavily (thus contributing greater proportionate amounts to the pool) would receive a proportionately higher return.

Distribution Formula

A key to any revenue sharing system is the distribution formula. The 1972 legislative proposals based the distribution of revenues on four factors: (1) need for services, (2) ability to raise revenue, or fiscal capacity, (3) relative cost of services, and (4) local tax effort. Each of these elements may be defined and weighted according to desired goals.

"Need for services" may be expressed as a function of total population, school age population, population density, or other

other boroughs, but also to draw on revenues from resources outside its own borders. Finally, the distribution of revenues under HB 598, the 20 mill pipeline tax, also would have provided revenue regardless of whether an area was organized.

The 20 mill tax suffered because the major legislative struggle of the 1972 session centered on a package of legislation designed to protect the state's future oil production revenues. When these bills finally were passed, legislative leadership was in no mood to face what appeared to be still another oil revenue bill.[23]

As noted, the borough organization bill failed largely because establishment of new boroughs, in the absense of adequate revenues, might have created expectations which could not be fulfilled. In addition, some Native leaders felt that the state should not be involved in drawing boundaries for rural boroughs, but that people in these areas should determine their own governmental configuration. Especially in rural areas with Native population majorities, Native leaders are most likely to prefer that borough boundaries be coterminous with those of the regional corporations established under the Alaska Native Claims Settlement Act. This is also likely to be the view of state policymakers, unless there are compelling reasons for following a different course. In any case, the Alaska constitution[24] and state Supreme Count decisions on the point[25] indicate that the state has ultimate responsibility for local government boundaries. As noted by the court in the *Fairview* case:

[23]HB 598's relatively simple ad valorem approach to oil revenue (the 20 mill pipeline tax) is likely to command further attention particularly if present measures based on maintenance of wellhead price encounter serious difficulty in court.

[24]Art. X, Sec. 3 and 12.

[25]*Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P. 2d. 540, 543 (Alaska 1962).

> An examination of the relevant minutes of [the Constitutional Convention's committee on local government] meetings shows clearly the concept that was in mind when the local boundary commission was being considered: that local political decisions do not usually create proper boundaries and that boroughs should be established at the state level.[26]

Also, the failure of voluntary borough formation in the years since statehood indicates the practical importance of state initiative in this area.

Conclusion

The 1972 legislative program brought before the legislature and the public much useful information and debate. New programs take time to be perfected in detail and to gain public acceptance. The possible approaches to fiscal resource equalization were by no means exhausted by the 1972 legislative proposals. Given the legal and social pressures involved, it is likely that further attempts will be made, based either on refinements of that legislation or on different concepts. It may be useful to suggest certain tentative principles which seem to emerge from the research and experience generated by the 1972 program:

- Revenue equalization is desirable to promote early formation of rural boroughs, and on legal and equitable grounds.

- A prerequisite to equalization is coherent geographic units; the state should have ultimate control over the configuration of new boroughs.

- Revenue distribution should not be dependent on organizational status. That is, an area should not be forced to assume government responsibility prematurely in order to procure adequate services, and a decision to incorporate should carry no fiscal penalty.

[26]*Ibid.*

- The mechanics of the program should be as simple and orthodox as possible, involving minimum interference with local decision making and minimum disturbance of existing tax bases.

Local government is a volatile policy area, and proposals dealing with local finances can verge on the incendiary. As a result, any legislative decision on new approaches to local government is difficult. But inaction is also a decision, and by now we should know enough about the historical results of inaction in Alaska to prefer innovation, unnerving though it may sometimes be.

APPENDIX A

ALASKA STATE CONSTITUTION

Article X

Local Government

Section 1. Purpose and Construction. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

Section 2. Local Government Powers. All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

Section 3. Boroughs. The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

Section 4. Assembly. The governing body of the organized borough shall be the assembly, and its composition shall be established by law or charter.

Section 5. Service Areas. Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services.

Section 6. Unorganized Boroughs. The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.

Section 7. Cities. Cities shall be incorporated in a manner prescribed by law, and shall be a part of the borough in which they are located. Cities shall have the powers and functions conferred by law or charter. They may be merged, consolidated, classified, reclassified, or dissolved in the manner provided by law.

Section 8. Council. The governing body of a city shall be the council.

Section 9. Charters. The qualified voters of any borough of the first class or city of the first class may adopt, amend, or repeal a home rule charter in a manner provided by law. In the absence of such legislation, the governing body of a borough or city of the first class shall provide the procedure for the preparation and adoption or rejection of the charter. All charters, or parts or amendments of charters, shall be submitted to the qualified voters of the borough or city, and shall become effective if approved by a majority of those who vote on the specific question.

Section 10. Extended Home Rule. The legislature may extend home rule to other boroughs and cities.

Section 11. Home Rule Powers. A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.

Section 12. Boundaries. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

Section 13. Agreements; Transfer of Powers. Agreements, including those for cooperative or joint administration of any functions or powers, may be made by any local government with any other local government, with the State, or with the United States, unless otherwise provided by law or charter. A city may transfer to the borough in which it is located any of its powers or functions unless prohibited by law or charter, and may in like manner revoke the transfer.

Section 14. Local Government Agency. An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law.

Section 15. Special Service Districts. Special service districts existing at the time a borough is organized shall be integrated with the government of the borough as provided by law.

ARTICLE 2. COMMUNITY AND REGIONAL AFFAIRS.

Sec. 44.47.050. GENERAL POWERS AND DUTIES. The department may

(1) advise and assist local governments;

(2) serve as staff for the Local Boundary Commission;

(3) conduct studies and carry out experimental and pilot projects for the purpose of developing solutions to community and regional problems;

(4) promote cooperative solutions to problems affecting more than one community or region, including joint service agreements, regional compacts, and other forms of cooperation;

(5) serve as a clearinghouse for information useful in solution of community and regional problems, and channel to the appropriate authority requests for information and services;

(6) advise and assist community and regional governments on matters of finance, including but not limited to bond marketing and procurement of federal funds;

(7) prepare suggested guidelines relating to the content of notice of bond sale advertisements, prospectuses and other bonding matters issued by local governments;

(8) administer state funds appropriated for the benefit of unorganized regions within the state, allowing for maximum participation by local advisory councils and similar bodies;

(9) carry out those administrative functions in unorganized boroughs that the legislature may prescribe;

(10) study existing and proposed laws and state activities that affect community and regional affairs and submit to the governor recommended changes in those laws and activities;

(11) coordinate activities of the state which have impact on community and regional affairs;

(12) assist in the development of new communities and serve as the agent of the state for purposes of participation in federal programs relating to new communities;

(13) supervise planning, management, and other activities required for local eligibility for financial aid under those federal and state programs which provide assistance to community and regional governments;

(14) administer state, and, as appropriate, federal programs for revenue sharing, grants, and other forms of financial assistance to community and regional governments;

(15) provide staff assistance, as requested, to the Rural Affairs Commission;

(16) apply for, receive and use funds from federal and other sources, public or private, for use in carrying out the powers and duties of the department;

(17) request and utilize the resources of other agencies of state government in carrying out the purposes of this chapter to the extent such utilization is more efficient than maintaining departmental staff, reimbursing the other agencies when appropriate;

(18) carry out other functions and duties, consistent with law, necessary or appropriate to accomplish the purpose of this chapter.

ARTICLE 3. PLANNING ASSISTANCE.

Sec. 44.47.080. PLANNING ASSISTANCE TO PLATTING AUTHORITIES. To facilitate urban planning in cities and other political subdivisions, the department may provide planning

assistance, including but not limited to surveys, land-use studies, urban renewal plans, technical services, and other planning work to a city, borough, or other platting authority. In an area under the jurisdiction for planning purposes of a city, borough, or other platting authority, the department may not perform the planning work except at the request or with the consent of the local authority.

Sec. 44.47.090. ASSISTANCE BY CITIES AND PLATTING AUTHORITIES. A city or platting authority may make funds under its control available to the department for the purposes of obtaining planning work or planning assistance, or both, for its area. The department may contract for, accept, and expend the funds for urban planning for the local jurisdiction.

Sec. 44.47.100. PLANNING POWERS OF AUTHORITY. The department may accept and expend grants from the federal government and other public or private sources, may contract with reference thereto, and may enter into contracts and exercise all other powers necessary to carry out secs. 80-100 of this chapter.

ARTICLE 4. RURAL DEVELOPMENT

Sec. 44.47.130. POWERS AND DUTIES. To promote development of rural areas of the state the department is authorized to

(1) investigate social and economic conditions of rural areas to determine the need to expand economic opportunities and improve living conditions;

(2) formulate a coordinated program to broaden and diversify the economic base of rural areas;

(3) coordinate administration of emergency relief, surplus food distribution, or other public assistance programs, except the regular relief and assistance programs of the federal government in rural areas;

(4) formulate and conduct a program of construction of basic facilities to improve health, welfare and economic security and provide employment and income in the rural areas;

(5) promote training and educational programs designed to expand employment opportunities for residents of rural areas.

ARTICLE 5. GENERAL PROVISIONS.

Sec. 44.47.160. REGULATIONS. The department may adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) to carry out the purposes of this chapter.

Sec. 44.47.170. DEFINITIONS. In this chapter

(1) "commissioner" means the commissioner of community and regional affairs;

(2) "community" means home rule cities and boroughs, cities and boroughs of any class, and unorganized boroughs and villages which are social units;

(3) "department" means the Department of Community and Regional Affairs;

(4) "region" means an area larger than a community, or including all or part of more than one community, but sufficiently integrated that it may be treated as a unit for administration of particular services.

*Sec. 3. AS 43.18.010(a)(4)(B)(ii) is amended to read:

(ii) an annual contract with a recognized planning firm to provide land use planning and plan implementation on a consulting basis with a work program outline approved by the Department of Community and Regional Affairs; or

*Sec. 4. AS 43.18.010(a)(4)(B)(iii) is amended to read:

(iii) the state's continuing planning advisory service program through the Department of Community and Regional Affairs;

*Sec. 5. AS 44.19.250 is amended to read:

Sec. 44.19.250. LOCAL BOUNDARY COMMISSION. There is in the Department of Community and Regional Affairs a local boundary commission. The local boundary commission consists of five members appointed by the governor for overlapping five-year terms. One member shall be appointed from each of the four major senatorial election districts and one from the state at large. The member appointed from the state at large is the chairman of the commission.

*Sec. 6. AS 44.19.260(a)(3) is amended to read:

(3) consider a local government boundary change requested of it by the legislature, the commissioner of community and regional affairs, or a political subdivision of the state; and

*Sec. 7. AS 44.19.270 is amended to read:

Sec. 44.19.270. MEETINGS AND HEARINGS. The chairman of the commission or the commissioner of community and regional affairs with the consent of the chairman may call a meeting or hearing of the local boundary commission. All meetings and hearings shall be public.

*Sec. 8. AS 44.19.880(a)(10) is amended to read:

(10) assist the governor and the Department of Community and Regional Affairs in coordinating the activities of state agencies which have an impact on the solution of local and regional development problems;

*Sec. 9. When the titles "Local Affairs Agency" or "Rural Development Agency" appear in the law of this state, they shall be read as the "Department of Community and Regional Affairs".

*Sec. 10. AS 18.55.970 - 18.55.990; AS 44.19.180 - 44.19.210; 44.19.580 - 44.19.620; 44.19.880(5) are repealed.

*Section 11. All litigation, hearings, investigations and other proceedings pending under a law amended or repealed or functions which may be transferred by this Act, continue in effect and may be continued and completed notwithstanding a transfer or amendment or repeal provided for in this Act. Certificates, orders, rules or regulations issued or filed under authority of law amended or repealed by this Act or functions which may be transferred by this Act, remain in effect for the term issued, until revoked, vacated, or otherwise modified under the provisions of this Act. All contracts or other obligations created by a law amended or repealed by this Act or by virtue of functions which may be tranferred by this Act, and in effect on the effective date of this Act, remain in effect until revoked, or modified under the provisions of this Act. Appropriations, records, equipment and other property of agencies of the state integrated with the Department of Community and Regional Affairs established under this Act are transferred to the department. Appropriations and other money available and to become available to agencies the functions, powers and duties of which have been transferred to the Department of Community and Regional Affairs established under this Act shall be available for the objects and purposes for which appropriate or otherwise made available, subject to the terms, restrictions, limitations or other requirements imposed under this section or federal law.

*Sec. 12. This Act takes effect July 1, 1972.

Approved by governor: July 7, 1972
Actual effective date: July 1, 1972

APPENDIX C

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 596

IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTH LEGISLATURE—SECOND SESSION

A BILL

For an Act entitled: "An Act providing for boroughs in the unorganized borough; and providing for an effective date."

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

*Section 1. AS 07 is amended by adding a new chapter to read:

CHAPTER 04. BOUNDARIES AND ORGANIZATION OF BOROUGHS IN THE UNORGANIZED BOROUGH.

ARTICLE 1. BOUNDARIES, ADMINISTRATION AND INCORPORATION.

Sec. 07.04.010. BOUNDARIES. By the tenth day following the convening of the first session of the Eighth Legislature, the Local Boundary Commission shall propose to the legislature a division of the unorganized area of the state into unorganized boroughs. The Local Boundary Commission may propose adjustments to the boundaries of existing boroughs to the extent necessary to secure conformity with the standards for borough boundaries set forth in the statutes and in the Constitution of the State of Alaska. A proposed adjustment of existing boundaries shall provide for those transitional matters the

commission considers necessary or appropriate. The boundaries proposed by the Local Boundary Commission become effective 45 days after presentation or at the end of the session whichever is earlier, unless disapproved by resolution concurred in by a majority of the members of each house. The proposed division is not subject to modification by the legislature as an alternative to disapproval, and if disapproved by the legislature the proposed division made in accordance with the section is of no effect.

Sec. 07.04.020. ADMINISTRATION. Unorganized boroughs shall be administered by the Department of Community and Regional Development as prescribed by the legislature.

Sec. 07.04.030. ADVISORY COUNCIL. In each unorganized borough the lieutenant governor, within 60 days of the establishment of unorganized borough in the manner provided in sec. 10 of this chapter shall provide for election of an advisory council of 11 members. The council may participate in an advisory capacity in the development and implementation of state programs and projects relating to the borough. Elections of council members shall be held every four years.

Sec. 07.04.035. COUNCIL MEMBERSHIP. At the time of election and during their tenure advisory council members shall be qualified voters of the state and residents of the borough. A vacancy on the advisory council shall be filled by a person qualified for election to the advisory council and selected by majority vote of the remaining members of the council. If a majority of seats on the advisory council are vacant concurrently, the lieutenant governor shall fill the vacancies by appointment of persons qualified for election to the advisory council.

Sec. 07.04.040. INCORPORATION. A percentage, determined in accordance with AS 07.10.020(8), of the qualified voters of an unorganized borough may petition for organization of the borough as a borough of the first, second or third class in the manner provided in AS 07.10 and 07.17, except that the petition need not include matters relating to boundaries.

ARTICLE 2. HOME RULE CHARTERS.

Sec. 07.04.050. ADOPTION OF CHARTER. An unorganized borough established under this chapter may adopt a home rule charter in the manner prescribed by AS 29.40.010 - 29.40.030 and AS 29.85.110(a) - (d), except that the advisory council elected in accordance with sec. 30 of this chapter shall perform the duties assigned to city councils, and except that the charter commission shall consist of 11 members. Vacancies on the charter commission shall be filled in the same manner as vacancies on the advisory council.

Sec. 07.04.060. ORGANIZATION The charter commission shall initiate organization of the borough in accordance with the terms of the charter by submission of the charter to the Department of Community and Regional Development. The charter shall be submitted within one year of the first meeting of the commission. The department shall review the charter in light of the circumstances of the particular borough and, within 120 days from receipt shall transmit the charter, together with its findings and recommendations, to the Local Boundary Commission.

Sec. 07.04.070. HEARING. The Local Boundary Commission shall hold at least one hearing in the area proposed to be organized for the purpose of hearing public comment on the charter.

Sec. 07.04.080. LOCAL BOUNDARY COMMISSION DETERMINATION. The Local Boundary Commission, within 90 days from receipt of the charter and the recommendations and findings of the Department of Community and Regional Development, shall determine whether the charter meets standards for organization established by the laws and the Constitution of the State of Alaska and by regulations adopted by the commission.

Sec. 07.04.090. REJECTION OF CHARTER. If the Local Boundary Commission determines that the charter fails to meet the standards for organization it shall reject the charter stating in writing its reasons for the rejection.

Sec. 07.04.100. AMENDED CHARTER. A charter commission, within 60 days of rejection, may prepare and submit to the Department of Community and Regional Development an amended charter fairly meeting the stated objections to the original charter. The amended charter shall be evaluated in the same manner as the original charter. No more than one original and one amended charter may be submitted within one 12 month period.

Sec. 07.04.110. RATIFICATION OF CHARTER. If the Local Boundary Commission determines that the charter meets the standards for organization it shall notify the lieutenant governor. As soon thereafter as practicable the lieutenant governor shall provide for an election in the borough on the question of whether or not the charter is ratified and for election of the officers provided for in the charter. The election shall be preceded by publication and posting of the proposed charter by the lieutenant governor substantially in the manner provided for other charter elections in AS 29.85.150.

Sec. 07.04.120. CERTIFICATION OF RESULTS. If a majority of the votes cast by the qualified voters of the borough are against ratification the lieutenant governor shall so certify and shall certify that the charter is defeated. If a majority of the votes cast by the qualified voters on the question are in favor of ratification the lieutenant governor shall so certify and declare that the borough in which the election was held is an organized borough and a municipal corporation in accordance with the terms of the charter. The lieutenant governor shall also certify the names of those candidates who received the greatest number of votes for the offices established by the charter.

Sec. 07.04.125. VOTERS, ELECTIONS AND COSTS. (a) A person is qualified to vote in a borough election authorized in this chapter if he is qualified to vote in state elections and if he is a resident of the borough.

(b) The lieutenant governor shall supervise elections under this chapter as provided for supervision of other borough elections under AS 07.10.120(d).

(c) The state through the office of the lieutenant governor shall assume the costs of elections and charter preparation under this chapter.

*Sec. 2. Nothing in the Act may be construed to affect any organization petition pending on the effective date of this Act. All such petitions shall be acted upon in the manner provided by law in effect prior to the effective date of this Act.

*Sec. 3. AS 07.05.010 and AS 07.05.040 are repealed.

*Sec. 4. This Act takes effect July 1, 1972.

APPENDIX D

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 597

IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTH LEGISLATURE—SECOND SESSION

A BILL

For an Act entitled: "An Act providing for assessment, levy, collection and distribution of a property tax; and providing for an effective date."

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

*Section 1. AS 43 is amended by adding a new chapter to read:

CHAPTER 77. PROPERTY TAX

ARTICLE 1. LEVY, ASSESSMENT AND COLLECTION.

Sec. 43.77.010. LEVY OF TAX. An annual tax of 15 mills is levied each tax year, beginning January 1, 1973, on the full and true value of taxable real and personal property located in the state.

Sec. 43.77.020. EXEMPTIONS. The following property is exempt from the tax levied in sec. 10 of this chapter:

(1) an owner-occupied single family dwelling, and the land it stands on, including but not limited to condomi-

niums to the extent of the interest of an owner, and household goods and personal effects, including but not limited to farm equipment, inventory, mechanic's tools and other equipment necessary to the business of the taxpayer and other property of the taxpayer of any description otherwise taxable under this chapter; however, an exemption under this paragraph may not exceed $50,000;

(2) property exempt under AS 29.10.336;

(3) unimproved land;

(4) aircraft weighing 6,000 pounds or less;

(5) boats and vessels otherwise taxed by a city or borough.

Sec. 43.77.030. CREDIT. A credit is allowed to an owner on the tax payable with respect to particular property under this chapter equal to the full amount of ad valorem tax levied by a city or borough on the same property for the same tax year and not satisfied by means of a tax credit or by means of a tax incentive.

Sec. 43.77.040. LOCAL EEFFORT EXCLUSION. No return need be filed nor tax paid by any person with respect to property located in a city or borough for any tax year as to which the Department of Revenue certifies that the amount of tax which would be levied under this chapter in the city or borough for that year exceeds the amount of revenue raised or anticipated from all local taxes in the city or borough during the tax year next preceding.

Sec. 43.77.050. ASSESSMENT. Assessment of property in unorganized boroughs subject to the tax levied under this chapter shall be carried out by the office of the state assessor in the Department of Community and Regional Development in the manner provided in AS 29.10.378 - 29.10.453 for first class cities, except that the state assessor in the Department of Community and Regional Development shall function in place of the local

assessor and a state assessment review officer shall function in place of the city council sitting as a board of equalization.

Sec. 43.77.060. STATE ASSESSMENT REVIEW OFFICERS. The commissioner of community and regional development shall appoint at least five qualified persons to serve at his pleasure as state assessment review officers. At least one such person shall be appointed from each of the four judicial districts.

Sec. 43.77.070. COMPENSATION, PER DIEM AND EXPENSES. State assessment review officers receive no compensation but are entitled to per diem and expenses authorized by law for boards.

Sec. 43.77.080. POWERS AND DUTIES. Each state assessment review officer has the powers and duties with respect to assessment in unorganized boroughs of a city council sitting as a board of equalization with respect to first class cities.

Sec. 43.77.090. HEARINGS. The commissioner of community and regional development shall assign annually at least one state assessment review officer to hear assessment appeals at appropriate locations in each election district.

Sec. 43.77.100. REAL PROPERTY RECORDING. To assist in assessment of real property subject to tax under this chapter, no recorder may accept for filing any document of transfer unless the document shows on its face a legal description of the property, the names and addresses of the buyer and seller, the date of the sale, and the purchase price, attested to by the transferee, except that the recorder may accept, in place of this information on the document of transfer, a sworn statement of the transferee containing the same information. The statement shall be held in confidence for use only by the office of the state assessor.

Sec. 43.77.110. COLLECTION AND ENFORCEMENT. The tax levied in this chapter is payable in full to the Department of Revenue on September 30 of the tax year. A penalty of ten per cent shall be added to delinquent taxes and interest at the rate of six per cent a year shall accrue on all unpaid

taxes, excluding penalties, from the due date until paid in full. Collection of the tax levied in this chapter shall be carried out by the Department of Revenue in the manner provided in AS 29.10.456 - 29.10.537 and AS 29.10.348 - 29.10.351 for first class cities.

Sec. 43.77.120. PROCEEDS OF TAX. Money collected under this chapter shall be deposited in the general fund.

Sec. 43.77.130. LIEN FOR TAX. The tax levied under this chapter and interest and penalty set out in sec. 110 of this chapter are liens upon the property assessed and taxed. With respect to property located outside an organized borough and outside of a city, the tax liens provided by this chapter are prior and paramount to all other liens or encumbrances against the property assessed. With respect to property located in cities and boroughs the tax liens provided by this chapter are prior to all liens and encumbrances against the property assessed except liens for taxes levied by the city or borough.

Sec. 43.77.140. FALSE STATEMENT. A person who knowingly makes a false statement in a return required under this chapter as to the amount, location, kind or value of property subject to taxation with intent to evade the taxation is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $500 or by imprisonment for not more than five days, or by both, together with the costs of prosecution.

ARTICLE 2. REVENUE SHARING AMONG UNORGANIZED BOROUGHS.

Sec. 43.77.160. DISTRIBUTION OF PROCEEDS. The legislature is authorized to appropriate each year as shared revenue for the benefit of unorganized boroughs an amount equal to the net amount of revenue raised under this chapter in the preceding year on property located in unorganized boroughs. Revenue so appropriated shall be administered by the Department of Community and Regional Development. The department shall hold and

utilize for the benefit of each unorganized borough an amount determined in accordance with secs. 170 - 190 of this chapter.

Sec. 43.77.170. DIRECT RETURN. From the appropriation authorized under sec. 160 of this chapter an amount equal to the net revenue raised by a five mill levy on property taxable under this chapter within each unorganized borough shall be held and used for the benefit of the unorganized borough where the particular property is located.

Sec. 43.77.180. DISTRIBUTION. Revenue appropriated under sec. 130 of this chapter, less revenue allotted in accordance with sec. 170 of this chapter, shall be held and used for the benefit of each unorganized borough in accordance with the ratio of its distribution index to the sum of the distribution indices of all unorganized boroughs.

Sec. 43.77.190. DISTRIBUTION INDEX. The distribution index of each unorganized borough is based upon its wealth, cost of services, population and area and is determined by the following formula:

$$D = \frac{F_a CP}{2F_p}$$

where

D = distribution index

F_a = average fiscal capacity of unorganized boroughs

F_p = fiscal capacity of the particular unorganized borough

C = cost of service which is the cost as determined by the state assessor for each tax year in each particular unorganized borough of providing education, water, sewer, police, fire, administrative and other government services expressed as a percentage of the average cost of such services in all unorganized boroughs.

P = population of the particular unorganized borough as a percentage of total population of unorganized boroughs.

Sec. 43.77.200. DEFINITIONS. In this chapter

(1) "Taxable real and personal property" means property not exempt from taxation under the constitution and laws of the state; particularly the term does not include property exempt under sec. 20 of this chapter, in AS 29.10.342, in AS 29.10.343 and in 29.10.344; the term otherwise includes property exempted from taxation by home rule charter provision and property exempted from execution under AS 09;

(2) "real property" means property defined in AS 29.10.552(1);

(3) "personal property" means property as defined in AS 29.10.552(3) excluding money on deposit;

(4) "unimproved land" means land with respect to which the state assessor in the Department of Community and Regional Development determines that no current physical addition or alteration which enhances the utility, value, or income producing potential exists;

(5) "fiscal capacity" means the total assessed value within an organized borough divided by its population.

Sec. 43.77.210. REGULATIONS. The Department of Community and Regional Development and the Department of Revenue may adopt regulations as appropriate to carry out their respective duties under this chapter.

*Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.

APPENDIX E

IN THE HOUSE BY THE LOCAL GOVERNMENT COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 598

IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTH LEGISLATURE—SECOND SESSION

A BILL

For an Act entitled: "An Act providing for a state tax on property used in connection with transportation of unrefined oil and gas; and providing for an effective date."

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

*Section 1. AS 43 is amended by adding a new chapter to read:

CHAPTER 56. OIL AND GAS TRANSPORTATION PROPERTY TAX.

Sec. 43.56.010. LEVY OF TAX. An annual tax of 20 mills is levied each tax year beginning January 1, 1973, on the full and true value of taxable real and tangible personal property employed in the transportation of unrefined oil and gas. With respect to a facility employed for part of a tax year in such a manner as to render it taxable under this chapter or partly so employed for a full tax year, the value of the facility taxable under this chapter shall be proportionate to the employment. Property taxable under this chapter does not include property employed in the construction of facilities taxable under this chapter as distinct from the facilities themselves. The tax levied under this chapter does not apply to property with respect to which an ad valorem tax is

payable to a city or borough on January 1, 1972 and on January 1 of any succeeding year during which a tax is levied under this chapter.

Sec. 43.56.020. EXEMPTIONS. In addition. to property excluded under sec. 150(6) of this chapter, the following property is exempt from the tax levied under this chapter:

(1) producing oil or gas leases;

(2) machinery, appliances and equipment used in and around a well producing oil or gas and actually used in the operation of a well;

(3) oil and gas produced in the state upon which gross production taxes are paid;

(4) pipelines less than 21 inches in diameter.

Sec. 43.56.030. IN LIEU OF OTHER TAXES. Payment of the tax levied under this chapter is in lieu of all ad valorem taxes on property subject to tax under this chapter now or hereafter imposed by the state, or by a city or a borough.

Sec. 43.56.040. ASSESSMENT. Assessment of property subject to the tax levied under this chapter shall be carried out by the Local Affairs Agency substantially in the manner provided in AS 29.10.378 - 29.10.453 for first class cities, except that the agency shall function in place of the local assessor, and the State Assessment Review Board shall function in the place of the city council sitting as a board of equalization.

Sec. 43.56.050. STATE ASSESSMENT REVIEW BOARD. The director of local affairs shall appoint at least five qualified persons to serve at his pleasure as the State Assessment Review Board. At least one person shall be appointed from each of the four judicial districts.

Sec. 43.56.060. PER DIEM AND EXPENSES. Members of the State Assessment Review Board shall be compensated and are entitled to per diem and expenses authorized by law for boards.

Sec. 43.56.070. POWERS AND DUTIES. The State Assessment Review Board has the powers and duties with respect to assessment of property taxable under this chapter of a city council sitting as a board of equalization with respect to first class cities.

Sec. 43.56.080. COLLECTION AND ENFORCEMENT. The tax levied in this chapter is payable in full to the Department of Revenue on September 30 of the tax year, except that, the Department of Revenue may by regulation provide for prepayment of taxes and payment by installments. A penalty of ten per cent shall be added to delinquent taxes and interest at the rate of eight per cent per annum, or four percentage points above the per annum rate charged member banks for advances by the 12th Federal Reserve District that prevailed on the first day of the month preceding the commencement of that calendar quarter, whichever is greater, shall accrue on all unpaid taxes, excluding penalties, from the due date until paid in full. Collection of the tax levied under this chapter shall be carried out by the Department of Revenue substantially in the manner provided in AS 29.10.456 - 29.10.537 and 29.10.348 - 29.10.351 for first class cities.

Sec. 43.56.090. LIEN FOR TAX. The tax levied under this chapter and interest and penalty set out in sec. 80 of this chapter are liens upon the property subject to tax under this chapter. The liens provided by this section are prior and paramount to all other liens or encumbrances upon the same property.

Sec. 43.56.100. FALSE STATEMENT. A person who knowingly fails to file a return when due or makes a false statement in a return required under this chapter as to the amount, location, kind or value of property subject to taxation with intent to evade the taxation is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $1,000, or by imprisonment for not more than six months, or by both, together with the costs of prosecution.

Sec. 43.56.110. DEPOSIT IN GENERAL FUND. The annual revenue from the tax levied under this chapter shall be deposited in the general fund.

Sec. 43.56.120. AUTHORIZATION OF APPROPRIATION. There is authorized to be appropriated to the Local Affairs Agency each year an amount equal to the sum of the amounts deposited in the general fund under sec. 110 of this chapter, less costs incurred or anticipated in administration of the tax for the year of levy.

Sec. 43.56.130. DISTRIBUTION. As soon as practicable following the annual appropriation provided for in sec. 120 of this chapter, the Local Affairs Agency shall distribute to the treasurer of each taxing unit, and shall segregate and hold for the benefit of each unorganized borough, an amount which bears the same ratio to the total amount of the annual appropriation under sec. 120 of this chapter as the distribution index of the governmental unit bears to the sum of the distribution indices of all governmental units.

Sec. 43.56.140. DISTRIBUTION INDEX. The distribution index of each governmental unit is based on its cost of services, wealth and population and is determined annually in accordance with the following formula:

$$D = \frac{PCF_a}{F_p}$$

where

D = distribution index

P = total population of the governmental unit as a percentage of the statewide total population

C = cost of service index

F_p = fiscal capacity

F_a = statewide fiscal capacity.

Sec. 43.56.150. DEFINITIONS. In this chapter

(1) "cost of service index" means the ratio as determined by the Local Affairs Agency of the average cost of materials and personal services, weighed equally, in a particular governmental unit to the average cost of materials and personal services in the state as a whole for each tax year; in determining the cost of service index the state assessor may utilize such standards of reference as federal cost of living data, state employee regional pay differentials and other measures and standards which in his opinion tend to reflect cost differentials of construction materials, labor, and other components of the overall cost of local government operations;

(2) "fiscal capacity" means the ratio of total taxable assessed value to total population in a governmental unit;

(3) "governmental unit" means an organized borough or a city levying ad valorem taxes whether located inside or outside an organized borough, and an unorganized borough;

(4) "statewide fiscal capacity" means the ratio of total taxable assessed value to total population for the state as a whole;

(5) "taxable real and tangible personal property" means property not exempt from taxation under the constitution and laws of the state or of the United States, but does not include any subsurface estate or property used in a consumer distribution system; the term includes otherwise taxable property exempted from taxation under home rule ordinance or charter;

(6) "taxing unit" means any organized borough or city levying ad valorem taxes whether located inside or outside an organized borough.

Sec. 43.56.160. REGULATIONS. The Local Affairs Agency and the Department of Revenue may adopt regulations as

appropriate to carry out their respective duties under this chapter, including regulations governing determination of the population valuation and cost factors in sec. 140 of this chapter.

*Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.

APPENDIX F

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTH LEGISLATURE—SECOND SESSION

A BILL

For an Act entitled: "An Act providing for equalization of local tax resources; and providing for an effective date."

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

*Section 1. AS 43 is amended by adding a new chapter to read:

CHAPTER 17. STATEWIDE TAX RESOURCE EQUALIZATION.

Sec. 43.17.010. PURPOSE. The purpose of this chapter is to provide for equitable allocation of tax resources among local government units organized and unorganized, and to insure that no area suffers impoverishment of necessary public services, relative to other areas, because of the chance location of taxable wealth within the state.

Sec. 43.17.020. DETERMINATION OF VALUE INCREASE. As soon as practicable following completion of assessment rolls for the tax year beginning January 1, 1973 and each tax year thereafter, the state assessor shall ascertain and certify for each governmental unit the amount by which the value of taxable property within the governmental unit as of January 1, 1973, and

each year thereafter, exceeds the value of the taxable property within the governmental unit as of January 1 of the preceding year. The amount of such excess is the annual value increase of the governmental unit.

Sec. 43.17.030. RETAINED REVENUE. (a) Forty per cent of the net revenue raised by the annual application of the mill rate levy of each taxing unit to the value increase of the tax base of the taxing unit may be retained and expended by the taxing unit in which the increase occurred.

(b) Forty per cent of the net revenue raised by the annual application of the mill rate levy imposed under AS 43.77 to the value increase of each unorganized borough may be appropriated, held and used for the benefit of unorganized boroughs in the manner provided in AS 43.77.160.

Sec. 43.17.040. EQUALIZATION REVENUE. (a) An amount equal to 60 per cent of the net revenue raised by the annual application of the mill rate levy of each taxing unit to the value increase of the taxing unit shall be remitted to the Department of Revenue for deposit in the general fund of the state not later than December 31, 1973 and each year thereafter.

(b) An amount equal to 60 per cent of the net revenue raised by the application of the mill rate levy imposed under AS 43.77 to the value increase of each unorganized borough shall be collected by the Department of Revenue for deposit in the general fund of the state not later than December 31, 1973 and each year thereafter.

Sec. 43.17.050. STATEWIDE TAX EQUALIZATION FUND. There is authorized to be appropriated each year an amount equal to the sum of the amounts deposited in the general fund under sec. 140 of this chapter. The amount appropriated under authority of this section is the statewide tax equalization fund which shall be administered by the Department of Community and Regional Development.

Sec. 43.17.060. DISTRIBUTION. As soon as practicable following appropriation of the statewide tax equalization fund provided for in sec. 50 of this chapter, the Department of Community and Regional Development shall distribute to the treasurer of each taxing unit, and shall segregate and hold for the benefit of each unorganized borough an amount which bears the same ratio to the total amount of the statewide tax equalization fund as the distribution index of each governmental unit bears to the sum of the distribution indices of all governmental units.

Sec. 43.17.070. DISTRIBUTION FORMULA. The distribution index of each governmental unit is based on its cost of services, wealth, population and local tax effort and is determined in accordance with the following formula

$$D = \frac{PCLF_a}{F_p}$$

where

D = distribution index

P = civilian population of the governmental unit as a percentage of the statewide civilian population

C = cost of service index

L = local tax effort

F_p = fiscal capacity

F_a = statewide fiscal capacity.

Sec. 43.17.080. DEFINITIONS. In this chapter

(1) "taxing unit" means any organized borough or city levying ad valorem taxes whether located within or outside an organized borough;

(2) "governmental unit" means an organized borough or a city levying ad valorem taxes whether located within or outside an organized borough, and an unorganized borough;

(3) "fiscal capacity" means the ratio of total taxable assessed value to total population within a governmental unit;

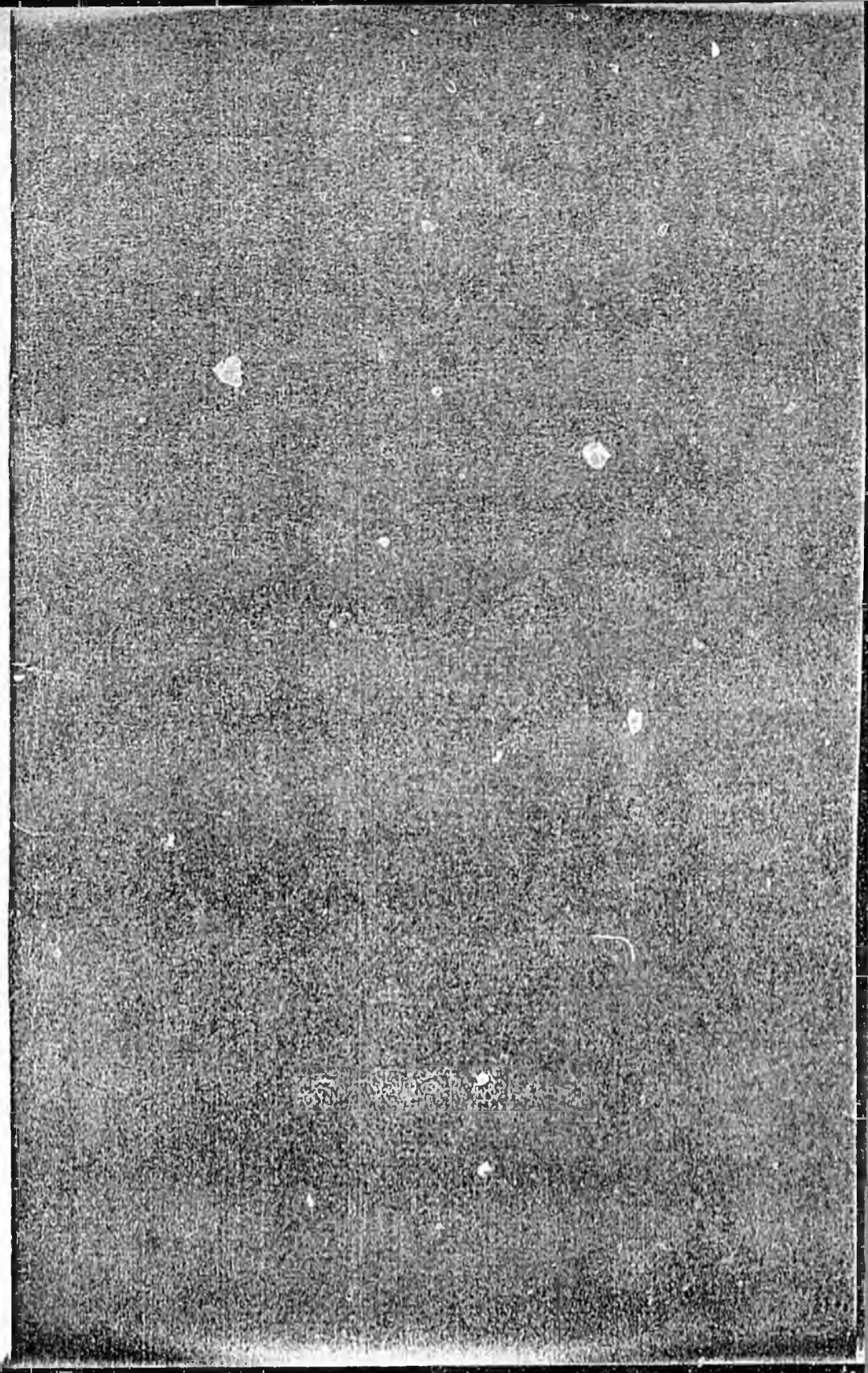
(4) "statewide fiscal capacity" means the ratio of total taxable assessed value to total population for the state as a whole;

(5) "local tax effort" means the ratio of total revenue raised from ad valorem taxes within each governmental unit, including, as applicable, the tax levied under AS 43.77, to the total assessed value of taxable property within the governmental unit;

(6) "cost of services index" means the cost as determined by the state assessor in the Department of Community and Regional Development for each tax year in each particular governmental unit of education, sewer, water, police and fire protection, road construction and other governmental services expressed as a percentage of the average cost of those services in the state as a whole.

Sec. 43.17.090. REGULATIONS. The Department of Community and Regional Development may adopt regulations necessary or appropriate to carry out the purpose of this chapter.

*Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.



EXTRA SESSION
CHAPTER 21—S.F.No.10

[Coded]

An act relating to metropolitan development; providing for allocation among governmental units of increases in the assessed valuation of commercial-industrial property within the metropolitan area; providing a formula for the distribution of additional revenues to municipalities within the metropolitan area; creating certain accounts in the state treasury; and appropriating money.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. [473F.01] METROPOLITAN AREAS; DISTRIBUTION OF REVENUES; PURPOSE. The legislature finds it desirable to improve the revenue raising and distribution system in the seven county Twin Cities area to accomplish the following objectives:

(1) To provide a way for local governments to share in the resources generated by the growth of the area, without removing any resources which local governments already have;

(2) To increase the likelihood of orderly urban development by reducing the impact of fiscal considerations on the location of business and residential growth and of highways, transit facilities and airports;

(3) To establish incentives for all parts of the area to work for the growth of the area as a whole;

(4) To provide a way whereby the area's resources can be made available within and through the existing system of local governments and local decision making;

(5) To help communities in different stages of development by making resources increasingly available to communities at those stages of development and redevelopment when financial pressures on them are the greatest;

(6) To encourage protection of the environment by reducing the impact of fiscal considerations so that flood plains can be protected and land for parks and open space can be preserved; and

(7) To provide for the distribution to municipalities of additional revenues generated within the area or from outside sources pursuant to other legislation.

Sec. 2. [473F.02] DEFINITIONS. Subdivision 1. The terms defined in this section shall have the meanings therein ascribed to them for purposes of this act unless context otherwise requires.

Subd. 2. "Area" means the territory included within the boundaries of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties.

Subd. 3. "Commercial-industrial property" means the following categories of property, as defined in Minnesota Statutes, Section 273.13, excluding that portion of such property (a) which may, by law, constitute the tax base for a tax increment pledged pursuant to Minnesota Statutes, Section 462.585 or Section 474.10, to the extent and while such tax increment is so pledged; (b) which may, by law, constitute the tax base for tax revenues set aside and paid over for credit to a sinking fund pursuant to direction of the city council in accordance with Laws 1963, Chapter 881, as amended, to the extent such revenues are so treated in any year; or (c) which is exempt from taxation pursuant to Minnesota Statutes, Section 272.02:

(a) That portion of class 3 property consisting of stocks of merchandise and furniture and fixtures used therewith; manufacturers' materials and manufactured articles; and tools, implements and machinery, whether fixtures or otherwise.

(b) Class 3h property.

(c) Class 3j property.

(d) That portion of class 4 property which is either used or zoned for use for any commercial or industrial purpose, except for such property which is, or, in the case of property under construction, will when completed be used exclusively for residential occupancy and the provision of services to residential occupants thereof. Property shall be considered as used exclusively for residential occupancy only if all of not less than 80 percent of its occupied residential units is, or, in the case of property under construction, will when completed be occupied under an oral or written agreement for occupancy over a continuous period of not less than 30 days.

If the classification of property prescribed by section 273.13 is modified by legislative amendment, the references in this subdivision shall be to such successor class or classes of property, or portions thereof, as embrace the kinds of property designated in this subdivision.

(e) That property valued and assessed under Minnesota Statutes, Section 273.13, Subdivision 14.

Subd. 4. "Residential property" means the following categories of property, as defined in Minnesota Statutes, Section 273.13, excluding that portion of such property exempt from taxation pursuant to Minnesota Statutes, Section 272.02:

(a) Class 3b property

New matter or additions indicated by underline, deletions by ~~strikeout~~.

(b) Class 3c property

(c) Class 3cc property

(d) Class 3f property

(e) And that portion of Class 4 property used exclusively for residential occupancy.

(f) That property valued and assessed under Minnesota Statutes Section 273.13, Subdivision 17.

Subd. 5. "Governmental unit" means a county, city, village, borough, town, school district, or other taxing unit or body which levies ad valorem taxes in whole or in part within the area.

Subd. 6. "Administrative auditor" means the person selected pursuant to section 3.

Subd. 7. "Population" means the most recent estimate of the population of a municipality made by the metropolitan council and filed with the state auditor. The council shall annually estimate the population of each municipality as of a date which it determines and, in the case of a municipality which is located partly within and partly without the area, the proportion of the total which resides within the area, and shall promptly thereafter file its estimates with the state auditor.

Subd. 8. "Municipality" means a city, village, borough, town or township located in whole or part within the area. If a municipality is located partly within and partly without the area, the reference in this act to property or any portion thereof subject to taxation by taxing jurisdiction within the municipality are to such property or portion thereof as is located in the portion of the municipality within the area, except that the fiscal capacity of such a municipality shall be computed upon the basis of the valuation and population of the entire municipality.

Subd. 9. "Qualifying municipality" means each city, village, borough which is located in whole or in part within the metropolitan area and which has a population of not less than 2500.

Subd. 10. "County" means each county in which a governmental unit is located in whole or in part.

Subd. 11. "Locally raised revenues" means the total current receipts of a municipality, including those of its constituent agencies, boards, commissions, and other bodies, from all sources and for all purposes, reduced by the expenses, including a reasonable allowance for depreciation of capital assets, incurred in the operation by the municipality of facilities for the production or sale of [illegible]

...r, gas, heat, or telephone service, except that locally raised ...enues shall not include:

(a) Revenues derived from the operation of municipal liquor ...es;

(b) Public grants, as defined in subdivision 17, except that for ...poses of this subdivision the amount prescribed by clause (2) of ...division 16 shall be multiplied by 10;

(c) Grants or gifts from private persons, unless made by an entity ...mpt from ad valorem taxation in an amount which does not ...ed the ad valorem tax which would have been payable by the ...ity during that year for the benefit of the recipient if the ...mption did not exist; and

(d) The proceeds of any indebtedness incurred by the municipali-

The public examiner shall certify the locally raised revenues of ... municipality for each year to the state auditor not later than ...cembe: 1 of the subsequent year. If the fiscal year of a ...icipality ends on a date other than December 31, the certification ... relate to the fiscal year which ended in the calendar year ...ding that in which the certificate is required to be made, and ...rences in this act to the locally raised revenues of a municipality ...specified year shall be deemed to refer to the fiscal year ended in ...specified calendar year.

Subd. 12. "Market value" of real property within a municipality ...s the "actual market value" of real property within the ...icipality, determined in the manner and with respect to the ...erty described for school districts in Minnesota Statutes, Section ...3, Subdivision 4, except that no adjustment shall be made for ...erty on which taxes are paid into the state treasury under gross ...ings tax laws applicable to common carrier railroads. For ...oses of this act, the equalization aid review committee shall ...ally make determinations and reports with respect to each ...icipality which are comparable to those it makes for school ...icts under Minnesota Statutes, Section 124.211, Subdivision 3, in ...same manner and at the same times as are prescribed by that ...division. The auditor of each county and the commissioner of ...tion shall annually determine and certify to the state auditor, for ... municipality, information comparable to that required of each of ... by section 475.53, subdivision 4, for school districts, as soon as ...ticable after it becomes available. The state auditor shall then ...ute the market value of property within each municipality.

Subd. 13. "Valuation" means the market value of real property ...a municipality.

...ons or additions indicated by underline, deletions by strikeout.

Subd. 14. "Fiscal capacity" of a municipality means its valuation, determined as of January 2 of any year, divided by its population, determined as of a date in the same year.

Subd. 15. "Average fiscal capacity" of municipalities means the sum of the valuations of all municipalities, determined as of January 2 of any year, divided by the sum of their populations, determined as of a date in the same year.

Subd. 16. "Fiscal effort" of a municipality for any year means its locally raised revenues in that year, divided by its valuation in that year.

Subd. 17. "Public grants" means (1) the sum of all moneys received by a municipality pursuant to Minnesota Statutes, Sections 273.13, Subdivisions 3 and 15 (4), 273.69, Subdivision 8, 297.03, Subdivision 4, 297.13, 297A.51 to 297A.60, and 340.60; and (2) one-tenth of all other moneys received by a municipality from the federal and state governments, and their agencies and political subdivisions, under programs of intergovernmental aids and grants distributed by formula or upon application. The public examiner shall certify the public grants of each municipality for each year to the state auditor not later than September 1 of the subsequent year.

Subd. 18. "Adjusted fiscal capacity" of a municipality means the product of its fiscal capacity and the sum of its locally raised revenues and public grants, divided by its locally raised revenues.

Subd. 19. "Base adjusted fiscal capacity" for municipalities for any year means the highest adjusted fiscal capacity of any qualified municipality in that year.

Subd. 20. "Metropolitan area municipal equity account" or "municipal equity account" means the moneys deposited in the state treasury and credited to the account, for distribution to municipalities in accordance with this act, pursuant to other legislation. A metropolitan area municipal equity account is hereby established in the state treasury.

Subd. 21. "Metropolitan council" or "council" means the metropolitan council created by Minnesota Statutes, Chapter 473B.

Subd. 22. "Levy" means the amount certified to the county auditor pursuant to Minnesota Statutes, Chapter 275, less all reductions made by the auditor pursuant to any provision of law in determining the amount to be spread against taxable property.

Sec. 3. [473F.03] ADMINISTRATIVE AUDITOR. Subdivision 1. On or before July 1 of 1972 and each subsequent even numbered year the auditors of the counties within the area shall meet at the office of the auditor of Hennepin county and elect from among their

...ber one auditor to serve as administrative auditor for a period of ... years and until his successor is elected. If a majority is unable ...gree upon a person to serve as administrative auditor, the state ...itor shall appoint him from among the auditors of the counties in ... area. If the administrative auditor ceases to serve as a county ...itor within the area during the term for which he was elected or ...inted, a successor shall be chosen in the same manner as is ...ided herein for the original selection, to serve for the unexpired ...m.

...Subd. 2. The administrative auditor shall utilize the staff and ...ities of the auditor's office of the county he serves to perform the ...ctions imposed upon him by this act. His county shall be ...bursed for the marginal expenses incurred by its county auditor ...his staff hereunder by contributions from each other county in ... area in an amount which bears the same proportion to the total ...enses as the population of the other county bears to the total ...lation of the area. The administrative auditor shall annually, ...r before February 1, certify the amounts of total expense for the ...eding calendar year, and the share of each county, to the ...surer of each other county. Payment shall be made by the ...surer of each other county to the treasurer of the county ...rring expense on or before the succeeding March 1.

Sec. 4. [473F.04] ASSESSED VALUATION; 1971. On or before ...ember 20, 1972, the assessors within each county in the area shall ...rmine and certify to the county auditor the assessed valuation in ... of commercial-industrial property subject to taxation within ... municipality in his county.

Sec. 5. [473F.05] ASSESSED VALUATION; 1972 AND SUBSEQUENT YEARS. On or before November 20 of 1972 and each ...quent year, the assessors within each county in the area shall ...rmine and certify to the county auditor the assessed valuation in ... year of commercial-industrial property subject to taxation ...in each municipality in his county.

Sec. 6. [473F.05] INCREASE IN ASSESSED VALUATION. ...re before November 20 of 1972 and each subsequent year, the ...or of each county in the area shall determine the amount, if any, ...hich the assessed valuation in that year of commercial-industrial ...erty subject to taxation within each municipality in his county ...eds the assessed valuation in 1971 of commercial-industrial ...erty subject to taxation within that municipality. If a municipality is located in two or more counties within the area, the auditors ...se counties shall certify the data required by sections 4 and 5 to ...unty auditor who is responsible under other provisions of law ...locating the levies of that municipality between or among the ...ral counties. That county auditor shall determine the amount of ...ax excess, if any, for the municipality under this section, and

...ges or additions indicated by underline, deletions by strikeout.

certify that amount under section 7. Notwithstanding any other provision of this act to the contrary, in the case of a municipality which is designated on the effective date of this act as a redevelopment area pursuant to Section 401(a) (4) of the Public Works and Economic Development Act of 1965, P.L. 89-136, the increase in the assessed valuation of commercial-industrial property for purposes of this section shall be determined in each year subsequent to the termination of such designation by using as a base the assessed valuation of commercial-industrial property in that municipality in the year following that in which such designation is terminated, rather than the assessed valuation of such property in 1971.

Sec. 7. [473F.07] COMPUTATION OF AREA-WIDE TAX BASE. Subdivision 1. Each county auditor shall certify the determinations pursuant to sections 4, 5, and 6 to the administrative auditor on or before November 20 of 1972 and each subsequent year. The administrative auditor shall determine the sum of the amounts certified pursuant to section 6, and divide that sum by two and one-half. The resulting amount shall be known as the "area-wide tax base for ..... (year)."

Subd. 2. The state auditor shall certify to the administrative auditor, on or before November 20 of 1972 and each subsequent year, the population of each municipality for the preceding year, the proportion of that population which resides within the area, the average fiscal capacity of municipalities for the preceding year, and the fiscal capacity of each municipality for the preceding year.

Subd. 3. The administrative auditor shall determine, for each municipality, the product of (a) its population, (b) the proportion which the average fiscal capacity of municipalities for the preceding year bears to the fiscal capacity of that municipality for the preceding year, and (c) two. The product shall be the area-wide tax base distribution index for that municipality, provided that (a) if the product in the case of any municipality is less than its population, the index shall be increased to its population, and (b) if a municipality is located partly within and partly without the area its index shall be that which is otherwise determined hereunder, multiplied by the proportion which its population residing within the area bears to its total population as of the preceding year.

Subd. 4. The administrative auditor shall determine the proportion which the index of each municipality bears to the sum of the indices of all municipalities. In the case of each municipality he shall then multiply this proportion by the area-wide tax base.

Subd. 5. The product of the multiplication prescribed by subdivision 4 shall be known as the "area-wide tax base for ..... (year) attributable to ..... (municipality)." The administrative auditor shall certify such product to the auditor of the county in which the municipality is located on or before November

Changes or additions indicated by underline, deletions by strikeout

Sec. 8. [473F.08] TAXABLE VALUE. Subdivision 1. The ...nty auditor shall determine the taxable value of each governmen... unit within his county in the manner prescribed by this section.

Subd. 2. The taxable value of a governmental unit is its ...essed valuation, as determined in accordance with other provisions ...law, subject to the following adjustments:

(a) There shall be subtracted from its assessed valuation, in each ...icipality in which the governmental unit exercises ad valorem ...ing jurisdiction, an amount which bears the same proportion to 40 ...cent of the amount certified in that year pursuant to section 6 in ...pect to that municipality as the total assessed valuation of ...mmercial-industrial property which is subject to the taxing juris... of the governmental unit within the municipality bears to the ...al assessed valuation of commercial-industrial property within the ...icipality;

(b) There shall be added to its assessed valuation, in each ...icipality in which the governmental unit exercises ad valorem ...ing jurisdiction, an amount which bears the same proportion to the ...-wide base for the year attributable to that municipality as the ...al assessed valuation of residential property which is subject to the ...ing jurisdiction of the governmental unit within the municipality ...rs to the total assessed valuation of residential property of the ...icipality.

Subd. 3. On or before November 30 of 1972 and each subsequent ..., the county auditor shall apportion the levy of each governmen... unit in his county in the manner prescribed by this subdivision. ...shall:

(a) Determine that portion of the levy which bears the same ...portion to the total levy as the amount set forth in subdivision 2, ...se (b), bears to the taxable value of the governmental unit; and

(b) Determine the excess of the levy over that portion of the levy ...rmined pursuant to clause (a).

Subd. 4. In 1972 and subsequent years, the county auditor shall ...de that portion of the levy determined pursuant to subdivision 3, ...se (b), by the assessed valuation of the governmental unit, less ...portion subtracted from assessed valuation pursuant to subdivi... 2, clause (a). The resulting rate shall apply to all taxable ...erty except commercial-industrial property, which shall be taxed ...ordance with subdivision 6.

Subd. 5. On or before November 30 of 1972 and each subsequent ... the county auditor shall certify to the administrative auditor ...portion of the levy of each governmental unit determined ...uant to subdivision 3, clause (a). The administrative auditor

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shall then determine the rate of taxation sufficient to yield ... amount equal to the sum of such levies from the area-wide tax b... On or before December 5 the administrative auditor shall certify ... rate to each of the county auditors.

Subd. 5a. If a governmental unit is located in two or m... counties, the computations and certifications required by subdivis... 3 to 5 with respect to it shall be made by the county auditor wh... responsible under other provisions of law for allocating its le... between or among the affected counties.

Subd. 6. The rate of taxation determined in accordance w... subdivision 5 shall apply in the taxation of each item of commerc... industrial property subject to taxation within a municipality to th... portion of the assessed valuation of the item which bears the s... proportion to its total assessed valuation as 40 percent of the am... determined pursuant to section 6 in respect to the municipality ... which the property is taxable bears to the amount determi... pursuant to section 5. The rate of taxation determined in acc... ance with subdivision 4 shall apply in the taxation of the remainder the assessed valuation of the item.

Subd. 7. On or before January 1 of 1973 and each subsequ... year, the administrative auditor shall certify to the state treasu... the amount of that portion of the levy made by each governme... unit set forth in subdivision 3, clause (a). Each county treas... shall remit all tax payments computed pursuant to subdivision ... the state treasurer not later than 20 days before the times prescri... by Minnesota Statutes, Chapter 276, for the apportionment ... distribution of tax revenues by county treasurers. The state t... surer shall deposit such payments to the credit of the area-wide ... account, which is hereby created. Marginal expenses incurred by ... state treasurer under this section, and all refunds of tax receipts into the account, shall be paid from the account, and all inte... earned on moneys in the account shall be credited to the account. ... the distributions under subdivision 8 shall be adjusted proportion... to reflect expense payments and interest income and reduce ... reflect the payment of each refund in amounts proportionate to ... distributions received in the year the tax was paid.

Subd. 8. The state treasurer shall apportion and distri... amounts received by him pursuant to subdivision 7 to the co... treasurer having jurisdiction of each governmental unit ent... thereto as shown by the certification to him in accordance ... subdivision 7. The apportionment and distribution shall be made ... the manner and not later than ten days before the times pres... by Minnesota Statutes, Chapter 276, for the apportionment ... distribution of tax revenues by county treasurers. Each co... treasurer shall include the amounts thus received in his distrib... pursuant to Chapter 276. Amounts necessary for distribu...

funds and payment of administrative expenses under this act are hereby appropriated.

Subd. 9. If the payment of any tax attributable to the area-wide tax base is delinquent, the county treasurer to whom said tax is payable shall promptly notify the state treasurer of the failure of payment. The state treasurer shall deduct the amount of the delinquency from his distributions to the county entitled to receive payment from the taxpayer. If the tax is subsequently paid or collected, the amount so paid or collected shall be retained by the county and distributed by it to the governmental units whose distributions were reduced pursuant to this subdivision by reason of the delinquency in the amount of such reduction.

Subd. 10. For the purpose of computing the amount or rate of any salary, aid, tax, or debt authorized, required, or limited by any provision of any law or charter, where such authorization, requirement, or limitation is related in any manner to any value or valuation of taxable property within any governmental unit, such value or valuation shall be adjusted to reflect the adjustments to valuation effected by subdivision 2, provided that: (1) in determining the market value of commercial-industrial property or any class thereof within a governmental unit for any purpose other than section 7, (a) the reduction required by this subdivision shall be that amount which bears the same proportion to the amount subtracted from the governmental unit's assessed valuation pursuant to subdivision 2, clause (a), as the market value of commercial-industrial property, or such class thereof, located within the governmental unit bears to the assessed valuation of commercial-industrial property, or such class thereof, located within the governmental unit, and (b) the increase required by this subdivision shall be that amount which bears the same proportion to the amount added to the governmental unit's assessed valuation pursuant to subdivision 2, clause (b), as the market value of commercial-industrial property, or such class thereof, located within the governmental unit bears to the assessed valuation of commercial-industrial property, or such class thereof, located within the governmental unit; and (2) in determining the market value of property within a municipality for purposes of section 7, the adjustment prescribed by clause (1)(a) hereof shall be made and that prescribed by clause (1)(b) hereof shall not be made.

Subd. 11. For the purposes of computing distributions under Minnesota Statutes, Section 273.69, the property tax levy imposed on all taxable property for the purpose of a governmental unit, referred to therein, shall be deemed to consist of the levy of that governmental unit, as defined in section 2, subdivision 22, irrespective of the extent to which levies are spread against the area-wide tax base pursuant to this section.

Words or additions indicated by underline, deletions by strikeout.

Sec. 9. [473F.09] ADJUSTMENTS IN DATES. If, by reason of the enactment of any other law, the date by which the commissioner of taxation is required to certify to the county auditors the records or proceedings affecting the assessed valuation of property is advanced to a date earlier than November 15, the dates specified in sections 3 through 7 and 10 may be modified in the years to which such other law applies in the manner and to the extent prescribed by the administrative auditor.

Sec. 10. [473F.10] REASSESSMENTS AND OMITTED PROPERTY. Subdivision 1. If the commissioner of taxation orders a reassessment of all or any portion of the property in a municipality other than in the form of a mathematically prescribed adjustment of valuation, or if omitted property is placed upon the tax rolls, and the reassessment has not been completed or the property placed upon the rolls, as the case may be, by November 15, the assessed valuation of the affected property shall, for purposes of sections 3 to 8, be determined from the abstracts filed by the county auditor with the commissioner of taxation.

Subd. 2. If the reassessment, when completed and incorporated by the commissioner of taxation in his certification of the assessed valuation of the municipality, or the listing of omitted property, when placed on the rolls, results in an increase in the assessed valuation of commercial-industrial property in the municipality which differs from that used, pursuant to subdivision 1, for purposes of sections 3 to 8, the increase in the assessed valuation of commercial-industrial property in that municipality in the succeeding year, as otherwise computed under section 6, shall be adjusted in a like amount, by an increase if the reassessment or listing discloses a larger increase than was used for purposes of sections 3 to 8, or by a decrease if the reassessment or listing discloses a smaller increase than was used for those purposes, provided that no adjustment shall reduce the amount determined under section 6 to an amount less than zero.

Subd. 3. Subdivisions 1 and 2 shall not apply to the determination of the tax rate under section 8, subdivision 4, or to the determination of the assessed valuation of commercial-industrial property and each item thereof for purposes of section 8, subdivision 6.

Sec. 11. [473F.11] LATE LEVIES. Subdivision 1. If a governmental unit does not certify its levy to the county auditor by November 25, then for purposes of section 8, subdivision 3, clause (a), and section 8, subdivision 5, its levy shall be deemed to equal its levy in the preceding year.

Subd. 2. If a governmental unit certifies its levy to the county auditor on or before November 25, no change in its levy subsequent to that date shall be recognized for purposes of section 8, subdivision 3, clause (a), and section 8, subdivision 5.

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Subd. 3. Subdivisions 1 and 2 shall not apply to section 8, subdivision 3, clause (b), and section 8, subdivision 4.

Subd. 4. If, in any year, the levy employed in respect to a governmental unit, for purposes of section 8, subdivision 3, clause (a), of section 8, subdivision 5, is determined under subdivision 1 or subdivision 2, and its actual levy as determined subsequent to December 25 is a different amount, then its levy as otherwise determined in the succeeding year shall, for purposes of those provisions, be increased in the amount of the difference if the actual levy was greater than that employed for purposes of those provisions, decreased in the amount of the difference if the actual levy was less than that employed for purposes of those provisions.

Sec. 12. [473F.12] DISTRIBUTIONS FROM MUNICIPAL EQUITY ACCOUNT. Subdivision 1. The sums deposited in the state treasury to the credit of the municipal equity account and all interest earned thereon shall be distributed to qualifying municipalities in the manner provided by this section. Amounts so distributed shall be expended by each municipality in the manner determined by its governing body consistently with other statutory and charter provisions.

Subd. 2. On September 1 of 1971 and each subsequent year, the state auditor shall estimate the total amount available for distribution to municipalities from the municipal equity account during the subsequent calendar year. The amount so estimated shall be the sum of the estimated balance in the account on November 15 of the year in which the estimate is made, the estimated deposits to the credit of the account thereafter through November 15 of the subsequent year, and interest earned by the fund over the 12 month period. The amount to be distributed to each qualifying municipality shall be the amount determined in accordance with subdivision 3, except that (a) if the sum of the amounts so determined differs from the total amount estimated to be available for distribution, the amount of the distribution to each municipality shall be adjusted proportionately, and (b) the amount to be distributed to each qualifying municipality, after any adjustment prescribed by clause (a), shall not be less than $9, or, if the total amount estimated to be available for distribution is less than $10 millions, that proportion of $9 which equals the proportion which the total amount estimated to be available for distribution bears to $10 millions, multiplied by the population of the municipality residing within the area as determined for the year preceding that in which the estimate is made. To the extent that the distributions to any municipality or group of municipalities are adjusted pursuant to clause (b), the distributions to other municipalities shall be adjusted proportionately in amounts sufficient to make the total of the distributions to all municipalities equal the total amount estimated to be available for distribution. The state auditor shall notify the governing body of each qualifying

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municipality of the amount so determined with respect to the municipality before September 20.

Subd. 3. The amount of the distribution to each qualifying municipality is the product of its fiscal effort for the year preceding that in which the estimate is made and the excess of base adjusted fiscal capacity for municipalities for the preceding year over the adjusted fiscal capacity of the municipality for the preceding year. If a qualifying municipality is located partly within and partly without the area, its distribution shall be that which is otherwise determined hereunder, multiplied by the proportion which its population residing within the area bears to its total population as of the year preceding that in which the estimate is made.

Subd. 4. On or before each of the dates June 15 and November 15 of 1972 and each subsequent year, the state auditor shall issue a warrant in favor of the treasurer of each qualifying municipality in an amount equal to one half the amount determined by the state auditor to be due the municipality in that year under the terms of subdivision 2. There is hereby appropriated from the municipal equity account, to each municipality entitled to payments authorized by this section, sufficient moneys to make such payments.

Sec. 13. [473F.13] CHANGE IN STATUS OF MUNICIPALITY. Subdivision 1. If a qualifying municipality is dissolved, consolidated with all or part of another municipality, annexes territory, has a portion of its territory detached from it, or is newly incorporated, the secretary of state shall immediately certify the fact to the state auditor. The secretary of state shall also certify to the state auditor the current population of the new, enlarged, or successor municipality, if determined by the municipal commission incident to consolidation, annexation, or incorporation proceedings. The population so certified shall govern for purposes of this act until the metropolitan council files its first population estimate as of a later date with the state auditor. If an annexation of unincorporated land occurs without proceedings before the municipal commission, the population of the annexing municipality as previously determined shall continue to govern for purposes of this act until the metropolitan council files its first population estimate as of a later date with the state auditor.

Subd. 2. The amount of each distribution from the municipal equity account shall reflect the status of municipalities as certified by the state auditor on September 1 of the year preceding that in which the distribution is made. If the status of a municipality thereafter changes before the distribution is made, the distribution shall be made to the successor municipality or municipalities. If there are two or more successors, the distribution shall be apportioned among them in accordance with Minnesota Statutes, Section 414.037.

Subd. 3. In determining the locally raised revenues or market ue of property attributable to a successor municipality for a year or to a change in status, such amount shall be deemed the sum of e amounts of its predecessor municipalities and towns. If any of e predecessors were divided incident to the change, then for poses of this act its locally raised revenues shall be apportioned ong its successors in proportion to the division of population ween them, and the market value of property located therein shall allocated to the successor in which the property is located.

Approved July 23, 1971.

EXTRA SESSION

CHAPTER 25—H.F.No.212

[Coded]

An act relating to employment; authorizing the state, its ernmental subdivisions and other public instrumentalities to ploy certain persons in accordance with a federal emergency ployment act.

it enacted by the Legislature of the State of Minnesota:

Section 1. [15.61] FEDERAL EMERGENCY EMPLOYMENT T; EMPLOYMENT OF PERSONS BY STATE. Subdivision 1. state of Minnesota, its departments, agencies and instrumentali- and any county, city, village, borough, town, school district or r body corporate and politic, may employ unemployed and employed persons as defined in the federal Emergency Employ- t Act of 1971 pursuant to and in accordance with the terms of act.

Subd. 2. The provisions of Minnesota Statutes 1969, Sections 5 to 197.48 and 43.30 and any other law or ordinance relating to erence in employment and promotion of persons having served in armed services, the provisions of any civil service law, ule or ation, the provisions of any city charter or any ordinance or ation, or the provisions of any other law or statute in conflict the provisions of the federal Emergency Employment Act of shall not be applicable to the employment of the persons ed in subdivision 1.

Subd. 3. The provision of any law limiting the complement of state department or agency is not applicable to persons employed

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HB 87

Note: Minnesota's Metropolitan Fiscal Disparities Act—An Experiment in Tax Base Sharing

The problem of fiscal disparities within a metropolitan area[1] is essentially one of inequalities in the taxable resources available to each of the various political subdivisions that compose the metropolis. It is a problem of relatively recent development. At one time, the taxable resources of most central cities were more or less balanced, consisting of commerce and industry as well as the residences of people of varying income levels. Although these various land uses were generally concentrated in different neighborhoods, the city itself was large enough to contain them all and thus to allow the rich areas to subsidize the poorer ones. After development reached the borders of the central city, however, growth began to occur within political subdivisions in the surrounding countryside—suburban municipalities which were generally smaller and more homogeneous than the central city, and which tended to be either rich or poor in terms of taxable resources. At the same time, the central city came to shelter an increasing proportion of the less-advantaged while it lost both industry and residences of the more affluent to the suburbs. In short, the sharing of taxable resources that once was possible within the confines of the central city has today become impossible because of the increasing political fragmentation of the metropolis.[2] This in turn has given rise to one aspect of today's much decried urban fiscal crisis.

The Metropolitan Fiscal Disparities Act[3] represents Minne-

1. Many terms used in this Note to denote a community or political subdivision will be used in a narrow, technical fashion. "Metropolis" or "metropolitan area" will be used to mean the overall seven-county area to which the Metropolitan Fiscal Disparities Act applies. *See* note 4 *infra*. Within this area are "governmental units" and "municipalities," both of which are defined by the Act. "'Governmental unit' means a county, city, town, school district, or other taxing unit or body which levies ad valorem taxes in whole or in part within the [seven-county] area." MINN. STAT. § 473F.02(5) (1974). A governmental unit is thus a taxing body. "'Municipality' means a city, town, or township located in whole or part within the [seven-county] area." *Id.* § 473F.02(3). *See also* notes 42-43 *infra* and accompanying text.

2. *See* U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, URBAN AMERICA AND THE FEDERAL SYSTEM 9-13 (1969) [hereinafter cited as URBAN AMERICA].

3. MINN. STAT. ch. 473F (1974).

sota's attempt to partially alleviate the financial imbalance among certain of its metropolitan municipalities. The Act applies to a seven-county area that includes the central cities of St. Paul and Minneapolis and their suburbs.[4] Under the Fiscal Disparities Act, all local governmental units in this seven-county area share a portion of the growth in the area's commercial-industrial[5] tax base. It is the purpose of this Note to investigate the workings and constitutionality of the Act, as well as to critically analyze the effect of the Act on the provision of public services[6] and the development of the seven-county area.[7]

I. THE PROBLEM OF FISCAL DISPARITIES

A "fiscal disparity" exists between two or more governmental units when they have unequal abilities to generate revenue. Since local governments in Minnesota generate their revenues primarily through an ad valorem tax upon real property,[8] the

4. The Act applies to the seven counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington, which cover almost 3000 square miles and contain approximately two million people. Within this area lies a diverse sampling of municipalities, including central cities, balanced cities, dormitory suburbs, and commercial-industrial areas. *See* J. MARGOLIS, W. HELLER & N. GLICKMAN, METROPOLITAN FISCAL DISPARITIES: PROBLEMS AND POLICIES 5-1 to 5-5 (1971) [hereinafter cited as MARGOLIS]. The various and oftentimes overlapping political subdivisions include 137 cities, 52 townships, 49 school districts, 7 counties, and numerous special purpose governmental units.

5. "Commercial-industrial property" is defined in MINN. STAT. § 473F.02(3) (1974). Basically, it is property which is either used or zoned for any commercial or industrial purpose. Apartment buildings, however, are not included. *Id.* § 473F.02(3)(d).

6. The term "public services" will be used to denote those services that local governmental units normally provide, such as fire and police protection, water and sewer service, and education.

7. This Note will not, however, discuss the portions of the Act that provide for a municipal equity account. Those provisions establish a formula whereby funds appropriated pursuant to other state legislation may be distributed to municipalities in the seven-county area. *See* MINN. STAT. §§ 473F.01(7), .02(9), (11), (16)-(20), .12, .13 (1974). But the provisions for this account are essentially unrelated to the rest of the Act.

8. *See* MINNESOTA LEGISLATURE SUBCOMM. ON FISCAL DISPARITIES OF HOUSE COMM. ON METROPOLITAN AND URBAN AFFAIRS, FINAL REPORT, 1969-70 INTERIM 1-2 (1971) [hereinafter cited as HOUSE REPORT]. In recent years, the Minnesota legislature has attempted to partially relieve both citizens and local governments from the burdens of local property taxes by using state income tax revenues as a source for increased state aid to school districts and local governments. *See* MINN. STAT. § 124.212 (1974); *id.* § 477A.01 *et seq.* The governor's proposals for the 1975-77 budget indicate that this form of state aid will continue to increase. *See* Minneapolis Tribune, Jan. 17, 1975, § B, at 10, cols. 3-4. As to the

taxable resources available to these governmental units are heavily dependent on the assessed valuation of the real property located within their borders. As indicated earlier,[9] however, political fragmentation of a metropolitan area results in the area's property tax base being divided rather arbitrarily among the various governmental units.[10] Fiscal disparities may thus arise when the per capita assessed valuation of real property differs between two of these governmental units; a unit with a high fiscal capacity[11] can tax itself at a low rate and still generate the same revenue per capita that a poorer municipality will generate with a high tax rate.[12] This situation has had two major effects: inequities in the provision of public services, and im-

efficacy of this form of state aid in providing relief to local governmental units, see note 125 *infra*.

9. *See* text accompanying note 2 *supra*.

10. *See* San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1, 53-54 (1973). In addition, local political subdivisions do not necessarily correspond to the areas benefiting from the public services that a particular governmental unit provides. *See* note 19 *infra*.

11. "Fiscal capacity is a quantitative measure intended to reflect the resources which a taxing jurisdiction can tax to raise revenue for public purposes." U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, MEASURES OF STATE AND LOCAL FISCAL CAPACITY AND TAX EFFORT 3 (1962) [hereinafter cited as MEASURES]. The Act defines a municipality's fiscal capacity to be the market value of all real property within its jurisdiction divided by its population. MINN. STAT. § 473F.02(13), (14) (1974).

The fact that two municipalities have equal fiscal capacities, however, does not necessarily mean that they will provide the same level of public services. There are many factors besides the total available resources that affect the ability and inclination of taxpayers to seek a particular level of services from their local government; these factors include other demands which may be made upon the available resources, the taxpayers' perception of the fairness and reasonableness of the tax, the taxpayers' preference for public services, the nature of the local decisionmaking process, and the composition of the local tax base and population. *See* MARGOLIS, *supra* note 4, at 3-1 to 3-3; MEASURES, *supra*; Note, *A Statistical Analysis of the School Finance Decisions: On Winning Battles and Losing Wars*, 81 YALE L.J. 1303, 1315 (1972) [hereinafter cited as *A Statistical Analysis*]. Differences in the per capita costs of public services will also affect the level of the services that a governmental unit can provide. *See* note 112 *infra*.

The fiscal capacity of a municipality within the seven-county area and the assessed valuation of its commercial-industrial property appear to be directly related. Brief for Appellants at 25-26, Add-31, Village of Burnsville v. Onischuk, 222 N.W.2d 523 (Minn. 1974), *appeal dismissed*, 420 U.S. 916 (1975). *See also* MARGOLIS, *supra* note 4, at 5-6 to 5-7 (noting that the central cities may be the one exception to this relationship).

12. Brief for Appellants at 23-28, Add-31, Village of Burnsville v. Onischuk, 222 N.W.2d 523 (Minn. 1974), *appeal dismissed*, 420 U.S. 916 (1975); URBAN AMERICA, *supra* note 2, at 7-13.

balance in the development of the seven-county metropolitan area.

It is apparent that in the seven-county area there is a direct relationship between a municipality's fiscal capacity and its per capita expenditures for public services.[13] Significant differences in fiscal capacity,[14] however, cannot be readily compensated for by increases in the tax rate of the poorer municipalities.[15] Thus, a preference for a certain level of public services within a municipality will not always control; relative wealth must also be considered. If the position is accepted that equal tax efforts should result in commensurate yields to the taxing units, inequities in either the public services provided or the tax burdens borne are manifestly unfair.[16]

The resulting unfairness to the taxpayer becomes even more apparent when it is recognized that the more or less arbitrary

13. *See* Brief for Appellants at 26-28. Add-31, Village of Burnsville v. Onischuk, 222 N.W.2d 523 (Minn. 1974), *appeal dismissed*, 420 U.S. 916 (1975); METROPOLITAN COUNCIL, THE IMPACT OF FISCAL DISPARITY ON METROPOLITAN MUNICIPALITIES AND SCHOOL DISTRICTS 15 (1971) [hereinafter cited as METROPOLITAN COUNCIL]. *See generally* Netzer, *Federal, State, and Local Finance in a Metropolitan Context*, in ISSUES IN URBAN ECONOMICS 435, 442 (1968) [hereinafter cited as Netzer]. *Cf. A Statistical Analysis*, *supra* note 11, at 1329.

14. In the seven-county area, fiscal capacity may vary between municipalities by a ratio of as much as three to one. *See* Brief for Appellants at 22. Add-31, Village of Burnsville v. Onischuk, 222 N.W.2d 523 (Minn. 1974), *appeal dismissed*, 420 U.S. 916 (1975); HOUSE REPORT, *supra* note 8, at 1. *Cf.* CITIZENS LEAGUE FISCAL DISPARITIES COMM., BREAKING THE TYRANNY OF THE LOCAL PROPERTY TAX 8 (1969) [hereinafter cited as CITIZENS LEAGUE].

15. A governmental unit may encounter legal restraints on the tax levy it can set, because the Minnesota legislature, in an effort to provide property tax relief, has placed significant limitations on such levies. MINN. STAT. § 275.125 (1974) (school districts); *id.* §§ 275.50-.59 (counties, cities, and towns). If a statutory limit is exceeded, the governmental unit will lose state funds. *See id.* §§ 275.125(4), .51(4). The limit, however, may be increased by a referendum within the governmental unit. *Id.* §§ 275.125(2a)(3), .59.

Regardless of statutory limitations, a substantial increase in the tax rate is almost always an unpopular political course. Even if politically feasible, this course of action may prove ineffective—if the increased tax burdens are greater than anticipated relocation costs, the more mobile portion of the local tax base may move to a municipality with a lower tax rate. *See* URBAN AMERICA, *supra* note 2, at 13. Similarly, individuals and businesses giving consideration to locating in the municipality may be deterred by the increased tax rate, thereby exacerbating the problem of a small local tax base.

16. *See* Comment, *Ad Valorem Financing of Law Enforcement Services: An Equitable Solution to an Inequitable Condition*, 19 U.C.L.A.L. REV. 59, 63-66 (1971) [hereinafter cited as *Ad Valorem Financing*].

political fragmentation of the seven-county metropolitan area fails to reflect the social and economic interdependence of the area.[17] That interdependence is evidenced by the considerable intercommunity travel within the area,[18] and by the presence of local governmental "spillovers."[19] Commercial and industrial enterprises, generally staffed and patronized at least in part by nonresidents of the municipality in which the enterprise is located, are especially likely to be of a metropolitan character.[20]

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17. For a discussion of the interdependence of the seven-county area, see MARGOLIS, *supra* note 4, at 1-1. It should be noted that as a metropolitan area develops and subcenters emerge in surrounding areas, the economic interdependence of the area as a whole will decline. *See* Netzer, *supra* note 13, at 472-73. The problem of fiscal disparities will remain, however, since commercial and industrial development will continue to concentrate in certain municipalities. *See* Minneapolis Tribune, July 16, 1971, § A, at 5, cols. 1-2 (65 percent of new commercial-industrial tax base to locate in 15 percent of the metropolitan area over the next 25 years). *See also* note 32 *infra*.

18. *See* Brief for Appellants at 19-21, Village of Burnsville v. Onischuk, 222 N.W.2d 523 (Minn. 1974), *appeal dismissed*, 420 U.S. 916 (1975). For example, approximately one-half of the persons employed in the metropolitan area reside in a county other than the one in which they work, and one-third of all trips in the area begin and end in different counties. *Id.*

19. "Spillovers" can be defined as the benefits or detriments one community receives as a result of another's action or inaction. *See* Note, *Metropolitan Government: Minnesota's Experiment with a Metropolitan Council*, 53 MINN. L. REV. 122, 123 (1968) [hereinafter cited as *Metropolitan Government*]. Thus, when political boundaries do not coincide with the area benefited by a particular public service, either benefit or cost spillovers may result. *Benefit* spillovers can be of two types: nonresidents may enter the community and make use of local services; or the nature of the service itself may affect other areas or follow a resident if he leaves the community. Note, *Equalization of Municipal Services: The Economics of* Serrano *and* Shaw, 82 YALE L.J. 89, 99 (1972) [hereinafter cited as *Municipal Services*]. Examples of the latter type of benefit spillover are preventive health care and education. *Cost* spillovers are similar in form, as when local taxes are shifted to nonresidents or when the pollution created in one community contaminates the environment of an adjoining community.

Spillovers tend to be the rule in metropolitan areas, *see* U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, STATE AID TO LOCAL GOVERNMENT 6-7 (1969) [hereinafter cited as STATE AID], and are likely to increase with technological change and growing consumer demands. Netzer, *supra* note 13, at 472-73.

The presence of spillovers alone does not mandate tax reform, however, since they may balance out between municipalities or their effects may be reduced via user charges, intergovernmental transfers, or redefined political boundaries. *See Municipal Services*, *supra*.

20. An example is the Southdale shopping center, located in Edina, a Minneapolis suburb. It is patronized not only by Edina residents, but also by residents of Minneapolis and other area suburbs. The property taxes that Southdale contributes to local governmental units are thus

To the extent that such property increases the fiscal capacity of a particular municipality, it does so in part through the contributions of nonresidents. Thus the taxable property that is scattered among the municipalities of the seven-county area is in this sense a metropolitan tax base. If this social and economic interdependence of the seven-county area is accepted, then clearly the different costs to taxpayers of the public services provided by various municipalities stems not from any inherent differences in the taxpayers' situations, but only from the circumstance of their location in municipalities of different fiscal capacities.

The other major problem raised by the presence of fiscal disparities within the metropolitan area is that of imbalance in the development of the area. The decision of an industrial firm to locate in a particular municipality within the metropolitan area can be influenced by a number of factors, notably tax rate differentials,[21] the ability of a local government to negotiate pref-

borne in part by nonresident shoppers. Admittedly, the municipality may have to provide additional public services to the area because of the presence of the shopping center; but the surplus in excess of such costs that accrues to the municipality will be funded in part by nonresidents.

Similarly, a factory may locate in a municipality, thereby increasing that municipality's fiscal capacity, while its employees will establish residence elsewhere. The governmental units in which the employees live thus face increased costs, particularly for the education of the employees' children, without benefit of any corresponding increase in their industrial tax base.

21. *See* U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, STATE-LOCAL TAXATION AND INDUSTRIAL LOCATION 68-70 (1967) [hereinafter cited as STATE-LOCAL TAXATION]. Nontax factors, such as location of raw materials, markets, and labor, tend to be more influential in the firm's selection of a particular region—as distinguished from a site within the region. *Id.*

22. *See* URBAN AMERICA, *supra* note 2, at 12. The traditional taxing system has encouraged preferential tax treatment, *see* HOUSE REPORT, *supra* note 8, at 6, in that there is considerable pressure on local assessors to offer such treatment, *see* STATE-LOCAL TAXATION, *supra* note 21, at 85. The ability of Minnesota municipalities to offer preferential assessment was reduced, however, by 1971 legislation providing that assessors be certified by the State Board of Assessors. MINN. STAT. §§ 270.41, .48, .50 (1974). Furthermore, a State Board of Equalization was established to review assessments. *Id.* § 270.12. *See also id.* §§ 274.01, .13 (review by city council and County Board of Equalization). Because of the difficulty in determining the market value of business property, however, U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, FINANCING SCHOOLS AND PROPERTY TAX RELIEF—A STATE RESPONSIBILITY 71, 73 (1973) [hereinafter cited as FINANCING SCHOOLS], the possibility of preferential assessments still exists.

erential assessments,[22] and the provision of public services.[23] The possibility of augmenting their respective fiscal capacities by attracting new industry through a manipulation of these factors causes "keen competition" among the municipalities of the metropolitan area.[24]

This competition manifests itself on both a local and a regional plane. At the local level, the initial decision on the appropriateness of a given development within the municipality tends to be based on an analysis of whether the tax revenue to be gained from that development will exceed the cost of providing the necessary public services to it.[25] At the regional level, municipalities strive to influence the location or nature of area-wide development so as to derive the greatest possible improvement in their fiscal capacities; this improvement in fiscal capacity may be sought regardless of safety, environmental, or other considerations.[26] On the other hand, individual municipalities resist the location within their borders of developments which will redound to the benefit of the entire metropolitan area, but which will not contribute to the local tax base.[27] In attempting to allocate local land use so as to maximize the tax advantage of their municipality, local officials may thus forgo or resist de-

23. *See* STATE-LOCAL TAXATION, *supra* note 21, at 71-75.

24. *Id.* at 70. *See also* URBAN AMERICA, *supra* note 2, at 12 ("cut-throat intergovernmental competition").

25. *See* MARGOLIS, *supra* note 4, at 2-22; *Metropolitan Government*, *supra* note 19, at 126. Regulating development on this basis is termed "fiscal zoning." Netzer, *supra* note 15, at 473. Its effect is most pronounced when the municipality is confined to a small geographic area. *Id.*

The usual tactic for discouraging unwanted development within the municipality is exclusionary zoning. CITIZENS LEAGUE, *supra* note 14, at 5. If, on the other hand, the development under consideration would be an economic asset to the municipality, its growth may be encouraged by offering preferential assessments, *see* HOUSE REPORT, *supra* note 8, at 6, or by extending water and sewer facilities to the intended site, *see* Margolis, *The Demand for Urban Public Services*, in ISSUES IN URBAN ECONOMICS 527, 535 (1968).

26. For example, although municipalities have little hope of influencing the location of a freeway, they may have some effect on the number and location of freeway interchanges. The more interchanges a municipality has within its boundaries, the more access it can offer to local commercial or industrial development. A concern for traffic safety, however, might call for widely spaced interchanges, thus running counter to the economic interests of local communities. *See* HOUSE REPORT, *supra* note 8, at 4-5.

27. For example, parks, open spaces, and wetlands might well be sacrificed if balanced in the calculus of only one municipality, whereas they would perhaps be preserved if the interest of the seven-county area as a whole were to be considered. *See id.* at 3-4.

velopment that might be highly desirable from the viewpoint of noneconomic considerations.

As a result of this competition for a more productive tax base, the seven-county area has suffered haphazard and inefficient development. Municipal ordinances designed to improve a municipality's fiscal capacity force developers who do not meet prescribed standards to move farther away from the center of the area. This contributes to urban sprawl and high public service costs in remote areas,[28] while undeveloped land nearer to the central cities and already fully furnished with public services is available.[29] Furthermore, tax considerations hinder the consolidation and annexation of some of the myriad governmental units in the seven-county area,[30] thereby precluding economies of scale in the provision of public services. Consequently, the interest of municipalities in improving their fiscal capacities conflicts with what might be regarded as optimal regional development.

Under a traditional taxing system, therefore, municipalities have little incentive to cooperate with a regional development plan that conflicts with their interest in maximizing fiscal capacities. Yet the need for a regional development plan is evidenced by the legislative mandate to the Metropolitan Council[31] to co-

28. CITIZENS LEAGUE, *supra* note 14, at 5-6.

29. In 1973, 41 percent of the 562 square miles in the seven-county area served by existing sewer systems was vacant land, suitable for development. METROPOLITAN COUNCIL, METROPOLITAN DEVELOPMENT FRAMEWORK INTERIM POLICIES 9 (1974) (similar figures for storm sewers and public water reported to be 34 percent and 35 percent, respectively). A Metropolitan Council staff report estimated that two billion dollars in development costs could be saved through 1990 by planning the area's growth so as to utilize undeveloped land within the area. *See* METROPOLITAN COUNCIL, METROPOLITAN DEVELOPMENT GUIDE, ch. Development Framework, at 3-4 (1974) [hereinafter cited as METROPOLITAN DEVELOPMENT GUIDE]; METROPOLITAN COUNCIL OF THE TWIN CITIES AREA, NEWSLETTER, Aug. 1974, at 1.

30. For example, one obstacle to consolidation or annexation is usually the reluctance of a richer governmental unit to share its tax base with a poorer unit. *See* CITIZENS LEAGUE, *supra* note 14, at 3-4.

31. The Metropolitan Council was created by MINN. STAT. ch. 473B (1974). *See generally* S. BALDINGER, PLANNING AND GOVERNING THE METROPOLIS—THE TWIN CITIES EXPERIENCE (1971); *Metropolitan Government*, *supra* note 19. The Council is responsible for providing a Development Guide for the seven-county area, *see* note 33 *infra*, and for coordinating the functions of various commissions that provide certain services in the seven-county area. *See* MINN. STAT. §§ 473B.06(5a), .062 (1974) (Council's powers); *id.* §§ 473A.051(2), .06(1a) (transit); *id.* §§ 473C.01, .06 (sewage); *id.* § 473D.03 (solid waste disposal); *id.* § 473G.04 (1) (metropolitan parks and open space). The Council also has the power to review the long-term, comprehensive plans of independent

ordinate and plan development for the seven-county area.[32] Without some tax reform, however, the Council might expect to encounter serious opposition to its Development Guide[33] from municipalities that would be economically injured by its implementation.[34] Thus, some way of reducing the impact of fiscal disparities on area development and the provision of public services was necessary in order to allow development in accordance with a regional plan. It is this need which the Fiscal Disparities Act attempts to meet.

II. THE FISCAL DISPARITIES ACT

A. History and Operation of the Act

In 1971, the Minnesota legislature after stormy debate[35]

commissions if those plans may have an area-wide or multi-community effect, or a substantial effect on metropolitan development. *Id.* § 473B.06(6).

32. For example, the Council has adopted the policy that commercial and industrial growth should be clustered in several major, diversified centers, rather than being scattered throughout the metropolitan area. Metropolitan Development Guide, *supra* note 29, at 8-9, 16-17, 31. In this respect, the Fiscal Disparities Act promotes the Council's plans by reducing the competitive need for such development to occur in a particular community, while avoiding the otherwise inequitable result of concentrating the commercial-industrial tax base in only a few localities. *See* notes 16-20 *supra* and accompanying text.

33. Minn. Stat. § 473B.06(5) (1974) requires the Council to produce a Development Guide for the seven-county area. The Guide will establish general policies for the area's growth. *See generally* Freilich & Ragsdale, *Timing and Sequential Controls—The Essential Basis for Regional Planning: An Analysis of the New Directions for Land Use Control in the Minneapolis-St. Paul Metropolitan Region*, 59 Minn. L. Rev. 1009 (1974). Different levels of government share the planning and implementation responsibilities for the Guide's Development Framework; local governmental units originate plans which must accord with the general policies established by the Council. *See* Metropolitan Development Guide, *supra* note 29, at 10-12, 39-43. *See also* note 104 *infra*.

34. *See* Citizens League, *supra* note 14, at 6; House Report, *supra* note 8, at 2. *See also* notes 31-32 *supra*.

35. The bill passed the senate by one vote. Of the 31 senators who voted against the bill, 12 were from the seven-county area and 19 were from outstate Minnesota. Minneapolis Tribune, June 2, 1971, § A, at 1, cols. 2-6, at 4, cols. 4-5. Final passage in the house was by a vote of 83 to 39, with 13 of the opponents representing districts within the seven-county area. Minneapolis Tribune, July 16, 1971, § A, at 1, cols. 4-8, § C, at 5, cols. 5-8.

Suburban opponents feared that the bill would lead to loss of the local tax base, reduction of incentives to attract commercial development, and adoption of a metropolitan government. *See id.*, § A, at 1, col. 8; Minneapolis Tribune, June 2, 1971, § A, at 1, col. 4. The Act was also

passed the Metropolitan Fiscal Disparities Act,[36] which provides a method of reducing fiscal disparities within the seven-county area while retaining existing governmental and tax structures. The Act, which nominally[37] went into operation in 1972, was greeted with national acclaim as both an innovative and a realistic approach to metropolitan problems.[38] Some skepticism has been expressed, however, as to whether the Act will ultimately be effective.[39]

The basic concept of the Fiscal Disparities Act is tax base sharing. In particular, the Act implements a plan whereby 40 percent of the commercial-industrial growth in the seven-county area since 1971 is to be shared by all governmental units levying property taxes within the area. The Act places no restrictions on where or how the shared funds can be spent by the recipient governmental units, although it does state six objectives which it is hoped the tax base sharing will accomplish.[40] The Act, moreover, does not fundamentally change the

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said to have virtually insurmountable administrative problems. *See* Minneapolis Tribune, July 16, 1971, § A, at 1, col. 3.

Rural legislators who opposed passage of the Act feared that it would be expanded to the entire state. *Id.* At the time, such expansion of the plan was politically unfeasible, although the State Planning Agency did consider the option, finding that the outstate tax base was insufficient to render the plan economically feasible. *See* J. HOYT & D. NELSON, A REPORT ON REGIONAL TAX BASE SHARING 4 (1973).

36. Minn. Laws Extra Sess. 1971, ch. 24 (codified at MINN. STAT. ch. 473F (1974)). The concept of tax base sharing for the seven-county area, now embodied in the Act, originated with the Citizens League. *See generally* CITIZENS LEAGUE, *supra* note 14.

37. The first assessments under the Act were required to be completed and certified to the appropriate county auditor by November 20, 1972. MINN. STAT. §§ 473F.04, .05 (1974). Operation of the Act was enjoined by a Minnesota district court, however, on the ground that it violated the uniformity clause of the Minnesota Constitution. This decision was reversed by the Minnesota Supreme Court on September 13, 1974. Village of Burnsville v. Onischuk, 222 N.W.2d 523 (Minn. 1974), *appeal dismissed*, 420 U.S. 916 (1975). *See* notes 55-64 *infra* and accompanying text.

38. *See, e.g.*, Corditz, *A Word for the Property Tax*, 85 FORTUNE, May 1972, at 105, 112; Falternayer, *'Metro' government, Twin Cities-style*, 72 LIFE, Jan. 21, 1972, at 28; Editorial, *Tax Base Sharing*, 60 NAT'L CIVIC REV. 424 (1971).

39. *See A Statistical Analysis*, *supra* note 11, at 1325 n.196 ("But by restricting its scope to 'commercial-industrial property,' the plan does little to end enclaves of low or high residential property taxes.").

40. MINN. STAT. § 473F.01 (1974) provides:

> The legislature finds it desirable to improve the revenue raising and distribution system in the seven county Twin Cities area to accomplish the following objectives.
>
> (1) To provide a way for local governments to share in the

existing tax structure or its administration;[41] it merely provides a method by which property in one governmental unit can be taxed by others.

Before exploring the workings of the Fiscal Disparities Act, it is necessary to review several technical definitions. The focus of the Act is upon "municipalities," which are defined by the Act as cities, towns, or townships located in whole or in part within the seven-county area.[42] Municipalities are used as a basic unit for calculating both the contributions to and the distributions from the area-wide tax base. "Governmental units" are the jurisdictional units that actually collect taxes under the Act. They may or may not be municipalities. The Act defines them as taxing units or bodies which levy ad valorem taxes in whole or in part within the seven-county area; this would include such units as counties, cities, and school districts.[43]

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resources generated by the growth of the area, without removing any resources which local governments already have;

(2) To increase the likelihood of orderly urban development by reducing the impact of fiscal considerations on the location of business and residential growth and of highways, transit facilities and airports;

(3) To establish incentives for all parts of the area to work for the growth of the area as a whole;

(4) To provide a way whereby the area's resources can be made available within and through the existing system of local governments and local decision making;

(5) To help communities in different stages of development by making resources increasingly available to communities at those early stages of development and redevelopment when financial pressures on them are the greatest;

(6) To encourage protection of the environment by reducing the impact of fiscal considerations so that flood plains can be protected and land for parks and open space can be preserved . . . .

A seventh objective, concerning the distribution to municipalities of other revenues, is beyond the scope of this Note. *See* note 7 *supra*.

41. One of the seven county auditors serves as the "administrative auditor" and administers the statute from his county office. MINN. STAT. §§ 473F.03, .07(3), (4) (1974). Each county treasurer remits the tax revenues from the shared tax base to the state treasurer, who deposits the revenues in an area-wide tax account from which they are subsequently distributed to governmental units in the same manner as are all other tax revenues. *Id.* §§ 473F.08(7), (8). Assessment of the market value of commercial-industrial property within each jurisdiction takes place as it did before passage of the Act.

42. *Id.* § 473F.02(8). *See also* note 1 *supra*.

43. MINN. STAT. § 473F.02(5) (1974). *See also* note 1 *supra*. Seventeen school districts and three municipalities are located partly within and partly without the seven-county area. The Act deals to some extent with these divided governmental units. Section 473F.02(8) limits the Act's application to property located within the seven-county area, although each municipality's fiscal capacity is to be computed on the basis of its entire property valuation and population. Section 473F.07(3)

The first step in the operation of the Act is to determine the *area-wide tax base*. Every year, the assessors of each county in the metropolitan area assess the value of all non-exempt commercial-industrial property located within the municipalities of that county. This amount is then compared with the assessed valuation[44] of such property in 1971, the base year. Forty percent of the increase over the 1971 valuation is then contributed by the municipality to the area-wide tax base for the given year.[45] If the market value of the commercial-industrial property within a municipality shows no increase over 1971, that municipality makes no contribution to the area-wide tax base. The sum of the contributions from all the municipalities in the entire seven-county area constitutes the area-wide tax base.

In order to determine the share of the area-wide tax base which each municipality is to receive, a *distribution index*, based on the population and fiscal capacity of each, must be calculated.[46] A particular municipality then receives a share of the area-wide tax base proportional to the ratio of its index to the sum of the indices of all municipalities within the seven-county area.[47] Whether the municipality gains or loses assessed valuation under the plan depends on whether the share it receives is larger or smaller than the one which it has contributed.[48]

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provides that the municipality's area-wide tax base distribution index, *see* note 46 *infra*, must be multiplied by the fraction of the municipality's population residing in the seven-county area.

44. *Valuation* is defined as the market value of the real property within a municipality. MINN. STAT. § 473F.02(13) (1974). *Assessed valuation* is thus the percentage of the valuation which Minnesota subjects to the tax. *See id.* § 273.13.

45. *Id.* §§ 473F.05-.07.

46. The area-wide tax base *distribution index* for a municipality is equal to its population multiplied by the ratio of the average fiscal capacity for the seven-county area to the municipality's fiscal capacity (both measured in the prior year) multiplied by two; if the product of those factors is less than the municipality's population, however, the index is equal to the population. *Id.* § 473F.07(3).

47. *Id.* §§ 473F.07(3)-(5).

48. Whether a municipality gains or loses *tax dollars* under the plan depends on the relationship between its local tax rate and the area-wide tax rate. *See* text accompanying notes 52-53 *infra*. The amount of tax dollars a municipality contributes to the area-wide tax account is equal to the assessed valuation contributed by the municipality to the area-wide tax base multiplied by the area-wide tax rate. The amount of tax revenue a municipality receives is equal to its share of the area-wide tax base multiplied by the local tax rate. *See* note 51 *infra* and accompanying text. Thus, even if on balance a municipality loses assessed valuation to the area-wide tax base, it could receive more tax dollars than it contributes to the area-wide tax account if its local tax rate is sufficiently greater than the area-wide tax rate. A similar situation may

Once the contributions to and the distributions from the area-wide tax base have been calculated for municipalities, the focus shifts to the governmental unit so that the mechanics of actually collecting tax revenues under the Act may be worked out. Initially, each governmental unit must ascertain its *local tax base*; this is done by determining the assessed valuation of *all* nonexempt real property within the governmental unit and subtracting the contributions made to the area-wide tax base by municipalities located in whole or in part within its jurisdiction.[49] The governmental unit must also ascertain its share of the area-wide tax base; this share is determined by adding together the distributions to which all municipalities located in whole or in part within the unit's jurisdiction are entitled.[50] Aware of the size of the tax bases upon which it can levy a tax, the governmental unit then determines the amount that it desires to raise in tax revenue and certifies this amount to the appropriate county auditor as its *levy*. The county auditor will subsequently apportion that levy between the local tax base—that is, that part of the particular governmental unit's assessed valuation which was not contributed to the area-wide tax base—and the unit's share of the area-wide tax base.[51]

The first portion is termed the *local levy*. The local levy divided by the local tax base equals the *local tax rate*, a rate which will be applied to all taxable property within the jurisdic-

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exist for other governmental units. *See* notes 49-53 *infra* and accompanying text.

49. The contribution of a governmental unit to the area-wide tax base is proportionate to the assessed valuation of the commercial-industrial property located within each municipality subject to that unit's taxing power. MINN. STAT. § 473F.03(2)(a) (1974). Thus, if one-half of the commercial-industrial property in a particular municipality were subject to taxation by the unit, one-half of the amount contributed by the municipality to the area-wide tax base would be subtracted from the unit's tax base. This procedure would be repeated for all municipalities in which the unit levies taxes.

50. The proportion of each municipality's distribution to which a governmental unit is entitled is calculated by dividing the assessed valuation of all residential property within a municipality subject to the unit's taxing power by the total assessed valuation of all residential property within that municipality. *Id.* § 473F.08(2)(b).

51. The area-wide levy is equal to that portion of the total levy represented by the unit's share of the area-wide tax base divided by the sum of the unit's local tax base and its share of the area-wide tax base. *Id.* §§ 473F.08(2), (3)(a). The local levy is equal to the difference between the total levy and the area-wide levy. *Id.* § 473F.08(3)(b). The ratio of the area-wide levy to the local levy is thus equivalent to the ratio that the unit's share of the area-wide tax base bears to the local tax base.

Minnesota Supreme Court had previously held that tax legislation must satisfy two requirements in order to be valid under this clause: similarly situated taxpayers must be treated alike,[57] and special benefits must accrue to the community that bears the tax.[58] Relying principally on the latter of these two requirements, the district court held that there was no reasonable relationship between the contribution made by a municipality to the area-wide tax base and the benefits that its citizens would derive from the distribution of funds under the Act.[59] In other words, the main issue of the case was whether those units of government within the metropolitan area which in a given year contribute more of their tax base to the pool than is redistributed to them are sufficiently benefited to meet the constitutional requirement of uniformity.[60]

In a four-three decision in *Village of Burnsville v. Onischuk*,[61] the Minnesota Supreme Court reversed, holding that the Act satisfies the requirements of the uniformity clause; an appeal to the United States Supreme Court was dismissed for want of a substantial federal question. The Minnesota court admitted that a "literal reading" of its prior decisions would have dictated invalidation of the Act because special benefits would not accrue to each governmental unit on which the tax was imposed.[62] Nonetheless, the court stated that requiring a special benefit to accrue to the governmental unit

> no longer adequately serves the constitutional requirement of uniformity. In a seven-county area which is heavily populated, . . . it is no longer necessary for units of government providing tax revenue to receive the kind of tangible and specific benefits to which our court has previously referred . . . to satisfy the uniformity clause.[63]

Instead, the court found that governmental units which contribute more than they receive under the Act derive benefits

57. *See, e.g.*, Montgomery Ward & Co. v. Comm'r of Taxation, 216 Minn. 307, 310, 12 N.W.2d 625, 627 (1943).

58. *See* City of Jackson v. County of Jackson, 214 Minn. 244, 7 N.W.2d 753 (1943); Village of Robbinsdale v. County of Hennepin, 199 Minn. 203, 207, 271 N.W. 491, 493 (1937); Sanborn v. Comm'rs of Rice County, 9 Minn. (9 Gill.) 258, 262 (1864).

59. The statute "imposes a tax on some [units] for the benefit of others." 222 N.W.2d at 528, quoting the trial court memorandum.

60. *Id.* at 529.

61. 222 N.W.2d 523 (Minn. 1974), *appeal dismissed*, 420 U.S. 916 (1975) (no substantial federal question). Burnsville, the municipality that challenged the Act, can be characterized as a developing suburb.

62. *Id.* at 530.

63. *Id.*

from the area-wide tax base by reason of the social and economic interdependence of the seven-county area. Hence, residents "of highly developed commercial-industrial areas . . . enjoy direct benefits from the existence of adjacent municipalities which provide open spaces, lakes, parks, golf courses, zoos, fairgrounds, low density housing areas, churches, schools, and hospitals."[64]

Two aspects of the court's decision deserve comment. First, the Fiscal Disparities Act is tax legislation and thus is entitled to a presumption of validity.[65] This deference is essential to allow the legislature to reform local property taxes in the most efficient and realistic manner.[66] In *Onischuk*, the Minnesota Supreme Court expressly accorded such deference to the legislature's scheme for reducing fiscal disparities.

Second, even though the court found that the "special benefit" requirement did not invalidate the Fiscal Disparities Act, that requirement was not completely abandoned: residents must still derive some threshold benefit from the allocation of taxes under a challenged statute.[67] The court in *Onischuk* merely revised its view of the uniformity clause to take into account what it called "a developing concept of the meaning of the word 'benefit.'"[68] That concept apparently centers around an implicit recognition that benefits can be derived from the social and economic interdependence of the seven-county area.[69] This percep-

64. *Id.* at 532.

65. Courts traditionally defer to the legislative judgment on tax legislation because the subject matter is complex, because courts tend to lack familiarity with local problems, and because a stricter standard of review would entail inquiry into the purpose of the statute, an especially difficult matter with respect to tax legislation. Tussman & tenBroek, *The Equal Protection of the Laws*, 37 CALIF. L. REV. 341, 370 n.68, 372-73 (1949). *See, e.g.*, General Mills, Inc. v. Division of Employment & Security, 224 Minn. 306, 310-11, 28 N.W.2d 847, 849-50 (1947).

66. *See* San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1, 58 (1973)

67. 222 N.W.2d at 530-32.

68. *Id.* at 530. The court cited Visina v. Freeman, 252 Minn. 177, 89 N.W.2d 635 (1958), as the precursor of this "evolving" notion of benefit. *Visina* involved a challenge under the uniformity clause to the statute establishing the Port Authority of Duluth, an agency which was to finance the reclamation of land and the construction of a terminal port facility. In that case, the Minnesota Supreme Court found that all involved taxpayers received benefits sufficient to uphold the statute's constitutionality. Yet *Visina* concerned benefits that would be derived from a specific improvement, whereas *Onischuk* involved benefits to be derived from undetermined uses of redistributed revenues—benefits arising from the social-economic interdependence of the area.

69. *See* text accompanying note 64 *supra*. The court also acknowl-

tion of benefit is based on the realization that the political fragmentation of the seven-county area is artificial and that the area is actually a socially and economically integrated entity. In essence, the seven-county area can be viewed as a large city rather than as numerous, completely autonomous political subdivisions.

In ruling on the constitutionality of the Fiscal Disparities Act, the Minnesota Supreme Court did not explicitly address the equal protection issue raised by the plaintiffs.[70] Thus, it might be argued that the statute remains open to a constitutional challenge on that ground.[71] It seems likely, however, that the court

edged that commercial-industrial property can provide a windfall to the municipality in which it locates, and that competition for such property could lead to disorderly development of the seven-county area. 222 N.W. 2d at 532.

70. In their complaint, plaintiffs had alleged that the statute violated the equal protection provisions of the fourteenth amendment to the United States Constitution. 222 N.W.2d at 525. Both the district and supreme courts, however, ruled explicitly only on the uniformity ground. In passing over the equal protection issue, the supreme court seemed to indicate that its inattention was attributable to the fact that the uniformity clause has been construed "to be no more restrictive than the [federal] equal protection clause." *Id.* at 527. *See In re* Taxes on Property of Cold Spring Granite Co., 271 Minn. 460, 466, 136 N.W.2d 782, 787 (1965); Apartment Operators Ass'n v. Minneapolis, 191 Minn. 365, 366, 254 N.W. 443, 444 (1934); Reed v. Bjornson, 191 Minn. 254, 261, 253 N.W. 102, 105 (1934). *See also* Lake Superior Consol. Iron Mines v. Lord, 271 U.S. 577, 581 (1926).

71. There is a line of cases which suggests that the Act could not be successfully challenged under the federal equal protection clause. Thus, while the Minnesota Supreme Court has held that the uniformity required by the Minnesota Constitution in the distribution of tax benefits is achieved if there is a reasonable relationship between tax benefits and burdens, *see* Visina v. Freeman, 252 Minn. 177, 195, 89 N.W.2d 635, 650 (1958) (uniformity of distribution among several taxing districts); Village of Robbinsdale v. County of Hennepin, 199 Minn. 203, 271 N.W. 491 (1937) (uniformity of distribution within one taxing district); State *ex rel.* City of New Prague v. County of Scott, 195 Minn. 111, 261 N.W. 863 (1935) (uniformity of distribution within one taxing district), some courts have stated that the fourteenth amendment does not require that a tax bear a reasonable relationship to the benefits received. *See* Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 521-23 (1937); Thomas v. Gay, 169 U.S. 264, 278-80 (1897); Hess v. Mullaney, 213 F.2d 635, 639-40 (9th Cir.), *cert. denied*, 348 U.S. 836 (1954); Morton Salt Co. v. City of South Hutchinson, 177 F.2d 869, 891-92 (10th Cir. 1949); Lafayette Steel Co. v. City of Dearborn, 360 F. Supp. 1127, 1131 (E.D. Mich. 1973). The latter view, however, may not apply to the situation in *Onischuk*. Those cases involved general taxes, *see* Illinois Cent. R.R. v. Decatur, 147 U.S. 190, 196-97 (1892); Kelly v. Pittsburgh, 104 U.S. 78, 80-83 (1881), and the statute in each instance was challenged by a member of a community whose government was supported by the disputed taxes. The Fiscal Disparities Act, on the other hand, shifts local

implicitly ruled on this issue.[72] This fact, as well as the practical

property tax revenues from one governmental unit to another. Under the Act, a taxpayer in one community may be taxed for the benefit of a community of which he is not a member and from which he receives no general benefits. On this basis, the Act is distinguishable from the cases cited above and may be subject to scrutiny under the equal protection clause of the fourteenth amendment. *See Ad Valorem Financing*, *supra* note 16, at 81-83.

Two possible claims could be made under the equal protection clause. First, by limiting the area-wide tax base to commercial-industrial growth, the Act is arguably underinclusive since residential property above a certain value may provide as much of a windfall to the fiscal capacity of a governmental unit as does commercial-industrial property. Even though the capacity of high income housing for generating tax revenue may be less than that of commercial-industrial property, the former requires less expense for public services, and thus could provide a windfall to the governmental unit; residential suburbs with high fiscal capacities are examples of governmental units receiving such windfalls. It should be noted, however, that residential property lacks the "metropolitan" aspect of commercial-industrial property. *See* note 20 *supra* and accompanying text.

Second, the apportionment of the area-wide tax base among area municipalities is not necessarily linked to deficiencies in their fiscal capacities. Rather, the Act's distribution formula is based primarily on a municipality's population, *see* text accompanying notes 78-87 *infra*, a measure which fails to take into account the actual needs and costs faced by municipalities in the seven-county area. By allowing residential suburbs with relatively high fiscal capacities to share the area-wide tax base on the same basis as municipalities with lower fiscal capacities and greater public service costs, the Act might be overinclusive as to its class of beneficiaries.

72. The equal protection issue was raised in the pleadings, *see* 222 N.W.2d at 526, and was briefly referred to by the district and supreme courts, *see id.* at 527. The comment of the Minnesota Supreme Court that the uniformity clause has been construed to be "no more restrictive" than the equal protection clause, *see* note 70 *supra*, appears to indicate that the court felt it was resolving both issues. If, as seems likely, the issue was considered by the Minnesota court, it must have been resolved in favor of the statute's constitutionality; otherwise, the case could not have been decided as it was. Thus, a strong argument can be made that the equal protection issue was litigated and decided by implication in the *Onischuk* case.

If this argument is accepted, the *Onischuk* decision places two doctrinal obstacles in the path of a future taxpayer plaintiff. The first is that of traditional stare decisis. The other is that of res judicata, under which the parties to an action may be estopped from relitigating in a subsequent action issues that were raised and determined in the prior action. *See generally* Brooks Realty, Inc. v. Aetna Ins. Co., 263 Minn. 122, 123 N.W.2d 151 (1964). Specific findings are unnecessary; the doctrine applies to every issue which was actually litigated or raised by the pleadings in the original case. *See* Youngstown Mines Corp. v. Prout, 266 Minn. 450, 470, 124 N.W.2d 328, 342 (1963); Gollner v. Cram, 258 Minn. 8, 10-11, 102 N.W.2d 521, 523 (1960); Prendergast v. Searle, 81 Minn. 291, 292, 84 N.W. 107, 103 (1900); O'Brien v. Manwaring, 70 Minn. 86, 87-88, 31 N.W. 745 (1900). In the present situation, the doctrine of res judicata would have an effect beyond the original plaintiffs, since

unavailability of a federal forum,[73] makes it improbable that the Act will again be subjected to judicial review on equal protection grounds.

The holding in *Onischuk* may prove to be a narrow one. The court's emphasis on the social and economic interdependence of the seven-county area[74] suggests that its new interpretation of the term "special benefit"[75] may be limited by the requirement of such interdependence. Even so, the decision may have a far reaching impact on regionalism; similar statutory schemes could be established in other parts of the state where an area is found to be socially and economically interdependent. The interde-

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the determination in an action brought by one taxpayer binds other taxpayers to the same extent that it binds the original plaintiff. Oakman v. City of Eveleth, 163 Minn. 100, 102, 203 N.W. 514, 515 (1925); Driscoll v. Board of County Comm'rs, 161 Minn. 494, 500-02, 201 N.W. 945, 947-48 (1925).

73. A federal court would probably refuse to assume jurisdiction of a challenge to the Act under the federal equal protection clause for at least two reasons. First, when the *Onischuk* case was appealed to the United States Supreme Court on equal protection grounds, among others, the Court dismissed for want of a substantial federal question. 420 U.S. 916 (1975) (issues of taxation without representation and due process were also raised). It is unclear what effect the dismissal will have on future equal protection challenges to the Act. *Compare* Ohio *ex rel.* Eaton v. Price, 360 U.S. 246, 247 (1959) (Brennan, J., separate opinion); P. Bator, P. Mishkin, D. Shapiro & H. Wechsler, Hart and Wechsler's The Federal Courts and the Federal System 649 (2d ed. 1970); R. Stern & E. Gressman, Supreme Court Practice 233 (4th ed. 1969); Note, *The Insubstantial Federal Question*, 62 Harv. L. Rev. 488, 494 (1949) (taking the view that dismissal for want of a substantial federal question is a declaion on the merits), *with* Comment, *The Significance of Dismissals "For Want of a Substantial Federal Question": Original Sin in the Federal Courts*, 68 Colum. L. Rev. 765 (1968) (taking the view that such a dismissal is in many cases akin to a denial of certiorari, which lacks precedential weight).

Second, the Tax Injunction Act of 1937, 28 U.S.C. § 1341 (1970), may preclude a federal court from assuming jurisdiction. That statute provides that "the district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law when a plain, speedy and efficient remedy may be had in the courts of such State." *Id. See, e.g.*, Mandel v. Hutchinson, 494 F.2d 364 (9th Cir. 1974). The very occurrence of the *Onischuk* suit is strong evidence that such a remedy exists in Minnesota. Moreover, federal declaratory relief, though still technically available, 1A J. Moore, Federal Practice ¶ .207, at 2265 (2d ed. 1959), is a discretionary remedy governed by general equitable principles. It has usually been denied in cases attacking state tax legislation where an adequate remedy exists under state law. *E.g.*, Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 293 (1943). *See* Lynch v. Household Fin. Corp., 405 U.S. 538, 542-43 n.6 (1972).

74. *See* text accompanying note 64 *supra*.

75. *See* text accompanying notes 68-69 *supra*.

pendence itself would appear to meet the threshold requirement of benefit necessary to validate the tax scheme.

The fact that additional use of this statutory scheme would be found constitutional, however, does not mean that it will come into common use. There is a basic political conflict between the sort of regionalism that the Fiscal Disparities Act represents and local autonomy. The Act itself was a compromise, partially introducing regional financing of governmental units while at the same time retaining local decisionmaking. Whether this compromise is likely to be repeated or not depends heavily on the effect of the present Act.

III. EFFECT OF THE FISCAL DISPARITIES ACT: A CRITICAL ANALYSIS

As previously noted,[76] the presence of fiscal disparities within the seven-county metropolitan area has had two major effects: inequities in the provision of public services and imbalance in area development. The success of the Fiscal Disparities Act will thus be largely contingent on the extent to which it eliminates those problems.

A. Provision of Public Services

Fiscal disparities produce inequities in the tax rates which residents of different governmental units must pay in order to obtain a given level of public services.[77] The effectiveness of the Act in equalizing those tax burdens will depend upon the degree to which the factors chosen to measure "fiscal capacity" relate to the problems that the Act is intended to solve, and also upon the extent to which a perceived fiscal capacity will influence the Act's distribution formula.

Fiscal capacity can be measured in two ways: through the use of economic indicators such as income levels, or by a comparison of the revenues that would be raised in different municipalities by a representative tax system.[78] The Fiscal Disparities Act relies on the second conceptual measure of fiscal capacity, defining the fiscal capacity of a municipality as the market value of the real property within its borders divided by its population,[79] and using the real property tax—the prime generator of

76. *See* text accompanying notes 8-24 *supra*.
77. *See* notes 11-20 *supra* and accompanying text.
78. *See* MEASURES, *supra* note 11, at 4-8, 13-52.
79. MINN. STAT. §§ 473F.02(13), (14) (1974).

local government revenues—as its representative tax. The use of the market value of real property rather than its assessed valuation is desirable, since it will eliminate inter-municipality differences which might arise from varying assessment practices as well as from Minnesota's property classifications.[80] Market values also serve as some indicator of the income received and produced within the municipality.[81] Nevertheless, the use of population as a divisor in the Act's definition of fiscal capacity renders that definition a per capita index, reflecting the assumption that a municipality's expenditure requirements vary directly with its population. This assumption, however, ignores the fact that the *composition* of a municipality's population may have an extraordinary effect upon that municipality's need for public services.[82] To some extent, the limitation on the Act's definition of fiscal capacity may be attributed to statistical deficiencies—a lack of data that impedes both the determination of an accurate measure of fiscal capacity and the usefulness of such a formula once it has been devised.[83] Even so, the Act's definition fails to account for grants-in-aid that a municipality may receive from outside sources, funds which are certain to affect fiscal capacity and which should be readily ascertainable.

Once determined, fiscal capacity may be at best a fractional part of the distribution formula of the Act. Under the Act, a municipality's area-wide tax base distribution index is proportional to its population and inversely proportional to its fiscal

80. METROPOLITAN COUNCIL, *supra* note 13, at 50. Minnesota classifies property and, based upon that classificatio., applies a particular percentage figure to the property's market value to arrive at the property's assessed valuation. *See* MINN. STAT. § 273.13 (1971).

81. METROPOLITAN COUNCIL, *supra* note 13, at 50. The market value of residential property serves as a fairly accurate measure of personal income, but commercial and industrial property values are less closely related to business income. MARGOLAS, *supra* note 4, at 4-5, 4-6, 4-11, 5-4.

82. For example, the age distribution of the population may affect public service requirements. If a municipality's population is relatively young (requiring schools) or relatively old (requiring assistance), the municipality's public service expenditures will be greater than if this were not the case. MEASURES, *supra* note 11, at 9, 97-105. Generally, central cities such as Minneapolis and St. Paul contain a greater percentage of these special populations than do the suburbs. *See* E. BRANDT, R. JACKSON & J. WHITE, THE PLIGHT OF THE CITIES (1972); E. BRANDT, THE PLIGHT OF THE CITIES (Supp. 1973).

83. *See* METROPOLITAN COUNCIL, *supra* note 13, at 51. Compare, for example, the recommendation of a fiscal capacity formula based on income received and produced within a community, MARGOLAS, *supra* note 4, at 3-9, with the Metropolitan Council's recommendation of a formula based on the market value of real property, METROPOLITAN COUNCIL, *supra* note 13, at 51.

capacity,[84] unless a municipality's fiscal capacity exceeds twice the average fiscal capacity of the area, in which case its distribution index equals its population.[85] Population is therefore actually utilized twice in the distribution formula: first, as an element in the determination of fiscal capacity; and, second, as a factor in the formula itself. Population alone, however, is not an accurate measure of a municipality's public needs.[86] Because of this reliance on population, the distribution formula of the Act will be of limited effectiveness in reducing fiscal disparities and the resulting inequities in tax burdens. Municipalities will still be unable to provide a given level of public services at a uniform cost.[87]

But this objection remains somewhat abstract. A more concrete understanding of the Act's relationship to the provision of public services can best be achieved by examining the possible effects of the statute in three types of communities.

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84. A municipality's area-wide tax base distribution index is equal to the product of its population, the average fiscal capacity for the area divided by the municipality's fiscal capacity, and two:

$$\text{Pop.} \times ((\text{avg. f.c.})/(\text{f.c.})) \times 2$$

MINN. STAT. § 473F.07(3) (1974). Since the average fiscal capacity, *id.* § 473F.02(15), is a constant for each municipality, if K is designated as 2 × (avg. f.c.), a municipality's share of the area-wide tax base equals:

$$\text{Pop.} \times ((\text{avg. f.c.})/(\text{f.c.})) \times 2 = K \times ((\text{pop})/(\text{f.c.})).$$

85. The formula used in the calculation of a municipality's area-wide tax distribution index does not take account of the amount by which a municipality's fiscal capacity exceeds twice the average fiscal capacity; the possibility exists, therefore, that a particular municipality could receive an unneeded additional amount of the area-wide tax base. This situation arises because of the presence of the numeral two as a factor in the formula and because the index is not allowed to be less than a municipality's population. *Id.* § 473F.07(3). For example, if r equals average fiscal capacity and s equals the fiscal capacity of a municipality, then where p equals the population of that municipality, $p > p \times (r/s) \times 2$, for any $s > 2r$. In 1970 only two small municipalities in the seven-county area, however, had fiscal capacities greater than twice the average fiscal capacity; thus the problem may be negligible. *See* Brief for Appellants at Add-31, Village of Burnsville v. Onischuk, 222 N.W.2d 523 (Minn. 1974), *appeal dismissed*, 420 U.S. 916 (1975).

86. *See* note 82 *supra*. A true measure of need may be impossible to express in any formula. *See Municipal Services*, *supra* note 19, at 112. *See also* McInnis v. Shapiro, 293 F. Supp. 327 (N.D. Ill. 1963), *aff'd mem. sub nom.* McInnis v. Ogilvie, 394 U.S. 322 (1969).

87. The discussion regarding municipalities also applies to other governmental units that calculate their distribution from the area-wide tax base according to the amounts municipalities within their taxing jurisdiction receive. Insofar as these units are larger in area than municipalities, however, costs and population composition tend to be more equally distributed.

1. Residential Suburbs with a High Fiscal Capacity

Residential suburbs generally have a low proportion of commercial-industrial to total assessed valuation. If a residential suburb has a high fiscal capacity—because, for example, of high property values—it may well benefit unduly from the operation of the Act. Such a municipality would contribute relatively little to the area-wide tax base; yet, because distribution is based primarily on population, it would almost certainly be assured of showing a net gain under the statute. Thus, an already superior ability to provide public services to residents would be further enhanced by the Act.[88]

2. Municipalities with Commercial-Industrial Development

Although a municipality with a high proportion of commercial-industrial to total assessed valuation may have a correspondingly high fiscal capacity, that municipality must provide services such as fire and police protection to the commercial-industrial property. Where the municipality also has a small population, however, it will receive less than it contributes to the area-wide tax base. If the cost of providing services to the commercial-industrial property is greater than the tax revenues that such property will generate after the redistribution mandated by the Act, the burden of providing the services will partially fall upon the residents of the municipality.[89] In this respect, the Act may actually hinder the provision of public services in those municipalities with a small population and a fiscal

88. *See* Village of Burnsville v. Onischuk, 222 N.W.2d 523, 538-39, 541 (Minn. 1974) (dissenting opinions), *appeal dismissed*, 420 U.S. 916 (1975). *Cf.* Stephens, *The Metropolitan Impact of Fiscal and Governmental Reforms: A Simple Model of the Metropolis*, 2 URBAN LAW. 495, 510 (1970). *But see* CITIZENS LEAGUE, *supra* note 14, at 16 (deemphasizing this problem because of the benefit to school districts encompassing residential suburbs with high fiscal capacities).

89. Before enactment of the Fiscal Disparities Act, those residents would not have been so burdened, if it is assumed that revenues from the commercial-industrial property would have covered the cost of providing services to the property. But it is difficult to estimate the true cost of serving commercial and industrial property. Usually commercial-industrial development is considered to be a fiscal advantage for a municipality, but a conservative view would be that the cost of services to such property consumes the tax revenues that it generates. Although some municipalities may benefit greatly from commercial-industrial property within their borders, there is no agreement that this will be true in the average case. *See* MARGOLIS, *supra* note 4, at 1-17 to 1-18, 5-8, 7-52.

capacity composed primarily of commercial-industrial assessed valuation.[90]

3. *Certain Governmental Units Noncoterminus with Municipalities*

Governmental units other than municipalities determine both their contribution to and their share of the area-wide tax base on the basis of the municipalities wholly or partly within their boundaries."[91] When the boundaries of a governmental unit do not coincide with municipal lines, the unit may be either the beneficiary or the victim of the uneven distribution of residential and commercial-industrial property in the divided municipality. For example, if a municipality is located within two governmental units so that one of the units possesses a large percentage of the residential valuation of the municipality while the other unit has a large percentage of the municipality's commercial-industrial valuation, the former unit will contribute little to the area-wide tax base but will receive a large share in the population-based distribution. For similar reasons, the latter unit will "lose" in the distribution. If the governmental unit in which the residential area is located also has a high fiscal capacity relative to the other unit, such a result would be contrary to the statute's intent. This effect will be significant, however, only when the governmental units cover a relatively small area; over large areas such uneven distributions should tend to balance out.

To the extent that these and other adverse consequences occur, the Act's success in reducing fiscal disparities will be undermined. Even if the Act ultimately equalizes the benefits that residents of the seven-county area receive for their tax dollars, however, inequities may nonetheless arise while the Act is being implemented. Before the passage of the Act, residents living in a municipality with a high fiscal capacity may have enjoyed a

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90. If poor people tend to live in municipalities with a high commercial-industrial valuation, a distribution of this nature may resemble a "befuddled Robin Hood," taking from the poor and giving to the individually wealthy who reside in the suburban municipalities with high fiscal capacities. *See A Statistical Analysis, supra* note 11, at 1337-38.

Recognizing the general problem illustrated by this example, the Metropolitan Council recommended a percentage equalization plan for municipalities and a sharing of commercial-industrial growth for school districts, which provide no direct services to commercial-industrial property. *See* METROPOLITAN COUNCIL, *supra* note 13.

91. *See* notes 49-50 *supra* and accompanying text.

high level of public expenditures at a relatively low tax rate. They may have found this advantage capitalized in their property values, whereas residents of a municipality with a low fiscal capacity may have suffered depressed property values.[92] Following implementation of the Act and the resulting equalization of these advantages and disadvantages, property values in a wealthy municipality should drop while those in a poor municipality should rise. During the interim, owners and lessees in the former locality will suffer from this adjustment, while occupants of the latter will benefit.[93] Inasmuch as the Act will have only a moderating impact on fiscal disparities in the seven-county area, however, these effects may be so gradual as not to be serious.

In discussing the impact of the Act on the provision of public services, consideration must go beyond the question whether the Act will indeed have its anticipated effect on the ability of

92. *See generally* MALCOLIS, *supra* note 4, at app. 1-A; Oates, *The Effects of Property Taxes and Local Public Spending on Property Values: An Empirical Study of Tax Capitalization and the Tiebout Hypothesis*, 77 J. POL. ECON. 957 (1969). *See also* Smith, *Property Tax Capitalization in San Francisco*, 23 NAT'L TAX J. 177 (1970).

Tax capitalization occurs where property values rise because a substantial number of prospective residents, in making their locational decision, consider the mix of tax rate and public services that various communities offer. A model based on this notion is the Tiebout hypothesis. *See generally* Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956). Theoretically, if tax advantages are capitalized fully into property values, taxpayers who are residents of different municipalities having different fiscal capacities will pay equivalent sums for public services. The resident of the municipality with the higher fiscal capacity will find that his lower taxes force him to pay *more* for his housing, while the resident of the poorer municipality will find his taxes higher but his housing cheaper. Thus, the total payments of each for public services may be the same, merely being apportioned differently between tax and rent payments.

93. Oates, *supra* note 92, at 958-59, 959 n.3. For example, an individual who buys property in a municipality with a high fiscal capacity pays an inflated price because the municipality's tax advantages are capitalized in the market value of that property. After implementation of the Act, such a municipality's tax advantages will diminish. The individual will find not only that his tax dollar buys less public services, but also that his property is worth less than it formerly was. Conversely, a property owner in a municipality with a low fiscal capacity will find that his tax dollar will be worth more as reflected in the amount of public services it will purchase, and also that this advantage will be capitalized in the value of his property—a windfall increase to him. Exactly who will be benefited and who will be hurt, of course, depends upon one's view of the incidence of the property tax, a matter over which there is some controversy. *See* FINANCING SCHOOLS, *supra* note 22, at 131-33, app. C.

local governments to provide these services. The Fiscal Disparities Act expressly relies on existing local governmental structure and local decisionmaking; in effect, local governments retain discretion in both the raising and the spending of revenues received from the area-wide tax base. Because of this discretion, any increased ability to raise revenues for public services which results from the operation of the Act will not necessarily be converted into such services. Whether a governmental unit which loses under the Act will raise its tax rate to restore the previous level of expenditures for public services or simply reduce the quantum of those services is not controlled by the Act.[94] And a unit which gains under the Act could choose to lower its tax rate or spend the funds on other projects, rather than increase its level of public services.

Thus, if the Act is successful in reducing fiscal disparities, its effect will be to remove the size of the local tax base as a determining factor in local governmental spending decisions, allowing other considerations to be given more weight. The Act thereby enables a governmental unit to fund public services in an amount based to a greater degree on the unit's preference for those services. In this way, the Act tends to equalize the resources of communities, while allowing them the freedom to use their equalized resources as they see fit.

It might be argued, however, that in an urban area composed of a myriad of local governmental units lacking the size, population, and fiscal resources to provide public services rationally, the ideal of local self-determination is superseded—or at least outweighed—by notions of equality, in the sense of equal tax burdens for a uniform level of services.[95] On the basis of efficiency—and perhaps fairness, if benefit and cost spillovers are not otherwise recompensed—the present system of local self-determination should give way to an alternative local governmental structure that can provide a standard level of services throughout the metropolitan area at a uniform cost to all residents.[96]

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94. *Cf.* R. Reischauer & R. Hartman, Reforming School Finance 88-90 (1973); *A Statistical Analysis*, *supra* note 11, at 1335 n.115.

95. *Cf.* San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1 (1973); Areen & Ross, *The Rodriguez Case: Judicial Oversight of School Finance*, 1973 Sup. Ct. Rev. 33, 45; Bateman & Brown, *Some Reflections on* Serrano v. Priest, 49 J. Urban Law 701, 705-09 (1972).

96. For a list of criteria relevant to evaluating local governmental structure and also an enumeration of eleven approaches to local government reorganization, see *Metropolitan Government*, *supra* note 19, at 134-42. For a comprehensive analysis of public services and their efficiencies, see U.S. Advisory Comm'n on Intergovernmental Relations, Per-

Such an alternative structure could take the form of a special taxing district providing a single service;[97] a metropolitan government furnishing all public services;[98] or a federated metropolitan government, with the metropolitan government and its subdivisions each supplying certain public services.[99]

Opposing this argument is the contention that if local self-determination were to be substantially curtailed, not only would the traditional values of local political autonomy be sacrificed[100] but a source of public funds might also be lost.[101] Moreover, local autonomy may not be as inefficient as it has been argued to be. By retaining the existing local governmental structure, the Act preserves, and may in fact increase,[102] the freedom which both the residents of and newcomers to the seven-county area

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FORMANCE OF URBAN FUNCTIONS: LOCAL AND AREAWIDE (1963) [hereinafter cited as URBAN FUNCTIONS].

97. The formation of special districts is, however, subject to objection, because such districts diffuse local government accountability and also lack a balanced perspective. *See* Netzer, *supra* note 13, at 462-64; *Metropolitan Government*, *supra* note 19, at 135.

98. An area-wide government may not provide all public services in the most efficient manner, however, as different services have different economies of scale. In particular, a metropolitan government may not be as efficient as a local governmental unit in providing services that are local in nature, such as fire protection. *See* URBAN FUNCTIONS, *supra* note 96, at 9.

The consolidation of the city of Nashville and Davidson County in Tennessee illustrates this type of alternative. The city-county, however, was divided into two service districts: a general service district, which served the entire county, and an urban service district, which served the area that formerly was Nashville. *See* Lineberry, *Reforming Metropolitan Governance: Requiem or Reality*, 58 GEO. L.J. 675, 698-700 (1970).

99. Toronto has adopted this alternative, whereby the metropolitan government provides social services, water supply, sewage disposal, mass transit, regional parks, and complete financing of the educational system for the entire area. Toronto's six political subdivisions, however, continue to provide fire protection, garbage and local water and sewage service, and administration of the local schools. *See* U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, IN SEARCH OF BALANCE—CANADA'S INTERGOVERNMENTAL EXPERIENCE 84-86, app. F (1971) [hereinafter cited as IN SEARCH OF BALANCE].

Other examples of a two-tiered system for providing services include Winnipeg, Canada, and Miami-Dade County, Florida. *See generally* IN SEARCH OF BALANCE, *supra* at 86-99; Lineberry, *supra* note 98, at 703-05.

100. These values have been said to be increased opportunity for political participation and greater knowledge of the local area. *See* STATE AID, *supra* note 19, at 8.

101. Carrington, *Financing the American Dream: Equality and School Taxes*, 73 COLUM. L. REV. 1227, 1250 (1973).

102. The Act could improve mobility within the seven-county area by encouraging each municipality to accommodate increased population. *See* notes 109-12 *infra* and accompanying text.

have had in selecting the municipality that they prefer in relation to its costs and services. In this way—ignoring economies of scale—the Act could prove more efficient than a political structure composed of only one or a few local governmental units.[103]

Ultimately, of course, the desired balance will probably lie between the extremes of complete local self-determination and the realization of the most equitable and efficient tax base for the provision of an equal level of services over the entire metropolitan area. The Fiscal Disparities Act resolves this conflict to a degree by forgoing absolute equality in favor of equal opportunity: since only resources are equalized, governmental units retain the discretion to determine the level of public services that they will provide. The Act's impact on the final balance will likely be slight and equivocal, however, since it preserves the present local governmental structure[104] while perhaps improving the efficiency of local tax bases.

Finally, it should be observed that the discretion left to governmental units by the Act cannot lead to a depredation of the area-wide tax base. The levy that officials of a local governmental unit choose is apportioned between the local and the area-wide tax base, with the funds derived from the latter available only in proportion to the unit's taxation of its own local assessed valuation. The procedure thus prevents communities from ravaging the area-wide tax base without enduring a corresponding burden.

B. Area Development

The Fiscal Disparities Act is almost certain to have profound effects upon the development of the seven-county metropolitan area, at both the local and regional levels. Just what those effects will be has not yet become clear; certain speculations, however, are possible.

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103. *See* Netzer, *supra* note 13, at 460-61. This efficiency is exemplified by the operation of the Tiebout model. By presenting a potential resident with a number of communities, each offering a varying mix of services and tax rates, his true preferences will govern his choice of location within the metropolitan area, resulting in a more efficient allocation of services. *See* Tiebout, *supra* note 92, at 417, 422.

104. The Twin Cities area is developing the outline of a two-tier system of government, with broad policy decisions being made on a regional level by the Metropolitan Council, and implementation of these policies being accomplished by local governmental units. *See* Kolderie, *Reconciling Metropolis and Neighborhood: The Twin Cities*, 62 Nat'l Civic Rev. 184 (1973).

At the local level, the Act is likely to affect the location of future commercial-industrial development. Inasmuch as any growth in the assessed valuation of commercial-industrial property is to be shared in part by the entire area, municipalities will have less incentive to attract commercial-industrial development, and therefore less desire to offer preferential assessments or to extend public services to areas not otherwise requiring them. Residential suburbs, in particular, should have little incentive to encourage commercial-industrial development, because under the Act they can share in the assessed valuation of such property while enduring none of the accompanying congestion or pollution.[105] Developing communities should also have less desire for additional commercial-industrial development, since 40 percent of its assessed valuation would be subject to the levies of other communities. Insofar as the tax revenues to be generated by the remaining 60 percent of the new property's assessed valuation—together with the amount received from the area-wide tax base—exceed the costs of services for the development and also offset the nuisance of the development to ear, eye, and lung, commercial and industrial concerns should not be unwelcome. A fine line exists, therefore, between desirable and undesirable developments, especially in view of the uncertainties inherent in the relationship between tax liabilities and service costs.[106] A municipality's decision may be influenced, however, by the employment opportunities that a new development might offer.

In the event that no municipality desires commercial-industrial growth, or if developers become too dissatisfied with the Act's effect, commercial-industrial development may well locate outside the borders of the seven-county area.[107] The Act could thus become a cause of urban sprawl.[108] For this to occur, however, the tax advantages of doing business outside the metropolitan area would have to significantly outweigh the added costs—especially transportation costs. Consequently, the possibility of

105. *See* Goldstein, *Interdistrict Inequalities in School Financing: A Critical Analysis of* Serrano v. Priest *and its Progeny*, 120 U. PA. L. REV. 504, 523 (1972).

106. *See* note 69 *supra*.

107. Nevertheless, since the area-wide tax rate is in some measure merely the average of all the tax rates levied in the seven-county area, its effect is unlikely to be decisive for developers.

108. *See* Village of Burnsville v. Onischuk, 222 N.W.2d 523, 539 (Minn. 1974) (Kelly, J., dissenting), *appeal dismissed*, 420 U.S. 916 (1975).

the Act's becoming a cause of extraregional development seems remote.

Residential development, too, may be affected by the Fiscal Disparities Act. Since the distribution of the funds collected from the area-wide tax base is proportional to a municipality's population, the Act provides some incentive for a municipality to encourage population growth. Because the distribution formula does not take into account the composition of a municipality's population, however, municipalities will probably still be unwilling to encourage high-service-cost persons, such as the poor and the elderly, to locate within their borders.[109]

In can be argued that by equalizing fiscal capacities, the Act has diminished suburban motives for maintaining exclusionary zoning practices.[110] Under this theory, low- and middle-income housing would no longer be a burden on the municipality if the additional service costs associated with such development could be satisfied out of funds received from a levy on the area-wide tax base. Realistically, however, the Act does little to aid development of low- and middle-income housing.[111] Many municipalities will still prefer wealthier people as residents, because they not only significantly raise the residential valuation that a municipality can retain for itself, but also do not require the "enabling" public services that the poor and elderly need. Furthermore, cost differentials in the provision of public services may favor the wealthier communities[112] so that even if expenditures were equalized on a per capita basis, a wealthy community could still enjoy a greater quantum of public services.

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109. *See* Hagman, *Property Tax Reform: Speculations on the Impact of the* Serrano *Equalization Principle*, 1 REAL ESTATE L.J. 115, 123-24 (1972).

110. *See id.* at 122; *Municipal Services*, *supra* note 19, at 120.

111. Other means, however, are available to encourage low- and middle-income housing development. For example, the Metropolitan Council discourages applications for federal aid for any purpose if the community applicant has not made reasonable efforts to find sites for federal housing programs. *See* Kolderie, *supra* note 104, at 186; Minneapolis Tribune, Dec. 9, 1974, § B, at 9, cols. 1-7.

112. The central cities are burdened with greater municipal service costs than are the suburbs. This condition is usually termed "municipal overburden." For example, Minneapolis and St. Paul spend two and one-half times as much per capita for police protection as do suburban municipalities. This expenditure per capita corresponds closely to the crime rate. Similar situations exist with respect to fire protection, public health, housing, park programs, and street maintenance. *See* E. BRANDT, THE PLIGHT OF THE CITIES 1-15 (Supp. 1973). Thus, merely equalizing expenditures per capita will not account for the different level of public services each community requires.

Local planners may also be affected by the Act, to the extent that it removes tax base considerations as a factor in urban planning. Rather than concentrating on whether a particular land use will generate maximum tax revenues while keeping service costs to a minimum, a municipality can base its planning decisions on nontax factors.[113] On the other hand, the tax revenue-service cost calculus may simply become more complicated under the Act. Local planners may attempt to weigh the loss of two-fifths of the incremental growth in a municipality's commercial-industrial assessed valuation against the implications of such development under the statutory distribution formula. In other words, the existence of the Act might simply result in the incorporation of its effects into the tax revenue-service cost balance. Nevertheless, to the extent that the Act shifts a municipality's focus from commercial-industrial development to a broader range of development by making the latter more economically feasible, it should remove tax base considerations as the primary determinant of that municipality's planning decisions.

On the regional level, the Fiscal Disparities Act should aid implementation of the Metropolitan Council's Development Guide[114] and promote local government cooperation[115] by reducing intergovernmental competition for commercial and industrial development. Viewed as part of an overall legislative scheme, therefore, the Act furthers the orderly growth of the seven-county area and may make possible the realization of other regional objectives. If successful, however, the Act may result in the elimination of one reason for local government reorganization,[116] since the problem of fiscal disparities will have been re-

113. Freilich & Ragsdale, *Timing and Sequential Controls—The Essential Basis for Effective Regional Planning: An Analysis of the New Directions for Land Use Control in the Minneapolis-St. Paul Metropolitan Region*, 53 MINN. L. REV. 1009, 1032 (1974).

114. *See* note 33 *supra*.

115. *See* Hagman, *supra* note 109, at 129-30. The initial response to the Act, however, has been resistance by most municipalities that must share their tax base with others. Burnsville's lawsuit challenging the validity of the Act exemplifies this hostility toward the implementation of the Act. In addition, the Minnesota Supreme Court's decision upholding the Act's validity resulted in the introduction in the legislature of a bill that would repeal the Act. Minneapolis Tribune, Jan. 25, 1975, § B, at 10, col. 1. This reaction was foreseen by the house subcommittee which considered the fiscal disparities bill. *See* HOUSE REPORT, *supra* note 8, at 28-29. That subcommittee suggested that the Act be combined with the Metropolitan Council's proposed percentage equalization program, under which all communities would be net beneficiaries.

116. *See* U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS,

moved or reduced. By so preserving the existing local governmental structure, the Act may thus incongruously prove to be an obstacle to regional government.

The Act may also further, on a more subjective level, the notion of regionalism in the seven-county area. An enunciated objective of the Act is "to establish incentives for all parts of the area to work for the growth of the area as a whole."[117] One such incentive is provided by the fact that when commercial-industrial development occurs anywhere in the seven-county area, many municipalities will share in its contribution to the area-wide tax base. The Act may thus broaden the focus of local officials from their own municipalities to the entire seven-county area.

IV. CONCLUSION

In terms of concrete accomplishment, the Fiscal Disparities Act is perhaps only a modest step toward improved local governmental finance. It continues the use of the much maligned property tax, which has been decried for its regressivity, inequitable administration, adverse land use consequences, and even unpopularity.[118] In recent years, however, the property tax has been looked upon with more favor,[119] and there now seems little doubt that it will continue as the mainstay of local finance.[120] For this reason, the Act's most significant achievement may be its redistribution over the seven-county area of possible tax windfalls, gained by a particular municipality from the location of commercial-industrial property within its borders.

Other deficiencies, however, detract from this achievement. Since the distribution formula is founded primarily on population, the shares that governmental units receive from the area-wide tax base are not necessarily related to the unit's needs.

METROPOLITAN SOCIAL AND ECONOMIC DISPARITIES: IMPLICATIONS FOR INTERGOVERNMENTAL RELATIONS IN CENTRAL CITIES AND SUBURBS 124-25 (1965).

117. MINN. STAT. § 473F.01(3) (1974).

118. *See generally* CITIZENS LEAGUE, *supra* note 14, at 18-19; FINANCING SCHOOLS, *supra* note 22, at 11-42, 69-74, 76; Glickstein & Want, *Inequality in School Financing: The Role of Law*, 25 STAN. L. REV. 335, 397-98 (1973).

119. *See* FINANCING SCHOOLS, *supra* note 22, at 12; Areen & Ross, *supra* note 95, at 49-50; Carrington, *supra* note 101, at 1244-46.

120. *See* HOUSE REPORT, *supra* note 8, at 11; Meon & Moon, *The Property Tax, Governmental Services, and Equal Protection: A Rational Analysis*, 18 VILL. L. REV. 527, 591-92 (1973) (property taxes should continue to support public services not producing significant spillovers).

Moreover, because the shared area-wide tax base is limited in nature and extent,[121] the Act can only partially reduce fiscal disparities. The Act could be revised either to broaden the character of property whose assessed valuation is shared,[122] or to supplement its operation with additional funds derived from a nonproperty tax source at the state or regional level.[123] Increased state aid to municipalities and school districts, for example, would lessen the reliance of governmental units on the property tax[124] and thus mitigate the deficiencies of the Act.[125] Without modification, however, the Act remains open to attack as being relatively ineffective in relieving inequities in the tax burden with respect to the provision of public services.

On other levels, the Fiscal Disparities Act may have a greater effect. One very important impact may well be that, in conjunction with the activities of the Metropolitan Council, the Act will serve to further the orderly development of the seven-county area. In this regard the Act's narrow focus on commercial-

121. The Act provides that the assessed valuation of only commercial-industrial property will be shared. Moreover, only 40 percent of the increase in this valuation since 1971 forms the area-wide tax base.

122. Even if the assessed valuation of other property—such as residential—were included in the redistribution scheme of the Act, merely requiring the area's tax base to be shared on a larger scale might not provide sufficient funds for all communities. If a high minimum level of public services were desired, additional funding would be necessary.

123. *See* CITIZENS LEAGUE, *supra* note 14, at 18-23. Of the five fiscal disparities proposals that were before the house subcommittee, all but the bill eventually enacted provided for additional revenues. *See* HOUSE REPORT, *supra* note 8, at 15-29. The house subcommittee felt that, with or without provision for additional revenues, a statute was needed which would allow local governmental units to share the property tax base. *Id.* at 14.

124. Municipalities in Minnesota are relying less on property taxes and more on state and federal aid. *See* Minneapolis Tribune, Jan. 31, 1975, § B, at 2, cols. 3-4 (37 percent of municipalities' revenue generated by property taxes in 1971; 29 percent in 1973). Nonetheless, property taxes continue to increase in most municipalities. *Id.*

125. The present state aid program, however, does little to equalize taxpayers' burdens. The legislature has concentrated on aiding education while doing little to alleviate municipal overburden. E. BRANDL, *supra* note 112, at 29-37. For example, in 1972 state-provided funds represented 70 percent of revenue for elementary and secondary schooling, but only 25 percent of municipal government revenue. *Id.* at 29. This pattern of state aid only increases the discrepancies between the fiscal position of the suburbs, whose primary financial burden is education, and that of the central cities, which are plagued by greater municipal costs. *See note 112 supra.* Minneapolis has been hurt by such a state aid program. *See* Minneapolis Tribune, Feb. 12, 1975, § A, at 4, cols. 1-2. *But see* Minneapolis Tribune, Feb. 21, 1975, § A, at 12, cols. 1-2 (suburbs' rebuttal).

industrial property may be appropriate, since such property is the prime object of municipal competition to improve the local tax base. Also, the Act may have major significance because its notion of funding governmental units in part on an area-wide basis recognizes the seven-county area as a single community. To this extent the statute may help foster a growing regionalism in the seven-county area. Conversely, it may serve to rescue those governmental units faced with a fiscal crisis from the fate of annexation, merger, or consolidation, and thus encourage the forces of decentralization.

The impact of the Fiscal Disparities Act will increase in the future.[126] For the present, however, its significance seems to rest in its function as an interim measure, a milestone in the regional development of the seven-county area.

126. In 1973, the shared commercial-industrial assessed valuation was to have been only about two percent of the area's total tax base. By 1985, this figure is expected to be 25 percent. Minneapolis Tribune, July 18, 1971, § A, at 14, cols. 1-2.

Appendix

ILLUSTRATION OF THE WORKINGS OF THE FISCAL DISPARITIES ACT

Consider a metropolitan area in which three municipalities, A, B, and C, comprise a county, W. For purposes of this illustration, these four entities will be assumed to constitute the only existing governmental units. A is a central city beset with urban problems, B is a highly developed inner ring suburb, and C is a developing outer ring suburb.* The following data is postulated:**

	A	B	C	W
Population 1971	50,000	20,000	5,000	75,000
1972	49,000	20,000	6,000	75,000
Valuation***1971	$400	$140	$60	$600
Assessed valuation 1972	$105	$50	$20	$175
C-I assessed valn. 1971	$23.0	$4.9	$3.0	
C-I assessed valn. 1972	$23.5	$5.0	$3.5	
C-I growth	$ .5	$ .1	$ .5	
40% C-I growth	$ .2	$ .04	$ .2	

The effect of the Fiscal Disparities Act on the metropolitan area can be studied through the use of this data.

1. Calculation of fiscal capacity and area-wide tax base: ****

Fiscal capacity for 1971 (f.c.=valn./pop.) (§473F.02(14))
for A = $400/50,000 = 8,000
for B = $140/20,000 = 7,000
for C = $60/5,000 = 12,000

Average fiscal capacity for 1971 (§473F.02(15))
($400 + $140 + $60)/(50,000 + 20,000 + 5,000) = 8,000

Area-wide tax base (§473F.07(1))
$.2 + $.04 + $.2 = $.44

2. Determination of a municipality's distribution from the area-wide tax base:

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* A, B, and C have the approximate fiscal capacities of Minneapolis, Richfield, and Burnsville, respectively.

** All dollar amounts are in millions. Valn.=valuation; pop.=population; C-I=commercial-industrial; f.c.=fiscal capacity.

*** Valuation is the market value of real property within a governmental unit.

**** Throughout this statutory process, the burden of calculating the various figures is allocated between the administrative auditor and each county auditor.

The area-wide tax base distribution index (pop.× ((avg. f.c. 1971)/(f.c. 1971)) × 2) (§473F.07(3))

for A = 49,000 × (8,000/8,000) × 2 = 98,000
for B = 20,000 × (8,000/7,000) × 2 = 45,714
for C = 6,000 × (8,000/12,000)× 2 = 8,000

The sum of these indices = 98,000 + 45,714 + 8,000 = 151,714

The area-wide tax base for 1972 (((index)/(indices)) × (area-wide tax base)) attributable (§473F.07(4), (5))

to A = (98,000/151,714) × $.44 = $.2842
to B = (45,714/151,714) × $.44 = $.1326
to C = (8,000/151,714) × $.44 = $.0232

Therefore:

	Assessed Valuation		
	Contribution	Distribution	Net
A	$.2000	$.2842	$.0842
B	$.0400	$.1326	$.0926
C	$.2000	$.0232	−$.1768

C is a net loser to the area-wide tax base while A and B gain on balance.

3. Calculation of taxable value for each governmental unit:
((assessed valn.) — (contribution to area-wide tax base) + (distribution therefrom))

for A	for B	for C	
$105.0000	$50.0000	$20.0000	(§473F.03(2))
— .2000	— .0400	— .2000	(§473F.08(2)(a))
+ .2842	+ .1326	+ .0232	(§473F.08(2)(b))
$105.0842	$50.0926	$19.8232	

for W
$175.0000 (§473F.03(2))
—((.2 + .04 + .2) = .44) (§473F.08(2)(a))
+((.2842 + .1326 + .0232) = .44) (§473F.08(2)(b))
$175.0060

4. Determination of levy:

After the taxable value for their governmental unit has been calculated, officials can decide upon the amount they wish to levy. Suppose A decides on a levy of $12.6, B $2.25, C $.7, and W $17.5. These are total levies, which must be apportioned among the local and area-wide tax bases.

The taxable resources available to each unit (local tax base + area-wide share)

A = $104.8000 + $.2842 = $105.0842
B = $49.9600 + $.1326 = $50.0926
C = $19.8000 + $.0232 = $19.8232
W = $174.5600 + $.4400 = $175.0000

Unit's area-wide levy (((area-wide share)/(taxable value)) × (total levy)) (§473F.03(3)(a))

Unit's local levy ((total levy) — (area-wide levy)) (§473F.03(3)(b))

for A area-wide levy = (.2842/105.0842) × 12.6 = $.03403
local levy = 12.6 — .03403 = $12.56592

for B area-wide levy = (.1326/50.0926) × 2.25 = $.00596
local levy = 2.25 — .00596 = $2.24404

for C area-wide levy = (.0232/19.8232) × .7 = $.00082
local levy = .7 − .00082 = $.69918
for W area-wide levy = (.4400/175.0000) × 17.5 = $.04400
local levy = 17.5 − .04400 = $17.45600

5. Calculation of tax rates:

The local tax rate ((unit's local levy)/(unit's local tax base)) ($473F.03(4))

with respect to municipalities
for A = (12.56592)/(101.8000) = .11990 = 119.90 mills
for B = (2.24404)/(49.9600) = .04192 = 44.92 mills
for C = (.69918)/(19.8000) = .03531 = 35.31 mills
with respect to the county
W = (17.45600)/(174.5600) = .10000 = 100.00 mills

The local tax rate is the tax levied on all taxable property except commercial-industrial property. Thus, for noncommercial-industrial property, the tax rate is
in A 119.90 + 100.00 = 219.90 mills
in B 44.92 + 100.00 = 144.92 mills
in C 35.31 + 100.00 = 135.31 mills

The area-wide tax rate ($473F.03(5))
The area-wide levy = $.03403 + $.00595 + $.00032 + $.04400 = $.08486
The area-wide tax rate ((area-wide levy)/(area-wide tax base))
= (.08486)/(.44)
= .19286 = 192.86 mills

The tax rate on commercial-industry property (((40% C-I growth)/(C-I assessed valn. 1972)) × area-wide tax rate) + (((C-I assessed valn. 1972−40% C-I growth)/(C-I assessed valn. 1972)) × local tax rate) ($473F.03(6))
in A = ((.2/23.5) × 192.86) + ((23.3/23.5) × 219.90) = 219.67 mills
in B = ((.04/5) × 192.86) + ((4.96/5) × 144.92) = 145.30 mills
in C = ((.2/3.5) × 192.86) + ((3.3/3.5) × 135.31) = 138.60 mills

Prior to the passage of the Fiscal Disparities Act, tax rates would have been (unit's tax rate = unit's levy/unit's assessed valn.)

	municipal	county	
in A =	(12.6/105)	+ (17.5/175) = .12000	+ .10000 = 22.00 mills
in B =	(2.25/50)	+ (17.5/175) = .04500	+ .10000 = 14.50 mills
in C =	(.7/20)	+ (17.5/175) = .03500	+ .10000 = 13.50 mills

on both commercial-industrial and other property.

3:40 pm
2-22

TO: LISA

FROM: Mr. Bernier

RE: HB 87

Mr. Bernier would like you to return his call as he is having a bit of a problem drafting the amendment regarding dual majority in both borough and city. I told him that you'd get back to him 2/23 A.M.

J.

Introduced: 1/21/77
Referred: Community & Regional Affairs and Judiciary

IN THE HOUSE BY MALONE

HOUSE BILL NO. 87

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

vote on issue dual majority?

A BILL

For an Act entitled: "An Act relating to appropriations and grants from boroughs to service areas and cities; and providing for an effective date."

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

* Section 1. AS 29.63.090(b) is amended to read:

(b) The assembly may levy or authorize the levying of taxes, charges, or assessments in service areas to finance the special services or may by ordinance authorize appropriations from areawide taxes or other areawide revenues to finance all or part of the special service and, after enactment of an authorizing ordinance, may make appropriations for the purpose authorized.

* Sec. 2. AS 29.73 is amended by adding a new section to read:

Sec. 29.73.070. REVENUE SHARING GRANTS BY BOROUGHS. A home rule or general law borough of any class may make grants from areawide taxes or other areawide revenues to cities within the borough or service areas of the borough for a function the city or service area is authorized to perform. Grants so made shall be authorized by borough ordinance.

* Sec. 3. AS 29.13.100 is amended by adding a new subsection to read:

(37) AS 29.73.070 (revenue sharing by boroughs)

* Sec. 4. AS 29.48.210 is amended to read:

Sec. 29.48.210. EXPENDITURE OF BOROUGH REVENUES. Borough revenues levied and collected on an areawide basis by a home rule or general law borough may be expended on general administrative costs, [AND] on areawide functions, and as authorized in AS 29.63.090(b) and 29.73.070 only.

Revenues levied and collected in the area outside cities only may be expended on general administrative costs and functions which render service to the area outside cities only.

* Sec. 5. AS 29.53.010 is amended to read:

Sec. 29.53.010. GENERAL PROPERTY TAX. Home rule and general law boroughs may levy (1) an areawide property tax for areawide functions, <u>for appropriations authorized under AS 29.63.090(b), for grants authorized under AS 29.73.070;</u> and (2) a property tax limited to the area outside cities for functions limited to the area outside cities. A property tax if levied must be assessed, levied and collected on real and personal property as provided in this chapter.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-070(c).

In short, this is a nice, neat way to impose a large borough tax on the remaining commercial and oil industry property with all functions of government (i.e., city, special district and borough) being paid for by the borough taxes. Such a plan also effectively gets around an annexation problem to reach the large industry properties in the borough.

One of the problems with this whole scheme, from a political standpoint, is that if the borough tax is raised significantly (for example, suppose it went from 5-mills to 12-mills), the amount of tax paid to Kenai borough becomes a credit against the 20-mill "hardware" tax imposed at the state level on oil and gas producing equipment and pipelines. Thus, as the Kenai borough takes more in taxes with respect to property taxable under the 20-mill hardware tax, the less revenue the state receives.

Politically, it is difficult to see how anyone outside the Kenai Borough would agree to such a scheme, because the people outside Kenai have everything to lose and nothing to gain by permitting the state, in effect, to subsidize homeowners at the expense of state revenue. This is probably one of the strongest arguments why such a scheme as this would not be acceptable.

The foregoing discussion perhaps cynically assumes that voters in Kenai would agree to take property taxes off their homes. This may or may not be what the author has in mind but it certainly would be a rather powerful force to reckon with if these changes ever became a law.