SB
180

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

April 1, 1982

The Honorable Patrick M. O'Connell, Chairman
House Community & Regional Affairs Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative O'Connell:

RE: CSSB 180 (C&RA)am

This Department is pleased to note that CSSB 180am is being heard by your committee during this week. As you know, the Title 29 rewrite bill is a high legislative priority for this Department and we are hopeful it will receive prompt approval by your committee and the house.

The Department would, however, like to remind you of a concern we have regarding Sec. 29.60.140 (p. 154-155) of the current bill. This section pertains to making State Revenue Sharing payments to Native village governments. The language in this section is identical to present language found in AS 29.89.050. The Department's concerns about this language have been previously noted by the Joint Community and Regional Affairs Committee that worked on the Title 29 bill during the interim. However, that Joint Committee suggested that this language be revised in legislation specifically designed to amend the State Revenue Sharing Program. The Governor's legislation (SB 716/HB 746) to revise State Revenue Sharing substantially alters the process for funding unincorporated communities. We do, of course, hope to see enactment of the Governor's State Revenue Sharing bill as the solution to the present Native village government statute. However, in the event SB 716/HB 746 does not become law we would like to insure that AS 29.60.140 of CSSB 180am be addressed.

The enclosed September 2, 1981 Attoney General's opinion states that AS 29.89.050 is "unconstitutional if read literally to restrict aid to Native villages". The opinion goes on to say that the present law can only be interpreted as constitutional if the payments are made available to all similarly situated unincorporated communities regardless of racial or governmental status. Based on this opinion, the Department made FY 1982 State Revenue Sharing under AS 29.89.050 available on an application basis to all eligible unincorporated communities in the unorganized borough. This places the Department in a position of ignoring a statute, a position we would like to correct as soon as possible.

LPILM

Another Attorney General's opinion (copy enclosed) identifies an additional problem with AS 29.89.050. Specifically, that unincorporated communities within organized boroughs are not eligible to receive revenue sharing funds. Currently AS 29.89.050 contains no such specific prohibition. Based on this Attorney General's opinion, the Department is not paying revenue sharing funds to unincorporated communities within organized boroughs. Again, however, this puts us in a position of administering a statute in contradiction to its literal interpretation.

To alleviate this situation the Department requests that AS 29.60.140 be
1) deleted from the bill as an alternative or
2) amended in such a manner as to make eligible those unincorporated communities of 25 or more in the unorganized borough. The Department recognizes the need to make a reliable source of funding available to unincorporated communities to provide services and maintain and operate projects constructed with SB 168 funds. However, this Department and the Department of Law have always questioned the propriety of administering a program for unincorporated communities as part of a Municipal Revenue Sharing concept. State Revenue Sharing is also an "entitlement" program and the inclusion of unincorporated communities in an ongoing entitlement program has also been a source of some concern. The Department prefers, as illustrated in the Governor's Revenue Sharing bill, a program whereby unincorporated communities compete by application on the basis of need and merit with other unincorporated communities for a segregated "pot" of funding (i.e. a modifiedversion of the current Rural Development Assistance program authorized in AS 44). The second alternative language suggested above would "legitimize" the manner in which the Department currently administers the present State Revenue Sharing program.

If we can provide you with additional information on this matter, please advise.

Sincerely,

LEE McANERNEY
COMMISSIONER

BY: Palmer McCarter, Director
Local Government Assistance Division

Enclosures

cc: Senator Don Gilman

cc: Senator Don Gilman
Senator Arliss Sturgeluwski
Ginnie Chitwood, Alaska Municipal League
Tamara Brandt Cook, Legal Services

MEMORANDUM State of Alaska

TO Hon. Lee McAnerney, Commissioner
Dept of Community & Regional Affairs

DATE April 27, 1981

FILE NO J-66-335-81

ATTN: Palmer McCarter, Director
Div. of Local Gov't Asst

TELEPHONE NO 465-3600

FROM WILSON L. CONDON
ATTORNEY GENERAL

By:
Rodger W. Pegues
Assistant Attorney General

SUBJECT State revenue sharing with IRA councils and traditional councils, chiefs, or other governing bodies

You have asked for additional advice on this subject.

Under AS 29.89.050, the state pays $25,000 annually to a "Native village government for a village which is not incorporated as a city . . . ." The term is defined as a local governing body organized under section 16 of the Indian Reorganization Act, 25 U.S.C.A. 476 (1963) which was applied to Alaska by the Act of May 1, 1936, 25 U.S.C.A. § 473a (1963), */ or as a traditional village council, paramount chief, or other governing body of a village.

This statute creates serious constitutional problems. If the money is not expended by the recipient to provide public services in a racially non-discriminatory manner, the public purpose clause **/ and the equal protection clause ***/ of the Alaska Constitution will have been violated. Lien v. City of Ketchikan, 383 P.2d 721 (Alaska 1963). The test, however, is not the racial or religious character of the recipient but the character of the use to which the money will be put. Id. And the courts will look at the entire factual and governmental context on a case-by case basis to determine whether the expenditure serves a public purpose. Wright v. City of Palmer, 468 P.2d 326 (Alaska 1970). Accordingly, the constitutional provisions which require a public purpose and equal protection will not be offended so long as the services

---

*/ There is a question whether any section 16 tribal organization, other than the Metlakatla Indian Community Annette Islands Reserve, Alaska, still exercises governmental powers after the enactment of the Alaska Native Claims Settlement Act.

**/ Alaska Const., art. IX, § 6. "No tax shall be levied, or appropriation of public money made, or public property transferred . . . except for a public purpose."

***/ Alaska Const., art. I, § 1; U.S. Const., Amend. XIV, § 1.

provided by a village council are furnished on a non-discriminatory basis.

A much less easily resolved problem lies in another provision of the Alaska Constitution, article X, section 2:

> All local government power shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

This limitation of "local government power" to boroughs and cities is preceded by a purpose clause which states:

> 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.

The record of the debates at the Constitutional Convention makes it clear beyond reasonable doubt that this threefold statement of purpose and construction precisely and concisely sums up the essence of the article on local government and the intent of its framers. The framers perceived three evils hobbling local government in Alaska and elsewhere: One, there were a multiplicity of overlapping, special (often single) purpose districts, each little known to the average voter and each monomaniacly pursuing its own goals in disregard and often in conflict with other special purpose districts occupying the same, or part of the same, area. Two, many of these districts operated on revenues from special purpose projects, for example sewage disposal districts. Others levied taxes. Their single purpose orientation, lack of centralized control and responsibility, distance from any meaningful relationship to the voters, and lack of any need to compete for a share of an integrated budget made tax levies and expenditures excessive and irrational. Three, the courts had hobbled local governments with general rules for construing their powers under which local governments could not respond to pressing needs because they could not find some express provision of a statute or charter which gave them the power to act on the subject. The framers crafted article X to cure or remove all three evils. Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, 368 P.2d 540, 543-545 (Alaska 1962).

The provisions of article X carry out the framers

purposes. They prescribe that a "liberal construction shall be given to the powers of local government units." Alaska Const., art. I, § 1. They limit local government powers to cities and boroughs. Id., § 2. They allow the legislature to delegate taxing power to boroughs and cities only. Id. They prohibit new special districts ("service areas") from being 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." Id., § 5. The adoption of home rule charters is placed in the hands of local voters, id., § 9, and home rule local governments have all powers not prohibited by law or charter. Id., § 11. Finally, to make boundary changes, including mergers, as easy as possible, a state commission is empowered to change them, subject only to a two-house veto by the legislature. Id., § 12. In other words, if the constitution is followed, none of the three evils the framers sought to cure and avoid can exist in Alaska.

The use of traditional village councils or IRA councils to provide local government services is at odds with the constitution's provisions on local government. The public services they would perform are those which local governments perform. The Alaska Constitution limits the exercise of those powers by political subdivisions of the state to boroughs and cities. The tribal councils are neither. If they are duly organized under section 16 of the Act, 25 U.S.C.A. 476 (1963), they are tribal governments with sovereign immunity. Parker Drilling Co. v. Metlakatla Indian Community, 451 F.Supp. 1127 (D. Alaska 1978); Atkinson v. Haldane, 569 P.2d 151 (Alaska 1977). Financing a broad range of tribal government activities on the part of the councils is not for a public purpose of the state. Financing a broad range of non-tribal, local government activities through the councils would effectively raise them to the status of local governments. That conflicts with the constitutional mandate that the legislature may only use cities or boroughs to provide local government, and it indubitably removes any incentive -- or even any rational basis -- for a village to incorporate as a city. It would also have the practical effect of creating or sanctioning a racially exclusive de facto local government under color of state law, which is the reason that tribal councils cannot be designated by the state to be cities or local governments. Under the Equal Protection Clause, the state cannot set up racially exclusive political subdivisions.

This is not to say that the state cannot contract with a racially (or religiously) exclusive group to provide

public services or manage a public facility on a non-discriminatory basis for all the residents of a community. On a limited basis, therefore, grants can be made to IRA councils in their capacity as business corporations to provide some public services. The state constitution, however, bars the de facto establishment under state law of these councils as the local governments of Alaska's villages.

There is still another problem. In making monetary distribution to Native village governments but not to other potential applicants for grants in those villages and in other unincorporated communities, the statute may create equal protection problems by discriminating against the latter without a reasonable basis, if these are responsible parties which are equally capable of providing community services. This problem can be solved by amending the law to open the class of beneficiaries to other entities and other communities and including them, on application, in the distribution. We understand that there are 30 of these communities.

Turning to your specific questions, first to be eligible to participate in the revenue sharing program, the community must meet the statutory requirements, make application, and undertake to expend the money for public purposes on a non-discriminatory basis. Because the contract cannot be enforced in court unless Congress waives the tribal government's sovereign immunity, you should use forfeiture of the grantee's right to a grant in the following fiscal year as an enforcement mechanism.

Second, state money cannot be expended for the costs of general administration because the village councils and other groups are not public agencies of the state or its political subdivisions. They are, on the one hand, federally recognized and organized tribal entities, and on the other, private associations or corporations. With respect to the former, depending on whether they are organized under section 16, section 17, or both of the Indian Reorganization Act, they are governmental, corporate, or both. In their governmental role, they are tribal. In their corporate role, they are private. All of them can provide public services on a non-discriminatory basis, and to the extent that they do so, a proportional share of their general administrative costs can be paid from state money.

Third, we know of no way to insure that the money will be spent for the good of the whole community. Obviously, each recipient must be required to promise that the money will

be spent for the good of the entire community and to specify what public services it will provide on a racially non-discriminatory basis. Enforcement will be difficult against a tribal council acting in its governmental capacity under section 16 of the IRA. For that reason, if a section 17 corporation exists, the grant-contract should state that it is with the village council acting in its capacity as a business corporation.

RWP/pjg

cc: Hon. William R. Nix
Commissioner
Department of Public Safety

Daniel W. Hickey
Chief Prosecutor
Juneau AGO - Criminal Section

MEMORANDUM State of Alaska

TO Hon. Lee McAnerney, Commissioner
Dept of Community & Regional Affairs
ATTN: Palmer McCarter, Director
Div. of Local Gov't Asst

DATE September 2, 1981

FILE NO J-66-829-81

TELEPHONE NO 465-3600

FROM WILSON L. CONDON
ATTORNEY GENERAL

By: Laura L. Davis
Assistant Attorney General

SUBJECT State financial aid to benefit unincorporated communities

By your memoranda of May 17 and June 12, 1981, you have asked us to address a number of questions related to state financial assistance to benefit unincorporated communities. First, as to your authority to distribute money to unincorporated villages under AS 29.89.050, we believe that statute to be unconstitutional if read literally to restrict aid to Native villages. We also believe that the statute may be construed in a constitutional manner by severing the words "Native" and "government" and the definition of "Native village government." Second, with regard to state financial aid to unincorporated communities in general, we will discuss the relevant constitutional principles which apply to the questions you have raised.

AS 29.89 provides for annual revenue sharing with municipalities (for roads, AS 29.89.020), operators of health facilities and hospitals (AS 29.89.030), volunteer fire departments in the unorganized borough (AS 29.89.040), and Native village governments (AS 29.89.050). As discussed in our memorandum of April 27, 1981, aid to Native village governments raises serious issues under (1) article IX, section 6 of the Alaska Constitution which prohibits expenditure of public money unless the expenditure is for a public purpose; (2) article I, section 1, which accords equal protection to all persons; and, (3) article X, section 2, which provides for the exercise of local governmental powers only by cities and boroughs which are incorporated under state law.

We stated that the public purpose requirement was satisfied if the money were used for public benefit, and not for the private benefit of a racially exclusive group. We also indicated that a local organization could receive and spend state money for the benefit of a community without becoming a de facto unit of local government. As to equal protection, we stated that the distribution of state money to a racially exclusive organization did not deny equal protection to persons who are not members of the organization, if benefits provided with the funds were made available to the public at large.

However, as we noted, the payment of state money under AS 29.89.050 only to those unincorporated communities which are identified as Native villages does exclude from participation a number of similarly situated communities which are not Native villages. The first inquiry necessary to determine if a statute is valid under Alaska's equal protection test is whether the statute has a legitimate purpose. State v. Erickson, 574 P.2d 1 (Alaska 1978).

Of the three possible purposes for AS 29.89.050 which we have identified, the only legitimate one is to provide public services to residents of unincorporated communities. */ If the statutory purpose were illegitimate under the Alaska Constitution, the statute would be unenforceable. There is a heavy presumption in favor of the constitutionality of any statute. SUTHERLAND STATUTORY CONSTRUCTION § 45.11.

Assuming that the legislature intended by AS 29.89.050 to provide public services to the residents of unincorpo-

---

*/ A purpose to benefit Native villages solely because of the racial ancestry of their inhabitants would not be legitimate in the absence of a special motivation such as compensation for loss of aboriginal property rights. No such special motivation appears to be present here. A purpose to encourage the Native villages to assume the responsibilities of local governmental units would be in conflict with article X, section 2, of the constitution, and thus will not be inferred, despite the use of the term "Native village government."

We note that the Act which added AS 29.89 stated no purpose for that chapter, but did state a purpose for adding the general revenue sharing chapter, AS 29.88, as follows:

> It is the purpose of sec. 2 of this Act to
>
> (1) improve the revenue raising and distribution system for the benefit of residents of home rule and general law municipalities by providing for more equitable allocation of financial resources among municipalities to improve their fiscal capacities; and
>
> (2) assure that no municipality suffers impoverishment of necessary public services, relative to other municipalities, because of the chance location of taxable wealth in the state.

rated communities, the means chosen are only loosely suited to that purpose because of the existence in the state of a substantial number of unincorporated communities whose residents would not be benefitted by the literal language of AS 29.89.050. Since the distinction is based upon the racial ancestry of the communities, we might conclude that the statute is unconstitutional despite its legitimate purpose. However, we note that the Alaska Supreme Court has held that a statute which denied equal protection by limiting its application to members of one sex (prohibiting prostitution by females) could be construed as constitutional by severing the offending restrictive language, and thereby expanding application of the statute to all persons. Plas v. State, 598 P.2d 966 (Alaska 1979).

The interpretation of AS 29.89.050 presents an analogous problem. The effect of severing the offending restriction to "Native" village "governments," and deleting the definition of that term, is to expand the group of eligible communities to include all "villages." */ Although this interpretation alters the literal wording of the statute significantly and is, therefore, not to be implemented hastily, State v. Campbell, 536 P.2d 105 (Alaska 1975), it does avoid the alternative interpretation that the statute is unconstitutional and void. The law strongly favors the construction of statutes to be consistent with constitutional requirements. State v. Sundberg, 611 P.2d 44 (Alaska 1980); Summers v. Anchorage, 589 P.2d 863 (Alaska 1979). According to Sutherland:

> It has even been said that "a strained construction is not only permissible, but desirable if it is the only construction that will save constitutionality."

SUTHERLAND STATUTORY CONSTRUCTION § 45.11 at 34 (footnote omitted). We believe that the interpretation of AS 29.89.050 to authorize grants of state money to all villages is the only interpretation consistent with our constitution.

According to your estimates, the dilution of revenue sharing funds caused by including other unincorporated communities under AS 29.89.050 will not cause significant diminution in the fund allotments. Further, this interpretation

---

*/ A parallel deletion of "Native" and 'government" from AS 29.89.010(b) is also necessary.

is consistent with the subsequent action of the legislature in providing for grants to all unincorporated communities. 1981 Alaska Sess. L., ch. 60, § 2. We believe that under the circumstances, the Alaska courts would uphold an administrative interpretation of AS 29.89.050 to permit revenue sharing to all villages in the state, regardless of their racial composition or ancestry.

A question arises as to the meaning of "village" under AS 29.89.050, in the absence of the language limiting it to a Native village organized under federal law. Generally, a village is any discrete and identifiable place where a group of people reside in close proximity, intend to remain in the place indefinitely, and carry on ordinary human social and economic activities as a community. Wyandotte Sav. Bank v. Eveland, 78 N.W.2d 612, 617, 347 Mich. 33; Union Sav. Bank of Patchogue v. Saxon, 335 F.2d 718, 721 (D.C. Cir. 1964). Your administrative regulations interpreting and implementing chapter 60, SLA 1981 should provide appropriate guidelines for both that Act and for AS 29.89.050.

Your memorandum of May 17 asked a number of questions regarding your assistance to local governments and to communities in the unorganized borough. Generally, the three constitutional principles discussed above should guide your conduct. You must administer money under your control in order to ensure that it is spent to achieve a public purpose. This requires active supervision of all grants and contracts, especially those transferring money to an organization other than a municipal government. Village and regional Native corporations are not incorporated as cities or boroughs and are not considered to be local governments under state law.

The equal protection provision requires that you administer your programs in order to provide similar treatment for people or organizations which are similarly situated, unless there is a very strong reason for treating them differently. The distinction between a municipality and an unincorporated village is created by the Alaska Constitution. This different treatment of municipalities is justified because of their status and duties as governmental entities. For example, the state may make general revenue sharing grants to municipalities, to be used at the discretion of the municipal government. The public purpose requirement is met by the operation of state law and the Alaska Constitution controlling the activities of municipal governments. The state may not make general revenue sharing grants to non-governmental entities. In administering the grants to villages under AS 29.89 and to unincorporated communities under chapter 60,

SLA 1981, you must ensure that the money is spent to achieve a public purpose.

The local government article of the Alaska Constitution (article X) provides for the exercise of local government powers by cities and boroughs and for the provision of services by multi-purpose service areas. In administering services in the organized borough, the state may contract with any entity capable of providing the needed service, as long as the contractor is actively supervised by the state, and not permitted to become de facto, a local government.

You are not absolutely prohibited by the constitution from contracting for the delivery of services by profit-making corporations or by Native organizations which may have sovereign status, if the services are necessary and no other capable and responsible contractor is available. However, it would be inconsistent with your duties as an administrator of public funds, to contract with these organizations if another more responsible and capable contractor is available. An entity which may be immune from contract enforcement because of its sovereign status should be considered less responsible to accept a state grant than any corporate entity.

We will defer your request for an authoritative statement of the powers of tribal governments for the time being, and hope that these general guidelines are adequate to resolve your immediate problems.

LLD/pjg

MEMORANDUM State of Alaska

TO Hon. Lee McAnerney, Commissioner
Dept of Community & Regional Affairs

DATE November 18, 1981

FILE NO J-66-261-82

ATTN: Palmer McCarter, Director
Div. of Local Gov't Asst

TELEPHONE NO 465-3600

FROM WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT Revenue sharing to unincorporated communities

By: Laura L. Davis
Assistant Attorney General

This responds to your memorandum of October 1, 1981. It is our opinion that AS 29.89.050 should be interpreted to authorize payments only to those unincorporated communities located outside the boundaries of any municipality, and administered in a manner similar to that provided for aid to unincorporated communities under chapter 60, SLA 1981. Our reasoning follows:

Our memoranda of April 27, 1981 and September 2, 1981 set forth and explain the legal principles which prohibit the recognition of any entity other than an incorporated city, borough, or unified municipality as a unit of local government in Alaska. We advised by those memoranda that general revenue sharing with an unincorporated community would be unconstitutional. In order to avoid the conclusion that AS 29.89.050, "State aid to Native village governments," is unconstitutional and void, we suggested that the legislative intent behind that section was to provide state assistance for public services in unincorporated communities.

Any community located within a municipality is a part of the municipality. Adult members of the community are eligible to vote in municipal elections and the municipality is the unit of local government for that community. There is no need for the state to provide services through another organization where a municipality exists. To do so would contravene the constitutional provision that "all local government powers shall be vested in boroughs and cities." Alaska Const., art X, § 2.

Accordingly, we advise that AS 29.89.050 should be administered not as general revenue sharing, but as aid for specific purposes which are identified in a manner similar to that provided for aid to unincorporated communities in chapter 60, SLA 1981. Payments should be made under AS 29.89.050 only for the benefit of communities located outside any municipality.

We understand that the Senate community and regional

affairs committee has discussed introducing legislation to amend AS 29.89.050 to provide for aid to unincorporated communities similar to chapter 60, SLA 1981. Such legislation would confirm our interpretation of the legislative intent behind AS 29.89.050 and would avoid the constitutional problems discussed in our earlier memoranda. We hope that this answers your questions.

LLD/pjg

TABLE I

LOCAL ASSESSMENT POLICY

BOROUGHS	RESIDENTIAL		GENERAL PERSONAL PROPERTY		MOTOR VEHICLES		BOATS & VESSELS		BUSINESS INVENTORY		AIRCRAFT	
	AV	EX	AV	EX	AV	EX	AV	EX	AV	EX	AV	EX
ANCHORAGE, MUNICIPALITY OF	X	-	X	-	2	-	X	-	X	-	X	-
BRISTOL BAY BOROUGH	1	-	X	-	X	-	X	-	X	-	X	-
FAIRBANKS NORTH STAR BOROUGH	1	-	-	X	-	X	-	X	-	X	-	X
HAINES BOROUGH	X	-	X	-	X	-	-	3	X	-	X	-
JUNEAU, CITY & BOROUGH	X	-	X	-	-	X	-	X	X	-	X	-
KENAI PENINSULA BOROUGH	1	-	X	-	X	-	X	-	-	X	X	-
KETCHIKAN GATEWAY BOROUGH	X	-	X	-	2	-	-	3	X	-	X	-
KODIAK ISLAND BOROUGH	X	-	X	-	2	-	X	-	X	-	X	-
MATANUSKA-SUSITNA BOROUGH	X	-	X	-	2	-	X	-	X	-	X	-
NORTH SLOPE BOROUGH	1	-	X	-	X	-	X	-	X	-	X	-
SITKA, CITY & BOROUGH	X	-	X	-	X	-	-	3	X	-	X	-
CITIES												
CORDOVA	X	-	-	X	-	X	-	X	-	X	-	X
CRAIG	X	-	-	X	-	X	-	X	-	X	-	X
DILLINGHAM	X	-	X	-	X	-	X	-	X	-	X	-
EAGLE	X	-	X	-	-	X	-	X	-	X	-	X
GALENA		NA		NA		NA		NA		NA		NA
HOONAH		NA		NA		NA		NA		NA		NA
HYDABURG		NA		NA		NA		NA		NA		NA
KAKE		NA		NA		NA		NA		NA		NA
KING COVE		NA		NA		NA		NA		NA		NA
KLAWOCK		NA		NA		NA		NA		NA		NA
NENANA	X	-	X	-	X	-	X	-	X	-	X	-
NOME	X	-	X	-	X	-	X	-	X	-		NA
PELICAN	X	-	X	-	-	X	-	3	X	-	X	-
PETERSBURG	X	-	X	-	2	-	-	X	X	-	X	-
ST. MARY'S		NA		NA		NA		NA		NA		NA
SKAGWAY	X	-	-	X	-	X	-	X	-	X	-	X
UNALASKA	X	-	X	-	-	X	-	X	X	-	X	-
VALDEZ	1	-	-	X	-	X	-	X	-	X	-	X
WRANGELL	X	-	X	-	-	X	-	X	X	-	X	-
YAKUTAT	X	-	-	X	-	X	-	X	-	X	-	X

1. optional residential exemption up to $10,000 exercised (AS 29.53.025(a))
2. state collected, annual motor vehicle tax (AS 28.10.431)
3. option 5 & 15 dollar fee collected in lieu of property tax (AS 25.53.025(b)(1))

WEDNESDAY, MAR. 31

AMENDMENTS

DELETE SENATE FIGURES OF 10/8/10 ON PAGE 115 OF SENATE VERSION AND INSERT HOUSE FIGURES OF 20/15/20

DELETE WORDING ~~FROM~~ THAT DEFINES SUBDIVISION IN SENATE VERSION OF THE BILL AND INSERT LANGUAGE OF THE HOUSE BILL

INSERT NEW SECTION 40 IN BILL WITH THE AUTHORITY FOR MUNICIPALITIES TO FORM AN EMPLOYER GROUP FOR THE PURPOSES OF PROVIDING SELF-INSURANCE AND RENUMBER ACCORDINGLY

ON HOLD

WAIVER AND ABBREVIATED PLAT PROCEDURE
COMMITTEE CONCERN - THE LANGUAGE IN BOTH THE SENATE BILL AND HOUSE BILL DO NOT HAVE THE SAME REQUIREMENT (p.90)

Friday a.m.

TAM COOK'S AMENDMENTS

CHEVRON'S AMENDMENT - p.88 29.40.040 REPLACE WITH 29.33.090 (EXISTING LAW)

Alaska State Legislature

House of Representatives

Committee on

Community & Regional Affairs

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

To: All Committee Members
House CRA Committee

Date: March 25, 1982

From: Linda Otey, Committee Aide

Re: Differences-- CSSB 180(CRA)am / CSHB 170 (CRA)

Changes made in Committee:

	CSSB 180	CSHB 170
1.	600 pop. necessary for reclassification of 2nd class to 1st class status.	400 population requirement for reclassification
2.	Temporary law section added to allow pending applicants for reclassification to be permitted if petition has been filed with the Dept. before the effective date of this act.	---------none---------
3.	----------none----------	amended/regarding notification of certification of petitions; recall and initiative. (pg. 64)

Changes made on Senate Floor:

4. By Ziegler/ to allow borough mayors to vote in the event of a tie (pg.47)

5. Deleted language of mandatory, non-suspendable imprisonment for violation of an ordinance. (Pg. 59)

6. By CRA Committee - "the assembly shall (may) establish short plat proceedure. Returned to mandate of current law in waiver proceedure. (Pg. 90-91)

7. By Gilman- returned to current law - taxation of vessels: $5 max-5 tons or less, $15 max- over 5 tons. (Pg. 102)

CSSB 180	CSHB 170
8. By Gilman/Kerttula - amended percentages back to current law. (Pg. 115)	Rates of Penalty & Interest: 20%, 15%, 20%
9. By Sen. CRA- amended definition of 'subdivision' to be consistent with other statutory references. (Pg. 174)	

3/21/82 from Hans Eugene Wiles - Clemson USA

Amendments to CSSB170 and CSSB180
Municipal Government

Problem: No limitation is made upon the exercise of planning, platting and zoning authority with respect to projects authorized by a state or federal agency. This could result in the arbitrary and/or unreasonable exclusion or restriction of natural resource development on federal, state and fee lands.

Solution: Insert language in the bills which would prohibit local zoning decisions from interfering with federal or state agency decisions providing for the development of natural resources.

Compare: AS 35.30.030 which allows the governor to waive compliance with local zoning regulations for the construction of a public project.

Methods: (1) Impose limitation in Chapter 40 of Title 29, dealing with the exercise of zoning powers.

(2) Since home rule municipalities are not subject to Chapter 40 (except §§200 (subdivision of state land) and 160 (title to vacated areas)), and AS 29.10.110, refer to limitation in Chapter 40 by inserting a new subsection in AS 29.10.110 (limitation of home rule powers).

Language: A. Amend AS 29.40 by adding a new section 210. Two Alternatives as suggested:

1. Alternative 1:

Sec. 29.40.210. ACTIVITIES AUTHORIZED BY STATE AGENCIES. Ordinances, regulations or permit decisions adopted or promulgated under AS 29.35.180 or AS 29.40 may not preclude or otherwise impede an activity conducted pursuant to a lease, license, permit or other written authorization issued by a state or federal regulatory agency or department having jurisdiction over the activity.

2. Alternative 2:

AS 29.40.210. USES OF STATE CONCERN. (a) Ordinances, regulations and permit decisions adopted or promulgated under AS 29.35.180 or AS 29.40 may not arbitrarily or unreasonably restrict uses of state concern as defined in subsection (b) of this section.

(b) Uses of state concern means those land and water uses which would significantly affect the longterm public interest. These uses include:

(1) uses of national interest, including the use of resources for the siting of ports and major facilities which contribute to meeting national energy needs, construction and maintenance of navigational facilities and systems, resource development of federal land, and national defense and related security facilities that are dependent upon coastal locations;

(2) uses of more than local concern, including those land and water uses which confer significant environmental, social, cultural, or economic benefits or burdens beyond a single coastal resource district;

(3) the siting of major energy facilities, activities pursuant to a state oil and gas lease, or large-scale industrial or commercial development activities which are dependent on a coastal location and which, because of their magnitude or the magnitude of their effect on the economy of the state or

the surrounding area, are reasonably likely to present issues of more than local significance;

(4) facilities serving statewide or interregional transportation and communication needs; and

(5) uses in areas established as state parks or recreational areas under AS 41.20.010 - 41.20.505 or as state game refuges, game sanctuaries or critical habitat areas under AS 16.20.010 - 16.20.320.

B. Amend AS 29.10.110 by adding a new subsection 37 (and renumbering the present subsections 37 and following) to read as follows:

(37) AS 29.40.210 (activities authorized by state agencies).

TITLE 29 REVISIONS
Comment on CSHB 170(C&RA)

This comment relates to an apparently unintentional change from current law in the platting regulations under CSHB 170 (C&RA). Section AS 29.40.090 defines a "short plat procedure" which clarifies the "waiver procedure" in current law. However, proposed AS 29.40.090 leaves out a portion of the waiver process which is important to the Matanuska-Susitna Borough and in rural and remote areas. The proposed language would require survey and monumentation in all cases. Present law allows a municipality to waive such requirements for larger parcels, e.g. the subdivision of a 40 acre parcel into two 20 acre parcels. This is more regulation than is required to protect the public interests involved.

The following change is recommended to retain the flexibility of the current law, yet to keep the otherwise improved form of CSHB 170 (C&RA). AS 29.40 .090(b) should be changed to read as follows:

> Sec. 29.40.090. SHORT PLAT PROCEDURE.
> (b) The Assembly ~~may~~ shall establish notice, hearing and other procedural requirements for the review, consideration, approval, alteration and replatting of short plats and may provide for waiver of survey and other formal requirements where each parcel created is five acres or larger in size.

The only change is the addition of the provision for waiver of certain requirements where lots created are larger than five acres. This is consistent with present law. (See AS 29.33.170(a)(2).)

Steven H. Morrissett
Borough Attorney
MATANUSKA-SUSITNA BOROUGH

board. The board shall state on its record and in writing to the applicant its reason for disapproval of a plat.

(b) The platting board shall submit an approved plat to the district recorder in compliance with AS 40.15.010—40.15.020. (§ 2 ch 118 SLA 1972)

Sec. 29.33.170. Waiver in certain cases. (a) The platting authority shall, in individual cases, waive the preparation, submission for approval, and recording of a plat upon satisfactory evidence that

(1) each tract or parcel of land will have adequate access to a public highway or street;

(2) each parcel created is five acres in size or larger and that the land is divided into four or fewer parcels;

(3) the conveyance is not made for the purpose of, or in connection with, a present or projected subdivision development;

(4) no dedication of a street, alley, thoroughfare or other public area is involved or required.

(b) In other cases the platting authority may waive the preparation, submission for approval, and recording of a plat, if the transaction involved does not fall within the general intent of §§ 29.33.150—29.33.240 of this chapter and AS 40.15 if it is not made for the purpose of, or in connection with, a present or projected subdivision development and no dedication of a street, alley, thoroughfare, park or other public area is involved or required. (§ 2 ch 118 SLA 1972)

Sec. 29.33.180. Information required. A plat shall show initial point of survey, original or reestablished corners and their descriptions, and actual traverse showing area of closure and all distances, angles and calculations required to determine initial point, corners and distances of the plat, as well as other information which may be required by ordinance. (§ 2 ch 118 SLA 1972)

Sec. 29.33.190. Penalties. (a) The owner or agent of the owner of land located within a subdivision who transfers, sells, or enters into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved, and recorded, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $500 for each lot or parcel transferred, sold, or included in a contract to be sold. The platting board may enjoin a transfer, sale, or contract to sell, and may recover the penalty by appropriate legal action.

(b) No person may record a plat or seek to have a plat recorded unless it bears the approval of the platting board. A person who knowingly violates this requirement is punishable upon conviction by a fine of not more than $500. (§ 2 ch 118 SLA 1972)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM March 25, 1982

SUBJECT: Municipal government
(CSSB 180 (C&RA) am)

TO: Representative Patrick M. O'Connell
Chairman, House Community and Regional
Affairs Committee

FROM: Tamara Brandt Cook
Legislative Counsel TBC

I have discovered three technical mistakes in CSSB 180 (C&RA) am which is currently in your committee.

1. Chapter 14, which begins on page 31 is essentially identical to the provisions dealing with the capital city currently contained in AS 29.18.510 - 29.18.610. However, Sec. 7, Chapter 143, SLA 1978 provides that the Capital City Incorporation Act ". . . takes effect 30 days after certification that a bond issue for costs of relocation of the capital has been adopted by the voters of the state". This effective date was inadvertantly omitted from CSSB 180 (C&RA) am, so that Chapter 14 takes effect on the effective date of the Act. I would recommend that an effective date similar to that contained in Sec. 7, Chapter 143, SLA 1978 be added with respect to Chapter 14, or that the first sentence of Sec. 29.14.010 be changed to read: "Thirty days after certification that a bond issue for costs of relocating the state capital has been authorized by the voters of the state there is created and incorporated a city of the state as the capital city of Alaska that is a city of the first class."

2. On page 132, line 2 there is a reference to AS 34.-10.070 - 34.10.220 which has been carried over from existing law. Those sections have been repealed and the reference should be deleted from this Act.

3. On page 192, line 28 an existing chapter in Title 29 was inadvertantly omitted from the repealer. AS 29.48 should be repealed in this Act, since material currently in AS 29.48 has been reorganized into Chapter 35 of this Act.

Please contract me if you have any questions regarding these techncial corrections and let me know if you would like the corrections incorporated into a committee substitute for your committee.

TBC:ljb

12-2752
Sofo

IN THE HOUSE

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to workers' compensation."

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

* Section 1. AS 23.30.005 is amended by adding a new subsection to read:

(m) The board shall adopt regulations that permit two or more municipalities to form an employer group for the purpose of providing self-insurance under this chapter.

Possible amendment to Mun. code

A M E N D M E N T

Offered in the HOUSE

By the Community and Regional Affairs Committee

TO: CSSB 180(C&RA) am

Page 31, lines 3 - 29:

Delete all material

Pages 32 - 34:

Delete all material

Page 35, lines 1 and 2:

Delete all materi

Renumber following bill sections accordingly

Page 182, line 29:

Delete "AS 29.18 or AS 29.05, AS 29.14, or AS 29.65," and insert "AS 29.18.011 - 29.18.460, AS 29.18.510 - 29.18.610, AS 29.05, or AS 29.65, [AS 29.18]"

Page 187, lines 27 - 29:

Delete all material

Page 188, lines 1 - 26:

Delete all material

Renumber following bill sections accordingly

Page 189, lines 15 - 27:

Delete all material

Renumber following bill sections accordingly

Page 192, line 28:

Delete "AS 29.18" and insert "AS 29.18.011 - 29.18.460"

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

April 1, 1982

The Honorable Patrick M. O'Connell, Chairman
House Community & Regional Affairs Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative O'Connell:

RE: CSSB 180 (C&RA)am

This Department is pleased to note that CSSB 180am is being heard by your committee during this week. As you know, the Title 29 rewrite bill is a high legislative priority for this Department and we are hopeful it will receive prompt approval by your committee and the house.

The Department would, however, like to remind you of a concern we have regarding Sec. 29.60.140 (p. 154-155) of the current bill. This section pertains to making State Revenue Sharing payments to Native village governments. The language in this section is identical to present language found in AS 29.89.050. The Department's concerns about this language have been previously noted by the Joint Community and Regional Affairs Committee that worked on the Title 29 bill during the interim. However, that Joint Committee suggested that this language be revised in legislation specifically designed to amend the State Revenue Sharing Program. The Governor's legislation (SB 716/HB 746) to revise State Revenue Sharing substantially alters the process for funding unincorporated communities. We do, of course, hope to see enactment of the Governor's State Revenue Sharing bill as the solution to the present Native village government statute. However, in the event SB 716/HB 746 does not become law we would like to insure that AS 29.60.140 of CSSB 180am be addressed.

The enclosed September 2, 1981 Attoney General's opinion states that AS 29.89.050 is "unconstitutional if read literally to restrict aid to Native villages". The opinion goes on to say that the present law can only be interpreted as constitutional if the payments are made available to all similarly situated unincorporated communities regardless of racial or governmental status. Based on this opinion, the Department made FY 1982 State Revenue Sharing under AS 29.89.050 available on an application basis to all eligible unincorporated communities in the unorganized borough. This places the Department in a position of ignoring a statute, a position we would like to correct as soon as possible.

1-P1LH

Another Attorney General's opinion (copy enclosed) identifies an additional problem with AS 29.89.050. Specifically, that unincorporated communities within organized boroughs are not eligible to receive revenue sharing funds. Currently AS 29.89.050 contains no such specific prohibition. Based on this Attorney General's opinion, the Department is not paying revenue sharing funds to unincorporated communities within organized boroughs. Again, however, this puts us in a position of administering a statute in contradiction to its literal interpretation.

To alleviate this situation the Department requests that AS 29.60.140 be
1) deleted from the bill, or as an alternative,
2) amended in such a manner as to make eligible those unincorporated communities of 25 or more in the unorganized borough.

The Department recognizes the need to make a reliable source of funding available to unincorporated communities to provide services and maintain and operate projects constructed with SB 168 funds. However, this Department and the Department of Law have always questioned the propriety of administering a program for unincorporated communities as part of a Municipal Revenue Sharing concept. State Revenue Sharing is also an "entitlement" program and the inclusion of unincorporated communities in an ongoing entitlement program has also been a source of some concern. The Department prefers, as illustrated in the Governor's Revenue Sharing bill, a program whereby unincorporated communities compete by application on the basis of need and merit with other unincorporated communities for a segregated "pot" of funding (i.e. a modified version of the current Rural Development Assistance program authorized in AS 44). The second alternative language suggested above would "legitimize" the manner in which the Department currently administers the present State Revenue Sharing program.

If we can provide you with additional information on this matter, please advise.

Sincerely,

LEE McANERNEY
COMMISSIONER

BY: Valmer McCarter, Director
Local Government Assistance Division

Enclosures

cc: Senator Don Gilman
Senator Arliss Sturgeluwski
Ginnie Chitwood, Alaska Municipal League
Tamara Brandt Cook, Legal Services

LM/PM/jl/0917S

Alaska State Legislature

House of Representatives

Committee on

Community & Regional Affairs

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 9, 1981

M E M O R A N D U M

TO: All Members
House of Representatives

FROM: Rep. Patrick O'Connell, Chairman
House Community & Regional Affairs
Committee

SUBJECT: Municipal Code Revision - CSHB 170

The attached Chapter Summary of CSHB 170 has been prepared at my request and is being circulated at this time for your review.

As you may know, CSHB 170 is currently in the House Rules Committee and will hopefully be able to be scheduled in the next few weeks.

In an attempt to simplify this extremely technical piece of legislation, the attached summary is quite thorough in its overview of substantive changes that have been made through the revision process during the past two years.

I would sincerely appreciate your attention to the legislation and summary and would ask that you direct any questions that may arise during your review to myself or Linda Otey, Committee Aide. Any additional back-up material may be received upon request. We will be happy to assist in your research and hopefully alleviate possible areas of confusion and misunderstanding when this 'project' comes before the full body for final adoption.

Rep O'Connell

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM February 4, 1982

SUBJECT: Chapter summary of Municipal Code Revision [CSHB 170] (Work Order No. 12-2379)

TO: Representative Patrick M. O'Connell
Chairman, House Community and Regional Affairs Committee

FROM: Tamara Brandt Cook
Legislative Counsel

You have requested a chapter summary of the municipal code revision (CSHB 170) highlighting significant changes to existing law. For your convenience, I have attached a table of contents by chapter and article to the revision. Corresponding chapter numbers in the existing Title 29 are included in parentheses.

Chapter 03. The Unorganized Borough. No significant change.

Chapter 04. Classification of Municipalities. No significant change.

Chapter 05. Incorporation. Does not authorize incorporation of a third class borough.

Chapter 06. Alteration of Municipalities. Does not authorize incorporation of a third class borough through merger or consolidation.

Chapter 10. Home Rule Municipalities. Authorizes a second class city to adopt a home rule charter if the city has at least 400 permanent residents. Requires home rule municipalities to provide land use regulation.

Chapter 14. Capital City. No significant change.

Chapter 20. Municipal Officers and Employees. Requires a municipality to adopt a conflict of interest ordinance that requires a member of the governing body to declare a substantial financial interest he has in an official action. The presiding officer must then determine whether to excuse him from a vote and this decision may be overturned by majority vote of the membership. Allows a special meeting to be called if a majority of the members are given at least 24 hours notice and reasonable efforts are made to notify all members. A special meeting may be conducted with less than 24 hours notice if all members are present or if absent members waive in writing the required notice. Requires the governing body to appoint within 7 days the number of members needed for a quorum if the membership is reduced to fewer than the number needed. Requires that a veto be overridden at the next regular meeting or within 21 days after exercise of the veto. Grants authority to a municipality to establish advisory, administrative, technical, or quasi-judicial boards and commissions. Allows the governing body to provide for a classified service and to designate positions that are wholly or partially exempt from the classified service.

Chapter 25. Municipal Enactments. A penalty not to exceed that imposed for a class B misdemeanor may be imposed for a violation of an ordinance. A mandatory, nonsuspendable term of imprisonment for 5 days may be imposed for violation of an ordinance. A civil action may be instituted against a person who violates an ordinance and a civil penalty of up to $1,000 may be imposed for each violation. An action to enjoin a violation may be brought and the court must grant the injunction on finding a violation. Each day a violation continues is a separate violation.

Chapter 26. Elections. The judge of a precinct must be a voter of the precinct for which he is appointed unless no voter is willing to serve. Both general law and home rule municipalities are required to give at least 20 days notice of a regular or special election. A runoff election shall be held if no candidate receives over 40 percent of the votes cast for the office of mayor or member of the governing body or school board. There is no super majority requirement for other elected offices, and a municipality

may change the requirement for mayor, member of the governing body, or member of the council by ordinance. The initiative and referendum process and the recall process have been substantially altered. An application must be filed with the clerk for a petition. The clerk prepares the petition and provides it to the voters who will sponsor the petition. When a petition is returned, the clerk certifies whether it is sufficient and notifies the sponsors. The petition may be supplemented with additional signatures obtained and filed within 10 days after the petition is first rejected, except that a recall petition may only be supplemented if it contains an adequate number of signatures, counting both valid and invalid. A person may not be recalled until after he has served 120 days and may not be recalled if there are only 180 days left in his term.

Chapter 35. Municipal Powers and Duties. The following have been included in the list of facilities that a municipality may provide outside its boundaries: solid and septic waste facilities, utility services, transportation facilities, wharves, harbors and other marine facilities. A municipality that provides a facility outside its boundaries may regulate its use only to the extent that the jurisdiction in which the facility is located does not. Extends eminent domain and declaration of taking power to second class cities as it may be exercised by other municipalities. Unless a grant of a franchise or permanent permit is made on a competitive basis, the grant of an exclusive right to use a public street or right-of-way for more than five years to a utility or transportation system that is not certified is valid only if approved by vote. (Under existing law no franchise is valid unless it is submitted to the voters for approval.) The governing body is required by ordinance to establish a formal procedure for acquisition and disposal of land, but is not otherwise limited in its ability to dispose of land. A first class borough is allowed to exercise on a nonareawide basis any power, and on an areawide basis any power that is acquired, so long as exercise of the power is not specifically prohibited by law. Allows a second class borough to exercise on a nonareawide basis any power approved by the voters living outside cities, unless the power is prohibited by law. Allows a second class borough to exercise an areawide power if it is approved by the voters or transferred by the cities in the borough, unless prohibited by law. A city may exercise any power not prohibited by law.

Chapter 40. Planning, Platting, and Land Use Regulation. A planning commission is authorized to utilize methods other than zoning to implement a comprehensive plan. The governing body must update the plan as necessary. Requires the assembly to provide for an appeal from the application of a land use regulation before a hearing officer or board of adjustment. The governing body must establish a platting authority, but the planning commission need not act as platting authority. Plat requirements may not be waived, but in certain cases a short plat procedure may be followed rather than the regular procedure. A person who violates a land use regulation or condition imposed by a platting authority is subject to the penalties that may be imposed for violation of an ordinance.

Chapter 45. Municipal Taxation. Allows a municipality to exempt by ordinance personal property from taxation. Extends the limit on assessing farm use land to greenhouses so that they are assessed at full and true value for farm use. A penalty not to exceed 20 percent of the tax due may be added to delinquent taxes, and interest not to exceed 15 percent shall accrue on unpaid taxes. The right to repurchase foreclosed property is cut off after 10 years. If, in the absence of a suit, it becomes obvious to the governing body that judgment for recovery of taxes would be obtained the municipality must refund the taxes. A petition for incorporation of a second class city may be combined with a sales and use tax proposal, so the incorporation proposition fails if the tax proposal fails.

Chapter 46. Special Assessments. Costs that may be included in a special assessment are listed. These may not exceed actual costs, but may include reasonable estimates of the costs of issuing bonds. If an assessment is increased a new public hearing must be held unless all owners of property subject to the increase agree to the increase in writing. A municipality may issue notes for the costs of a local improvement project to be eventually paid from assessments for the improvement.

Chapter 47. Municipal Debt. The issuance of revenue bonds and use of proceeds from revenue bonds are not subject to the prohibition against a political subdivision making a subscription to the capital stock of a corporation, lending its credit for the use of a corporation, or borrowing money for the use of a corporation. Refunding bonds may be

exchanged at the discretion of the governing body and need not be exchanges at par for bonds being refunded. Revenue bonds may be issued to finance any project and to be secured solely from the revenue and property of that project. Bonds and notes may be sold in the manner and at the price determined by the municipality regardless of the par value. Allows the interest rate payable on bonds or notes to exceed the contract usury rate. Indebtedness of a service area remains a debt even though a court subsequently determines that the service area was not validly formed under law.

Chapter 55. Municipal Programs. No significant change.

Chapter 60. State Programs. No significant change.

Chapter 65. General Grant Land. No significant change.

Chapter 71. General Provisions. Dedication of streets, rights-of-way, easements of other areas for public use may not be construed to require the municipality to maintain, improve or provide for municipal services in the area dedicated.

TBC:ljb

Attachment

TABLE OF CONTENTS

29.40.090 Waivers and abbreviated plats.

(a) Notwithstanding other provisions of this chapter, the assembly shall establish abbreviated plat procedures in accordance with this section upon satisfactory evidence that

(1) each tract or parcel of land created will have legal and physical access to a public highway or street;

(2) no more than four parcels are created by the subdivision;

(3) no dedication of a street, right-of-way or other public area is involved or required;

(4) no vacation of public dedication or variance from a subdivision regulation is required.

(b) In individual cases meeting the requirements of (a) of this section where each parcel is five acres or larger in size, the preparation, submission and recording of a formal plat shall be waived.

(c) In other cases meeting the requirements of (a) of this section, including plats which relocate or vacate lot lines, the assembly may establish procedural and informational requirements for an abbreviated plat procedure.

Support Amendment #1

board. The board shall state on its record and in writing to the applicant its reason for disapproval of a plat.

(b) The platting board shall submit an approved plat to the district recorder in compliance with AS 40.15.010—40.15.020. (§ 2 ch 118 SLA 1972)

Sec. 29.33.170. Waiver in certain cases. (a) The platting authority shall, in individual cases, waive the preparation, submission for approval, and recording of a plat upon satisfactory evidence that

(1) each tract or parcel of land will have adequate access to a public highway or street;

(2) each parcel created is five acres in size or larger and that the land is divided into four or fewer parcels;

(3) the conveyance is not made for the purpose of, or in connection with, a present or projected subdivision development;

(4) no dedication of a street, alley, thoroughfare or other public area is involved or required.

(b) In other cases the platting authority may waive the preparation, submission for approval, and recording of a plat, if the transaction involved does not fall within the general intent of §§ 29.33.150—29.33.240 of this chapter and AS 40.15 if it is not made for the purpose of, or in connection with, a present or projected subdivision development and no dedication of a street, alley, thoroughfare, park or other public area is involved or required. (§ 2 ch 118 SLA 1972)

Sec. 29.33.180. Information required. A plat shall show initial point of survey, original or reestablished corners and their descriptions, and actual traverse showing area of closure and all distances, angles and calculations required to determine initial point, corners and distances of the plat, as well as other information which may be required by ordinance. (§ 2 ch 118 SLA 1972)

Sec. 29.33.190. Penalties. (a) The owner or agent of the owner of land located within a subdivision who transfers, sells, or enters into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved, and recorded, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $500 for each lot or parcel transferred, sold, or included in a contract to be sold. The platting board may enjoin a transfer, sale, or contract to sell, and may recover the penalty by appropriate legal action.

(b) No person may record a plat or seek to have a plat recorded unless it bears the approval of the platting board. A person who knowingly violates this requirement is punishable upon conviction by a fine of not more than $500. (§ 2 ch 118 SLA 1972)

Subdivision waivers –

Amendment #1

29.33.170

TITLE 29 REVISIONS
Comment on CSHB 170(C&RA)

This comment relates to an apparently unintentional change from current law in the platting regulations under CSHB 170 (C&RA). Section AS 29.40.090 defines a "short plat procedure" which clarifies the "waiver procedure" in current law. However, proposed AS 29.40.090 leaves out a portion of the waiver process which is important to the Matanuska-Susitna Borough and in rural and remote areas. The proposed language would require survey and monumentation in all cases. Present law allows a municipality to waive such requirements for larger parcels, e.g. the subdivision of a 40 acre parcel into two 20 acre parcels. This is more regulation than is required to protect the public interests involved.

The following change is recommended to retain the flexibility of the current law, yet to keep the otherwise improved form of CSHB 170 (C&RA). AS 29.40 .090(b) should be changed to read as follows:

Will consider it

> Sec. 29.40.090. SHORT PLAT PROCEDURE.
> (b) The Assembly ~~may~~ shall establish notice, hearing and other procedural requirements for the review, consideration, approval, alteration and replatting of short plats and may provide for waiver of survey and other formal requirements where each parcel created is five acres or larger in size.

The only change is the addition of the provision for waiver of certain requirements where lots created are larger than five acres. This is consistent with present law. (See AS 29.33.170(a)(2).)

Steven H. Morrissett
Borough Attorney
MATANUSKA-SUSITNA BOROUGH

Short Plat procedure.

SB 730 cont'd

Senator Rodey moved and asked unanimous consent that CS FOR SENATE BILL NO. 730 (RES) be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

CS FOR SENATE BILL NO. 730 (RES) was read the third time.

The question being: "Shall CS FOR SENATE BILL NO. 730 (RES) (establishing the Aleksandr Baranov State Game Refuge) pass the Senate?" The roll was taken with the following result:

CS SB 730 RES 3RD

Yeas:	18	Anderson, Bennett, Bradley, Colletta, Dankworth, Eliason, Fahrenkamp, Ferguson, Fischer, Gilman, Kerttula, Mulcahy, Parr, Ray, Rodey, Sackett, Stimson, Sturgulewski
Nays:	1	Kelly
Excused:	1	Ziegler

and so, CS FOR SENATE BILL NO. 730 (RES) passed the Senate and was referred to the Secretary for engrossment.

SENATE BILLS IN SECOND READING

SB 610

SENATE BILL NO. 610 (certificates of birth) which had been held from the March 10 calendar was before the Senate at this time in second reading.

Senator Rodey moved and asked unanimous consent that SENATE BILL NO. 610 be held one legislative day in second reading. Without objection, it was so ordered and the bill will appear on the March 12 calendar in second reading.

SB 180

CS FOR SENATE BILL NO. 180 (C&RA) (relating to municipal government) which had been held from the March 9 calendar was before the Senate at this time in second reading.

SB 180 cont'd

Senator Gilman offered the following amendment No. 1:

> Page 174, lines 19-22: following "'subdivision'" delete all material and insert:
>
> "(A) means the division of a tract or parcel of land into two or more lots, sites, or other divisions for the purpose, whether immedi[illegible]e or future, of sale or building development, and includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to [illegible]he land or areas subdivided;
>
> (B) does not include cadastral plats, cadastral control plats, open-to-entry plats, or remote parcel plats created by or on behalf of the state regardless of whether these plats include easements or other public dedications."

Senator Gilman moved and asked unanimous consent for the adoption of amendment No. 1. Without objection, amendment No. 1 was [illegible]dopted.

The Community and Regional Affairs Committee offered the following a[illegible]dment No. 2:

> Page 47, line 6: between "first class city" and "may" insert "or the mayor of a borough with a manager form of government" delete "and" insert a period and capitalize "t" in "the"

Senator Gilman moved and asked unanimous consent that amendment No. 2 be held until Senator Ziegler was present. Without objection, it was so ordered.

The Community and Regional Affairs Committee offered the following amendment No. 3:

> Page 90, line 17: change "may" to "shall"
>
> Page 91, line 1: change "may" to "shall"

Senator Gilman moved and asked unanimous consent for the adoption of amendment No. 3. Without objection, amendment No. 3 was adopted.

SB 180 cont'd

Senator Mulcahy moved and asked unanimous consent that amendment No. 4 be withdrawn. Without objection, amendment No. 4 was withdrawn.

Senator Sackett moved and asked unanimous consent that amendment No. 5 be withdrawn. Without objection, amendment No. 5 was withdrawn.

Senator Gilman offered the following amendment No. 6:

> Page 102, line 11: After "tonnage" insert "; a tax based upon a tonnage valuation shall not exceed $5 a year for a boat or vessel of less than five net tons and shall not exceed $15 a year for a boat or vessel of more than five net tons;"

Senator Gilman moved for the adoption of amendment No. 6. Senator Rodey objected.

The question being: "Shall amendment No. 6 be adopted?" The roll was taken with the following result:

CSSB 180 AM AM NO 6

Yeas:	15	Anderson, Bennett, Colletta, Dankworth, Eliason, Fahrenkamp, Ferguson, Fischer, Gilman, Kelly, Kerttula, Mulcahy, Sackett, Stimson, Sturgulewski
Nays:	3	Parr, Ray, Rodey
Excused:	1	Ziegler
Absent:	1	Bradley

and so, amendment No. 6 was adopted.

Senators Gilman and Kerttula offered the following amendment No. 7:

> Page 115, line 7: Change "20" to "10"
> Page 115, line 8: Change "15" to "8"
> Page 115, line 10: Change "20" to "10"

SB 180 cont'd

Senator Gilman moved for the adoption of amendment No. 7. Senator Fischer objected, then withdrew his objection. Senator Ray asked unanimous consent. There being no further objection, amendment No. 7 was adopted.

Senator Gilman offered the following amendment No. 8:

> Page 59, lines 5 and 6: After "misdemeanor" delete "and may require mandatory, nonsuspendable imprisonment not to exceed five days"

Senator Gilman moved and asked unanimous consent for the adoption of amendment No. 8. Without objection, amendment No. 8 was adopted.

Senator Ziegler moved and asked unanimous consent for the adoption of amendment No. 2 (see page 542). Without objection, amendment No. 2 was adopted.

Senator Rudey moved and asked unanimous consent that CS FOR SENATE BILL NO. 180 (C&RA) am be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

CS FOR SENATE BILL NO. 180 (C&RA) am was read the third time.

The question being: "Shall CS FOR SENATE BILL NO. 180 (C&RA) am (relating to municipal government) pass the Senate?" The roll was taken with the following result:

CSSB 180 AM 3RD

Yeas:	13	Anderson, Colletta, Dankworth, Ellason, Ferguson, Fischer, Gilman, Kelly, Mulcahy, Sackett, Stimson, Sturgulewski, Ziegler
Nays:	6	Bennett, Fahrenkamp, Kerttula, Parr, Ray, Rudey
Excused:	0	
Absent:	1	Bradley

and so, CS FOR SENATE BILL NO. 180 (C&RA) am passed the Senate.

Senator Rudey moved for the adoption of the effective date clause.

SB 180 cont'd

The question being: "Shall the effective date clause be adopted?" The roll was taken with the following result:

CSSB 180 AM EFL

Yeas:	19	Anderson, Bennett, Colletta, Dankworth, Eliason, Fahrenkamp, Ferguson, Fischer, Gilman, Kelly, Kerttula, Mulcahy, Parr, Ray, Rodey, Sackett, Stimson, Sturgulewski, Ziegler
Nays:	0	
Excused:	0	
Absent:	1	Bradley

and so, the effective date clause was adopted.

CS FOR SENATE BILL NO. 180 (C&RA) am was referred to the Secretary for engrossment.

UNFINISHED BUSINESS

SB 430

Senator Gilman, Chairman of the Community and Regional Affairs Committee, moved and asked unanimous consent that the Community and Regional Affairs referral on SENATE BILL NO. 430 (making a special appropriation to the City of Fort Heiden for erosion control) be waived. Without objection, it was so ordered.

SENATE BILL NO. 430 was referred to the Finance Committee.

ANNOUNCEMENTS

Announcements appear at the end of the journal.

SPECIAL ORDERS

Senator Dankworth moved and asked unanimous consent that he be excused from a call of the Senate on March 12. Without objection, Senator Dankworth was excused.

Senator Sackett moved and asked unanimous consent that he be excused from a call on the Senate on March 17 through March 19. Without objection, Senator Sacket was excused.

ENGROSSMENT

The following have been engrossed, signed by the President and Secretary, and transmitted to the House:

CS SB 730 (RES)

CS SB 180 (C&RA) am

ADJOURNMENT

Senator Rodey moved and asked unanimous consent that the Senate adjourn until 10:00 a.m., March 12, 1982. Without objection, the Senate adjourned at 11:03 p.m.

Peggy Mulligan
Secretary of the Senate

March 1982

ANNOUNCEMENTS

C&RA	Capitol Building	Butrovich Room 205
	3:00 p.m., 3/11	SB 768, SB 716, SB 797
FINANCE	Capitol Building	Senate Finance Room
	9:00 a.m., 3/12	SB 830, SB 836
	9:00 a.m., 3/17	SB 548
	9:00 a.m., 3/18	SB 552, SB 658
HESS	Behrends Building	Room 209
	3:00 p.m., 3/12	SB 754, SB 215
	3:00 p.m., 3/15	SB 698, SB 817
	3:00 p.m., 3/17	SB 823, SB 274
	3:00 p.m., 3/19	SB 822, SB 668
JUDICIARY	Capitol Building	Butrovich Room 205
	1:30 p.m., 3/12	SB 741, SB 603
LABOR & COMMERCE	Capitol Building	Butrovich Room 205
	3:00 p.m., 3/15	SB 606, SB 756
RESOURCES	Capitol Building	Beltz Room 211
	1:30 p.m., 3/12	Alaskan Agriculture an overview SB 608
	1:30 p.m., 3/15	SR 22, SCR 41
	1:30 p.m., 3/17	Briefing, Dept. of Natural Resources
	1:30 p.m., 3/19	SB 843
STATE AFFAIRS	Capitol Building	Room 423
	1:30 p.m., 3/11	SJR 9, SJR 24, SJR 55, SB 652
TRANSPORTATION	Capitol Building	Butrovich Room 205
	3/11	No Meeting
	1:30 p.m., 3/16	SB 824, SB 793, SB 512, HCR 44
	1:30 p.m., 3/18	SB 837, SB 838, HB 807

Senate Banking Committee	Capitol Building	Senate Finance Room
	3:30 p.m., 3/11	AHFC staff briefing
	Anchorage Legislative Info Office	
	10:00 a.m., 3/13	w/House Committee on Loans on multi-family housing & interstate banking
Blue Ribbon Commission	Capitol Building	Butrovich Room 205
	1:30 p.m., 3/11	
Budget & Audit	Capitol Building	House Finance Room
	8:15 a.m., 3/18	

REALTOR®

ALASKA ASSOCIATION OF REALTORS®
1818 W. Northern Lights Blvd., Suite 104 • Anchorage, Alaska 99503
Telephone 907-272-8016

April 1, 1982

Honorable Patrick M. O'Connell
Alaska State Legislator
Pouch V (MS 3100)
Juneau, Alaska 99811

RE: CSSB 180 (C&RA) AM

Dear Mr. O'Connell:

Since testifying before the Community and Regional Affairs Committee March 26, regarding the omission of AS 29.33.170 (waiver in certain cases) from the above referenced bill, I have met with Steven Morrisett, Borough Attorney for the Matanuska-Susitna Borough and discussed the differences that we expressed before your committee.

Mr. Morrisett has rewritten his suggested change to proposed AS 29.40.090 and AS 29.40.100 and, I understand, intends to present the changed suggestion before your committee on April 2, 1982.

The Alaska Association of REALTORS believes this new suggested change, copy attached, properly clarifies, simplifies and continues the intent of the present AS 29.33.170 and the suggested change, in its entirety, has our full support.

While in Juneau, I met with Senators Kerttula, Sturgulewski and Gilman. They assured me that they would concur with an amendment that placed the intent of AS 29.33.170 into SB 180. I am sending them copies of this letter and urging their support for this proposed amendment.

We thank the full committee for your courtesy and consideration.

Sincerely,

Audie L. Moore

Audie L. Moore
ALASKA ASSOCIATION OF REALTORS

ALM:cw

Attachment

CC: Senator Don Gilman
Senator Jay Kerttula
Senator Arliss Sturgulewski

Alaska State Legislature

House of Representatives

Committee on

Community & Regional Affairs

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: Billy Berrier, Director
Division of Legal Services

DATE: April 7, 1982

FROM: Representative Patrick M. O'Connell
Chairman, House C&RA

RE: Amendments to CSSB 180(C&RA)

The House C&RA Committee has had CSSB 180 (C&RA) and has adopted the following amendments:

1. Pg. 2 Line 4: Delete "600" and Insert 400

2. Pg. 3 Line 29: Delete "600" and Insert 400

3. Pg. 193 Line 15-16: Delete ~~Sec. 06~~ Temp Law Sect relating to population requirements

4. Pg. 64 Line 19: Delete (by certified mail) and insert "at the address provided under AS 29.26.110 (a) by certified mail"

5. Pg. 69 Line 8: Delete (by certified mail) and insert "at the address provided under AS 29.26.110 (a) by certified mail."

6.

6. Pg. 90 Line 15-29: Delete material in Sec. 29.40.090
Pg. 91 Line 1 & 2: Delete

7. Pg. 90 Line 15: Insert new material (attached)

8. Pg. 102 Line 10: Delete (;) semi colon and replace with a (.) period
Delete language after (.) period.

Line 11-12-13: Delete

9. Pg. 115 Line 9: Delete (10) insert 20
Line 10: Delete (8) insert 15
Line 12: Delete (10) insert 20

10. Pg. 174 Line 22-29: Delete all material in (A) and (B)
Pg. 175 Line 1: Delete

11. Pg. 174 Line 21: After the word "subdivision" insert "means the division of a parcel of land into two or more lots or other divisions for the purpose of sale or building development, includes resubdivision, and relates to the process of subdividing or to the land subdivided;"

12. Pg. 180 Line 23: Insert new Sec. 40 as follows and renumber accordingly:

*Sec. 40 AS 23.30.005 is amended by adding a new subsection to read:
(m) The board shall adopt regulations that permit two or more municipalities to form an employer group for the purpose of providing self-insurance under this chapter.

House deleted Chapter 14 from SB 180 and retained current law under 29.18 (see attached amendments)

13. Pg. 182 Line 28: Delete "former"
Line 29: Delete all material

Pg. 182 Line 28: After the word "under" insert the following: "AS 29.18.510-29.18.610, AS 29.05, AS 29.65 or former AS 29.18.011-460, if the Commissioner determines the action is consistent with the public interest."

* - Add 2 Technical Amendments approved By the Committee Ref Tamlook memo of April 82 to House CR & Committee Rep O'Connell.

4/12 - T.C. called Ref (c) of Abbreviated plat language - she will delete (c) as it is not consistent with (a). Also. change ref to 'subdivision plat' to 'abbreviated plat.

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

April 1, 1982

The Honorable Patrick M. O'Connell, Chairman
House Community & Regional Affairs Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative O'Connell:

RE: CSSB 180 (C&RA)am

This Department is pleased to note that CSSB 180am is being heard by your committee during this week. As you know, the Title 29 rewrite bill is a high legislative priority for this Department and we are hopeful it will receive prompt approval by your committee and the house.

The Department would, however, like to remind you of a concern we have regarding Sec. 29.60.140 (p. 154-155) of the current bill. This section pertains to making State Revenue Sharing payments to Native village governments. The language in this section is identical to present language found in AS 29.89.050. The Department's concerns about this language have been previously noted by the Joint Community and Regional Affairs Committee that worked on the Title 29 bill during the interim. However, that Joint Committee suggested that this language be revised in legislation specifically designed to amend the State Revenue Sharing Program. The Governor's legislation (SB 716/HB 746) to revise State Revenue Sharing substantially alters the process for funding unincorporated communities. We do, of course, hope to see enactment of the Governor's State Revenue Sharing bill as the solution to the present Native village government statute. However, in the event SB 716/HB 746 does not become law we would like to insure that AS 29.60.140 of CSSB 180am be addressed.

The enclosed September 2, 1981 Attoney General's opinion states that AS 29.89.050 is "unconstitutional if read literally to restrict aid to Native villages". The opinion goes on to say that the present law can only be interpreted as constitutional if the payments are made available to all similarly situated unincorporated communities regardless of racial or governmental status. Based on this opinion, the Department made FY 1982 State Revenue Sharing under AS 29.89.050 available on an application basis to all eligible unincorporated communities in the unorganized borough. This places the Department in a position of ignoring a statute, a position we would like to correct as soon as possible.

Another Attorney General's opinion (copy enclosed) identifies an additional problem with AS 29.89.050. Specifically, that unincorporated communities within organized boroughs are not eligible to receive revenue sharing funds. Currently AS 29.89.050 contains no such specific prohibition. Based on this Attorney General's opinion, the Department is not paying revenue sharing funds to unincorporated communities within organized boroughs. Again, however, this puts us in a position of administering a statute in contradiction to its literal interpretation.

To alleviate this situation the Department requests that AS 29.60.140 be
1) deleted from the bill, or as an alternative,
2) amended in such a manner as to make eligible those unincorporated communities of 25 or more in the unorganized borough.

The Department recognizes the need to make a reliable source of funding available to unincorporated communities to provide services and maintain and operate projects constructed with SB 168 funds. However, this Department and the Department of Law have always questioned the propriety of administering a program for unincorporated communities as part of a Municipal Revenue Sharing concept. State Revenue Sharing is also an "entitlement" program and the inclusion of unincorporated communities in an ongoing entitlement program has also been a source of some concern. The Department prefers, as illustrated in the Governor's Revenue Sharing bill, a program whereby unincorporated communities compete by application on the basis of need and merit with other unincorporated communities for a segregated "pot" of funding (i.e. a modified version of the current Rural Development Assistance program authorized in AS 44). The second alternative language suggested above would "legitimize" the manner in which the Department currently administers the present State Revenue Sharing program.

If we can provide you with additional information on this matter, please advise.

Sincerely,

LEE McANERNEY
COMMISSIONER

BY: Palmer McCarter, Director
Local Government Assistance Division

Enclosures

cc: Senator Don Gilman
Senator Arliss Sturgeluwski
Ginnie Chitwood, Alaska Municipal League
Tamara Brandt Cook, Legal Services

LM/PM/jl/0917S

Monday, March 29, 1982

VERY VERY ROUGH DRAFT

CSSB 180 (C&RA) am

Ginny Chitwood

Alaska Municipal League

The Municipal League, for the last several years, has been working to put together an insurance pool for cities and boroughs throughout the State.

This kind of self-insurance pooling has been put together very successfully in other States. It allows municipalities to get insurance where in some cases they weren't able to get it or they can get it at a cheaper rate than what they had been paying.

In many cases, the municipalities are too small for the insurance companies to pay much attention to. They don't understand municipalities and there isn't really a large enough market to make it worth their while to do that. The municipality either does not get what they want or get it at a higher rate.

The Municipal League has a program ready to start July 1. We've been assured along the way there's no legal problem with putting together the group insurance. It quite clearly states in Title 29, municipalities can band

together for the joint provision of services, etc.

The person who needs to sign the certificate in the Workers' Compensation Section of the Department of Labor has gotten very nervous about whether or not we can do this because there isn't anything in law that authorizes it. Per Billy Berrier, Division of Legal Services, you don't need authorization legislation if it's clearly in the general legislation. Since she signs the certification and is nervous about it, Legislative Affairs, Legal Services, has drafted an amendment to the Workers' Comp. law.

One reason why she's nervous is because throughout the Workers' Comp. statute it talks in terms of employer singular. There is a general section in the law tht says the singular shall include the plural, etc. This was pointed out to her, but it wasn't enough. In the meantime, she has asked for an Attorney General's opinion, but don't know how quickly that'll come down.

O'CONNELL There is no fiscal impact?

CHITWOOD No, no fiscal impact.

O'CONNELL The group exist only on paper?

CHITWOOD Yes

CLOCKSIN Which communities would be likely to participate? Is it the smaller communities?

CHITWOOD Yes Anchorage and Fairbanks have there own self-insurance program. They would not be participating. We have a lot who have signed resolutions of interest from Tenakee Springs (pop. 109) to Juneau (pop. 20,000). Most communities who have signed resolutions of interest are in the 1,000 pop. range.

Mat-Su, Kenai, Ketchikan, Kodiak, Nome - indicated interest; after that you're down to 2000-3000 population boroughs.

CLOCKSIN The draft before us is an act relating to Workers' Comp., are there any other bills relating to W/C pending in the Legislature? Do we have a single subject problem? I realize the amendment effects municipality yes but its to a portion of the Statutes which are not changed. So we would be bringing a new chapter into the bill and we may have a single subject problem.

CHITWOOD This was prepared by Tom Sofo, Legal Srevices, so I'm assuming he didn't figure there was a single subject problem.

CLOCKSIN But this is in the wording of another bill; a completely separate title...

GRUSSENDORF It's not necessarily setting out the outlines of the program itself; it's just enabling legislation for the municipality to do so you'd probably find it under Title 29.

CLOCKSIN That may be the way to do it or maybe this kind of conversation may be appropriate when we consider the amendment. What we have before

us is a proposal to amend AS 23.30 which is not amended in SB 180 or HB 170.

BYLSMA The W/C bill is somewhere in the mill but I don't know where.

CHITWOOD I think its in the House Labor and Commerce.

BYLSMA I thought we passed it out of there.

CHITWOOD Jackie McClintock (w/c) has prepared a two-page amendment that would deal with the municipality league insurance pool, but its a ~~major~~ much broader amendment than this because there are some problems with both the AGC and the Alaska Rural Electric Ureka because they have self-insruance pool. These problems are much broader than the municiapl league.

This amendment wouldn't have the effect of putting an amendment off on another proposed bill. That other proposed amendment is 2 pages and goes into depth about groups (other than government groups) getting together.

O'CONNELL This sheet here is not a proposed bill that's been introduced anywere else. It has the appearance here that it was intended as a separate piece of legislation to be introduced but in fact the whole thing was just prepared at your request in the last little while?

CHITWOOD Mike Miller asked. Not sure why headed that way and not as an amendment; I can check.

O'CONNELL If we look at the title of our bill here, it simply says an

act relating to municipal government, is that broad enough?

(46)

CLOCKSIN ...The first test is does it amend a similar part of the Statute? This amendment fails the test, but it might satistify the test of what the bill says. Billy Berrier spends hours in that stuff and I would like to have it cleared by him.

NO FURTHER TESTIMONY

O'CONNELL Refer to staff memorandum of March 25 which points out the more obvious things that exist between the Senate and House bill and as we go through that by its very nature will be taking up some of these proposed amendments that have come before the committee.

FIRST POINT: Is the question of 600 population necessary for reclassification of 2nd class to 1st class status. (p.3. l.29)

CLOCKSIN: Who does this effect? Obviously there are some communities between 400 and 600 that might want to become 1st class municipalities. Do we know who it effects?

O'CONNELL Ginny, do you know of any communities that might be thinking of incorporating or reclassifying which fit into that category?

CHITWOOD The only one I know of is the city of Tanana and they were going from home rule status directly from 2nd class status but they were not interested in the education function which would be included by this

bill and also by the bill that passed the Senate. There kind of in a status limbo. They wouldn't be effected because they want out of 2nd class to home rule but don't want to provide education.

O'CONNELL Do these people fet into the between 400 and 600 population?

CHITWOOD Yes

CLOCKSIN Do we know why the Senate did this? Significance of 400 to 600?

MCKIE CAMPBELL This was a redqust by Senator Ferguson. He felt that in some areas the REAAs were being weakened by municipality switching from 2nd class to 1st class and assuming the education power from the REAA. This was a move supported by the REAAs. It would make it more difficult..

O'CONNELL Some small community who was unhappy with the way somebody was running schools could just change over and want to run it themselves, but not have the right ability to do it themselves.

Obviously there'll be difference between the Senate and House version. We have to go to Conference Committee before it goes to Free Conference Committee and if we adopt the Senate language, the conference can't change it again anyway.

BYLSMA Since it doesn't seem we're very clear on this particular point and really don't have the debate that may have gone on in the Senate and don't understand the Senate rationale does it make any sense

to leave the difference so it can be taken up in Conference?

O'CONNELL Probably does. It doesn't mean we should duck out, but it does't mean we have to deal with it either.

Item #2: Temporary law section added to allow pending applicants for reclassification to be permitted if petition has been filed with the Department before the effective date of this act.

LINDA OTEY It's a temporary law to include those areas that may be in the process of right now applying to reclassify which are effected by the population change (600/400). Section 86 is written to allow that. If they are in the middle and the bill does in fact chnage to 600 those communities that have already filed and are on file with the Department can go ahead with the process.

O'CONNELL I would assume if we didn't address the first question, then we wouldn't address this one.

GRUSSENDORF The first one was that we had a kind of arbitrary as to the breaking points, but this is clearly some thing we could take care of here. We're talking about applications that are pending in relation to reclassification.

~~I would move we amend it to the House bill.~~

I move that we accept the language as proposed in the Senate Bill 180 and include it in the appropriate section of House Bill 170.

CLOCKSIN OBJECTION

CLOCKSIN Again, can we identify any specifics that have pending applications? We should be able to focus in on specifically what they are.

BYLS/AA What difference does it make at this point? This is if whatever happens here. Then it would allow them to take effect; wouldn't make a difference except it would give them the opportunity to go ahead without reapplying.

O'CONNELL It seems to me that if we speak to Mr. Grussendorf's motion, then does it make sense to have it in here if we haven't changed the 600?

MCKIE CAMPBELL ~~This is some~~ Background. This amendment was offered after the 400/600 amendment was adopted. There were representatives from several areas, the City of Tanana and I believe some folks from Ft. Yukon, were concerned. They were interested in incorporating to 1st class, and if the change became effective, they would not. As you have stated, it was intended solely to allow those municipalities that are between 400 and 600 to continue their efforts if the first amendment became law. The 400/600 change then this amendment I believe, would not have an effect.

CLOCKSIN I agree with that. The first two amendments are tied. There are not other situations besides that one. Under existing law it's 400; it's 400 under the House Bill.

GRUSSENDORF I saw the relationship there and I ~~could~~ thought there might be some community that are trying to get that right now but again if this is not passed, this 600 population figure, and I don't believe it will be, with that I will withdraw my amendment.

O'CONNELL Mr. Grussendorf has withdrawn his motion.

ITEM #3 The House made some amendment regarding notification of certification of petitions; recall and initiative. It has to do with the way city clerks notified groups circulating petitions. The Senate did not address that at all.

CLOCKSIN We've been through this, I think the Committee agrees with it and I suggest we go on.

NO OBJECTIONS

ITEM #4 Allow borough mayors to vote in the event of a tie. As the language reads" mayor of a borough with a manager form of government may vote in case of a tie..."

Who does this effect?

CHITWOOD

Who does this effect

CHITWOOD Ketchikan, Haines, Mat-Su, Kodiak, Bristol Bay.

CLOCKSIN What's the present law for those communities? Do they vote now?

CHITWOOD They do not vote.

O"CONNELL In otherwords, the language in the House version of the bill is fairly close to the siutation now. The mayor may take part in the discussion;.. the Mayor of a 1st class city can vote in case of a tie. The mayor of a 2nd class... we'd be giving the mayor of certain boroughs with a manager form of government..

GRUSSDORF Are we talking about them voting in the case of a tie of the full body or just that which makes a quorum. Or does it make a difference. I think if there is a tie a mayor, if he's an elected official, should have a vote; in fact most charters do allow the mayor to vote in that situtaion. I'm not speaking against the proposed amendment, I think it's a good one. I was wondering if there were any other restrictions on it. Would it have to be the only vote if there is a tie, a full membership or quorum?

I make a motion to move the amendment to adopt the Senate language in regards to allow mayors to vote in the event of a tie

CLOCKSIN Are there boroughs without a manager form of government, which ones are they?

CHITWOOD Sitka, Juneau, Anchorage, although unified, Sitka and Juneau managers, but by charter their mayors vote. Anchorage, there's not a manager form and the mayor does not vote, but has veto power; Kenai, Fairbanks have electd mayors who is administrative head, no vote, has veto power. North Slope borough has home rule, mayor administrative head, no vote, but veto power.

O'CONNELL I'd be opposed and mainly from the standpoint of the Kenai Peninsula Borough because we have 16 assembly members. The Borough mayor does not have the right to vote even in case of a tie, but does have veto power.

You'd have both with this amendment and with 16 member assembly a tie is frequent.

CAMPBELL In Kenai, the mayor has full administrative power and acts as the manager. This amendment was drafted specifically to say in a borough with a manager form of government specifically to remove that particular [illegible]

GRUSSENDORF When you have a mayor serving as an administrative executive as well as the political executive thought no he should not have that vote. But in cases where there is a manager responsible for putting it together, mayor should have a vote in that case.

CLOCKSIN Then this amendment attracts that where the mayor is the administrative head that's not a manager form of government.
(YES)

Most places have charters that put restriction on it. Like Sitka, we really do not have manager we have an administrative head in a water downed form. All the power comes from the assembly, policy, everything has to be passed through.

CALL FOR THE QUESTION

MOTION CARRIED UNANIMOUSLY

ITEM #5 The House bill on page 58 has languge that gives a municipality authority to require manadatory, nonsuspendable imprisonment not to exceed 5 days. Refer to Mr. Sharp
Do any municipalities have this authority Now? (Refer to Lee Sharp)

SHARP Kodiak thought it did but the

ITEM #5 The House bill on page 58 has language that gives a municipality authority to require manadatory, nonsuspendable imprisonment not to exceed 5 days. Do any municipalities have this authority now?

LEE SHARP Kodiak thought it did, but the Supreme Court said it didn't. So I guess we don't. They did not in the opinion that the chronology of events

authority to require manadatory, nonsuspendable imprisonment not to exceed 5 days. Do any municipalities have this authority now?

LEE SHAPP Kodiak thought it did, but the Supreme Court said it didn't. So I guess we don't . They did note in the opinion that the chronology of events was that they adopted the ordinance, convicted somebody under it, the the Legislature passed the new Uniform Criminal Code, the case went to Court. The Supreme Court said we're not deciding this based on any policy that we could find in the new criminal code; we're looking at the old criminal code to see what the Legislature's statewide policy implication are and we find the state did not contend nonsuspenable sentence under the old code so we're striking it. They sort of left the door open. It may be under the new code with that as the statewide policy they might find the authority for the municipal to vote to impose sort of sentence. They didn't say that. The situation now is it's still in double; it could go that yes they do and they do impose nonsuspendable mandatory sentences for as long as they can impose a sentence so it could go the other way and they stil have no authority at all.

With this amendment, it clears up those two questions:1. states they do have the power but places limitation on it...

O'CONNELL What kind of incidence are we looking at in Kodiak?

SHARP The ordinance that they had as I recall was on it required manadatory nonsuspendable sentence when the crime involved was an assault on a polic officer.

CLOCKSIN What's the relationship between municipalities and the State with regard to jail facilites. Do most of the larger communities contract with the State with beds in State jail facilities...

ANDERSON It works both ways. In Anchorage they contract with the State and the State in turn leases; Also to the municipality of Anchorage the 6th Ave. jail. There's a couple other places that do the same thing.

SHARP Pay state a charge per day out there under municipality ordinance.

CLOCKSIN Is it possible, assuming if the House version adopted, for a municipilaity could impose a broad range of required sentnces, end upplacing them in a state facility and increasing the burden on the State to build new prison facilities and yet the municipality not have responsiblity to pay for constructing new facitlies. Is it possible that would happen?

ANDERSON Possible, but we need someone from the Division of Corrections to come in and explain it. It seems to me when a jail reached that saturation point and municipalitiy prisions were coming into that facility, then it seem they'll send the long term ones off to spend sentence outside, and they do that on contract basis. Whether it would require State to build new facilities, it's hard to say.

CLOCKSIN Assuming the Federal Bureau of Prisons is limiting the number of prisoners we can place in federal prisons outside, that option may not be available to us which of course is happening in Anchorage now. My concern is would be granting a power without a responsibility. The municipality would have the power to flood the jails without even power or responsibility of problem of overcrowding.

ANDERSON With or without the language, a municipality could do that now because they have the power under existing law to sentence people.

CLOCKSIN Municipal assembly may not be interested can much about the

CLOCKSIN Municipal assembly may not be intereste to car much about the State's burden of building new jails when it agrees everyone gets arrested for littering or something.

SHARP Our experience has been that it's almost arbitrary as to whether it's a State prisoner or municipal prisoner; depends on how the perons's charge is constituted for assualt. He could be prosecuted under State Statute or municipal ordiance. It's more the acts that are going on...

Depends how may time the defendent has been before judge as to what kind of sentence he gets going to be any substantial increase because they can, if impose mandatory nonsuspendable sentence. I think assembly also going to look at cost to municipality ~~$50-60~~ per day for a prisoner. Make sure that person the worth that expense.

ANDERSON I think there's alot of incetive for municipality to charge under State law. If charge under State law, don't have to pay state rather than charge under municipal law have to pay. Probably find person charged with misdeamor serving state time, not municipal time.

CLOCKSIN The amendment wouldn't effect that either way. Assuming they're on charged under municipal law, the repone to Sharp, while the city has to look at $50 -$60 per day, the State has to look at capital cost. COn am having enough trouble in the Legislature on mandatory sentences if we bring another party in that throws...

MOTION: to adopt the Senate language in 29.25.020 sub-paragraph (a) which has the effect deleting the language originally adopted in the House Bill with regard to mandatory nonsuspendable imprisonment for 5 days.

BRIEF
Brief DISCUSSION

VOTE: FOR: CLOCKSIN, BYLSMA, O'CONNELL

AGAINST: GRUSSENDORF

ABSENT: ANDERSON

MOTION CARRIED

ITEM #6 Question of platting procedure. The Senate adpted some language. They added the word "shall" (P.90) According to the discussions we had before: testimony has indicated that the House version of the bill has apparently left out the authority for developers (subdividers) to use a simplified allocate pa ts subdivison in parcels of land down to ~~the~~ as small as 5 acres, without going through the whole complicated platting procedure and it's been requested to put back into the bill the authority to simplified platting proceudre on larger parcels of land.

The Senate put the words "shall" thinking it solved the problem but it doesn't . Mr. Morrissett had expressed interest in essentially going back to the old system. There was a division on the question on testimony on what would achieve .

CAMPBELL Mr. Morrissett and others have been working on language he feels should solve the objection of Mr. Moore and others who are upset about the for plat procdures while at the same time maintaining some of the consistencies and clarification the new language has made. We request you hold over until Wednesday when we have some language agreeable to both parties.

REQUEST GRANTED

ITEM #7

Amendment in the Senate returned to current law taxation of vessels: $5 max-5 tons or less, $15 max over 5 tons (p. 102) We had testimony ~~of~~ from Mr. Sharp saying the tax was so insignificant that it wasn't worth the bother to assess. This method of taxing boats doesn't make it worthwhile.

BYLSMA Does anyone know if any communitis taxing on basis of tonage currently?

CHITWOOD Ketchikan and Petersburg; Home-assessed value. Alot of communities exempted boats completely cause it cost more to collect the tax than received.

O'CONNELL If there is no authority to do it on basis of assessed valuation how are they doing it?

CHITWOOD There is authrogi to tax on assess value now. The House verison of the bill did was, now can do it 2 ways 1)assessed value 2) or a net tonage with limits of $5 and $15 based on the tonage . From an administrative point of view the tonage is easier taxing boats but because of the $5 and $15 the amount generated is not enuf to mke it wothwhile. The House version of the bill eliminated the 5 and 15 limit but didn't change part on assessed value.

ANDERSON I can't imagine any municipality going to the trouble of charging or assessing a tax on tonage when any municipal can do it on the basis of assessed valuation. That's the way they're going to generate alot more revenue than on the basis of tonage. If that's all they can assess is up to $15 on the largest of commercial fishing vessels, it just doesn't seem to me they're going to generate much revenue on that. Where they can from assess value. If do it on basis of full and ture value, can do form pleasure to commercial fishing vessel. Woner what the ratio..ale for Ketchikan or whoever for doind it on basis on $5 and $15?

SHARP Under current law you may not exempt vessels. This occurred in 1972. In '72 when revised law; they provided that any exmeption granted at that point would be grandfathered in. Prior to '72 the municipality had broader authoity to exempt varo'. calsses properties. Home reule in particular had very few limitations. So Home Rule municipal .oul exempt autos, vessels taxation and airplanes.

In '72 Legislature said can't exempt these things anymore, but if you had exempted it at the time, the exemption continued so i think that's why you find alot of commercial vessels, vehicls exempt. etc.

Ketchikan may be in that situation. So they didn't exempt them prior to '72 so there stuck with either tax or toanage.

If you go the our original language, the municipal would then have the authority to tax on avernorm basis or on a tonage and they could establish the schedule. It might be $5 per ton something that would bring in as much revenue as avenorm tax. Bring in enough to make it worthwhile. The problem with leveying a avernorm tax is there afraid the fleets going to move becuase it puts it on total true value - none at all.

No flexibility.

GRUSSENDORF That's a problem. Boats through their nature are very movable, very obviously. There's no arguement about tonage, but when you start talking about the true value, the assessed valur of a boat, the municipal is going to spend most of their time trying to determine tis and ther's going to be a difficult time enforcing this as boats decide to go elsewhere or claim there are elsewhere.

I think the way the present laws wooded the municipal has the option to tax either by ton or valuation. It becomes a policital question of what they have they essentially don't change.

O'CONNELL Why in the case of if they're going to tax on assess valuation We're assuming local municipalities has the common sense to set that tax at a lvel that won't drive them all away but by putting a limit on tonage we're assuming they don't have that came common sense. Why should we put a limit on tonage tax and no on the other. It's the same boat which ever wya they decide to do it.

BYLSMA In my way of looking at it there's a terrible inconsistency there. It seems to me we ought to provide the municipal with 2 taxing methods and that's what this language presupposes. What we're giving them is 2 options that we really aren't. We're syaing you can chare practically nothing on the one hand and charge what you wnat on the other hand. Seems if you're oing to allow them the opportunity to chare on basis of tonage, that it really ought to be an opportunity chage on that basis.

CLOCKSIN We may not have been doing this correctly, procedurally. Earlier I wanted tomaek a motion to delet the new language in the Senate Bill and I think that's what we have to do. We have the SEnate bill before us and we skipped over the first 2 amendments; we agreed to do nothing thinking htat we were thereby adopting the House language and I think technically we need to move to delet Senate language if we don't agree with it or if we want to leave it open for discussion.

In relation to this one I ould move to delete the new language added by the Senate on p. 102 (authority to tax on tonage but no limit on it)

IN FAVOR Clocksin, Bylsma, Anderson, O'Connell

OPPOSED Grussendorf

MOTION IS ADOPTED

CLOCKSIN With regard to proposed amendments 1 and 2 on the memorandum, I move that the House language be inserted in the SEnate Bill.

IN FAVOR Clocksin, Bylsma, Anderson, O'Connell, Grussendorf

MOTION CARRIED UNANIMOUSLY

CLOCKSIN On p. 64 I move that the amemdned language with regard that the House
CLOCKSIN On p. 64 I move that the amemdned language with regard to certification of petitions; recall and initiative, that the House language be inserted into the Senate version.

INFAVOR O'Connell, Anderson, Bylsma, Clocksin, Grussendorf

MOTION CARRIED UNANIMOUSLY

MEETING ADJOURNED

TABLE I

LOCAL ASSESSMENT POLICY

BOROUGHS	RESIDENTIAL		GENERAL PERSONAL PROPERTY		MOTOR VEHICLES		BOATS & VESSELS		BUSINESS INVENTORY		AIRCRAFT	
	AV	EX	AV	EX	AV	EX	AV	EX	AV	EX	AV	EX
ANCHORAGE, MUNICIPALITY OF	X	-	X	-	2	-	X		X	-	X	-
BRISTOL BAY BOROUGH	1	-	X	-	X	-	X	-	X	-	X	-
FAIRBANKS NORTH STAR BOROUGH	1	-	-	X	-	X	-	X	-	X	-	X
HAINES BOROUGH	X	-	X	-	X	-	-	3	X	-	X	-
JUNEAU, CITY & BOROUGH	X	-	X	-	-	X	-	X	X	-	X	-
KENAI PENINSULA BOROUGH	1	-	X	-	X	-	X	-	-	X	X	-
KETCHIKAN GATEWAY BOROUGH	X	-	X	-	2	-	-	3	X	-	X	-
KODIAK ISLAND BOROUGH	X	-	X	-	2	-	X	-	X	-	X	-
MATANUSKA-SUSITNA BOROUGH	X	-	X	-	2	-	X	-	X	-	X	-
NORTH SLOPE BOROUGH	1	-	X	-	X	-	X	-	X	-	X	-
SITKA, CITY & BOROUGH	X	-	X	-	X	-	-	3	X	-	X	-
CITIES												
CORDOVA	X	-	-	X	-	X	-	X	-	X	-	X
CRAIG	X	-	-	X	-	X	-	X	-	X	-	X
DILLINGHAM	X	-	X	-	X	-	X	-	X	-	X	-
EAGLE	X	-	X	-	-	X	-	X	-	X	-	X
GALENA		NA		NA		NA		NA		NA		NA
HOONAH		NA		NA		NA		NA		NA		NA
HYDABURG		NA		NA		NA		NA		NA		NA
KAKE		NA		NA		NA		NA		NA		NA
KING COVE		NA		NA		NA		NA		NA		NA
KLAWOCK		NA		NA		NA		NA		NA		NA
NENANA	X	-	X	-	X	-	X	-	X	-	X	-
NOME	X	-	X	-	X	-	X	-	X	-		NA
PELICAN	X	-	X	-	-	X	-	3	X	-	X	-
PETERSBURG	X	-	X	-	2	-	-	X	X	-	X	-
ST. MARY'S		NA		NA		NA		NA		NA		NA
SKAGWAY	X	-	-	X	-	X	-	X	-	X	-	X
UNALASKA	X	-	X	-	-	X	-	X	X	-	X	-
VALDEZ	1	-	-	X	-	X	-	X	-	X	-	X
WRANGELL	X	-	X	-	-	X	-	X	X	-	X	-
YAKUTAT	X	-	-	X	-	X	-	X	-	X	-	X

1. optional residential exemption up to $10,000 exercised (AS 29.53.025(a))
2. state collected, annual motor vehicle tax (AS 28.10.431)
3. option 5 & 15 dollar fee collected in lieu of property tax (AS 29.53.025(b)(1))

P. O. Box 116[illegible]
Fairbanks, Alaska 99707
452-4275

MAR 23 RECD

Eleventh Open Letter to all
Legislators of the State of Alaska

March 15, 1982

Re.: CSSB 180 am - An Unconstitutional Act--(It will eliminate maximum local self-government and local voter approval of municipal powers to be exercised by local governments.)

Dear Representative O'Connell:

The State Senate passed CSSB 180 am 13 to 6, among those who voted No was every member of the Senate Judiciary Committee. In my recent letters, of which I sent you copies, I warned that passage of CSSB 180 as written would result in law conflicting with the principles set forth in the Alaska Constitution, Article X in particular. Now it will be the responsibility of the State House to make the necessary corrections, or to defeat the bill.

The State Senate amended CSSB 180 on page 115, changing the rates of penalty and interest from 20 % to the present 10 % and from 15 % to the present 8% maximum rate. Apparently it was overlooked to make the same adjustment on page 122, line 25; the House should make this correction.

The Senate further amended AS 29.25.070(a) by deleting "and may require mandatory, nonsuspendable imprisonment not to exceed five days" but failed to correct the ambiguously termed "a municipality may prescribe penalties" language. Line 4, page 59 should be further amended to reflect as follows: "the legislative body of a municipality may prescribe by ordinance penalties ..." (If this correction is not made, AS 29.25.070(a) may be interpreted to mean that the mayor or a department head may by regulation prescribe penalties. Under present law, AS 29.38.200, the assembly or council may prescribe a penalty.) AS 29.25.070(b) should be amended by deleting on page 59, lines 11 and 12 "or a threatened violation" (any such allegation will most likely be conflicting with first amendment rights - freedom of speech - and therefore not be upheld by the courts; it will be a tool solely for harassment actions, that is something not for the good of the people as a whole.) This provision should be further amended by deleting on page 59 lines 13 and 14 "Each day that a violation of an ordinance continues constitutes a separate violation." (This is like above a provision for the purpose of harassment and fear-provocation, because

Although there is no first class borough incorporated at this time, people who like to consider incorporation with first class municipal powers should have the option to vote on areawide transportion systems, such as bus, railroad, pipeline, or truck-transportation, therefore AS 29.35.200(b)(1), line 21 at page 78, should be deleted. Established second class boroughs may acquire additional area-wide and non-areawide municipal powers by majority voter approval of the people affected only, and each proposed additional power to be exercised by a second class borough government must appear separately on the ballot. This right to vote for the approval of each additional power was retained by the people of second class boroughs at the time they voted to incorporate with the powers of a second class borough, therefore it is unlawful and unconstitutional for the Legislature to "confer" such powers through local or special legislation (Alaska Constitution, Article I, Sections 2, 15, 21, Article II, Section 19 and Article X, Section 1 in particular.) The State may only confer powers of the State (such as Health, Education and Welfare, etc.) and then only with the consent of the local governments, and in the case of second class boroughs, with voter approval. Although many powers were conferred without local voter approval, people accepted such legislation without judicial determination, not because it was lawful or constitutional, but most likely because they felt it was not worth the hardships and troubles associated with such litigation. The people of the Fairbanks North Star Borough voted only for the borough government to provide for public bus transportation, proposed AS 29.35.210(a)(1) and AS 29.35.210(b)(1) would allow the borough government to provide for any other transportation system without voter approval of those affected, and this will most likely be challenged in court; AS 29.35/210(a)(8) would allow the borough government to unrestrictively provide for "economic development", and that is something the Fairbanks voters turned down with 75% No-votes, and this is one provision which most certainly will be challenged, should it become law. Therefore, I urge the House to amend CSSB 180 am by deleting on page 79 lines 5, 16, and 22, "(1) provide transportation systems;" and "(8) provide for economic development;" nonareawide and "(1) provide transportation systems;" areawide. (Please see my 9th open letter, of which I sent you a copy, for more detailed facts regarding this matter.)

P. O. Box 1166
Fairbanks, Alaska 99707
452-4275

MAR 23 RECD

Eleventh Open Letter to all
Legislators of the State of Alaska

March 15, 1982

Re.: CSSB 180 am - An Unconstitutional Act--(It will eliminate maximum local self-government and local voter approval of municipal powers to be exercised by local governments.)

Dear Representative O'Connell:

The State Senate passed CSSB 180 am 13 to 6, among those who voted No was every member of the Senate Judiciary Committee. In my recent letters, of which I sent you copies, I warned that passage of CSSB 180 as written would result in law conflicting with the principles set forth in the Alaska Constitution, Article X in particular. Now it will be the responsibility of the State House to make the necessary corrections, or to defeat the bill.

The State Senate amended CSSB 180 on page 115, changing the rates of penalty and interest from 20 % to the present 10 % and from 15 % to the present 8% maximum rate. Apparently it was overlooked to make the same adjustment on page 122, line 25; the House should make this correction.

The Senate further amended AS 29.25.070(a) by deleting "and may require mandatory, nonsuspendable imprisonment not to exceed five days" but failed to correct the ambiguously termed "a municipality may prescribe penalties" language. Line 4, page 59 should be further amended to reflect as follows: "the legislative body of a municipality may prescribe by ordinance penalties ..." (If this correction is not made, AS 29.25.070(a) may be interpreted to mean that the mayor or a department head may by regulation prescribe penalties. Under present law, AS 29.38.200, the assembly or council may prescribe a penalty.) AS 29.25.070(b) should be amended by deleting on page 59, lines 11 and 12 "or a threatened violation" (any such allegation will most likely be conflicting with first amendment rights - freedom of speech - and therefore not be upheld by the courts; it will be a tool solely for harassment actions, that is something not for the good of the people as a whole.) This provision should be further amended by deleting on page 59 lines 13 and 14 "Each day that a violation of an ordinance continues constitutes a separate violation." (This is like above a provision for the purpose of harassment and fear-provocation, because

if applied as written, it may wipe out one's total investment for a violation of a land use regulation; or is this the true indent?!) Likewise and for the same above stated reasons AS 29.40.190 should be amended by deleting on page 94, line 25 "or threatened violation" and by deleting AS 29.40.190(b) "Each day that an unlawful act or condition continues constitutes a separate violation." on page 94, lines 27 and 28. Chapter 40 should be further amended by deleting AS 29.40.180 in its entirety (page 94, lines 6 through 16) because this provision is basically covered by AS 29.25.070(a) and any proposed provisions over and above those of AS 29.25.070(a) therein must be considered violative of the U.S. Constitution and our Alaska Constitution, Article I, in particular. (Only if the proposed imposements of Chapter 40 are written and recorded in a manner as provided for restricted covenant within an existing deed may they be enforcable in a lawful and constitutional way.: "No State shall pass any law impairing the obligation of contract.") For the reasons stated it would be advisable to change many of the "shalls" to "mays", especially when enforcement without specific written consent of the individual property owner may be possible, within Chapter 40.

AS 29.40.060(b) should be deleted (page 89, lines 19 to 23) because it will not provide due process of law and is conflicting directly the Rules of Appellate Procedure. It could be amended to read "An appeal to the superior court is an administrative appeal, the record for that may be prepared by the hearing officer, board of adjustment, or other body. The superior court, may sit with or without a jury, and may upon motion of a party or upon his own discretion in lieu of an appeal grant a trial de novo."

Not the number of individuals must be defined nor the matter for petition must be restricted beyond the requirements of the Constitution, therefore on page 62, line 13 should be amended to replace shall for "may" be signed by at least 10 voters ... and AS 29.26.-110(a) "(3) relates to a legislative rather than to an administrative matter; and (4) would be enforcable as a matter of law." on page 62, lines 21 through 23, should be deleted. On page 63, lines 6 and 24 "60 days" should be replaced with "90 days", in order to be in conformance with present law requiring a period 90 days during which signatures for a petition may be s cured. (reasons more detailed for the above are enumerated in my 8th open letter dated 2/14/82, of which I mailed you a copy)

Although there is no first class borough incorporated at this time, people who like to consider incorporation with first class municipal powers should have the option to vote on areawide transportion systems, such as bus, railroad, pipeline, or truck-transportation, therefore AS 29.35.200(b)(1), line 21 at page 78, should be deleted. Es ablished second class boroughs may acquire additional area-wide and non-areawide municipal powers by majority voter approval of the people affected only, and each proposed additional power to be exercised by a second class borough government must appear separately on the ballot. This right to vote for the approval of each additional power was retained by the people of second class boroughs at the time they voted to incorporate with the powers of a second class borough, therefore it is unlawful and unconstitutional for the Legislature to "confer" such powers through local or special legislation (Alaska Constitution, Article I, Sections 2, 15, 21, Article II, Section 19 and Article X, Section 1 in particular.) The State may only confer powers of the State (such as Health, Education and Welfare, etc.) and then only with the consent of the local governments, and in the case of second class boroughs, with voter approval. Although many powers were conferred without local voter approval, people accepted such legislation without judicial determination, not because it was lawful or constitutional, but most likely because they felt it was not worth the hardships and troubles associated with such litigation. The people of the Fairbanks North Star Borough voted only for the borough government to provide for public bus transportation, proposed AS 29.35.210(a)(1) and AS 29.35.210(b)(1) would allow the borough government to provide for any other transportation system without voter approval of those affected, and this will most likely be challenged in court; AS 29.35/210(a)(8) would allow the borough government to unrestrictively provide for "economic development", and that is something the Fairbanks voters turned down with 75% No-votes, and this is one provision which most certainly will be challenged, should it become law. Therefore, I urge the House to amend CSSB 180 am by deleting on page 79 lines 5, 16, and 22, "(1) provide transportation systems;" and "(8) provide for economic development;" nonareawide and "(1) provide transportation systems;" areawide. (Please see my 9th open letter, of which I sent you a copy, for more detailed facts regarding this matter.)

AS 29.35.490(c) at page 86 should be amended by adding "The exercise of each power in a service area which includes only vacant, unappropriated, and unreserved land owned by the borough or the state must be approved by a majority vote at an election held areawide in the borough; if the exercise of more than one additional municipal power is proposed, each must appear separately on the ballot." for the reason that in second and third class boroughs it was agreed at the time of incorporation between the voters and their governments that each additional municipal power exercised by the local borough government must be approved by the voters who pay for it or are affected. For example should the borough government decide a service area for police or fire protections shall be established on vacant, unappropriated, and unreserved land owned by the borough or the state, all the people of that borough will be affected and pay a portion of the cost of such service area, therefore they must have the opportunity to vote for the exercise of each proposed service in such a service area. Also this argument is presently before the Alaska Supreme Court, ca # 5761/5781, challenging the constitutionality of AS 29.63.090(a) and (f).

For the reasons stated in my Tenth open letter to all Legislators, of which I sent you a copy, and specifically for the reason that the Alaska Constitution, Article X, demands the Legislature to provide for law for maximum local self-government, incorporation for new third class boroughs must be provided for, as well as reclassifaction provisions from second class borough status to third class borough status, therefore, the following amendments to CSSB 180 am should be made:

page 2, line 25: add after first "or third"class borough;

page 4, lines 23 and 24: delete "An area may not incorporate as a third class borough."; and at line 25 add after second "or third" class borough:; and add likewise on page 5, line 24;

page 6, between lines 5 and 6 add "for a third class borough, a proposed designation of the powers to be exercised on a service area basis;"

•{page 7, line 26, add after each "areawide and" nonareawide power ;

•{page 7, line 27, add after Adoption of "an additional areawide or";

page 10, lines 11 and 19 add after second class borough, "third class borough,"; and at line 15 after second "or third" class borough, ... ;

page 173, line 7, add after second "or third" class;

•pertains to second class borough only

AS 29.10.010.(a) (at page 26 of CSSB 180 am) should be amended by adding "A second or third class borough shall follow the proceedings set forth under AS 29.06.200 - 29.06.350 for the election of commission members and charter adoption." for the reason to insure more adequate representation of the areas outside cities and to insure a separate vote between the areas outside cities and the cities. The reasons are further detailed in my letter to the Senate C&RA dated 3/11/80, copy of which is attached hereto.

Please give careful consideration to the above made suggestions. Should CSSB 180 am become law without the proper amendements, Title 29 will no longer provide the law for maximum local self-government as required by our Alaska Constitution.

Very truly yours,

Wolfgang Palke

P. O. Box 1166
Fairbanks, Alaska 99707

Senate Community & Regional Affairs Committee
Senator Arliss Sturgulewski, Chairman
Pouch V, Juneau, Alaska 99811

March 11, 1980

Re.: SB 353 and HB 585, "An Act relating to the incorporation of second class boroughs as home rule boroughs."

Dear Committee Members:

Both Senate Bill 353 and House Bill 585 are now in your committee. Please consider my following comments opposing passage of these bills.

In my third open letter to all legislators, dated Jan. 28, 1980, of which I sent you a copy, I stated that the above named bills are violating the principals of providing for maximum local self government as set forth under Article X of the Alaska Constitution and that the same cannot be legally enacted without first changing the Alaska Constitution. In my fourth open letter to all legislators, dated February 12, 1980, of which I also sent you a copy, I stated that no purpose is cited for the enactment of the above named bills under consideration which could not be implemented under present law, and that these bills are contrary to the best interest of the people as a whole. In spite of my warnings, on February 19, 1980 the Alaska House of Representatives passed HB 585, "An Act relating to the incorporation of second class boroughs as home rule boroughs.", with Representative Fred Brown casting the only NAY.

Article X, Section 9 of the Alaska Constitution says: "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." The legislature provided that law under AS 29.08.010

> "A home rule municipality is a municipal corporation and a political subdivision and is a borough of the first class or a city of the first class which has adopted a home rule charter.", and under AS 29.13.010
> "A charter is framed by a charter commission of seven members chosen by the municipal voters at a regular or special election."

Article X, Section 10 of the Alaska Constitution says: "The legislature may extend home rule to other boroughs and cities.", and the legislature provided for this too under AS 29.68.240

> "An organized borough and all cities within the borough may unite to form a single unit of home rule local government by complying with this chapter."

That charter is framed by a charter commission "of 11 members, three of whom shall be residents elected at large from the area of the borough and eight of whom shall be (1) residents of and elected from the area outside cities in the borough. The number representing each of these areas shall be proportionate to the respective population..." Both, the charter commission and the proposed charter must be approved by a majority of the votes cast in the area of the borough outside all

first class and home rule cities and a separate majority of the votes cast in the remaining area of the borough.

As you can see, existing law very adequately provides for home rule adoption for second class boroughs.

What is the difference between the home rule law of a first class municipality and the home rule law of a unified municipality? None, absolutely none what so ever! Any home rule municipality has all legislative powers not prohibited by law or charter as set forth in the Alaska Constitution, Article X, Section 11. The question is: How may home rule status be adopted? Under present law a second class borough may acquire home rule status in either of two ways:

(1) A majority of the voters outside and a majority of the voters inside first class and home rule cities of an organized borough must separately approve reclassification to first class borough status and then may by majority vote of the entire borough area elect a seven member charter commission and may by majority vote of the voters of the total borough area adopt or reject the proposed charter, or

(2) a majority of the voters outside and a majority of the voters inside of first class and home rule cities of an organized borough must separately approve unification, and the election of an 11 member charter commission and the proposed charter must also be approved by a separate majority vote of each of the area groups.

If SB 353 or HB 585 should become law, then the legislature would be illegally conferring first class status to existing second class boroughs, Thereby the legislature will be impairing and denying the people of existing second class boroughs that right of maximum local self-determination that they specifically retained at the time they voted to incorporate with the powers of a borough of the second class. Therefore the legislature is acting in violation of Article 1, Section 21, Alaska Constitution by passing the above named bills.

Last year, in similar action the legislature passed as part of HB 66 law conferring illegally first class municipal powers and service area powers to second class boroughs. On January 10, I filed suit in the Alaska Superior Court, Fourth Judicial District, regarding this matter. The moment SB 353 or HB 585 should become law, it will be challenged likewise.

In many of my previous letters I urged you to let SBs 348, 349, 350, 352, 353, and 354, and HBs 580, 581, 582, 584, 585, and 586 die in committee. If even only one of them will become law, it will destroy the borough system and for maximum local self government is no longer provided for. Again, for the good of the people as a whole, I ask you not to pass any of these bills.

I thank you for your kind consideration.

Very truly yours,

Wolfgang Palke

cc: This letter will be attached as a copy to my fifth open letter to all legislators

AS 29.35.490(c) at page 86 should be amended by adding "The exercise of each power in a service area which includes only vacant, unappropriated, and unreserved land owned by the borough or the state must be approved by a majority vote at an election held areawide in the borough; if the exercise of more than one additional municipal power is proposed, each must appear separately on the ballot." for the reason that in second and third class boroughs it was agreed at the time of incorporation between the voters and their governments that each additional municipal power exercised by the local borough government must be approved by the voters who pay for it or are affected. For example should the borough government decide a service area for police or fire protections shall be established on vacant, unappropriated, and unreserved land owned by the borough or the state, all the people of that borough will be affected and pay a portion of the cost of such service area, therefore they must have the opportunity to vote for the exercise of each proposed service in such a service area. Also this argument is presently before the Alaska Supreme Court, case # 5761/5761, challenging the constitutionality of AS 29.63.090(a) and (f).

For the reasons stated in my Tenth open letter to all Legislators, of which I sent you a copy, and specifically for the reason that the Alaska Constitution, Article X, demands the Legislature to provide for law for maximum local self-government, incorporation for new third class boroughs must be provided for, as well as reclassifaction provisions from second class borough status to third class borough status, therefore, the following amendments to CSSB 180 am should be made:

page 2, line 25: add after first "or third"class borough;

page 4, lines 23 and 24: delete "An area may not incorporate as a third class borough."; and at line 25 add after second "or third" class borough:; and add likewise on page 5, line 24;

page 6, between lines 5 and 6 add "for a third class borough, a proposed designation of the powers to be exercised on a service area basis;"

page 7, line 26, add after each "areawide and" nonareawide power ;

page 7, line 27, add after Adoption of "an additional areawide or";

page 10, lines 11 and 19 add after second class borough, "third class borough,"; and at line 15 after second "or third" class borough, ... ;

page 173, line 7, add after second "or third" class;

"pertains to second class borough only

Although there is no first class borough incorporated at this time, people who like to consider incorporation with first class municipal powers should have the option to vote on areawide transportion systems, such as bus, railroad, pipeline, or truck-transportation, therefore AS 29.35.200(b)(1), line 21 at page 78, should be deleted. Established second class boroughs may acquire additional area-wide and non-areawide municipal powers by majority voter approval of the people affected only, and each proposed additional power to be exercised by a second class borough government must appear separately on the ballot. This right to vote for the approval of each additional power was retained by the people of second class boroughs at the time they voted to incorporate with the powers of a second class borough, therefore it is unlawful and unconstitutional for the Legislature to "confer" such powers through local or special legislation (Alaska Constitution, Article I, Sections 2, 15, 21, Article II, Section 19 and Article X, Section 1 in particular.) The State may only confer powers of the State (such as Health, Education and Welfare, etc.) and then only with the consent of the local governments, and in the case of second class boroughs, with voter approval. Although many powers were conferred without local voter approval, people accepted such legislation without judicial determination, not because it was lawful or constitutional, but most likely because they felt it was not worth the hardships and troubles associated with such litigation. The people of the Fairbanks North Star Borough voted only for the borough government to provide for public bus transportation, proposed AS 29.35.210(a)(1) and AS 29.35.210(b)(1) would allow the borough government to provide for any other transportation system without voter approval of those affected, and this will most likely be challenged in court; AS 29.35/210(a)(8) would allow the borough government to unrestrictively provide for "economic development", and that is something the Fairbanks voters turned down with 75% No-votes, and this is one provision which most certainly will be challenged, should it become law. Therefore, I urge the House to amend CSSB 180 as by deleting on page 79 lines 5, 16, and 22, "(1) provide transportation systems;" and "(8) provide for economic development;" nonareawide and "(1) provide transportation systems;" areawide. (Please see my 9th open letter, of which I sent you a copy. for more detailed facts regarding this matter.)

AS 29.10.010.(a) (at page 26 of CSSB 180 am) should be amended by adding "A second or third class borough shall follow the proceedings set forth under AS 29.06.200 - 29.06.350 for the election of commission members and charter adoption." for the reason to insure more adequate representation of the areas outside cities and to insure a separate vote between the areas outside cities and the cities. The reasons are further detailed in my letter to the Senate C&RA dated 3/11/80, copy of which is attached hereto.

Please give careful consideration to the above made suggestions. Should CSSB 180 am become law without the proper amendements, Title 29 will no longer provide the law for maximum local self-government as required by our Alaska Constitution.

Very truly yours, MAR 19 Rec.

Wolfgang Falke

TELECOPY March 18, 1982

TO: Reps. O'Connell, Anderson, Bylsma, Clocksin, Grussendorf

Reps. Bettisworth, Brown, Fanning, Randolph, Rogers, and Smith

FROM: Wolfgang Falke, Box 1166, Fairbanks 99707

RE: CS for Senate Bill 180 (C&RA) am

this is page 3, 4, 5. You received 1 and 2. on 3/19.

Borough Powers

Dear Editor:

This morning the office of Senator Parr informed me that the Senate Judiciary Committee (Senator Pat Rodey, Chairman), will hold a hearing and will accept comments in regard to CSSB 180, a bill re-organizing and substantially changing local government law. An identical bill, CSHB 170, is in the House Rules Committee, Rep. John Fuller, Chairman.

Should the bills as presently written become law, among other changes, for second class boroughs:

1. it will eliminate option to reclassify to third class borough status (in reality the bill eliminates formation of new third class boroughs);

2. it will allow adoption of home rule status without separate voter approval of cities and areas outside cities for election of members to charter commission and for approval of home rule character;

3. it will shift authority from assembly or council to the municipality to set penalties for violations or threatened violations or ordinances (that means the mayor or a department head may by regulation prescribe the penalties, not only the elected assembly or council members);

4. it will add that the municipality (department head or mayor) may prescribe penalties for a violation or a threatened violation requiring mandatory, nonsuspendable imprisonment up to five days, and each day that a violation or a threatened violation continues constitutes a separate violation;

5. it will restrict petitioning by the people to legislative matter only (for example a petition for a change or establishing penalties for a threatened violation is not authorized when it pertains to one established by administrative regulation, only one established by the assembly or council by ordinance may be petitioned;

6. it reduces the time in which signatures may be secured for a petition from the present 90 days to 60 days;

7. it will allow in the area outside cities to provide without voter approval unrestricted borough owned and/or operated economic development (at the last election the Fairbanks voters outside cities turn down unrestricted industrial development (advertised as to authorize issuance of industrial revenue bonds), 75.9% voted NO!);

8. it will allow to provide for any kind of transportation in and outside cities (pipeline, railroad, trucking—it could mean that the borough may provide for the transportation of firewood to your house and to forbid you to haul your own!), without voter approval.

Members of the Senate Judiciary Committee are: Senators Pat Rodey (Chairman), Don Bennett, Charles Parr, and Bill Ray; the address: Pouch B, Juneau, Alaska 99811.

Very truly yours,
Wolfgang Falke
Box 1186
Fairbanks, AK

Alaska State Legislature

Senate

Committee on

Community & Regional Affairs

Official Business

465-4934
465-4935

Pouch V
State Capitol
Juneau, Alaska 99811

Donald Gilman, Chairman
Robert H. Ziegler, Sr., Vice-Chairman
Mike Colletta
Arliss Sturgulewski
Frank Ferguson

March 3, 1982

TO: Senator Donald E. Gilman, Chairman
Senate Community and Regional Affairs Committee

FROM: McKie Campbell, Staff
Senate Community and Regional Affairs Committee

RE: CSSB 180

A letter on Senate Bill 180 from Mr. Wolfgang Falke was received by all legislators this morning and a longer letter by him on the same subject was published in the Juneau Empire yesterday. Mr. Falke is very concerned about changes that SB 180 would make to some existing statutes to allow greater flexibility to municipalities. As everyone is aware, municipalities in Alaska range from the big city of Anchorage to rural communities with populations under 100. Senate Bill 180 was specifically drafted to allow municipalities to deal with their varying situations.

In the longer letter published in the Juneau Empire, Mr. Falke listed nine objections to SB 180. I would like to go through these one by one.

1. Mr. Falke is correct that SB 180 would prevent the formation of any new third class boroughs.

2. This item objects to the voting conditions surrounding adoption of home rule status. There is no change in the requirements listed in SB 180 from existing statute.

3. & 4. It is contended that the use of the word "municipality" in the relevant sections would allow the mayor or department heads to set penalties by regulation. This is a misreading of the bill. Legal Services states that the use of the term "municipality" allows for more precise drafting and eliminates confusion. All penalties would continue to have to be set by ordinance.

5. The letter states that petitions will be restricted to legislative matters only and would not be an available remedy to removal for offending regulations. Municipal regulations may only be drafted to implement specific ordinances and the petitionable remedy to offending regulations is to change the ordinances.

6. He is correct in stating that the time permitted for the obtaining of signatures for petitions is reduced from the present 90 days to 60 days.

7. Item number 7, appearing in the letter to the Juneau Empire, is the central point in Mr. Falke's letter to legislators, received this morning. Mr. Falke is concerned about AS 29.35.210(a)(8). This section permits a second class borough by ordinance to provide for economic development on a non-area wide basis. The borough would not be permitted to pay for this non-area wide service from the collection of area wide taxes or by general obligation bonding without voter approval. Second class boroughs would be able to pay for the economic development by the use of revenue bonds without voter approval, however, voter approval is not required under current statute for the use of revenue bonds.

8. Mr. Falke objects to AS 29.35.210(a)(1), which says that a second class borough may, by ordinance, provide transportation systems on a non-area wide basis. Existing statute, 29.48.030(a)(12), currently allows a municipality to exercise the powers necessary to provide for transportation systems. There is no significant change here from existing statute.

There is one additional item which is not addressed in Mr. Falke's letter but which I would like to address in this memorandum. I believe some misunderstanding has arisen over proposed section 29.40.090, Short Plat Procedure. The confusion arises from persons reading the title of the section without reading the body. The short plat procedure should not require any more formal procedures than the present waiver process. It is left to each local government to set whatever procedural requirements suit its situation. As in the case of the present waiver procedure, the proposed short plat process would allow boroughs to exempt the creation of a small number of lots from standard subdivision procedures.

I believe it should be emphasized that the thrust of SB 180 is not force new powers on municipalities, but to allow them a greater flexibility to meet their individual circumstances as determined by their citizens.

Objection - one of amendments - re: pen. int. on upaid taxes
raised from 20% (16)
10% (8)

Amendment - back to 10%

TITLE 29 REVISIONS
Comment on CSHB 170(C&RA)

This comment relates to an apparently unintentional change from current law in the platting regulations under CSHB 170 (C&RA). Section AS 29.40.090 defines a "short plat procedure" which clarifies the "waiver procedure" in current law. However, proposed AS 29.40.090 leaves out a portion of the waiver process which is important to the Matanuska-Susitna Borough and in rural and remote areas. The proposed language would require survey and monumentation in all cases. Present law allows a municipality to waive such requirements for larger parcels, e.g. the subdivision of a 40 acre parcel into two 20 acre parcels. This is more regulation than is required to protect the public interests involved.

The following change is recommended to retain the flexibility of the current law, yet to keep the otherwise improved form of CSHB 170 (C&RA). AS 29.40 .090(b) should be changed to read as follows:

> Sec. 29.40.090. SHORT PLAT PROCEDURE.
>
> (b) The Assembly ~~may~~ "shall" establish notice, hearing and other procedural requirements for the review, consideration, approval, alteration ~~and re-~~ shall? platting of short plats and ~~may provide~~ for waiver of survey and other formal requirements where each parcel created is five acres or larger in size.

The only change is the addition of the provision for waiver of certain requirements where lots created are larger than five acres. This is consistent with present law. (See AS 29.33.170(a)(2).)

Steven H. Morrissett
Borough Attorney
MATANUSKA-SUSITNA BOROUGH

REALTOR®

ALASKA ASSOCIATION OF REALTORS®
1818 W. Northern Lights Blvd., Suite 104 • Anchorage, Alaska 99503
Telephone 907-272-8018

April 1, 1982

Honorable Patrick M. O'Connell
Alaska State Legislator
Pouch V (MS 3100)
Juneau, Alaska 99811

RE: CSSB 180 (C&RA) AM

Dear Mr. O'Connell:

Since testifying before the Community and Regional Affairs Committee March 26, regarding the omission of AS 29.33.170 (waiver in certain cases) from the above referenced bill, I have met with Steven Morrisett, Borough Attorney for the Matanuska-Susitna Borough and discussed the differences that we expressed before your committee.

Mr. Morrisett has rewritten his suggested change to proposed AS 29.40.090 and AS 29.40.100 and, I understand, intends to present the changed suggestion before your committee on April 2, 1982.

The Alaska Association of REALTORS believes this new suggested change, copy attached, properly clarifies, simplifies and continues the intent of the present AS 29.33.170 and the suggested change, in its entirety, has our full support.

While in Juneau, I met with Senators Kerttula, Sturgulewski and Gilman. They assured me that they would concur with an amendment that placed the intent of AS 29.33.170 into SB 180. I am sending them copies of this letter and urging their support for this proposed amendment.

We thank the full committee for your courtesy and consideration.

Sincerely,

Audie L. Moore

Audie L. Moore
ALASKA ASSOCIATION OF REALTORS

ALM:ew

Attachment

CC: Senator Don Gilman
Senator Jay Kerttula
Senator Arliss Sturgulewski

TITLE 29 REVISIONS
Comment on CSSB 180 (C&RA)am

The following language is recommended to conform as closely as possible with present law relating to subdivision waivers and to define the flexibility of local government in establishing a short plat procedure.

Sec. 29.40.090. WAIVERS AND SHORT PLATS. (a) Notwithstanding other provisions of this chapter, the assembly shall establish short or abbreviated plat procedures in accordance with this section upon satisfactory evidence that

(1) each tract or parcel of land will have adequate access to a public highway or street;

(2) the land is divided into four or fewer parcels;

(3) no dedication of a street, right-of-way or other public area is involved or required;

(4) no vacation of a public dedication or variance from a subdivision regulation is required.

(b) In individual cases, meeting the requirements of (a) of this section, where each parcel created by subdivision is five acres in size or larger, the preparation, submission and recording of a formal plat shall be waived.

(c) In other cases, meeting the requirements of (a) of this section, including plats which relocate or vacate lot lines the assembly may establish procedural and informational requirements for a short plat procedure.

29.40.100. INFORMATION REQUIRED. Except as otherwise provided for in AS 29.40.090, a plat shall show

(1) initial point of survey;

(2) original or reestablished corners and their descriptions;

(3) actual traverse showing area of closure and all distances, angles, and calculations required to determine initial point, corners, and distances of the plat; and

(4) other information that may be required by ordinance.

TITLE 29 REVISIONS
Comment on CSHB 170(C&RA)

This comment relates to an apparently unintentional change from current law in the platting regulations under CSHB 170 (C&RA). Section AS 29.40.090 defines a "short plat procedure" which clarifies the "waiver procedure" in current law. However, proposed AS 29.40.090 leaves out a portion of the waiver process which is important to the Matanuska-Susitna Borough and in rural and remote areas. The proposed language would require survey and monumentation in all cases. Present law allows a municipality to waive such requirements for larger parcels, e.g. the subdivision of a 40 acre parcel into two 20 acre parcels. This is more regulation than is required to protect the public interests involved.

The following change is recommended to retain the flexibility of the current law, yet to keep the otherwise improved form of CSHB 170 (C&RA). AS 29.40 .090(b) should be changed to read as follows:

> Sec. 29.40.090. SHORT PLAT PROCEDURE.
> (b) The Assembly ~~may~~ shall establish notice, hearing and other procedural requirements for the review, consideration, approval, alteration and re-platting of short plats and may provide for waiver of survey and other formal requirements where each parcel created is five acres or larger in size.

The only change is the addition of the provision for waiver of certain requirements where lots created are larger than five acres. This is consistent with present law. (See AS 29.33.170(a)(2).)

Steven H. Morrissett
Borough Attorney
MATANUSKA-SUSITNA BOROUGH

board. The board shall state on its record and in writing to the applicant its reason for disapproval of a plat.

(b) The platting board shall submit an approved plat to the district recorder in compliance with AS 40.15.010—40.15.020. (§ 2 ch 118 SLA 1972)

Sec. 29.33.170. Waiver in certain cases. (a) The platting authority shall, in individual cases, waive the preparation, submission for approval, and recording of a plat upon satisfactory evidence that

(1) each tract or parcel of land will have adequate access to a public highway or street;

(2) each parcel created is five acres in size or larger and that the land is divided into four or fewer parcels;

(3) the conveyance is not made for the purpose of, or in connection with, a present or projected subdivision development;

(4) no dedication of a street, alley, thoroughfare or other public area is involved or required.

(b) In other cases the platting authority may waive the preparation, submission for approval, and recording of a plat, if the transaction involved does not fall within the general intent of §§ 29.33.150—29.33.240 of this chapter and AS 40.15 if it is not made for the purpose of, or in connection with, a present or projected subdivision development and no dedication of a street, alley, thoroughfare, park or other public area is involved or required. (§ 2 ch 118 SLA 1972)

Sec. 29.33.180. Information required. A plat shall show initial point of survey, original or reestablished corners and their descriptions, and actual traverse showing area of closure and all distances, angles and calculations required to determine initial point, corners and distances of the plat, as well as other information which may be required by ordinance. (§ 2 ch 118 SLA 1972)

Sec. 29.33.190. Penalties. (a) The owner or agent of the owner of land located within a subdivision who transfers, sells, or enters into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved, and recorded, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $500 for each lot or parcel transferred, sold, or included in a contract to be sold. The platting board may enjoin a transfer, sale, or contract to sell, and may recover the penalty by appropriate legal action.

(b) No person may record a plat or seek to have a plat recorded unless it bears the approval of the platting board. A person who knowingly violates this requirement is punishable upon conviction by a fine of not more than $500. (§ 2 ch 118 SLA 1972)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

March 25, 1982

SUBJECT: Municipal government
(CSSB 180 (C&RA) am)

TO: Representative Patrick M. O'Connell
Chairman, House Community and Regional
Affairs Committee

FROM: Tamara Brandt Cook
Legislative Counsel

TBC

I have discovered three technical mistakes in CSSB 180 (C&RA) am which is currently in your committee.

1. Chapter 14, which begins on page 31 is essentially identical to the provisions dealing with the capital city currently contained in AS 29.18.510 - 29.18.610. However, Sec. 7, Chapter 143, SLA 1978 provides that the Capital City Incorporation Act ". . . takes effect 30 days after certification that a bond issue for costs of relocation of the capital has been adopted by the voters of the state". This effective date was inadvertantly omitted from CSSB 180 (C&RA) am, so that Chapter 14 takes effect on the effective date of the Act. I would recommend that an effective date similar to that contained in Sec. 7, Chapter 143, SLA 1978 be added with respect to Chapter 14, or that the first sentence of Sec. 29.14.010 be changed to read: "Thirty days after certification that a bond issue for costs of relocating the state capital has been authorized by the voters of the state there is created and incorporated a city of the state as the capital city of Alaska that is a city of the first class."

2. On page 132, line 2 there is a reference to AS 34.-10.070 - 34.10.220 which has been carried over from existing law. Those sections have been repealed and the reference should be deleted from this Act.

3. On page 192, line 28 an existing chapter in Title 29 was inadvertantly omitted from the repealer. AS 29.48 should be repealed in this Act, since material currently in AS 29.48 has been reorganized into Chapter 35 of this Act.

Please contract me if you have any questions regarding these technical corrections and let me know if you would like the corrections incorporated into a committee substitute for your committee.

TBJ:ljb

12-2752
Sofo

IN THE HOUSE

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to workers' compensation."

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

* Section 1. AS 23.30.005 is amended by adding a new subsection to read:

(m) The board shall adopt regulations that permit two or more municipalities to form an employer group for the purpose of providing self-insurance under this chapter.

Possible amendment to Mun. code

Pat Notes

CSSB 180

Notes Chapter 29.14 - Capital City

Chp 143 1978 - Effective date =
"Thirty days after certification of adoption of a bond issue for relocation costs."
-As in Tom's memo.-

-

1981 Legislation Attached -

Now 82 - voters approval " the total cost to the state of providing for completion of relocation of a [illegible] final state capital."

The effect of Chp. 14 included in SB180 would enact the Capital City Council on July 1, 1982.

Possible to ~~repeal~~ delete Chp. 14 from SB180. & let it remain in existing law — w/ Bond passage as effective date.

Ques: for Ken Vassar - What was the purpose of [illegible] date of Capital City Council to bond passage rather than 1982 election or anything else?

he'll be back Monday.

Chapter 54

AN ACT

Relating to relocation of the state capital; repealing and reenacting the law enacted by the initiative popularly known as the 'FRANK Initiative' to provide for the determination of the costs of capital relocation, amending laws relating to the New Capital Site Planning Commission, and conditionally repealing laws relating to relocation of the state capital.

---

* Section 1. AS 44.06 96 is repealed and reenacted to read:

Sec. 44.06.196. CAPITAL RELOCATION EXPENDITURES. (a) Except for money used for planning, design, studies, and field investigations in accordance with the provisions of AS 44.06.200 - 44.06.299, state money may be spent to relocate the state capital from its present location to the new capital site at Willow only after a majority of those voting on the proposition at the 1982 general election have approved a ballot proposition that includes the total cost to the state of providing for completion of relocation of a functional state capital at the new capital site at Willow as provided in this section.

(b) The ballot proposition prepared and submitted to the voters under this section shall also show:

(1) the amount of the total cost that it is estimated may be defrayed by the net proceeds from disposal of land in the new capital site at Willow;

(2) the estimated cost, through the relocation completion

date, of providing for new or expanded facilities in Juneau and elsewhere to accommodate estimated growth in state government if the capital is not relocated;

(3) an estimate of the number of central state employees who are reasonably expected to be relocated from Juneau and from other existing, named locations to the new capital site at Willow; the estimate prepared under this paragraph shall be prepared in a manner consistent with the methodology used by the commission in determining the estimate in its 1978 report of the number of central state employees who are reasonably expected to be relocated to the new capital site at Willow, and the estimate shall be supported by information obtained from each of the branches of government;

(A) an estimate of the population reasonably expected to reside at the new capital site at Willow on the relocation completion date; the estimate prepared under this paragraph shall be based on the number of central state employees who are reasonably expected to be relocated to the new capital site at Willow estimated under (3) of this subsection; and

(5) the estimated costs, through the relocation completion date, of

(A) capital improvements;

(B) relocation of personnel and equipment; and

(C) indemnification under AS 44.08.

(c) The sum of the following costs, as estimated by the commission, shall be the total cost to the state that shall be included in the ballot proposition submitted to the voters under this section:

(1) the cost to the state as of the relocation completion date of the land development, capital improvements, equipment, and furnishings necessary to provide a functional state capital;

(2) the cost to the state as of the relocation completion date of relocating the central state employees and their dependents and household goods to the new capital site at Willow;

(3) the cost to the state as of the relocation completion date of moving offices, office equipment, and office contents sufficient to accommodate the central state employees at the new capital site at Willow;

(4) the cost to the state as of the relocation completion date of the indemnification requirements of AS 44.08;

(5) the cost to the state of the plans, designs, studies, and field tests for relocation of the capital through the relocation completion date;

(6) the cost to the state of the elements set out in the basic development plan described in (d) of this section, including payments deferred beyond the relocation completion date, to the extent those costs are related to relocation and are not otherwise provided for in items (1) - (5) of this subsection; and

(7) the cost to the state of financing the costs specified in this subsection.

(d) To estimate the costs under (c) of this section, the commission shall prepare a basic development plan. The commission shall prepare the basic development p an by revising the detailed development plan and cost estimates prepared by the commission in its report of March 15, 1978, in accordance with the provisions of AS 44.66 235 and this section. In making its revision, the commission shall revise those assumptions in the detailed development plan, if any, that are shown by substantial evidence to be erroneous and shall use the average rate of growth for central state positions and the average annual rate of inflation for construction costs and for other costs for the preced-

ing 10 years, taking into account any unusual growth or decline in growth caused by special circumstances. However, in estimating costs under (c) of this section, if public money is used for the development of facilities that will be conveyed to persons for private use and the public money will be recovered over a period of years, the estimated cost of the facility, for purposes of providing a cost estimate under (c) of this section, is the estimate of the difference between the amount expected to be recovered and the amount that would have been recovered if the public money had been invested over the same period of years at the average rate of return for investments made under AS 37.10.070.

(e) The commission shall prepare an estimate of the net proceeds reasonably expected to be received from the disposal of land at the new capital site at Willow through the relocation completion date. For purposes of this estimate, "net proceeds" means the increased value of lands expected to be disposed of if relocation occurs less the current value of those lands to the state in the absence of relocation of the state capital, taking into account the likelihood of disposal of those lands and of their producing revenue to the state.

(f) In estimating costs through the relocation completion date of providing for new or expanded facilities in Juneau and elsewhere in the absence of relocation, the commission shall

(1) exclude from its estimates the costs of facilities that would be required in Juneau and elsewhere even if relocation of the state capital were to proceed;

(2) use the same projections for growth in state government that it uses in preparing the basic development plan under (d) of this section and the cost estimates for the new capital site at Willow; and

(3) base its estimate of total space to accommodate its

estimate of the growth of state government on the state's past and current practice of providing public facilities at Juneau and elsewhere.

(g) In making its estimates, the commission shall neither overstate nor understate the costs, but rather shall make the most realistic estimates possible with the evidence available to it.

(h) The commission shall, on August 16, 1982, provide the legislature, the governor, the lieutenant governor, the director of elections, and the public with its basic development plan and a report setting out the cost estimates required by this section and the number of central state employees to be relocated from existing, named locations to the new capital site at Willow.

(i) After receipt of the report of the commission, the director of elections shall prepare a ballot proposition in accordance with this section and place it on the ballot at the 1982 general election.

(j) If the ballot proposition provided for in this section is approved by a majority of the votes cast on the question, an amount equal to the estimate of total costs may be expended to complete relocation of the capital. If the ballot proposition is rejected by a majority of those voting on the proposition, the Capital Relocation Initiative (AS 44.06.100 - 44.06.190), the "FRANK Initiative" as amended (AS 44.06.195, 44.06.196), the laws establishing the New Capital Site Planning Commission (AS 44.06.200 - 44.06.299), and the Relocation Indemnification Act (AS 44.08) are repealed.

(k) In this section

(1) "central state employees" means employees principally involved in matters that concern statewide activities of the state government rather than regional or local activities of the state government;

(2) "functional state capital" means a city that has the public buildings, public utilities, access roads, streets, and other facilities necessary to meet the operational needs of state government and to accommodate the numbers and classifications of central state employees estimated in (b) of this section, the population estimated in (b) of this section, and the general public;

(3) "relocation completion date" means the date that the commission, based on substantial evidence, estimates is the earliest practical date by which a functional state capital can be established in the new capital site at Willow.

* Sec. 2. AS 44.06.210(c) is amended to read:

(c) The members are entitled to receive <u>$200</u> [$100] per day for their service on the commission and per diem and travel expenses as authorized by law.

* Sec. 3. AS 44.06 is amended by adding a new section to read:

Sec. 44.06.235. PLANS. (a) The purpose of the commission is to prepare detailed plans for development of the capital site within the guidelines enumerated in this chapter.

(b) A basic development plan shall be completed in time to meet the requirements of AS 44.06.196 and shall be subject to public comment during its formulation. Following completion of the basic development plan, the commission shall make public presentations of it throughout the state.

(c) The basic development plan shall

(1) include, but need not be limited to, the following elements: government facilities, community facilities, transportation, public utilities, communication facilities, commercial and industrial development, residential development, resources, and environmental aspects; however, the plan shall assume that the development of commercial, industrial, and residential facilities shall be provided by the private sector to the maximum extent feasible;

(2) include provisions addressing each element described in (1) of this subsection in terms of its social and economic impact;

(3) address governmental jurisdictions, including statements as to the appropriate planning and development authority and recommendations as to the forms and powers of the local government; and

(4) develop a planning and implementation work program.

(d) The commission shall perform physical and geotechnical site-specific analysis and related mapping.

(e) The commission shall conduct an analysis of the opportunity for the reorganizing and regionalization of state government, and develop a list of executive agencies that are expected to be located in the capital. This list shall include the offices to be moved, the number of personnel to be employed in those offices, and the anticipated required office space for that number of persons. This list shall be used for capital site planning purposes only, and is not binding as to which executive agencies may be located in the capital. The commission shall then develop a relocation phasing plan.

(f) The commission shall recommend to the legislature the type of development entity that would be responsible for capital city development as well as the powers and authority that should be vested in this development entity.

(g) The commission shall conduct a cost analysis that includes proposed construction schedules and related cost studies including but not limited to construction costs and escalation and energy-efficient construction costing. The commission shall also prepare financing analysis including the investigation of funding alternatives and submission of a recommended financial plan to the legislature.

(h) The commission shall determine the environmental and ... permits necessary for the construction of the capital and shall recommend to the legislature any possible methods to expedite this process while protecting the environmental quality of the area.

(i) The commission may undertake other activities as are appropriate to carry out its functions, including but not limited to investigating the most economical and expeditious means of procurement, construction methods, construction alternatives, and labor costs.

(j) The commission shall provide a comprehensive assessment of the social, economic and environmental impact on the Matanuska-Susitna Borough and the City and Borough of Juneau in accordance with generally accepted standards for these procedures. The assessment shall emphasize the effect of governmental relocation on all items listed in this section.

* Sec. 4. AS 44.06 is amended by adding new sections to read:

Sec. 44.06.270. GENERAL DEVELOPMENT PLAN. (a) Simultaneously with the preparation of the basic development plan under AS 44.06.190 and 44.06.233(b), the commission shall begin preparation of a general development plan for the new capital site at Willow. To the extent that they are not adequately covered by the basic development plan prepared by the commission, the general development plan shall include but is not limited to,

(1) an estimate of the proposed uses of land throughout the entirety of the new capital site at Willow, with a general allocation of the amounts and proportions of land to be devoted to governmental, residential, commercial, industrial, institutional, and public uses, and indicating the anticipated population and building densities for the new capital site at Willow based on the proposed uses of the land;

(2) an estimate of the cost, number, nature, and general location of governmental and institutional facilities relating to use of the site as the new capital of the state, public transportation and major arterial street systems, parks and recreational facilities, water, sewer and drainage systems, electric, telephone and other energy or communications systems or utilities, and health, educational and community facilities;

(3) the approximate time schedule for the stages of development of the new capital site at Willow with reference to both the various parts of the new capital site and to the various types or categories of land uses proposed;

(4) the means of financing the facilities described in (2) of this subsection, the anticipated sources of money for completion of the facilities, and the means by which borrowed money required to complete the facilities is to be repaid; and

(5) any additional statements or documentation that the commission considers necessary or appropriate.

(b) The commission shall include in the general development plan an estimate of

(1) the minimum acreage of land to be allocated for the location and construction of state offices and related state facilities; and

(2) the minimum acreage of land to be set aside and allocated for parks, lakes, recreation and open space use, that, when developed, is available for the use and enjoyment of the general public.

(c) The commission shall hold at least one hearing in each judicial district of the state to receive comments from interested parties on the general development plan proposed by the commission. Each hearing shall be held in a community of the state selected by the commission. Public notice of a hearing under this subsection shall be given

by the commission by publication in a newspaper of general circulatio in the community.

(d) Following the completion of public hearings, the commission shall approve the general development plan. The plan may be approved with or without amendment. To be adopted, the general development plan requires approval by at least two-thirds vote of the full membership of the commission upon a finding that the plan is in accordance with and furthers the purposes of this chapter. The commission shall submit the general development plan to the assembly of the Matanuska-Susitna Borough and becomes effective only after review and comment by the assembly. The assembly shall submit its comments on the general development plan to the commission not later than 60 days after submission of the plan to the assembly.

(e) Maj amendments to the general development plan may be made in accordance with the same procedure set out in this section for approval of the plan. Minor amendments of limited application may be made without following the procedure of this section. However, when adopting a minor amendment, the commission shall publish notice of the proposed amendment that it considers appropriate and shall invite written comments on the proposed amendment before its adoption.

(f) An amendment to the general development plan takes effect on the date set by the commission. However, a major amendment may not take effect unless it is reviewed by the Matanuska-Susitna Borough in accordance with (d) of this section.

Sec. 44.06.280. SPECIFIC DEVELOPMENT PLANS. (a) Simultaneously with the preparation of the basic development plan under AS 44.06.[illegible] and 44.06.235(b), the commission shall also begin preparation of one or more specific development plans for the new capital site at Willow. A specific development plan includes, but is not limited to,

(1) a description of the area to be developed;

(2) a detailed and specific statement of the proposed uses in the area to be developed, including proposed locations of all buildings and structures;

(3) a general description of the land-use restrictions or covenants proposed for the area to be developed;

(4) a map of the existing and proposed transportation and utility systems in the area to be developed;

(5) a statement of the methods by which the property in the area to be developed may be disposed of;

(6) a statement of the relationship between the specific development plan and the general development plan; and

(7) any additional statements or documentation that the commission considers necessary or appropriate.

(b) A specific development plan shall be approved by the commission only after the general development plan has been adopted by the commission. A specific development plan becomes effective only after review and comment by the assembly of the Matanuska-Susitna Borough. The assembly shall submit its comments within 60 days of submission of the plan to the assembly.

(c) Amendments to a specific development plan may be made according to the procedure established in this section for approval of a specific development plan.

(d) The commission shall record a specific development plan and any amendments in the appropriate recording district.

(e) A specific development plan constitutes the controlling document and land use plan for the area to be developed.

(f) Approval of a specific development plan is an amendment to the relevent portion of the general development plan. A specific de-

velopment plan which constitutes a substantial change from the general development plan is subject to the provisions applicable to amendments to the general development plan under AS 44.06.270(d) and (e).

Sec. 44.06.290. LAND. Land within the new capital site at Willow reserved by the commissioner of natural resources under AS 44.06.130 as "reserved use land" may not be classified and made available for homesites under AS 38.08.

Sec. 44.06.299. DEFINITION. In AS 44.06.195 - 44.06.299, "commission" means the New Capital Site Planning Commission.

* Sec. 5. AS 44.06.230 is repealed.

* Sec. 6. FILLING VACANCIES IN COMMISSION MEMBERSHIP; MEETING. Within 15 days after the effective date of this Act, the governor shall fill any vacancies in the membership of the New Capital Site Planning Commission and shall call the first meeting of the commission.

* Sec. 7. REPORTS. The New Capital Site Planning Commission shall provide reports of its work under AS 44.06.196, 44.06.235, and 44.06.270 - 44.06.299 by April 15, 1982, and August 16, 1982. These reports shall be distributed to the governor, presiding officers of the legislature, chief justice of the supreme court, and the general public.

LA

Source

HB 314 am S

Relating to employm
effective date.

BE IT ENACTED BY THE LE

THE AC

UNDERLINED MAT
THE LAW AND BR
DELETIONS FRO
REPEALED AND R
LINE OF EACH R

Approved by the Gove
Actual Effective Dat

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

April 1, 1982

The Honorable Patrick M. O'Connell, Chairman
House Community & Regional Affairs Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative O'Connell:

RE: CSSB 180 (C&RA)am

This Department is pleased to note that CSSB 180am is being heard by your committee during this week. As you know, the Title 29 rewrite bill is a high legislative priority for this Department and we are hopeful it will receive prompt approval by your committee and the house.

The Department would, however, like to remind you of a concern we have regarding Sec. 29.60.140 (p. 154-155) of the current bill. This section pertains to making State Revenue Sharing payments to Native village governments. The language in this section is identical to present language found in AS 29.89.050. The Department's concerns about this language have been previously noted by the Joint Community and Regional Affairs Committee that worked on the Title 29 bill during the interim. However, that Joint Committee suggested that this language be revised in legislation specifically designed to amend the State Revenue Sharing Program. The Governor's legislation (SB 716/HB 746) to revise State Revenue Sharing substantially alters the process for funding unincorporated communities. We do, of course, hope to see enactment of the Governor's State Revenue Sharing bill as the solution to the present Native village government statute. However, in the event SB 716/HB 746 does not become law we would like to insure that AS 29.60.140 of CSSB 180am be addressed.

The enclosed September 2, 1981 Attoney General's opinion states that AS 29.89.050 is "unconstitutional if read literally to restrict aid to Native villages". The opinion goes on to say that the present law can only be interpreted as constitutional if the payments are made available to all similarly situated unincorporated communities regardless of racial or governmental status. Based on this opinion, the Department made FY 1982 State Revenue Sharing under AS 29.89.050 available on an application basis to all eligible unincorporated communities in the unorganized borough. This places the Department in a position of ignoring a statute, a position we would like to correct as soon as possible.

21-P1LH

Another Attorney General's opinion (copy enclosed) identifies an additional problem with AS 29.89.050. Specifically, that unincorporated communities within organized boroughs are not eligible to receive revenue sharing funds. Currently AS 29.89.050 contains no such specific prohibition. Based on this Attorney General's opinion, the Department is not paying revenue sharing funds to unincorporated communities within organized boroughs. Again, however, this puts us in a position of administering a statute in contradiction to its literal interpretation.

To alleviate this situation the Department requests that AS 29.60.140 be
1) deleted from the bill as an alternative or
2) amended in such a manner as to make eligible those unincorporated communities of 25 or more in the unorganized borough. The Department recognizes the need to make a reliable source of funding available to unincorporated communities to provide services and maintain and operate projects constructed with SB 168 funds. However, this Department and the Department of Law have always questioned the propriety of administering a program for unincorporated communities as part of a Municipal Revenue Sharing concept. State Revenue Sharing is also an "entitlement" program and the inclusion of unincorporated communities in an ongoing entitlement program has also been a source of some concern. The Department prefers, as illustrated in the Governor's Revenue Sharing bill, a program whereby unincorporated communities compete by application on the basis of need and merit with other unincorporated communities for a segregated "pot" of funding (i.e. a modifiedversion of the current Rural Development Assistance program authorized in AS 44). The second alternative language suggested above would "legitimize" the manner in which the Department currently administers the present State Revenue Sharing program.

If we can provide you with additional information on this matter, please advise.

Sincerely,

LEE McANERNEY
COMMISSIONER

BY: Palmer M[illegible]rter, Director
Local Government Assistance Division

Enclosures

cc: Senator Don Gilman

cc: Senator Don Gilman
Senator Arliss Sturgeluwski
Ginnie Chitwood, Alaska Municipal League
Tamara Brandt Cook, Legal Services

P. O. Box 1166
Fairbanks, Alaska 99707
452-4275

MAR 23 RECD

Eleventh Open Letter to all
Legislators of the State of Alaska

March 15, 1982

Re.: CSSB 180 am - An Unconstitutional Act--(It will eliminate maximum local self-government and local voter approval of municipal powers to be exercised by local governments.)

Dear Representative O'Connell:

The State Senate passed CSSB 180 am 13 to 6, among those who voted No was every member of the Senate Judiciary Committee. In my recent letters, of which I sent you copies, I warned that passage of CSSB 180 as written would result in law conflicting with the principles set forth in the Alaska Constitution, Article X in particular. Now it will be the responsibility of the State House to make the necessary corrections, or to defeat the bill.

The State Senate amended CSSB 180 on page 115, changing the rates of penalty and interest from 20 % to the present 10 % and from 15 % to the present 8% maximum rate. Apparently it was overlooked to make the same adjustment on page 122, line 25; the House should make this correction.

The Senate further amended AS 29.25.070(a) by deleting "and may require mandatory, nonsuspendable imprisonment not to exceed five days" but failed to correct the ambiguously termed "a municipality may prescribe penalties" language. Line 4, page 59 should be further amended to reflect as follows: "the legislative body of a municipality may prescribe by ordinance penalties ..." (If this correction is not made, AS 29.25.070(a) may be interpreted to mean that the mayor or a department head may by regulation prescribe penalties. Under present law, AS 29.38.200, the assembly or council may prescribe a penalty.)

AS 29.25.070(b) should be amended by deleting on page 59, lines 11 and 12 "or a threatened violation" (any such allegation will most likely be conflicting with first amendment rights - freedom of speech - and therefore not be upheld by the courts; it will be a tool solely for harassment actions, that is something not for the good of the people as a whole.) This provision should be further amended by deleting on page 59 lines 13 and 14 "Each day that a violation of an ordinance continues constitutes a separate violation." (This is like above a provision for the purpose of harassment and fear-provocation, because

if applied as written, it may wipe out one's total investment for a violation of a land use regulation; or is this the true indent?') Likewise and for the same above stated reasons AS 29.40.190 should be amended by deleting on page 94, line 25 "or threatened violation" and by deleting AS 29.40.190(b) "Each day that an unlawful act or condition continues constitutes a separate violation." on page 94, lines 27 and 28. Chapter 40 should be further amended by deleting AS 29.40.180 in its entirety (page 94, lines 6 through 16) because this provision is basically covered by AS 29.25.070(a) and any proposed provisions over and above those of AS 29.25.070(a) therein must be considered violative of the U.S. Constitution and our Alaska Constitution, Article I, in particular. (Only if the proposed imposements of Chapter 40 are written and recorded in a manner as provided for restricted covenant within an existing deed may they be enforcable in a lawful and constitutional way.; 'No State shall pass any law impairing the obligation of contract.") For the reasons stated it would be advisable to change many of the "shalls" to "mays", especially when enforcement without specific written consent of the individual property owner may be possible, within Chapter 40.

AS 29.40.060(b) should be deleted (page 89, lines 19 to 23) because it will not provide due process of law and is conflicting directly the Rules of Appellate Procedure. It could be amended to read "An appeal to the superior court is an administrative appeal, the record for that may be prepared by the hearing officer, board of adjustment, or other body. The superior court, may sit with or without a jury, and may upon motion of a party or upon his own discretion in lieu of an appeal grant a trial de novo."

Not the number of individuals must be defined nor the matter for petition must be restricted beyond the requirements of the Constitution, therefore on page 62, line 13 should be amended to replace shall for "may" be signed by at least 10 voters ... and AS 29.26.-110(a) "(3) relates to a legislative rather than to an administrative matter; and (4) would be enforcable as a matter of law." on page 62, lines 21 through 23, should be deleted. On page 63, lines 6 and 24 "60 days" should be replaced with "90 days", in order to be in conformance with present law requiring a period 90 days during which signatures for a petition may be secured. (reasons more detailed for the above are enumerated in my 8th open letter dated 2/14/82, of which I mailed you a copy)

Although there is no first class borough incorporated at this time, people who like to consider incorporation with first class municipal powers should have the option to vote on areawide transportion systems, such as bus, railroad, pipeline, or truck-transportation, therefore AS 29.35.200(b)(1), line 21 at page 78, should be deleted. Established second class boroughs may acquire additional area-wide and non-areawide municipal powers by majority voter approval of the people affected only, and each proposed additional power to be exercised by a second class borough government must appear separately on the ballot. This right to vote for the approval of each additional power was retained by the people of second class boroughs at the time they voted to incorporate with the powers of a second class borough, therefore it is unlawful and unconstitutional for the Legislature to "confer" such powers through local or special legislation (Alaska Constitution, Article I, Sections 2, 15, 21, Article II, Section 19 and Article X, Section 1 in particular.) The State may only confer powers of the State (such as Health, Education and Welfare, etc.) and then only with the consent of the local governments, and in the case of second class boroughs, with voter approval. Although many powers were conferred without local voter approval, people accepted such legislation without judicial determination, not because it was lawful or constitutional, but most likely because they felt it was not worth the hardships and troubles associated with such litigation. The people of the Fairbanks North Star Borough voted only for the borough government to provide for public bus transportation, proposed AS 29.35.210(a)(1) and AS 29.35.210(b)(1) would allow the borough government to provide for any other transportation system without voter approval of those affected, and this will most likely be challenged in court; AS 29.35/210(a)(8) would allow the borough government to unrestrictively provide for "economic development", and that is something the Fairbanks voters turned down with 75% No-votes, and this is one provision which most certainly will be challenged, should it become law. Therefore, I urge the House to amend CSSB 180 am by deleting on page 79 lines 5, 16, and 22, "(1) provide transportation systems;" and "(8) provide for economic development;" nonareawide and "(1) provide transportation systems;" areawide. (Please see my 9th open letter, of which I sent you a copy, for more detailed facts regarding this matter.)

AS 29.35.490(c) at page 86 should be amended by adding "The exercise of each power in a service area which includes only vacant, unappropriated, and unreserved land owned by the borough or the state must be approved by a majority vote at an election held areawide in the borough; if the exercise of more than one additional municipal power is proposed, each must appear separately on the ballot." for the reason that in second and third class boroughs it was agreed at the time of incorporation between the voters and their governments that each additional municipal power exercised by the local borough government must be approved by the voters who pay for it or are affected. For example should the borough government decide a service area for police or fire protections shall be established on vacant, unappropriated, and unreserved land owned by the borough or the state, all the people of that borough will be affected and pay a portion of the cost of such service area, therefore they must have the opportunity to vote for the exercise of each proposed service in such a service area. Also this argument is presently before the Alaska Supreme Court, case # 5761/5781, challenging the constitutionality of AS 29.63.090(a) and (f).

For the reasons stated in my Tenth open letter to all Legislators, of which I sent you a copy, and specifically for the reason that the Alaska Constitution, Article X, demands the Legislature to provide for law for maximum local self-government, incorporation for new third class boroughs must be provided for, as well as reclassifaction provisions from second class borough status to third class borough status, therefore, the following amendments to CSSB 180 am should be made:

page 2, line 25: add after first "or third"class borough;

page 4, lines 23 and 24: delete "An area may not incorporate as a third class borough."; and at line 25 add after second "or third" class borough:; and add likewise on page 5, line 24;

page 6, between lines 5 and 6 add "for a third class borough, a proposed designation of the powers to be exercised on a service area basis;"

page 7, line 26, add after each "areawide and" nonareawide power;

page 7, line 27, add after Adoption of "an additional areawide or";

page 10, lines 11 and 19 add after second class borough, "third class borough,"; and at line 15 after second "or third" class borough, ... ;

page 173, line 7, add after second "or third" class;

•pertains to second class borough only

AS 29.10.010.(a) (at page 26 of CSSB 180 am) should be amended by adding "A second or third class borough shall follow the proceedings set forth under AS 29.06.200 - 29.06.350 for the election of commission members and charter adoption." for the reason to insure more adequate representation of the areas outside cities and to insure a separate vote between the areas outside cities and the cities. The reasons are further detailed in my letter to the Senate C&RA dated 3/11/80, copy of which is attached hereto.

Please give careful consideration to the above made suggestions. Should CSSB 180 am become law without the proper amendements, Title 29 will no longer provide the law for maximum local self-government as required by our Alaska Constitution.

Very truly yours,

Wolfgang Falke

Wolfgang Falke

A M E N D M E N T

Offered in the HOUSE

By the Community and Regional Affairs Committee

TO: CSSB 180(C&RA) am

Page 31, lines 3 - 29:

Delete all material

Pages 32 - 34:

Delete all material

Page 35, lines 1 and 2:

Delete all material

Renumber following bill sections accordingly

Page 182, line 29:

Delete "AS 29.18 or AS 29.05, AS 29.14, or AS 29.65," and insert "AS 29.18.011 - 29.18.460, AS 29.18.510 - 29.18.610, AS 29.05, or AS 29.65, [AS 29.18]"

Page 187, lines 27 - 29:

Delete all material

Page 188, lines 1 - 26:

Delete all material

Renumber following bill sections accordingly

Page 189, lines 15 - 27:

Delete all material

Renumber following bill sections acco. lingly

Page 192, lin: 28:

Delete "AS 29.18" and insert "AS 29.18.011 - 29.18.460"

REALTOR®

ALASKA ASSOCIATION OF REALTORS®
1818 W. Northern Lights Blvd., Suite 104 • Anchorage, Alaska 99503
Telephone 907-272-8018

April 1, 1982

Honorable Patrick M. O'Connell
Alaska State Legislator
Pouch V (MS 3100)
Juneau, Alaska 99811

RE: CSSB 180 (C&RA) AM

Dear Mr. O'Connell:

Since testifying before the Community and Regional Affairs Committee March 26, regarding the omission of AS 29.33.170 (waiver in certain cases) from the above referenced bill, I have met with Steven Morrisett, Borough Attorney for the Matanuska-Susitna Borough and discussed the differences that we expressed before your committee.

Mr. Morrisett has rewritten his suggested change to proposed AS 29.40.090 and AS 29.40.100 and, I understand, intends to present the changed suggestion before your committee on April 2, 1982.

The Alaska Association of REALTORS believes this new suggested change, copy attached, properly clarifies, simplifies and continues the intent of the present AS 29.33.170 and the suggested change in its entirety, has our full support.

While in Juneau, I met with Senators Kerttula, Sturgulewski and Gilman. They assured me that they would concur with an amendment that placed the intent of AS 29.33.170 into SB 180. I am sending them copies of this letter and urging their support for this proposed amendment.

We thank the full committee for your courtesy and consideration.

Sincerely,

Audie L. Moore

Audie L. Moore
ALASKA ASSOCIATION OF REALTORS

ALM:ew

Attachment

CC: Senator Don Gilman
Senator Jay Kerttula
Senator Arliss Sturgulewski

TITLE 29 REVISIONS
Comment on CSSB 180 (C&RA)am

The following language is recommended to conform as closely as possible with present law relating to subdivision waivers and to define the flexibility of local government in establishing a short plat procedure.

Sec. 29.40.090. WAIVERS AND SHORT PLATS. (a) Notwithstanding other provisions of this chapter, the assembly shall establish short or abbreviated plat procedures in accordance with this section upon satisfactory evidence that

(1) each tract or parcel of land will have adequate access to a public highway or street;

(2) the land is divided into four or fewer parcels;

(3) no dedication of a street, right-of-way or other public area is involved or required;

(4) no vacation of a public dedication or variance from a subdivision regulation is required.

(b) In individual cases, meeting the requirements of (a) of this section, where each parcel created by subdivision is five acres in size or larger, the preparation, submission and recording of a formal plat shall be waived.

(c) In other cases, meeting the requirements of (a) of this section, including plats which relocate or vacate lot lines the assembly may establish procedural and informational requirements for a short plat procedure.

29.40.100. INFORMATION REQUIRED. Except as otherwise provided for in AS 29.40.090, a plat shall show

(1) initial point of survey;

(2) original or reestablished corners and their descriptions;

(3) actual traverse showing area of closure and all distances, angles, and calculations required to determine initial point, corners, and distances of the plat; and

(4) other information that may be required by ordinance.

(d) The commission shall
(1) act as the platting board;
(2) act upon requests for variances;
(3) act upon requests for conditional uses.

(e) Subject to § 245 of this chapter, no platting request, variance or conditional use may be granted except upon an affirmative vote of a majority of the commission.

(f) The commission shall designate its presiding officer and shall meet as frequently as is necessary. The commission shall establish, subject to approval by the assembly, rules and regulations for the conduct of its meetings. Meetings shall be public and minutes shall be kept. Minutes and records shall be filed with the municipal clerk and retained as public records. (§ 2 ch 118 SLA 1972)

(g) Exceptions may be granted to building, housing and related codes by the planning commission when an applicant for an exception demonstrates that the exception will result in increased energy efficiency, unless the planning commission determines that the exception would endanger the health or safety of the public.
(am § 3 ch 83 SLA 1980)

Effect of amendment. — The 1980 amendment, effective June 13, 1980, added subsection (g).

C.J.S. reference.—62 C.J.S. Municipal Corporations § 227.

C.J.S. reference.—62 C.J.S. Municipal Corporations § 227.

Sec. 29.33.085. Comprehensive plan. (a) The comprehensive plan is a compilation of policy statements, goals, standards and maps for guiding the physical, social and economic development, both private and public, of the borough, and may include, but is not limited to, the following: statements of policies, goals, standards, a land use plan, a community facilities plan, a transportation plan, and recommendations for plan implementation.

(b) The assembly shall adopt a comprehensive plan based upon the recommendations of the planning commission. The assembly may modify the plan, provided that it first obtains the recommendations of the planning commission. The planning commission shall undertake an overall review of the plan at least once every two years and shall present recommendations based on the review to the assembly. (§ 2 ch 118 SLA 1972)

Sec. 29.33.090. Zoning. (a) In accordance with the comprehensive plan, the assembly shall regulate and restrict the use of land and improvements by districts or contract zoning to permit specific uses provided for in the contract. Regulations shall be uniform for each class or kind of building, structure, land or water area within each district, but the regulations may differ among districts and exceptions may be made in order to provide for the preservation, maintenance and protection of historic areas, buildings and monuments. In this section, "contract zoning" means a zoning reclassification to a less restricted use when the owner of the rezoned property, either through an agreement with the assembly or a covenant in favor of the borough, places restrictions on the use of the land beyond the zoning requirements generally attaching to the new district in which the property has been placed. The assembly shall hold a public hearing on the proposed contract zoning.

(b) Zoning regulations adopted under (a) of this section may include, but are not limited to, restriction of

(1) land use;

(2) building location and use;

(3) the height and size of structures;

(4) the number of stories in buildings;

(5) the percentage of lot which may be covered;

(6) the size of open spaces;

(7) population density and distribution.

(c) Zoning regulations are designed to

(1) provide for orderly development,

(2) lessen street congestion;

(3) promote fire safety and public order;

(4) protect the public health and general welfare;

(5) prevent overcrowding;

(6) stimulate systematic development of transportation, water, sewer, school, park and other public facilities;

(7) encourage efficiency in the use of energy and the substitution of energy from renewable sources for energy from fossil fuels.

(d) Repealed by § 45 ch 85 SLA 1979.

(e) A zoning ordinance adopted or amended under (a) of this section may not preclude an activity authorized under a license or permit issued under AS 04 if the activity was licensed or permitted by the Alcoholic Beverage Control Board before the adoption of the zoning ordinance or zoning ordinance amendment.

(am § 1 ch 104 SLA 1974; am § 3 ch 142 SLA 1977; am § 45 ch 85 SLA 1979; am § 4 ch 83 SLA 1980; am § 9 ch 131 SLA 1980)

Effect of amendments. — The 1974 amendment added "or contract zoning to permit specific uses provided for in the contract" to the end of the first sentence of subsection (a) and added the third and fourth sentences of that subsection.

The 1977 amendment added subsection (d).

The 1979 amendment repealed former subsection (d), which read: "The assembly shall regulate and restrict the use of state land within the borough which is vacant, unappropriated and unreserved and which is found suitable for classification and disposal for the homesite entry under AS 38.05.010. Compliance with the provisions of this subsection is a prerequisite to issuance of the homesite entry permits for land within the borough."

The first 1980 amendment, effective June 13, 1980, added paragraph (7) in subsection (c).

The second 1980 amendment, effective July 1, 1980, added subsection (e).

As the rest of the section was not affected by the amendments, it is not set out.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3800

MEMORANDUM

March 25, 1982

SUBJECT: Municipal government
(CSSB 180 (C&RA) am)

TO: Representative Patrick M. O'Connell
Chairman, House Community and Regional
Affairs Committee

FROM: Tamara Brandt Cook
Legislative Counsel

TBC

I have discovered three technical mistakes in CSSB 180 (C&RA) am which is currently in your committee.

1. Chapter 14, which begins on page 31 is essentially identical to the provisions dealing with the capital city currently contained in AS 29.18.510 - 29.18.610. However, Sec. 7, Chapter 143, SLA 1978 provides that the Capital City Incorporation Act ". . . takes effect 30 days after certification that a bond issue for costs of relocation of the capital has been adopted by the voters of the state". This effective date was inadvertantly omitted from CSSB 180 (C&RA) am, so that Chapter 14 takes effect on the effective date of the Act. I would recommend that an effective date similar to that contained in Sec. 7, Chapter 143, SLA 1978 be added with respect to Chapter 14, or that the first sentence of Sec. 29.14.010 be changed to read: "Thirty days after certification that a bond issue for costs of relocating the state capital has been authorized by the voters of the state there is created and incorporated a city of the state as the capital city of Alaska that is a city of the first class."

2. On page 132, line 2 there is a reference to AS 34.-10.070 - 34.10.220 which has been carried over from existing law. Those sections have been repealed and the reference should be deleted from this Act.

3. On page 192, line 28 an existing chapter in Title 29 was inadvertantly omitted from the repealer. AS 29.48 should be repealed in this Act, since material currently in AS 29.48 has been reorganized into Chapter 35 of this Act.

Please contract me if you have any questions regarding these techncial corrections and let me know if you would like the corrections incorporated into a committee substitute for your committee.

TBC:1jb

TITLE 29 REVISIONS
Comment on CSHB 170(C&RA)

This comment relates to an apparently unintentional change from current law in the platting regulations under CSHB 170 (C&RA). Section AS 29.40.090 defines a "short plat procedure" which clarifies the "waiver procedure" in current law. However, proposed AS 29.40.090 leaves out a portion of the waiver process which is important to the Matanuska-Susitna Borough and in rural and remote areas. The proposed language would require survey and monumentation in all cases. Present law allows a municipality to waive such requirements for larger parcels, e.g. the subdivision of a 40 acre parcel into two 20 acre parcels. This is more regulation than is required to protect the public interests involved.

The following change is recommended to retain the flexibility of the current law, yet to keep the otherwise improved form of CSHB 170 (C&RA). AS 29.40 .090(b) should be changed to read as follows:

> Sec. 29.40.090. SHORT PLAT PROCEDURE.
> (b) The Assembly ~~may~~ shall establish notice, hearing and other procedural requirements for the review, consideration, approval, alteration and replatting of short plats and may provide for waiver of survey and other formal requirements where each parcel created is five acres or larger in size.

The only change is the addition of the provision for waiver of certain requirements where lots created are larger than five acres. This is consistent with present law. (See AS 29.33.170(a)(2).)

Steven H. Morrissett
Borough Attorney
MATANUSKA-SUSITNA BOROUGH

board. The board shall state on its record and in writing to the applicant its reason for disapproval of a plat.

(b) The platting board shall submit an approved plat to the district recorder in compliance with AS 40.15.010—40.15.020. (§ 2 ch 118 SLA 1972)

Sec. 29.33.170. Waiver in certain cases. (a) The platting authority shall, in individual cases, waive the preparation, submission for approval, and recording of a plat upon satisfactory evidence that

(1) each tract or parcel of land will have adequate access to a public highway or street;

(2) each parcel created is five acres in size or larger and that the land is divided into four or fewer parcels;

(3) the conveyance is not made for the purpose of, or in connection with, a present or projected subdivision development;

(4) no dedication of a street, alley, thoroughfare or other public area is involved or required.

(b) In other cases the platting authority may waive the preparation, submission for approval, and recording of a plat, if the transaction involved does not fall within the general intent of §§ 29.33.150—29.33.240 of this chapter and AS 40.15 if it is not made for the purpose of, or in connection with, a present or projected subdivision development and no dedication of a street, alley, thoroughfare, park or other public area is involved or required. (§ 2 ch 118 SLA 1972)

Sec. 29.33.180. Information required. A plat shall show initial point of survey, original or reestablished corners and their descriptions, and actual traverse showing area of closure and all distances, angles and calculations required to determine initial point, corners and distances of the plat, as well as other information which may be required by ordinance. (§ 2 ch 118 SLA 1972)

Sec. 29.33.190. Penalties. (a) The owner or agent of the owner of land located within a subdivision who transfers, sells, or enters into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved, and recorded, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $500 for each lot or parcel transferred, sold, or included in a contract to be sold. The platting board may enjoin a transfer, sale, or contract to sell, and may recover the penalty by appropriate legal action.

(b) No person may record a plat or seek to have a plat recorded unless it bears the approval of the platting board. A person who knowingly violates this requirement is punishable upon conviction by a fine of not more than $500. (§ 2 ch 118 SLA 1972)

29.40.090 Waivers and abbreviated plats.

(a) Notwithstanding other provisions of this chapter, the assembly shall establish abbreviated plat procedures in accordance with this section upon satisfactory evidence that

(1) each tract or parcel of land created will have legal and physical access to a public highway or street;

(2) no more than four parcels are created by the subdivision;

(3) no dedication of a street, right-of-way or other public area is involved or required;

(4) no vacation of public dedication or variance from a subdivision regulation is required.

(b) In individual cases meeting the requirements of (a) of this section where each parcel is five acres or larger in size, the preparation, submission and recording of a formal plat shall be waived.

(c) In other cases meeting the requirements of (a) of this section, including plats which relocate or vacate lot lines, the assembly may establish procedural and informational requirements for an abbreviated plat procedure.

Alaska State Legislature

House of Representatives

Committee on

Community & Regional Affairs

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

To: All Committee Members
House CRA Committee

Date: March 25, 1982

From: Linda Otey, Committee Aide

Re: Differences-- CSSB 180(CRA)am / CSHB 170 (CRA)

Changes made in Committee:

	CSSB 180	CSHB 170
1.	600 pop. necessary for reclassification of 2nd class to 1st class status.	400 population requirement for reclassification
2.	Temporary law section added to allow pending applicants for reclassification to be permitted if petition has been filed with the Dept. before the effective date of this act.	---------none---------
3.	----------none----------	amended/regarding notification of certification of petitions; recall and initiative. (pg. 64)

Changes made on Senate Floor:

4. By Ziegler/ to allow borough mayors to vote in the event of a tie (pg.47)

5. Deleted language of mandatory, non-suspendable imprisonment for violation of an ordinance. (Pg. 59)

6. By CRA Committee - "the assembly shall (may) establish short plat proceedure. Returned to mandate of current law in waiver proceedure. (Pg. 90-91)

7. By Gilman- returned to current law - taxation of vessels: $5 max-5 tons or less, $15 max- over 5 tons. (Pg. 102)

CSSB 180	CSHB 170
8. By Gilman/Kerttula - amended percentages back to current law. (Pg. 115)	Rates of Penalty & Interest: 20%, 15%, 20%
9. By Sen. CRA- amended definition of 'subdivision' to be consistent with other statutory references. (Pg. 174)	

TABLE I

LOCAL ASSESSMENT POLICY

BOROUGHS	RESIDENTIAL AV	RESIDENTIAL EX	GENERAL PERSONAL PROPERTY AV	GENERAL PERSONAL PROPERTY EX	MOTOR VEHICLES AV	MOTOR VEHICLES EX	BOATS & VESSELS AV	BOATS & VESSELS EX	BUSINESS INVENTORY AV	BUSINESS INVENTORY EX	AIRCRAFT AV	AIRCRAFT EX
ANCHORAGE, MUNICIPALITY OF	X	-	X	-	2	-	X	-	X	-	Y	-
BRISTOL BAY BOROUGH	1	-	X	-	X	-	X	-	X	-	X	-
FAIRBANKS NORTH STAR BOROUGH	1	-	-	X	-	X	-	X	-	X	-	X
HAINES BOROUGH	X	-	X	-	X	-	-	3	X	-	X	-
JUNEAU, CITY & BOROUGH	X	-	X	-	-	Y	-	X	X	-	X	-
KENAI PENINSULA BOROUGH	1	-	X	-	X	-	X	-	-	X	X	-
KETCHIKAN GATEWAY BOROUGH	X	-	X	-	2	-	-	3	X	-	X	-
KODIAK ISLAND BOROUGH	X	-	X	-	2	-	X	-	X	-	X	-
MATANUSKA-SUSITNA BOROUGH	X	-	X	-	2	-	X	-	X	-	X	-
NORTH SLOPE BOROUGH	1	-	X	-	X	-	X	-	X	-	X	-
SITKA, CITY & BOROUGH	X	-	X	-	X	-	-	3	X	-	X	-
CITIES												
CORDOVA	X	-	-	X	-	X	-	X	-	X	-	X
CRAIG	X	-	-	X	-	X	-	X	-	X	-	X
DILLINGHAM	X	-	X	-	X	-	X	-	X	-	X	-
EAGLE	X	-	X	-	-	X	-	X	-	X	-	X
GALENA		NA		NA		NA		NA		NA		NA
HOONAH		NA		NA		NA		NA		NA		NA
HYDABURG		NA		NA		NA		NA		NA		NA
KAKE		NA		NA		NA		NA		NA		NA
KING COVE		NA		NA		NA		NA		NA		NA
KLAWOCK		NA		NA		NA		NA		NA		NA
NENANA	X	-	X	-	X	-	X	-	X	-	X	-
NOME	X	-	X	-	X	-	X	-	X	-		NA
PELICAN	X	-	X	-	-	X	-	3	X	-	X	-
PETERSBURG	X	-	X	-	2	-	-	X	X	-	X	-
ST. MARY'S		NA		NA		NA		NA		NA		NA
SKAGWAY	X	-	-	X	-	X	-	X	-	X	-	X
UNALASKA	X	-	X	-	-	X	-	X	X	-	X	-
VALDEZ	1	-	-	X	-	X	-	X	-	X	-	X
WRANGELL	X	-	X	-	-	X	-	X	X	-	X	-
YAKUTAT	X	-	-	X	-	X	-	X	-	X	-	X

1. optional residential exemption up to $10,000 exercised (AS 29.53.025(a))
2. state collected, annual motor vehicle tax (AS 28.10.431)
3. option 5 & 15 dollar fee collected in lieu of property tax (AS 25.53.025(b)(1))

FRIDAY, MARCH 26
SB 830, SB 836, CSSB 180 (C: RA) am

ALLEN TESCHE
DEPUTY MUNICIPAL ATTORNEY
MUNICIPALITY OF ANCHORAGE

SUPPORTS THE BILL

CONCERNED OVER AN AMENDMENT WHICH IS TO BE PROPOSED.

THE AMENDMENT WOULD HAVE THE EFFECT OF EXEMPTING FROM MUNICIPAL PLANNING, PLATTING, AND ZONING REGULATIONS CERTAIN ENERGY RELATED FACILITIES OR OTHER PROJECTS WHICH EXIST OR ARE PERMITTED UNDER SOME FEDERAL PERMIT OR LICENSE.

WE'VE REVIEWED THE AMENDMENT AND IT APPEARS TO BE A PROPOSED LIMITATION ON HOME RULE POWERS. IF THIS AMENDMENT IS OFFERED, LIKE OPPORTUNITY TO FURTHER COMMENT ON THE AMENDMENT. AT THIS TIME WE'D STRENUOUSLY OPPOSE INCLUSION OF THAT AMENDMENT IN THE LEGISLATION

THE EFFECT OF THAT AMENDMENT WOULD BE TO PERMIT VIRTUALLY ANY KIND OF FACILITY THAT EXISTS

TO BE TOTALLY EXEMPT FROM MUNICIPAL PLATTING, PLANNING, ZONING REGULATIONS INCLUDING HOME RULE MUNICIPALITIES; AND THAT IS THE VERY KIND OF SIGNIFICANT SUBSTANTIAL POLICY CHANGE WHICH, IN OUR VIEW, SHOULD NOT BE PUT IN THIS HOUSEKEEPING LEGISLATION.

CLOCKSIN: UNDER EXISTING LAW AND UNDER THIS PROPOSED AMENDMENT, DOES THE MUNICIPALITY OF ANCHORAGE HAVE THE AUTHORITY, SHOULD IT DECIDE TO DO SO, TO IMPOSE RENT CONTROL?

TESCHE: IN MY VIEW, UNDER THE EXISTING STATUTES AND THE HOME RULE CHARTER OF ANCHORAGE, ANCHORAGE CAN RIGHT NOW IMPOSE RENT CONTROL IF THE ASSEMBLY CHOOSES TO DO SO. IF THIS BILL WERE PASSED I DON'T [redacted] BELIEVE THAT WOULD EFFECT ANCHORAGE'S ABILITY TO IMPOSE RENT CONTROL IF ITS ASSEMBLY WANTED TO.

STEVEN MORRISSETT
ATTORNEY, MAT-SU BOROUGH

SUPPORT THE REVISED TITLE 29

THE HAND OUT IS A PROPOSED CHANGE WHICH IS STRICTY A HOUSE KEEPING CHANGE RELATING TO THE SUBDIVISION PLAT PROCESS AND SPECIFICALLY

TO THE PROCESS OF SUBDIVISION WAIVERS.

CURRENT ALASKA STATUTE 29.33.170 PROVIDES FOR A WAIVER PROCESS FROM THE SUBDIVISION REGULATIONS IN CERTAIN CASES. THOSE CERTAIN CASES ARE WHERE YOU'RE LOOKING AT THE DIVISION OF A LARGE PARCEL, 40-20 ACRES. YOU'RE NOT LOOKING AT AN ANCHORAGE 6000 SQ. FT. LOT, BUT A LARGE PARCEL NORMALLY DIVIDED BY ALLOCATE. THE WAY THE CURRENT STATE STATUTE READS, ALLOWS A WAIVER PROCESS. ALLOWS AN INDIVIDUAL TO COME AND GO THROUGH A VERY ABBREVIATED ADMINISTRATIVE PROCESS. THERE'S NOT NECESSARILY A PUBLIC HEARING, THERE'S NO FORMAL SURVEY REQUIREMENTS AND THAT ALLOWS FOR CHEAP SUBDIVISION OF LARGE PARCELS UP TO 4 INDIVIDUAL PIECES SO LONG AS NONE OF THE INDIVIDUAL PIECES IS SMALLER THAN 5 ACRES.

THE CURRENT LANGUAGE DOES NOT CLEARLY ALLOW THIS WAIVER PROCESS TO CONTINUE. THE LANGUAGE I HAVE PROPOSED IS SIMPLY AN ADDITION TO THE PROPOSED SUB-SECTION(b) OF THE LAST PART OF THAT LAST SENTENCE; INCLUDES A PROVISION FOR THE WAIVER OF SURVEY AND OTHER FORMAL REQUIREMENTS WHERE EACH PARCEL CREATED IS 5 ACRES OR LARGER IN SIZE. OF THIS, I BELIEVE WOULD MAKE THE PROPOSED TITLE 29 REVISION CONSISTENT WITH

CURRENT LAW. I THINK IT WOULD BE APPROPRIATE TO MAKE THIS CORRECTION AND KEEP THE WAIVER PROCESS IN THE LAW.

O'CONNELL: OTHERS HAVE COME TO ME WITH THE SAME THING. I ASSUME THIS PROPOSED AMENDMENT WILL BE TAKEN UP AND DEALT WITH AS PROPOSED AMENDMENT TO THE BILL.

MORRISSETT: PURPOSE IN PUTTING THIS PARTICULAR LANGUAGE FOR IT; IT SEEMS A SIMPLE WAY TO ACCOMPLISH IT.

CLOCKSIN: AS I UNDERSTAND, THE NEW LANGUAGE "AND WOULD PROVIDE FOR WAIVER OF SURVEY..." THAT'S THE ONLY CHANGE?

MORRISSETT: YES

O'CONNELL: THE "SHALL" WAS PUT IN BY THE SENATE SO I IN THERE NOW

CLOCKSIN: WAS THIS AMENDMENT PROPOSED EITHER IN THE SENATE COMMITTEE OR ON THE FLOOR OF THE SENATE

MORRISSETT: NO

CLOCKSIN : WHY?

MORRISSETT: I WAS NOT AWARE OF THE PROBLEM AT THE TIME IT WAS IN FRONT OF THE SENATE.

AUDIE MOORE
ALASKA ASSOCIATION OF REALTORS
ANCHORAGE

MOORE I AM HERE ONLY TO SPEAK TO THE MANDATORY WAIVER PROCESS THAT MR MORRISSETT JUST SPOKE TO. . . .

WE BELIEVE THAT IT IS WORKING VERY, VERY WELL. WE DONIT SEE ANY NEED FOR CHANGING IT AND WE WOULD LIKE TO HAVE THAT PORTION, THE PRESENT LAW 29.33.170 REINSERTED EXACTLY AS IT NOW IS.

WE ALSO HAD NO IDEA WHEN THIS BILL WAS IN THE SENATE THAT WE WERE EFFECTED IN ANYWAY BY THIS. IT'S JUST THE WAY THE BILL IS MADE AND SO FORTH, IT DOESNIT SPEAK TO IT. ONLY ON THE LAST PAGE DOES IT SAY THAT WHATEVER THEY DIDNIT CHANGE IS REPEALED. IT CAME AS A SHOCK WHEN WE FINALLY REALIZED THIS. IT MAY BE UNDER THE NEW SHORT PLAT PROCEDURE THAT IS SET UP, AND AS MR. MORRISSETT HAS

PROPOSED AN AMENDMENT FOR, MIGHT POSSIBLY SERVE THE SAME PURPOSE OR NEARLY THE SAME PURPOSE, HOWEVER, THESE THINGS ARE SUBJECT TO INTERPRETATION BY VARIOUS BOROUGHS AROUND THE STATE. WE WENT THROUGH IT WHEN THE FIRST LAW WAS PASSED AND FOR A NUMBER OF YEARS WE HAD CONSIDERABLE CONFUSION. ITS ONLY BEEN LATELY ITS BEEN INTERPRETED AS WE THINK PROPERLY AND IS BEING USED THAT WAY AND AS I SAID BEFORE, I THINK IT'S AN IDEAL SITUATION AND WORKING BEAUTIFULLY THE WAY IT IS

UNDER THE SHORT PLAT PROCEDURE MR. MORRISSETT HAS PUT IT HERE, WHERE HE HAS "MAY" IT SHOULD SAY "SHALL". VERY DEFINITELY IT SHOULD SAY "SHALL" THE PROBLEMS THAT WE HAD BEFORE WE HAD THIS LAW WAS WHERE THESE THINGS WERE "MAY" IT WAS INTERPRETED BY VARIOUS ASSEMBLIES, EVEN IN THE SAME BOROUGH AT DIFFERENT TIMES IN DIFFERENT MANNERS AND SOMETIMES YOU COULD DO THINGS AND SOMETIMES YOU COULDN'T. THE WAY IT READS NOW IT'S A VEHICLE THAT PERMITS PEOPLE, PRIMARILY OWNERS OF LARGE PIECES OF PROPERTY WHO MAY HAVE BEEN HOMESTEADERS, OR MAY HAVE BEEN OTHER PEOPLE THAT ASSEMBLED IT. IT PERMITS THEM A METHOD TO PEEL OFF SOME OF THIS WITHOUT GOING THROUGH A LONG PROCESS.

THE REALTORS FEEL THERE ARE 3 VERY IMPORTANT FACTORS IN THIS

1) YOU NEED TO HAVE A VERY ACCURATE DEFINABLE LEGAL DESCRIPTION, WHICH WE DO HAVE IN THIS CASE

2) YOU NEED TO HAVE PUBLIC ACCESS, WHICH IS IN THE PRESENT WAIVER

3) NEED USABLE ROAD, WHICH IS IN PRESENT WAIVER

AND ITS BEEN WORKING VERY WELL.

THIS LAST YEAR IN THE KENAI PENINSULA BOROUGH THE ASSEMBLY PASSED AN ORDINANCE THAT PERMITTED PAPER PLATS AND WITHOUT ROADS, ETC. IT CREATED QUITE A HASSLE. THE REALTORS, SURVEYORS AND TITLE COMPANIES JOINED IN TAKING THE BOROUGH TO COURT AND WERE SUCCESSFUL IN HAVING THAT THROWN OUT.

WE ARE INTERESTED IN HAVING PIECES OF PROPERTY THAT YOU CAN GET TO AND ARE DEFINABLE. I SEE NO REASON WHY THAT SHOULDN'T BE REINSERTED AND DON'T KNOW WHY LEFT OUT; DELIBERATE OR ACCIDENTAL. WE WOULD CERTAINLY LIKE TO HAVE

IT BACK IN.

CLOCKSIN: ... YOU WOULD LIKE THE LANGUAGE FROM THE EXISTING STATUTE IN PLACE OF THE ENTIRE 29. 40. 090? OR IN PLACE JUST OF THE LANGUAGE MR MORRISSETTE HAS PROPOSED TO ADD?

MOORE IN PLACE OF THE LANGUAGE MR. MORRISSETT HAS ADDED. IT PROBABLY SHOULD BE A SEPARATE NUMBER SO IT DOESN'T COME UNDER THE SHORT PLAT PROCEDURE

CLOCKSIN IN THAT CASE AREN'T WE GOING TO HAVE ALOT OF DUPLICATION? 09. 08 IN THE BILL BEFORE US DUPLICATES 29. 33. 170 (a)

MOORE NO I DON'T THINK SO. UNDER PRESENT SITUATION YOU HAVE A WAIVER PROCESS AND I WOULD LIKE TO LEAVE WITH YOU A COPY THAT I HAVE DONE WITH THE BOROUGH UP THERE OF PRESENT WAIVER PROCESS AND HOW IT WORKS. YOU DO NOT ~~HAVE~~ HAVE TO GO THROUGH A SHORT PLAT PROCEDURE. WE DO NOT HAVE TO MEET BEFORE A COMMITTEE. ALL YOU HAVE TO DO IS PROVE ACCESS AND ROAD AND PROPER LEGAL DESCRIPTIONS

O'CONNELL THE PRESENT 29.40.090 REQUIRES THAT AN ASSEMBLY SET UP SOME SORT OF A SHORT PLATTING AND THEN INCLUDING YOUR AMENDMENT AS ADDITIONAL LANGUAGE WOULD BE A WAIVER TO .090 REQUIRES IN THE EXTENT OF ALLOCATE PARTS IN EXCESS OF 5 ACRES.

MOORE YES. IT MAY VERY WELL COME UNDER THE SAME 29.40.090, I'M NOT QUITE SURE HOW YOU'D DO IT.

WHAT IT SHOULD WAIVE IT OUT OF SHORT PLAT PROCEDURE AS WELL AS OUT OF OTHER REGULAR PLAT PROCEDURE

MORRISSETT THE CONCERN I WOULD HAVE IS THAT THE SHORT PLAT PROCESS AS IT'S BEEN DRAFTED AND PROPOSED IS DESIGNED TO ACCOMPLISH SOMETHING MORE THAN THE WAIVER IS. THERE ARE FREQUENTLY CASES WHERE IT IS NOT APPROPRIATE TO GO THROUGH A FULL PUBLIC HEARING, YET DO NOT FALL IN THE WAIVER CATEGORY.

FOR INSTANCE, 2 LOTS WHICH SOMEONE WANTS TO REMOVE A LOT LINE IS A TYPE OF A SITUATION WHICH OUGHT TO BE HANDLED ADMINISTRATIVELY. THERE'S NO REASON FOR A PUBLIC HEARING

AND PUTTING SOMEONE THROUGH THE COST OF EXPENSE.

A SHORT PLAT PROCESS WHICH IS NOT IN CURRENT CODE IS DESIGNED TO ACCOMPLISH THAT AS WELL. I THINK I DO SEE A PROBLEM WITH CONFUSION AND REDUNDANCY IN PUTTING BOTH THE SHORT PLAT IN THE WAY IT READS NOW AND THE WAIVER IN THE WAY IT READS BECAUSE THEY HAVE ALMOST EXACTLY THE SAME CONDITIONS DOWN EXCEPT FOR ONE.

THE PURPOSE IN MY AMENDMENT WAS TO TRY TO INCLUDE IN CERTAIN CASES THAN OTHER SITUATIONS. THE SITUATION WHERE YOU'RE ~~[illegible]~~ TALKING ABOUT PARCELS, THE DIVISION OF PARCELS BEING LARGER THAN 2 ACRES. IN THOSE CASES WHAT WE'RE CALLING A SHORT PLAT PROCESS WILL ACTUALLY INVOLVE A WAIVER OF REQUIREMENTS. I THINK THE TERM WAIVER IS KIND OF A MISNOMER IN THE CASE WHERE YOU'RE TALKING ABOUT A SUBDIVISION OF LARGE PARCELS.

WE HAVE A WAIVER PROCESS WHICH APPLIES TO LARGER; IF YOU'RE DIVIDING A 160 ACRES INTO PARCELS, NONE OF WHICH IS SMALLER THAN 40 ACRES THERE'S AN ABSOLUTE WAIVER. YOU DON'T HAVE TO

IN FRONT OF A LOCAL GOVERNMENT. THAT'S A WAIVER. WHAT MR. MOORE IS CALLING A WAIVER IS IN A SENSE A SUBDIVISION PROCESS. IT'S JUST AN ABBREVIATED PROCESS OF ADMINISTRATING. ALL THE PERSON HAS TO COME IN AND FILE AN APPLICATION AND GET THAT APPLICATION APPROVED. BY TERMING THAT A SHORT PLAT + YET COMBINING IT WITH THIS OTHER; I DON'T KNOW THAT THERE'S ANY SUBSTANTIAL DIFFERENCE IN WHAT SOMEONE HAS TO DO. SOMEONE STILL HAS TO COME IN AND FILE AN APPLICATION.

IT SIMPLIFIES THE LAW IN THE SENSE A PERSON KNOWS HE EITHER GOES BEFORE PLAT BOARD FOR PUBLIC HEARING OR ABBREVIATED PROCESS WITH APPLICATION. I THINK IT'D BE POSSIBLE TO PUT LANGUAGE BACK IN... IF PLOPPED BACK IN HAVE SOME CONFUSION

O'CONNELL - DIRECTED TOWARD AUDIE MOORE — MR. MORRISSETT HAS LANGUAGE THAT SAYS "MAY" PROVIDE FOR WAIVER, YOU SUGGEST AT A MINIMUM IT SHOULD READ "SHALL"

MOORE YES

MORRISSETT ONLY CONCERN I HAVE ON THAT BY SAYING THEY "SHALL" PROVIDE FOR A WAIVER ALL YOU'RE DOING IS TELLING THE LOCAL GOV'T (ASSEMBLY) THAT THEY ARE REQUIRED TO PROVIDE SOME SORT OF WAIVER PROVISION. I THINK THAT'S GOING TO BE DECIDED, WHAT SORT OF WAIVER PROVISION, BY THE POLITICAL PROCESS ANYWAY. I DON'T KNOW THAT I PARTICULARLY OBJECT TO IT BUT I'M NOT SURE WHAT IT ACCOMPLISHES BY SAYING "SHALL" WAIVE SURVEY AND OTHER REQUIREMENTS IN THESE CONDITIONS. WHAT ARE YOU REALLY TRYING TO TELL THE LOCAL GOV'T WHAT YOU WANT TO DO. IS THIS A SUBJECT THAT THE STATE WANTS TO DICTATE TO THE LOCAL GOV'T OR IS IT SIMPLY A

MOORE IF WE DON'T SAY "SHALL" WE HAVE IN FACT DESTROYED THE INTENT OF THE PRESENT WAIVER WHICH DEFINITELY SAYS "SHALL" AND WE GET BACK TO THE SAME POINT WHERE A PERSON DOES NOT HAVE THE RIGHT. YOU HAVE TO GO IN AND PLEAD FOR THE RIGHT TO DO WHAT IS RIGHT (IN MY OPINION) RATHER THAN TO KNOW THAT YOU CAN DO IT AHEAD OF TIME AND BE ABLE TO DO IT. I DON'T THINK THAT THERE IS VERY MUCH DIFFERENCE BETWEEN WHAT STEVE (MORRISSETT) WANTS AND WHAT I WANT. AS FAR AS WE ARE PERSONNALLY CONCERNED

WOULD GET WORKED OUT. BUT AGAIN IT BRINGS IT DOWN SUBJECT TO INTERPRETATION AND WHEN WE GET IT DOWN TO INTERPRETATION IT GOES OFF IN 50 DIFFERENT DIRECTIONS.

CLOCKSIN WOULD YOU BE SATISFIED BY CHANGING MR. MORRISSETT'S AMENDMENT TO SAY "SHALL" PROVIDE FOR WAIVER?

MOORE IT FRIGHTENS ME SOMEWHAT. IT WOULD CERTAINLY HELP A GREAT DEAL, BUT IT STILL FRIGHTENS ME BECAUSE WE DON'T HAVE THE SAME THING; MAYBE WE DO BUT IN TRYING TO UNDERSTAND THE NEW SHORT PLAT PROCEDURE ... NOT SURE WEIRE GETTING ANYWHERE NEAR WHAT WE HAD BEFORE.

O'CONNELL PROBLEM IDENTIFIED - NEED LANGUAGE TO MAKE IT MUTUALLY WORK

GENE WILES
CHEVRON, USA

BASICALLY SUPPORT THE BILL

ONE OBJECTION - NO LIMITATION MADE UPON EXERCISE OF PLANNING, PLATTING AND ZONING AUTHORITY WITH RESPECT TO A STATE OR FEDERAL LANDS.

IT'S OUR VIEW THE LAW NOW PROPOSES THAT A LOCAL LOCAL GOV'T, THROUGH THE PLANNING, ZONING & COMMITTING PROCESS, ELIMINATE OIL & GAS ACTIVITIES ON STATE OR FEDERAL LANDS. ON STATE LANDS WE FEEL REASONABLY CERTAIN THIS LAW DOES NOT PROVIDE FOR A SITUATION WHERE STATE OWNED LANDS COULD ISSUE AN OIL & GAS LEASE & THAT CAN BE ZONED OUT BY A LOCAL COMMUNITY.

WE'VE PROPOSED 2 SOLUTIONS TO THE PROBLEM.

IN RESPONDING I'm ANTICIPATING WHAT MR. TESCHE 'S GOING TO SAY. I THINK THE COMMUNITY OF ANCHORAGE IS WORRYING ABOUT PETROCHEMICAL PLANTS SO FORTH - I'm NOT TRYING TO ELIMINATE THE MUNICIPAL ZONING POWERS IN THAT RESPECT. I HAVE NO PRIDE OF AUTHORSHIP IN THIS & IF IT DOES ENCOMPASS THAT ACTIVITY, MAYBE SOME LANGUAGE CAN BE INSERTED TO ELIMINATE THAT. I'm INTERESTED IN MINING, ACTIVITES ON STATE & FEDERAL LANDS; TIMBER INDUSTRIES ON STATE LANDS & FEDERAL LANDS, OIL & GAS INDUSTRY. WE FEEL THIS BILL WOULD GIVE LOCAL COMMUNITIES AUTHORITY TO OVERRIDE THE STATE ...

35. 30.030 ALLOWS THE GOVERNOR TO WAIVE COMPLIANCE WITH LOCAL ZONING REGS. FOR

CONSTRUCTION OF PUBLIC PROJECTS. THE GOVERNOR USED THIS ON ONE OF OUR DEALS IN ANCHORAGE. I DON'T THINK IT'S ASKING TOO MUCH; ON STATE LANDS, THAT THE STATE HAVE SOME AUTHORITY THAT CAN'T BE PRECLUDED BY A LOCAL COMMUNITY. . . YOUR RESOURCE ON STATE + FEDERAL LANDS CONTROLLED BY THE STATE

O'CONNELL DOES THAT SAME AUTHORITY CARRY INTO THE PLACEMENT OF OIL REFINERIES?

WILES DON'T THINK SO. READ IT AS VERY LIMITED

LEE SHARP
CITY BOROUGH ATTORNEY
JUNEAU

SUPPORT THE BILL

CONCERNS WITH CHANGES MADE ON SENATE FLOOR -
1) ELIMINATING THE AUTHORITY FOR MUNICIPALITIES TO IMPOSE MINIMUM MANDATORY NON-SUSPENDABLE SENTENCES LIMITED TO 5 DAYS. WE BELIEVE THAT THAT'S CERTAINLY A REASONABLE AUTHORITY FOR A MUNICIPALITY TO HAVE.

URGE YOU TO RESOLVE THAT AUTHORITY

2) THE REDUCTION TO PRESENT LEVEL TO EXISTING LEVEL FOR INTEREST ON DELINQUENT TAX PAYMENTS. ... 8% IS EVEN BELOW THE MAXIMUM LEGAL LIMIT; BELOW WHAT YOU GET ON JUDGEMENTS. ... RESOLVE WHAT THE ORIGINAL BILL HAD OR AT LEAST SOMETHING MORE IN LINE WITH WHAT INTEREST RATES ARE IN THE COMMERCIAL MARKET.

3) TAXATION OF BOATS ON TONAGE. THAT HAD BEEN LIBERALIZED SOMEWHAT IN THE PROPOSED BILL. THE CHANGES MADE IN THE SENATE MOVE IT BACK TO EXISTING LAW WHICH MEANS IF YOU DO CHOOSE TO USE TONAGE AS A BASIS OF TAXATION, YOU MAY CHARGE ONLY $5 OR $15, WHICH MAKES IT HARDLY WORTHWHILE LEVYING THE TAX.

IF THERE ARE GOING TO BE NO CHANGES WE SUPPORT THE BILL AS IT IS BUT ARE A FEW CHANGES WE CERTAINLY SUPPORT.

(Comments in reference to Mr. Wiles - 35.03.030 - Governor's authority to waive for state projects, local zoning requirements)

THE GOVERNOR CAN DO THAT BUT FIRST HAS TO FIND THAT THERE'S AN OVERRIDING STATE INTEREST + THEN THE WAIVER SHOULD ONLY BE TO THE EXTENT THAT IT'S NECESSARY TO ACCOMPLISH

THAT VARIETY OF STATE INTEREST.

WHAT MR. WILES PROPOSAL GOES TO IS A TOTAL EXEMPTION IF ANY OF THESE INTERESTS EXIST; NOT MERELY ENOUGH TO GET THE PROJECT UNDERWAY, BUT A TOTAL EXEMPTION FROM PLATTING, PLANNING AND ZONING.

IF THE BASIS FOR THAT WAIVER IS THE FACT THAT IT'S A LEASE BY THE STATE OF AK, I WONDER HOW THE STATE WOULD FEEL IF THE SAME THING APPLIED AT THE FEDERAL LEVEL AND ANYTHING THE FEDS DO AND DECIDE HAS SOME SORT OF NATIONAL SIGNIFICANCE, NO MATTER WHOSE PROPERTY IT'S ON, IT HAS SOME SORT OF NATIONAL SIGNIFICANCE BECAUSE THE FEDS ISSUED A PERMIT THAT THE STATE WOULD HAVE NO CONTROL OVER IT. THE FACT THAT SOMETHING IS OF NATIONAL CONCERN DOES NOT MEAN THAT THERE'S NO LOCAL CONCERN.

WHEN YOU PUT IN A REFINERY CERTAINLY THERE'S A MAJOR LOCAL IMPACT & THE MUNICIPALITY OUGHT TO HAVE SOME VOICE IN HOW THAT PROJECT GOES IN, HOW IT IMPACTS THE COMMUNITY.

FOR THOSE REASONS I THINK WE OUGHT TO LEAVE THE EXISTING LAW THE WAY IT IS

IF THERE'S A PARTICULAR PROBLEM THAT THE OIL INDUSTRY HAS WITH A PARTICULAR COMMUNITY - FOCUS ON THAT PARTICULAR PROBLEM RATHER THAN ATTACKING IT IN SUCH A BROAD MANNER. I THINK MR. WILES RECOGNIZED THAT MAYBE THE LANGUAGE IS A LITTLE TOO BROAD

THE 2ND ALTERNATIVE, I THINK, IS JUST GOING TO INVITE ENDLESS LITIGATION AS TO WHAT IS OF STATEWIDE CONCERN.

ANDERSON ARE YOU AWARE OF ANY MUNICIPALITY NOW THAT ARE TAXING VESSELS ON THE BASIS OF TONAGE? IS THAT SOMETHING THAT IS NOT NORMALLY DONE?

SHARP I BELIEVE KETCHIKAN. WE'VE EXEMPTED THEM HERE BECAUSE IF WE'RE GOING TO GO BY TONAGE IT DOESN'T BRING IN ENOUGH MONEY TO MAKE IT WORTHWHILE...

BYLSMA IT OCCURS TO ME THAT SOME COMMUNITIES DEPEND QUITE ALOT ON THAT FORM OF TAXATION... I'M WONDERING IF WE LIMITED ~~THIS~~ IN THIS BILL TO 5 TONS OR LESS OR 5 TONS OR MORE THEN PERHAPS THOSE MUNICIPALITIES THAT MIGHT WANT TO IMPOSE ON THE BASIS OF TONAGE, MORE

TAXATION THAN WHAT THEY'RE ALLOWED NOW ON THE BASIS OF TONAGE, THAT MAYBE WE'RE NOT GIVING THEM ENOUGH LEEWAY WITH THE KIND OF LANGUAGE THAT IS PROPOSED IN THE SENATE. IT OCURRS TO ME THAT IT MIGHT BE MORE SENSIBLE - I DON'T KNOW HOW THE TONAGE GOES ON THESE VESSELS BUT, PROBABLY 5 TONS OR LESS INCLUDES AN AWFUL LOT OF PLEASURE BOATS AND ANYTHING OVER 5 TONS WOULD PROBABLY INCLUDE SOME MORE PLEASURE BOATS BUT ALSO INCLUDE ALL THE COMMERCIAL VESSELS INCLUDING FORTY FOOTERS FIFTY FOOTERS UP TO MAYBE HUNDRED FOOTERS; IT SEEMS TO ME IT'D BE MORE SENSIBLE TO GIVE THEM ENOUGH LEEWAY TO BE ABLE TO IMPOSE A TAX THAT WOULD BE SOMEWHAT MORE REASONABLE FOR PLEASURE BOATS & THEN AS THE VESSELS GET LARGER AN ADDITIONAL TAX

SHARP THAT'S WHY I WAS URGING TO RETURN IT TO THE ORIGINAL LANGUAGE ... ALLOWED COMMUNITY TO SET UP A LIMITATION ON TONAGE BUT DETERMINE THE RATES ... URGE IF YOU CHANGE IT, TO ~~CHARACTERIZE~~ RETURN DECISION TO BE MADE LOCALLY

BYLSMA IN YOUR COMMENTS ABOUT MR. WILES TESTIMONY, YOU SAID THAT IN A COMMUNITY IF

THEY WANT TO HAVE A REFINERY OR A COMMERCIAL VENTURE, THAT WOULD STILL BE CONSIDERABLY DIFFERENT THAN THAT COULD BE MOVED SOMEWHERE ELSE WHERE THERE IS A NATURAL RESOURCE THAT MIGHT BE DEVELOPED. IT'D BE A LITTLE DIFFEPENT SITUATION WOULDNIT IT?

SHARP FROM THE JUNEAU EXPERIENCE, WHAT LITTLE NATURAL RESOURCE WE HAVE HERE, IT'S MOSTLY GRAVEL. ITS SITE ~~SPECIFIC~~ PECULIAR THE COMMUNITY HAS TO MAKE A DECISION IF THEY WANT IT MOVED OR NOT. IF PERMIT TO MOVE - THERE'S CONDITIONS. IF IN A RESIDENTIAL AREA, ... THEY'LL NEED AUTHORITY TO PUT RESTRICTIONS ON SO CAN BE COMPATIBLE WITH SURROUNDING PROPERTY AND EXISTING USERS. WITH CHEVRON'S PROPOSAL IT'D BE EXEMPT. THEY CAN DO WHATEVER THEY WANT IN RELATION TO THAT PROPERTY. NEED SOME PROTECTION FROM ADVERSE ACTIVITIES; NEED CONTROL

ANDERSON WHEN YOU TALK ABOUT LIMITING THE CONTROL THE COMMUNITY OR MUNICIPALITY MIGHT HAVE ARE YOU TALKING ABOUT SUCH THINGS AS ORDINANCES

SHARP YES; DOES SAY ANY MUNICIPAL REGULATIONS

O'CONNELL. SET ASIDE FOR NOW; ON AGENDA FOR MONDAY + START WORKING ON PROPOSED AMENDMENTS

SB 830 ; SB 836 - THESE ARE IDENTICAL WORDING TO SSHB 723 ; SSHB 724 THAT WE MOVED OUT OF COMMITTEE A COUPLE WEEKS AGO

ANDERSON MADE A MOTION TO MOVE SB 830 OUT OF COMMITTEE

NO DISCUSSION NO OBJECTIONS
MOTION CARRIED UNANIMOUSLY

BYLSMA MADE A MOTION TO MOVE SB 836 OUT OF COMMITTEE

NO DISCUSSION NO OBJECTIONS
MOTION CARRIED UNANIMOUSLY

ADJOURNMENT

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

April 1, 1982

The Honorable Patrick M. O'Connell, Chairman
House Community & Regional Affairs Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative O'Connell:

RE: CSSB 180 (C&RA)am

This Department is pleased to note that CSSB 180am is being heard by your committee during this week. As you know, the Title 29 rewrite bill is a high legislative priority for this Department and we are hopeful it will receive prompt approval by your committee and the house.

The Department would, however, like to remind you of a concern we have regarding Sec. 29.60.140 (p. 154-155) of the current bill. This section pertains to making State Revenue Sharing payments to Native village governments. The language in this section is identical to present language found in AS 29.89.050. The Department's concerns about this language have been previously noted by the Joint Community and Regional Affairs Committee that worked on the Title 29 bill during the interim. However, that Joint Committee suggested that this language be revised in legislation specifically designed to amend the State Revenue Sharing Program. The Governor's legislation (SB 716/HB 746) to revise State Revenue Sharing substantially alters the process for funding unincorporated communities. We do, of course, hope to see enactment of the Governor's State Revenue Sharing bill as the solution to the present Native village government statute. However, in the event SB 716/HB 746 does not become law we would like to insure that AS 29.60.140 of CSSB 180am be addressed.

The enclosed September 2, 1981 Attoney General's opinion states that AS 29.89.050 is "unconstitutional if read literally to restrict aid to Native villages". The opinion goes on to say that the present law can only be interpreted as constitutional if the payments are made available to all similarly situated unincorporated communities regardless of racial or governmental status. Based on this opinion, the Department made FY 1982 State Revenue Sharing under AS 29.89.050 available on an application basis to all eligible unincorporated communities in the unorganized borough. This places the Department in a position of ignoring a statute, a position we would like to correct as soon as possible.

1216M

Another Attorney General's opinion (copy enclosed) identifies an additional problem with AS 29.89.050. Specifically, that unincorporated communities within organized boroughs are not eligible to receive revenue sharing funds. Currently AS 29.89.050 contains no such specific prohibition. Based on this Attorney General's opinion, the Department is not paying revenue sharing funds to unincorporated communities within organized boroughs. Again, however, this puts us in a position of administering a statute in contradiction to its literal interpretation.

To alleviate this situation the Department requests that AS 29.60.140 be
1) deleted from the bill, or as an alternative,
2) amended in such a manner as to make eligible those unincorporated communities of 25 or more in the unorganized borough.

The Department recognizes the need to make a reliable source of funding available to unincorporated communities to provide services and maintain and operate projects constructed with SB 168 funds. However, this Department and the Department of Law have always questioned the propriety of administering a program for unincorporated communities as part of a Municipal Revenue Sharing concept. State Revenue Sharing is also an "entitlement" program and the inclusion of unincorporated communities in an ongoing entitlement program has also been a source of some concern. The Department prefers, as illustrated in the Governor's Revenue Sharing bill, a program whereby unincorporated communities compete by application on the basis of need and merit with other unincorporated communities for a segregated "pot" of funding (i.e. a modified version of the current Rural Development Assistance program authorized in AS 44). The second alternative language suggested above would "legitimize" the manner in which the Department currently administers the present State Revenue Sharing program.

If we can provide you with additional information on this matter, please advise.

Sincerely,

LEE McANERNEY
COMMISSIONER

BY: Palmer McCarter, Director
Local Government Assistance Division

Enclosures

cc: Senator Don Gilman
Senator Arliss Sturgeluwski
Ginnie Chitwood, Alaska Municipal League
Tamara Brandt Cook, Legal Services

LM/PM/jl/0917S

3-26-82 CRA

Alan Tesche - supports w/ Senate Floor amendments —

- opposes zoning exemption proposal —

- rent control allowed under existing law & Home Rule Charter of Anch.

, & bill would not change that —

Steve Morriswell — Mat-Su Borough

- supports

- proposes amendment

Audie Moore - Anch - Ak Assn of Realtors —

wants original 29.33.170 back in - waiver of plat requirement for large lots

3-29-82 - Ginny Chitwood

- DOL concerned that communities may not be authorized to join together to provide self-insurance for workers' comp. - proposed amendment

Amendments -

1) - 400 to 600 - Sen. Ferguson: - to stop munic. from taking over REAA's functions - i.e. munic. takes over education functions -

2) temp. law - to allow pending applicants for reclassif. [related to # 1]

3)

4) mayor vote in ties - for borough w/ mgr. form of gov't. - Ketch., Mat-Su, Kodiak, B.B, Haines.

5) deleted - power of munic. to impose mand. min. sentences -

EXXON COMPANY U.S.A.
POUCH 6601 • ANCHORAGE, ALASKA 99502 (907) 276-4552

ALASKA OPERATIONS
WESTERN DIVISION

R.H. WEAVER
OPERATIONS MANAGER

October 9, 1981

Re: Twelfth Alaska Legislature
Joint House-Senate Committee
& Regional Affairs Committee
SB-180/HB-170 - Alaska
Municipal Code Review

Senator Don Gilman, Co-Chairman
Representative Pat O'Connell, Co-Chairman
Joint House-Senate Community and
Regional Affairs Committee
Alaska State Legislature
Pouch V (MS3100)
Juneau, Alaska 99811

Gentlemen:

Exxon has followed with interest your committee deliberations on the captioned bills since they were introduced the middle part of last February. We would like to offer for your consideration the attached comments and suggestions to those chapters and sections of these bills which you propose to discuss at your October 9 and 10 meeting. Additional comments and suggestions on the chapters you will be considering at later meetings will be submitted at the appropriate time.

We sincerely appreciate your consideration of the attached material. If you should have any questions, please let us know.

Sincerely,

R.H. Weaver

Richard H. Weaver

RHW:raw
Attachments

Sec. 29.25.020. ORDINANCE PROCEDURE.

Presently, the Assembly of a municipality is only required to give five day's notice before enacting an ordinance. The proposed revisions to Title 29 would not change this five-day requirement. Therefore, we would suggest that Section 29.25.020 of the revised Title 29 be amended to require that the hearing follow publication by at least 30 days. This time period would give interested persons an opportunity to review the ordinance and appear at the public hearing. The amendment would be as follows:

> (b) (4) The hearing follows publication by at least 30 days;

Sec. 29.25.070 PENALTIES.

The following language should be deleted from subsection (b):

> "An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and a finding of a violation or a threatened violation, the superior court shall grant the injunction."

These provisions are new to the statute and constitute a radical change in the established use of injunctive relief. The violation of a municipal ordinance does not require this extraordinary remedy and the provisions for the imposition of a fine or possible imprisonment should be adequate to insure compliance. Injunctive relief should be granted only after these other remedies have proven to be inadequate.

Sec. 29.35.010 GENERAL POWERS.

Subsection (8) of this provision has been amended by the deletion of the following underlined language:

> "to acquire, manage, control, use and dispose of real and personal property <u>for a purpose authorized under this title, federal law, or other law, or in accordance with such law</u>...

This deleted language clearly recognized that federal and state law was to be considered in the management, control and use of this property by the city or borough. The language should be retained so that deletion may not in any way be viewed by a city or borough as a dispensation from the doctrine of pre-emption by federal or state entities.

Sec. 29.35.050. GARBAGE AND SOLID WASTE SERVICES.

Sec. 29 35.050 of the proposed revisions states that a municipality may provide for a system of garbage and solid waste collection and may require all persons within the municipality to use the system and to dispose of their garbage and solid waste as provided in the ordinance. Because of the remoteness of our locations, which may require sanitary waste facilities, we would propose that the following language be added to subsection (2) to allow for exceptions to a municipality's exclusive service right, provided certain conditions are met:

> (2) Require all persons within the municipality or district to use the system and to dispose of their garbage and solid waste as provided in the ordinance. An exception to this requirement will be allowed if a person can demonstrate that he has adequate facilities for disposal of garbage and solid wastes and that such facilities are in compliance with all lawful laws and regulations.

Sec. 29.35.090 BUDGET AND CAPITAL PROGRAM.

Adequate public notice should be given of the hearing required by this section. The language in subsection (a) should specifically state what the notice shall contain and how the notice is to be published.

In addition, provision should be made for a period for public comment or a public hearing to be held prior to any non-emergency appropriation by the governing body.

Sec. 29.35.250. CITIES INSIDE BOROUGHS.

Clarification is needed in this section on the question of whether a city's power absolutely ceases once the borough exercises a similar power. A conflict currently exists between the literal interpretation of this statute and the provisions of AS 29.48.035(b) which provides that a city and borough may concurrently exercise a power if the borough agrees to the exercise.

Sec. 29.35.320. INITIATION OF ACQUISITION OF POWER.

This section proposes to delete from existing law the provision that a public hearing be held on the question of the ability of the borough to exercise the power to be acquired.

We recommend that this provision be retained in the revised Title 29 in that it serves a useful public service in apprising concerned parties of any changes in borough authority.

Sec.29.40.010. PLANNING, PLATTING AND LAND USE REGULATION.

We suggest the following addition to subsection (b) to provide:

> "The Assembly may, by ordinance, without first obtaining the consent of the city, revoke any power or responsibility delegated under this section."

Any revocation by the Assembly of a power previously delegated to a city should be by ordinance to insure that the public will have an opportunity to comment at the required public hearing.

Sec. 29.40.020. PLANNING COMMISSION.

The proposed revisions to this chapter greatly enlarge the authority of the Planning Commission. Existing law calls only for the commission to prepare a Zoning Ordinance to implement the Comprehensive Plan, but this section would empower the Planning Commission to administer measures necessary to implement the Plan. This broad delegation of authority is unnecessary.

The powers of the Planning Commission should be firmly set by statute and enumerated in this section.

Sec. 29.40.030. COMPREHENSIVE PLAN.

This section provides for a "periodic" review of the Comprehensive Plan by the Assembly, based on recommendations from the Planning Commission. We believe that each Assembly should establish a definite time for these mandatory reviews. Existing law requires they be held every two years, however, each Assembly should have the discretion to determine a schedule in accordance with the particular needs or requirements of the municipality. In addition, a public hearing or a period for public comment should be provided so that the Assembly may consider the views of the public as well as that of the Planning Commission.

Sec. 29.40.040. LAND USE REGULATION.

Insofar as this section vests in the Assembly much greater authority over land use than currently exists, we suggest that the statute be revised by the addition of the following subsection:

> (c) An ordinance adopted or amended under (a) of this section may not preclude or otherwise impede an activity authorized under a permit issued by a state regulatory agency or department having jurisdiction over the activity.

Sec.29.40.050. APPEALS FROM ADMINISTRATIVE DECISIONS.

This section should be amended to provide for a right of appeal of all decisions on a request for a variance.

Sec. 29.40.060. JUDICIAL REVIEW.

We support the proposed provision in subsection (a) providing for the right of appeal on all decisions dealing with land use regulation.

But we also urge that a provision in the existing law be retained and expanded.

We suggest the addition of the following:

> (c) An appeal under (a) and (b) of this section shall stay enforcement proceedings unless the court issues an enforcement order based on a sworn certificate of imminent peril to human life or property made by an administrative body.

Sec. 29.40.120. NOTICE OF HEARING.

This section should be amended to state with specificity as to what information the notice shall contain, when it is to be published, and the earliest date after publication on which the hearing may be held. Publication by notice in a newspaper should require that the notice appear at least on two occasions not more than one week apart.

Sec.29.40.170. REMEDIES.

The following language should be deleted from subsection (b):

> "An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and a finding of a violation or a threatened violation, the superior court shall grant the injunction."

These provisions are new to the statute and constitute a radical change in the established use of injunctive relief. Injunctive relief should be available only where no other remedy is available and its issuance should be within the sound discretion of the court.

RS/TRH/009a
10/5/81

TITLE 29 - MUNICIPAL CODE REVISIONS

SUGGESTIONS FOR ADDITIONS OR CHANGES TO

Ch. 25 - Municipal Enactments
Ch. 26 - Elections
Ch. 35 - Municipal Powers and Duties
Ch. 40 - Planning, Platting, and Land Use Regulations
Ch. 47 - Municipal Debt
Ch. 65 - General Land Grant
Ch. 71 - General Provisions

29.25.010(a)(4) (Department of Community & Regional Affairs)

Why should supplemental or transfer appropriations be excluded?

29.25.060 (JoAnne Shanley)

"Relates to resolutions and states the section is applicable to Home Rule municipalities. However, this section is not cited under Sec. 29.10.110, 'Limitation of Home Rule Powers.'"

29.26.050 (JoAnne Shanley)

"This section has been amended by the addition of a requirement that a person be registered to vote in the precinct (or service area?!) in which he seeks to vote. However, the section still does not address residency in a district, precinct or service area. The AAMC in November drafted language which was forwarded to the Policy Advisory Committee which would have required an elector to be registered and a resident of the State, district, municipality, service area and/or precinct in which he seeks to vote.

"Without more specific language, clerks feel that there is a legal conflict with not counting questioned ballots of persons who are registered but who have moved to another area and not filed a change of address card.

"In small communities where voter turn-out is small, elections close, and everyone knows where everyone else lives, this is an important issue."

29.26.060 (JoAnne Shanley)

"I found the language in this section regarding majority election extremely cumbersome."

29.26.100 (Peter Hallgren)

This section reserves the powers of referendum and initiative to the residents of a municipality and is a limitation on home rule municipalities. Immediately following are a number of sections (Sec. 29.26.110 et seq.) which give the statutory procedures for referenda and initiatives. It is unclear whether these procedures are also limitations on home rule power to act otherwise.

29.26.120 (Tam Cook, Legislative Counsel)

This section "was inadvertently included in this bill. It is a section currently in Title 29 which conflicts with the changes made in the initiative and referendum process by this bill."

29.26.130 (JoAnne Shanley)

"Relates to the contents of an initiative or referendum petition. The AAMC is concerned with this section and urges clarifying language to establish that the petitioners are responsible for drafting the issues and the clerk only is responsible for supplying the petition format.

"Suggested language:

> "(1) 'a summary of the bill to be initiated or the act to be referred, as submitted by the sponsor/s and reviewed and approved by the city attorney if applicable (to insure that the summary as submitted is not unclear or misleading)
>
> "'(2) the complete ordinance or resolution sought to be initiated or referred as submitted by the sponsor/s.'"

29.26.140 (JoAnne Shanley)

"Regarding signature requirements on petitions (b) states 'The clerk shall determine the number of signatures required on a petition and inform each sponsor.'

"The AAMC discussed this section and some concern was voiced that in larger municipalities there might be an overwhelming number of 'sponsors' which might pose a

problem when trying to contact all of them and coordinate the petition process. A suggestion was made that a maximum of 3-5 people be designated 'spokesmen' or 'coordinators' and the clerk, by contacting these individuals, would meet the requirements of law."

29.26.150 (JoAnne Shanley)

"Addresses the sufficiency of a petition. It states that 'Within 10 days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.'

"This section neglects to establish the time frame and means by which the clerk shall notify the sponsors of the sufficiency or insufficiency of the petition.

"Should also be clarified regarding the 'date on which the petition is rejected.' Is this the date the petitions are notified by certified mail?"

29.26.200 (JoAnne Shanley)

"Provides that an ordinance/resolution which was subject of a successful initiative election may not be repealed within one year BUT MAY BE AMENDED. Is there some way to place some controls on the amendment procedure whereby those amendments could not have the effect of creating 'lame duck,' ineffectual legislation?"

29.26.280 (JoAnne Shanley)

"See comments under 29.26.140 regarding number of sponsors.

"(b), last sentence

"I would support the addition of the word 'registered' because it takes the burden of proof off the clerk to prove that someone is residing in an area although the voter registration list indicates that he is registered in another area.

> "' If a petition seeks to recall an official who represents a district, the petition shall be signed by a number of the voters registered and residing within the district (or service area) equal to 35 percent of the number of votes cast in the district (or service area) for that office at the last regular election held before the issuance of the petition.'"

29.26.290 (JoAnne Shanley)

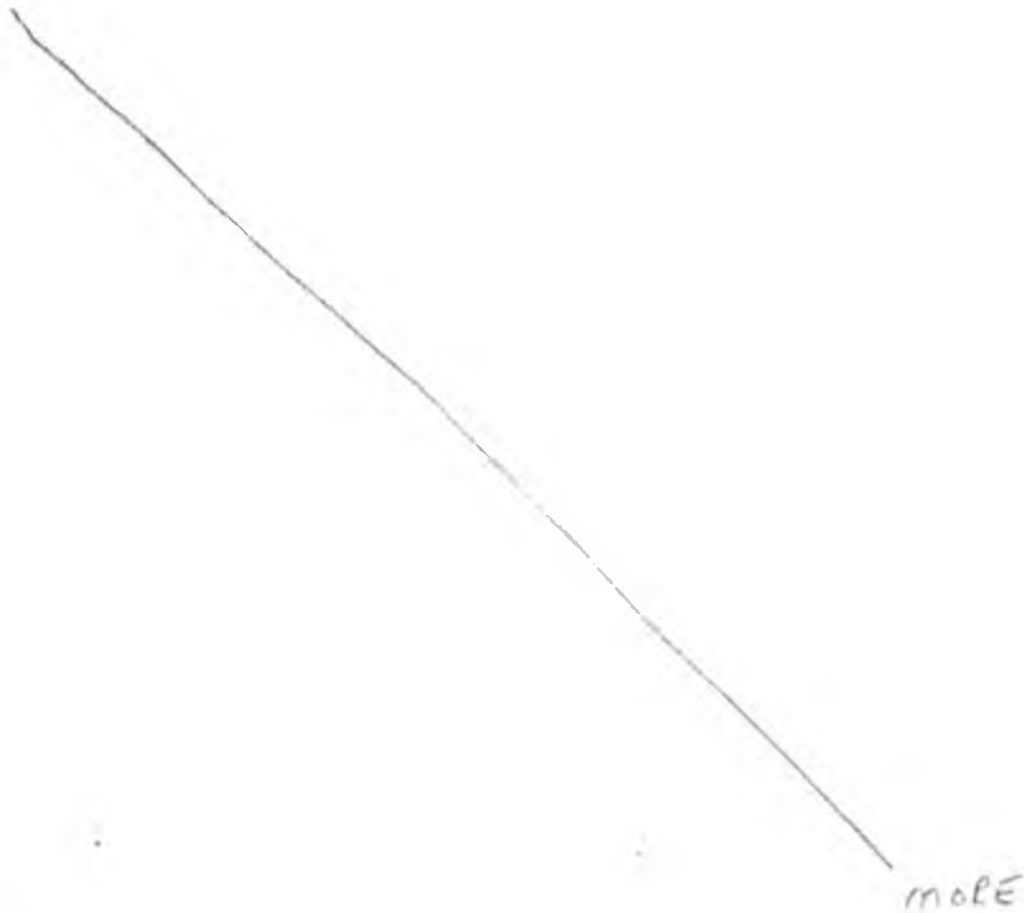
"See comments under 29.26.150 regarding a method whereby the clerk notifies the petitioners of the sufficiency or insufficiency of a petition."

29.26.310 (JoAnne Shanley)

"The word 'immediate' poses some problems. Does this mean the calling of a special meeting? What about substituting wording such as 'at the next regularly-scheduled meeting.'??"

29.26.350(c) (Department of Community & Regional Affairs)

Add "Appointments to fill vacancies are for the unexpired term."



29.35.200, 210, .250, .260, .170 (Tam Cook)

While SB 180 no longer contains a specific grant of power to regulate the use and sale of alcoholic beverages, that power may be implied to exist as a power "not otherwise prohibited by Alaska statute" because AS 04.21.010 is a grant rather than a limitation of regulatory power. If it is the intention of the committee that municipalities regulate in this area only pursuant to AS 04.21.010, a cross-reference to that section would be appropriate to include in Sec. 29.35.200, Sec. 29.35.210, Sec. 29.35.250 and Sec. 29.35.260. A cross-reference should also be included in Sec. 29.35.170 so that it is clear that the power to tax is subject to the limitation imposed under AS 04.21.010(c). I also note that AS 04.21.010 specifically applies to unified municipalities, and, presumably, to other home rule municipalities as a limitation on the power to regulate and to tax in this area. (AS 04.21.080(11)) It might be helpful to users of Title 29 if reference to this limitation were to appear there as well as in Title 4.

29.35.210(a) (Tam Cook)

A paragraph was omitted from Sec. 29.35.210(a): "(9) tax, spend and regulate for the purpose of promoting economic development." A second class borough would be authorized to exercise this power on a nonareawide basis. No similar provision currently exists in Title 29.

29.35.250, .260 (Dept. of Community and Regional Affairs)

This provision seems to give general law cities a power which is equivalent to the authority to adopt and modify a home rule charter by ordinance. As the State Constitution provides that the adoption and modification of a charter shall be by referendum, the propriety of these sections is questioned. Additionally, the subject provisions would allow a second class city in the unorganized borough to exercise the power of education.

29.35.260(c) (Tam Cook)

Incorrectly refers to AS 29.35.180, when it should refer to AS 29.35.190.

29.40.010 (Leo Rhode, Mayor of Homer)

(HB 170 or SB 180) has language which greatly improves the latitude in which this exchange may transpire i.e., "the City must first consent by ordinance to the delegation." Currently Title 29 allows no prerequisite affirmation by the City.

29.40.140 (Joe Burch, Div. of Technical Services, Dept. of Natural Resources)

Line 16: "recorded" should be changed to "filed."

29.40.150 (Richard Hallgren)

Vacating a street - returning the property to the original owner. If the property has been sold in the interim, they charge fair market value rather than giving property away free. Refers back to Sec. 29.10.110 - paragraph (34).

29.40.170 (Joe Burch)

Line 6: "recorded" should be changed to "filed."

Line 8: "record" should be changed to "file."

29.40.180 (Jim Kohler, City Manager of Yakutat)

State compliance with local subdivision regulations. Item that is going to be more than a sleeper, as well as elimination of third class boroughs.

29.35.020 (JoAnne Shanley, Seward City Clerk)

Regarding the control of watersheds outside a municipality's boundaries:

"Before this power may be exercised within the boundaries of another municipality, the approval of the other municipality must be given by ordinance."

A request had been made that some wording should be added similar to "such approval cannot be unreasonably withheld"; or, better still, "such approval cannot be withheld unless the other municipality is attempting to control the watershed."

A case in point is Homer. The city is trying to protect its watersheds located outside the city limits but within the boundaries of the Kenai Peninsula Borough. The Borough has refused to allow Homer to proceed with their plans but also refuses to take any action to protect the watershed.

29.35.170 (Richard Hallgren, Sitka Borough Mayor)

Page 77 - 29.35.170 - wishing to tie in all of this as mandatory in home rule municipalities. As it relates to 29.45.

29.35.190 and 29.10.110 (Dept. of Community & Regional Affairs)

It would seem an oversight that unified municipalities, home rule boroughs and home rule cities in the unorganized borough are not subject to such provisions. If the apparent oversight is remedied, 29.40.150(c) should be stricken and a new section 29.40.190 should be added stating that AS 29.40.010 - 29.40.190 apply to home rule and general law municipalities.

Re: Memo of 9/22/81

A M E N D M E N T S

TO: SB 180 and HB 170

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Page 1, line 11:

Delete "division of lands" and insert "Department of Natural R. urces"

Page 6, line 8:

Delete "hearing" and insert "informational meeting"

Page 6, line 9, after "incorporation.":

Insert "The department shall publish notice of the meeting."

Page 12, line 26:

Delete "EXCLUSION" and insert "DETACHMENT"

Page 12, line 28, after "It":

Insert "may reject the proposed change, accept the proposed change, or alter the boundaries and accept the proposal as altered. A Local Boundary Commission decision under this subsection may be appealed under the Administrative Procedure Act (AS 44.62)."

Page 12, line 29, before "may":

Insert "(b) The Local Boundary Commission"

Page 12, line 29:

Delete "proposed changes" and insert "a proposed municipal boundary change"

Page 13, line 5:

Delete "(b)" and insert "(c)"

Page 13, line 6:

Delete "AS 44.19.260" and insert "AS 44.47.560"

Page 13, line 7:

Delete "exclusion" and insert "detachment"

Page 13, line 11:

Delete "exclusion" and insert "detachment"

Page 13, line 12:

Delete "excluded" and insert "detached"

Page 13, line 18:

Delete "(c)" and insert "(d)"

Page 13, line 18, after "(a)":

Insert "and (b)"

Page 19, lines 3 - 5:

Delete "the home rule or general law borough and all cities within it shall unite to form a single unit of home rule government" and insert "a charter commission shall be formed to prepare a proposed unification charter"

Page 19, lines 7 - 8:

Delete "on the question of unification"

Page 19, line 10:

Delete "unification" and insert "formation of a charter commission"

Page 19, line 13:

Delete "UNIFICATION" and insert "FORMATION OF CHARTER COMMISSION"

Page 19, line 14:

Delete "unification" and insert "the question of formation of a charter commission"

Page 19, lines 18 - 19:

Delete "unification" and insert "the formation of a charter commission"

Page 19, line 20:

Delete "unification" and insert "the formation of the commission"

Page 19, line 21:

Delete "unification" and insert "formation of a charter commission"

Page 22, line 13:

Delete "publish" and insert "have"

Delete "by radio and television"

Page 22, lines 14 - 16:

Delete "in a manner intended to apprise the entire borough population of

the existence of the proposed charter" and insert "published"

Page 23, line 2, after "is ratified,"

Insert "election results shall be certified to the commissioner and"

Page 26, line 11, after "DECISION.":

Insert "(a)"

Page 26, following line 14: Insert:

"(b) A Local Boundary Commission decision under this section may be appealed under the Administrative Procedure Act (AS 44.62)."

Page 29, line 25:

Delete "AS 29.10.010 - 29.10.115 (home rule municipalities)" and insert "AS 29.10.080 (charter amendment)"

Page 30, line 5:

Delete all material and renumber following paragraphs accordingly.

Page 30, following line 11: Insert:

"(19) AS 29.25.060 (resolutions)"

Page 30, line 26:

Delete "AS 29.35.330(c)" and insert "AS 29.35.330(b)"

Page 37, line 17:

Delete "on a proposed form of representation"

Page 37, lines 18 - 20:

Delete "its composition and the form of assembly representation, and, if applicable, the apportionment of assembly seats which corresponds to the proposed form of representation which received the most votes at the election" and insert:

"(1) composition of the assembly;

(2) the form of assembly representation which received the majority of the votes; and

(3) if applicable, the apportionment of assembly seats in accordance with the form of assembly representation which received the

majority of the votes"

Page 42, following line 18: Insert:

"A limit may not be placed on the number of terms that a voter may serve on the governing body."

Page 44, lines 17 - 18:

Delete all material

Page 45, line 23:

Delete "BOROUGH" and insert "MUNICIPAL"

Page 46, line 21, after "serve":

Insert "except by ordinance ratified by the voters. The governing body may not limit the number of consecutive terms a mayor may serve except by ordinance ratified by the voters"

Page 55, line 16:

Delete "chapters" and insert "sections"

Cook
Re: Memo of 10/15/81

A M E N D M E N T S

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

TO: SB 180 and HB 170

Page 28, lines 12 - 19:
Delete all material
Page 30, line 14, after "AS 29.26.100":
Insert "- 29.26.205"
Page 56, line 1:
Delete "except" and insert "including"
Page 59, line 6:
Delete "city or borough" and insert "municipality"
Page 61, lines 4 - 5:
Delete all material
Page 61, line 6:
Delete "(c)" and insert "(b)"
Page 62, line 3:
Delete "city or borough" and insert "municipality"
Page 62, line 7:
Delete "(a)"
Page 62, lines 11 - 12:
Delete all material
Page 62, line 29:
Delete all material
Page 63, lines 1 - 2:
Delete all material
Page 63, line 10, after "referred":
Insert "as submitted by the sponsors"
Page 64, line 21, after "shall":
Delete all material and insert:

"(1) certify on the petition whether it is sufficient; and

(2) if the petition is insufficient, identify the insufficiency and notify the sponsors by certified mail."

LA-L 20A

Page 64, line 22:
Delete all material
Page 66, line 18, after "repealed":
Insert "or amended"
Page 66, lines 20 - 21:
Delete "The ordinance or resolution may be amended at any time."
Page 66, following line 29:
Insert:
"Sec. 29.26.205. APPLICATION. AS 29.26.100 - 29.26.205 apply to home rule and general law municipalities."
Page 67, line 4:
Delete "six months" and insert "the first 120 days"
Page 69, line 5, after "shall":
Delete all material and insert:
"(1) certify on the petition whether it is sufficient; and
(2) if the petition is insufficient, identify the insufficiency and notify the sponsors by certified mail."
Page 69, line 18:
Delete "immediately"
Page 69, line 18, after "body":
Insert "at the next regular meeting or at a special meeting called for the purpose before the next regular meeting"
Page 70, line 26, after "vacancies":
Insert "in accordance with AS 14.12.070"
Page 71, line 15:
Delete "cities and boroughs" and insert "municipalities"
Page 72, line 9:
Delete "city and borough" and insert "municipality"

MEMORANDUM State of Alaska

TO Hon. Lee McAnerney, Commissioner
Dept of Community & Regional Affairs
ATTN: Palmer McCarter, Director
Div. of Local Gov't Asst

DATE September 2, 1981

FILE NO J-66-829-81

TELEPHONE NO 465-3600

FROM WILSON L. CONDON
ATTORNEY GENERAL

By: Laura L. Davis
Assistant Attorney General

SUBJECT: State financial aid to benefit unincorporated communities

By your memoranda of May 17 and June 12, 1981, you have asked us to address a number of questions related to state financial assistance to benefit unincorporated communities. First, as to your authority to distribute money to unincorporated villages under AS 29.89.050, we believe that statute to be unconstitutional if read literally to restrict aid to Native villages. We also believe that the statute may be construed in a constitutional manner by severing the words "Native" and "government" and the definition of "Native village government." Second, with regard to state financial aid to unincorporated communities in general, we will discuss the relevant constitutional principles which apply to the questions you have raised.

AS 29.89 provides for annual revenue sharing with municipalities (for roads, AS 29.89.020), operators of health facilities and hospitals (AS 29.89.030), volunteer fire departments in the unorganized borough (AS 29.89.040), and Native village governments (AS 29.89.050). As discussed in our memorandum of April 27, 1981, aid to Native village governments raises serious issues under (1) article IX, section 6 of the Alaska Constitution which prohibits expenditure of public money unless the expenditure is for a public purpose; (2) article I, section 1, which accords equal protection to all persons; and, (3) article X, section 2, which provides for the exercise of local governmental powers only by cities and boroughs which are incorporated under state law.

We stated that the public purpose requirement was satisfied if the money were used for public benefit, and not for the private benefit of a racially exclusive group. We also indicated that a local organization could receive and spend state money for the benefit of a community without becoming a de facto unit of local government. As to equal protection, we stated that the distribution of state money to a racially exclusive organization did not deny equal protection to persons who are not members of the organization, if benefits provided with the funds were made available to the public at large.

However, as we noted, the payment of state money under AS 29.89.050 only to those unincorporated communities which are identified as Native villages does exclude from participation a number of similarly situated communities which are not Native villages. The first inquiry necessary to determine if a statute is valid under Alaska's equal protection test is whether the statute has a legitimate purpose. State v. Erickson, 574 P.2d 1 (Alaska 1978).

Of the three possible purposes for AS 29.89.050 which we have identified, the only legitimate one is to provide public services to residents of unincorporated communities. */ If the statutory purpose were illegitimate under the Alaska Constitution, the statute would be unenforceable. There is a heavy presumption in favor of the constitutionality of any statute. SUTHERLAND STATUTORY CONSTRUCTION § 45.11.

Assuming that the legislature intended by AS 29.89.050 to provide public services to the residents of unincorpo-

---

*/ A purpose to benefit Native villages solely because of the racial ancestry of their inhabitants would not be legitimate in the absence of a special motivation such as compensation for loss of aboriginal property rights. No such special motivation appears to be present here. A purpose to encourage the Native villages to assume the responsibilities of local governmental units would be in conflict with article X, section 2, of the constitution, and thus will not be inferred, despite the use of the term "Native village government."

We note that the Act which added AS 29.89 stated no purpose for that chapter, but did state a purpose for adding the general revenue sharing chapter, AS 29.88, as follows:

> It is the purpose of sec. 2 of this Act to
>
> (1) improve the revenue raising and distribution system for the benefit of residents of home rule and general law municipalities by providing for more equitable allocation of financial resources among municipalities to improve their fiscal capacities; and
>
> (2) assure that no municipality suffers impoverishment of necessary public services, relative to other municipalities, because of the chance location of taxable wealth in the state.

rated communities, the means chosen are only loosely suited to that purpose because of the existence in the state of a substantial number of unincorporated communities whose residents would not be benefitted by the literal language of AS 29.89.050. Since the distinction is based upon the racial ancestry of the communities, we might conclude that the statute is unconstitutional despite its legitimate purpose. However, we note that the Alaska Supreme Court has held that a statute which denied equal protection by limiting its application to members of one sex (prohibiting prostitution by females) could be construed as constitutional by severing the offending restrictive language, and thereby expanding application of the statute to all persons. Plas v. State, 598 P.2d 966 (Alaska 1979).

The interpretation of AS 29.89.050 presents an analogous problem. The effect of severing the offending restriction to "Native" village "governments," and deleting the definition of that term, is to expand the group of eligible communities to include all "villages." */ Although this interpretation alters the literal wording of the statute significantly and is, therefore, not to be implemented hastily, State v. Campbell, 536 P.2d 105 (Alaska 1975), it does avoid the alternative interpretation that the statute is unconstitutional and void. The law strongly favors the construction of statutes to be consistent with constitutional requirements. State v. Sundberg, 611 P.2d 44 (Alaska 1980); Summers v. Anchorage, 589 P.2d 863 (Alaska 1979). According to Sutherland:

> It has even been said that "a strained construction is not only permissible, but desirable if it is the only construction that will save constitutionality."

SUTHERLAND STATUTORY CONSTRUCTION § 45.11 at 34 (footnote omitted). We believe that the interpretation of AS 29.89.050 to authorize grants of state money to all villages is the only interpretation consistent with our constitution.

According to your estimates, the dilution of revenue sharing funds caused by including other unincorporated communities under AS 29.89.050 will not cause significant diminution in the fund allotments. Further, this interpretation

---

*/ A parallel deletion of "Native" and "government" from AS 29.89.010(b) is also necessary.

is consistent with the subsequent action of the legislature in providing for grants to all unincorporated communities. 1981 Alaska Sess. L., ch. 60, § 2. We believe that under the circumstances, the Alaska courts would uphold an administrative interpretation of AS 29.89.050 to permit revenue sharing to all villages in the state, regardless of their racial composition or ancestry.

A question arises as to the meaning of "village" under AS 29.89.050, in the absence of the language limiting it to a Native village organized under federal law. Generally, a village is any discrete and identifiable place where a group of people reside in close proximity, intend to remain in the place indefinitely, and carry on ordinary human social and economic activities as a community. Wyandotte Sav. Bank v. Eveland, 78 N.W.2d 612, 617, 347 Mich. 33; Union Sav. Bank of Patchogue v. Saxon, 335 F.2d 718, 721 (D.C. Cir. 1964). Your administrative regulations interpreting and implementing chapter 60, SLA 1981 should provide appropriate guidelines for both that Act and for AS 29.89.050.

Your memorandum of May 17 asked a number of questions regarding your assistance to local governments and to communities in the unorganized borough. Generally, the three constitutional principles discussed above should guide your conduct. You must administer money under your control in order to ensure that it is spent to achieve a public purpose. This requires active supervision of all grants and contracts, especially those transferring money to an organization other than a municipal government. Village and regional Native corporations are not incorporated as cities or boroughs and are not considered to be local governments under state law.

The equal protection provision requires that you administer your programs in order to provide similar treatment for people or organizations which are similarly situated, unless there is a very strong reason for treating them differently. The distinction between a municipality and an unincorporated village is created by the Alaska Constitution. This different treatment of municipalities is justified because of their status and duties as governmental entities. For example, the state may make general revenue sharing grants to municipalities, to be used at the discretion of the municipal government. The public purpose requirement is met by the operation of state law and the Alaska Constitution controlling the activities of municipal governments. The state may not make general revenue sharing grants to non-governmental entities. In administering the grants to villages under AS 29.89 and to unincorporated communities under chapter 60,

SLA 1981, you must ensure that the money is spent to achieve a public purpose.

The local government article of the Alaska Constitution (article X) provides for the exercise of local government powers by cities and boroughs and for the provision of services by multi-purpose service areas. In administering services in the organized borough, the state may contract with any entity capable of providing the needed service, as long as the contractor is actively supervised by the state, and not permitted to become de facto, a local government.

You are not absolutely prohibited by the constitution from contracting for the delivery of services by profit-making corporations or by Native organizations which may have sovereign status, if the services are necessary and no other capable and responsible contractor is available. However, it would be inconsistent with your duties as an administrator of public funds, to contract with these organizations if another more responsible and capable contractor is available. An entity which may be immune from contract enforcement because of its sovereign status should be considered less responsible to accept a state grant than any corporate entity.

We will defer your request for an authoritative statement of the powers of tribal governments for the time being, and hope that these general guidelines are adequate to resolve your immediate problems.

LLD/pjg

CHAPTER 44. UNINCORPORATED COMMUNITY AID ACCOUNT.

Section
10. Application
20. Determination of qualified communities
30. Determination of qualified recipients
40. Operating expenses defined
50. Financial reporting

19 AAC 44.010. APPLICATION. (a) Application to participate in the distribution of funds from the unincorporated community aid account must be made on forms prescribed by the department.

(b) An application received after May 15 will be considered for payment during the following fiscal year. (Eff / / , Reg.)

Authority: Ch. 60, SLA 1981
AS 44.47.050(6), (8), (9), (11), (13) and (14)
AS 44.47.980

19 AAC 44.020. DETERMINATION OF QUALIFIED COMMUNITIES. (a) A place in the unorganized borough is considered an unincorporated community in which 25 or more persons reside as a social unit if the place satisfies at least three of the following factors

(1) the place is recognized as a census designated place by the U.S. Bureau of the Census and the residents consider themselves a discrete social unit,

(2) the persons reside in close proximity to the place and intend to remain there permanently,

(3) an operating school is located in the place which has students enrolled who reside in the vicinity of the place,

(4) at least one commercial establishment is located in the place, or

(5) there is more than one source of employment in the place,

(b) The following places with 25 or more residents in

the unorganized borough are not considered a community and are not eligible for a grant from the unincorporated community aid account:

(1) a place where the public does not have unrestricted access, including the right to move to the place and reside there;

(2) a place within three miles of the corporate limits of a municipality which

(A) exists primarily as a suburb to the municipality; and

(B) is dependent upon the municipality to the extent that it exists only because the municipality is present; or

(3) a place provided by an employer for persons who are required to reside there as a condition of their employment and who do not consider the place to be their permanent place of residence.

(c) In this section,

(1) "employment" includes subsistence activity; and

(2) "employer" includes the state or federal government. (Eff. / / , Reg.)

Authority § 6(4), ch 60, SLA 1981
AS 44.47.050(6), (8), (9), (11), (13) and (14)
AS 44.47.980

19 AAC 44.030. DETERMINATION OF QUALIFIED RECIPIENTS. If more than one entity is qualified to receive and expend a grant from the unincorporated community aid account, the department will, in its discretion, select the most qualified entity after considering the following factors

(1) the purpose for which the entity is incorporated or federally recognized,

(2) the extent to which the entity represents the community and the collective views of all residents of the community;

(3) any substantial objection by a resident of the place to the entity's suitability to represent accurately and effectively the collective views of the residents of the community, and

(4) the administrative and financial resources of the entity must be sufficient to successfully complete the project and, if appropriate, to operate and maintain it for its useful life.

(b) An entity may not be qualified to receive a grant from the unincorporated community aid account unless the entity agrees in writing to transfer ownership of any capital projects to the municipal government if the community incorporates. (Eff. / / , Reg.)

Authority: § 2(c), ch. 60, SLA 1981
AS 44.47.050(6), (8), (9), (11), (13) and (14)
AS 44.47.980

19 AAC 44.040. OPERATING EXPENSES DEFINED. Operating expenses of capital projects are those expenses necessary to maintain, heat, and light the capital project if it is a public facility or to maintain and operate the capital project if it is equipment. Operating expenses do not include the salaries of persons who are employed in a public facility unless that person's job is directly related to the maintenance of the facility. (Eff. / / , Reg.)

Authority: § 2(d), ch. 60, SLA 1981
AS 44.47.050(6), (8), (9), (11), (13) and (14)
AS 44.47.980

19 AAC 44.050. FINANCIAL REPORTING. A recipient of a grant from the unincorporated community aid account shall quarterly submit a complete financial report detailing the uses of the grant. A report required by this section must be submitted not later than 15 days after the end of each quarter unless the community has spent its grant and has previously submitted a complete financial report. Failure to submit financial reports bars the recipient from future participation in distributions from the unincorporated community aid account and from receipt of money from other financial assistance programs administered by the department. (Eff. / / , Reg.)

Register , COMMUNITY AND REGIONAL AFFAIRS 19 AAC 44.050

Authority: Ch. 60, SLA 1981
AS 44.47.050(6), (8), (9), (11), (13) and (14)
AS 44.47.980

CHANGES TO TITLE 29 ADOPTED IN 1981 AND NOT REFLECTED IN SB 180, HB 170

AS 29.18.204(c) (amended by sec. 1, ch. 113, SLA 1981) (See Sec. 29.65.030)

(c) Land may be selected or nominated for selection by a municipality to satisfy a general grant land entitlement under AS 29.18.201 and 29.18.202 at any time before October 1, 1980. However, if a municipal selection or nomination or a part of a municipal selection or nomination is rejected by the director, the municipality may, not later than 90 days after receipt of the director's rejection, select additional state land as necessary to satisfy its entitlement.

AS 29.33.150(b) (amended by sec. 2, ch. 113, SLA 1981) (See Sec. 29.40.180)

(b) The regulations adopted under (a) of this section apply to subdivision plats of undeveloped state land for disposal under AS 38.05 or AS 38.08 filed with the platting board. The [, EXCEPT THAT THE] platting board may not disapprove the subdivision plat on the basis of [OR ADOPT] regulations which require [THE STATE TO CONSTRUCT ACCESS ROADS OR] capital improvements on or to state land included in the subdivision plat. Regulations adopted after the platting board is notified by the commissioner of natural resources of a proposed sale of subdivided state land under AS 38.05 or AS 38.08 do not apply to the state land in the proposed sale.

(See Sec. 29.40.180)

AS 29.33.150(c) - (g) (added by sec. 3, ch. 113, SLA 1981)

(c) The platting board must approve and sign the subdivision plat within 60 days of its receipt from the commissioner of natural resources unless the platting board

(1) determines that the plat does not comply with subdivision regulations other than those requiring capital improvements to state land; and

(2) notifies the commissioner of each determination of non-compliance within the 60-day period established in this subsection.

(d) The commissioner of natural resources may withdraw the subdivision plat and amend it in response to the determination of non-compliance by the platting board under (c) of this section. The platting board shall respond within 30 days to the amendment or response from the commissioner of natural resources.

(e) Notwithstanding any other provision of law, the provisions of (b) - (f) of this section apply to all disposals of land under AS 38.05 or AS 38.08.

(f) Nothing in this section relieves the Department of Natural Resources of its obligation to provide legal access to the subdivision.

(g) As used in this section, "capital improvements" includes but is not limited to access roads, other physical improvements, and their design and engineering.

AS 29.48.020(8) (added by sec. 12, ch. 38, SLA 1981) (See Sec. 29.35.210(a))

(8) provide for the acquisition and construction of local service roads and trails under AS 19.30.111 - 19.30.251.

AS 29.48.020(9) (added by sec. 1, ch. 107, SLA 1981)

(9) establish an emergency communications center under AS 29.73.080.

AS 29.73.080 (added by sec. 2, ch. 107, SLA 1981) (New Section)

Sec. 29.73.080. EMERGENCY SERVICES COMMUNICATIONS CENTERS. (a) A municipality may establish an emergency services communications center with one or more other municipalities and one or more state, federal, or private agencies that provide emergency service communications to the same geographic area. An emergency services communications center established under this section may be organized and operated as a public nonprofit corporation under AS 10.20.

(b) An emergency services communications center under this section may be governed by a board of directors. A member of a board of directors of an emergency services communications center serves without compensation but is entitled to per diem and travel expenses. If an emergency services communications center is organized as a nonprofit corporation, a member of its board of directors may not be employed by the nonprofit corporation.

(c) An emergency services communications center may assess the feasibility and desirability of providing emergency services communications for the geographic area in which it is located through one central office. An emergency services communications center may

(1) combine or coordinate the existing emergency services communications programs of the participating municipalities and agencies;

(2) operate a dispatch center to receive all requests for emergency services and dispatch those services;

(3) study the need for improvement in the timely delivery of

emergency services to residents of the participating municipalities;

(4) hold public hearings to obtain information concerning the timely delivery of emergency services;

( ) apply for and accept federal, state, municipal, and private money, property, or assistance for use in providing the timely delivery of emergency services;

(6) enter into contracts to carry out the provisions of this chapter;

(7) employ personnel necessary to carry out the provisions of this chapter.

(d) In this section

(1) "emergency services" means services provided by law enforcement agencies, fire departments, ambulance services, and other organizations that are intended to respond to emergency situations of imminent danger to life or property;

(2) "state agency" means a department, division, or office in the executive branch of state government.

AS 29.89.030(a)(1) (amended by sec. 1, ch. 103, SLA 1981) (See Sec. 29.60.120)

(1) to a municipality which has the power to provide hospital facilities and services and which exercises that power, $1,000 per bed for each bed actually used for patient care, limited to the number of beds provided for in the construction design of the hospital, or $250,000 [$75,000] a hospital for those hospitals with 10 or more beds, or $50,000 [$25,000] a hospital for those hospitals with less than 10

beds, as the municipality may elect; money received under this paragraph may be used only for hospitals and shall be apportioned among qualifying hospitals as the municipality determines;

AS 29.89.030(a)(3) (amended by sec. 2, ch. 103, SLA 1981) (See Sec. 29.60.120)

(3) to a municipality in which a health facility is operated, $2,000 [$1,000] per bed for each bed actually used for patient care, limited to the number of beds provided for in the construction design of the health facility, or $8,000 [$4,000] per health facility as the municipality determines.

AS 29.90.010 (amended by sec. 3, ch. 103, SLA 1981) (See Sec. 29.60.230)

Sec. 29.90.010. STATE AID FOR HOSPITAL AND HEALTH FACILITY CONSTRUCTION. If construction of a hospital began after January 1, 1968, or if construction of a health facility began after January 1, and before July 1, 1980, and state matching aid for construction approved for payment to the municipality or other hospital or health facility sponsor constitutes less than 25 percent of the total project cost, the department shall pay to the municipality or other hospital or health facility sponsor each fiscal year $2,500 a bed for the maximum number of beds provided for in the construction design of the hospital or health facility or five percent of the total project cost, whichever is greater. State aid provided for in this section shall continue until the municipality or other hospital or health facility sponsor has received an amount which, combined with state matching money for construc-

tion of the hospital or health facility, equals 25 percent of the total project cost. Money received for construction may not be used for any other purpose.

AS 29.90.020 (amended by sec. 4, ch. 103, SLA 1981) (See Sec. 29.60.240)

Sec. 29.90.020. HOSPITAL AND HEALTH FACILITY CONSTRUCTION ASSISTANCE ACCOUNT. The hospital and health facility construction assistance account is established. Money to carry out the provisions of this chapter shall be allocated by the department to the account in accordance with AS 29.95.010. If amounts in the account are insufficient to pay each recipient's share authorized under this chapter, the amounts which are available shall be distributed pro rata among eligible recipients.

AS 29.90.030(4) (added by sec. 5, ch. 103, SLA 1981) (See Sec. 29.60.250)

(4) "health facility"

(A) means a facility that is licensed, when required, by the state under AS 18.20.010 - 18.20.130 and that is owned or operated or both by a municipality or by a nonprofit corporation or other nonprofit sponsor;

(B) includes a public health center, maternity home, community mental health center, facility for the mentally or physically handicapped, nursing home, or convalescent center;

(C) excludes a facility operated or wholly supported by the state or the federal government.

PROPOSED AMENDMENT TO SEC. 29.26.290 INCORPORATING PROVISIONS OF AS 15.45.610 AND REQUIRING SUPPLEMENTAL SIGNATURES TO BE FILED WITHIN 10 DAYS. (Re: (15) of memo dated 10/15/81)

Sec. 29.26.290. FILING PETITION. (a) The copies of a recall petition shall be assembled and filed as a single instrument. No petition may be filed within 180 days of the termination of the term of office of the official sought to be recalled.

(b) Within 10 days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient and, if the petition is insufficient, shall identify the insufficiency and notify the sponsors by certified mail. A petition which is insufficient shall be rejected and filed as a public record, unless it is supplemented under (c) of this section.

(c) A petition may be supplemented with additional signatures obtained and filed within 10 days after the date on which the petition is rejected if

(1) The petition contains an adequate number of signatures counting both valid and invalid signatures; and

(2) the supplementary petition is filed before 180 days of the termination of the term of office of the official sought to be recalled.

(d) Within 10 days after the supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

Page 68, line 19:

Delete "35" and insert "25"

Page 68, line 24:

Delete "35" and insert "25"

(Note: if this proposal is accepted, Sec. 29.26.150 should be redrafted to use similar language, but with no substantive changes)

PROPOSED AMENDMENT TO SEC. 29.26.350 TO AVOID CONFLICTS WITH SEC. 29.20.180
(Re: (19) of memo dated 10/15/81)

Sec. 29.26.350. SUCCESSORS. (a) If an official is recalled from the governing body, his office is filled in accordance with As 29.26.180. If all members of the governing body are recalled, the governor shall appoint three qualified persons to the governing body. The appointees shall appoint additional members to fill remaining vacancies in accordance with AS 29.20.180.

(b) If a member of the school board is recalled, his office is filled in accordance with AS 14.12.070. If all members are recalled from a school board, the governor shall appoint three qualified persons to the school board. The appointees shall appoint additional members to fill remaining vacancies in accordance with AS 14.12.070.

(c) If an official other than a member of the school board or governing body is recalled, a successor shall be elected to fill the unexpired portion of the term. The election shall be held not more than 60 days from the date the recall election is certified, except that if a regular election occurs within 75 days after certification the successor shall be chosen at that election

(d) Nominations for a successor may be filed until seven days before the last date upon which a first notice of the election must be given. Nonimations may not be filed before the certification of the recall election.

PROPOSED AMENDMENT TO SEC. 29.45.050 ALLOWING A MUNICIPALITY TO EXEMPT CLASSES OF PERSONAL PROPERTY. (Re: (27) of memo dated 11/16/81)

Page 99, following line 22 insert:

"(3) classify personal property for the purposes of taxation and exempt particular classifications of personal property from taxation."

PROPOSED AMENDMENT TO SEC. 29.45.090 ALLOWING A MUNICIPALITY TO TAX CLASSES OF PERSONAL PROPERTY AT DIFFERENT RATES. (Re: (27) of memo dated 11/16/81)

Page 94, line 3:

After "the" insert "average"

Page 104, line 15:

After "All" insert "real"

Page 104, line 17:

After "year." insert "A municipality may by ordinance classify personal property upon which a tax is levied and tax particular classifications of personal property at different rates."

Page 111, line 21:

Delete "rate" and insert "rates"

Page 111, line 21:

Delete "rate" and insert "rates"

Page 120, line 29:

Delete "rate" and insert "rates"

PROPOSED AMENDMENT TO SEC. 29.35.250 INCORPORATING PROVISIONS OF AS 29.48.035(b). (Re: suggestion by Lee Sharp)

Sec. 29.35.250. CITIES INSIDE BOROUGHS. (a) A city inside a home rule or general law borough may exercise any power not otherwise prohibited by law. On adoption of a borough ordinance to provide for areawide exercise of a power, no city may exercise the power, unless the borough ordinance provides otherwise or the borough by subsequent ordinance ceases to exercise the power.

(b) This section applies to home rule and general law municipalities.

Page 30, after line 24 insert:

"(32) (cities inside boroughs)"

Renumber accordingly

PROPOSED AMENDMENT REQUIRING REIMBURSEMENT OF STATE AID FOR CONSTRUCTION IF A FACILITY CEASES TO BE OPERATED AS A NONPROFIT HEALTH FACILITY OR HOSPITAL. (Re: memo by Palmer McCarter dated 11/13/81)

Sec. 29.60.235. REIMBURSEMENT OF STATE AID. To qualify for state assistance under AS 29.60.230, the municipality or other sponsor shall agree, if the hospital or health facility ceases to operate as a nonprofit hospital or health facility within 20 years after construction of the project is completed, to pay the state an amount of money equal to

(1) the fair market value of the hospital or health facility at the time it ceases to operate as a nonprofit hospital or health facility;

(2) multiplied by the amount of state assistance received under AS 29.60.230; and

(3) divided by the total project cost.

Page 153, line 27:

After "hospital" insert "that is owned or operated or both by a municipality,nonprofit corporation, or other nonprofit sponsor"

A M E N D M E N T S

TO: SB 180 and HB 170

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Page 30, following line 24:

Insert

"(32) AS 29.35.190 (land use regulation)"

Renumber following paragraphs accordingly.

Page 31, lines 8 - 10:

Delete all material

Page 73, line 9:

Delete "an authorized" and insert "a"

Page 73, lines 9 - 10:

Delete "in accordance with" and insert "under the procedures established in"

Page 76, line 5:

Delete "by the mayor"

Page 77, line 7:

Delete ", except unified municipalities"

Page 77, line 25:

Delete "may"

Page 77, line 26:

After "taxes" insert "that are"

Page 78, lines 2 - 4:

Delete all material

Page 78, line 5, after "REGULATION.":

Insert "(a)"

Page 78, line 5:

Delete "first or second class"

Page 78, following line 7:

Insert

"(b) This section applies to home rule and general law municipalities."

Page 79, line 9:

Delete "receive and expend grants for a public purpose" and insert "provide for economic development"

Page 80, line 11, following "boroughs.":

Insert "A second class city is not a school district."

Page 80, line 14:

Delete "AS 29.35.180" and insert "AS 29.35.190"

Page 80, lines 15 - 16:

Delete "municipalities, except unified municipalities" and insert "cities"

Page 81, line 6:

Delete "assembly" and insert "borough clerk"

Page 81, lines 8 - 11:

Delete all material and insert:

"(b) The borough clerk shall certify whether a petition filed under (a) of this section contains the required number of signatures.

(c) Within 30 days after a petition is certified as containing the required number of signatures or the assembly proposes the acquisition of a power, at least one public hearing shall be held in the borough on the question. The assembly shall then evaluate the ability of the borough to exercise the power and make its findings public. Within 60 days after its findings have been made public, the assembly shall order an election on the question."

Page 84, line 21, following "may":

Insert "by ordinance"

Page 85, line 10:

Delete "prepare" and insert "review"

Page 85, line 13:

Delete "prepare" and insert "review"

Page 89, line 5:

Delete "all lots" and insert "a lot"

Page 89, line 6:

Delete "tracts" and insert "tract"

Page 89, line 11:

Delete "and" and insert "or"

Page 89, line 15, following "plats":

Delete ", and" and insert "and alterations to short plats. The assembly"

Page 89, line 17:

Delete "A" and insert "Except as provided in AS 29.40.100(b), a"

Page 90, line 16:

Delete "recorded" and insert "filed"

Page 92, line 6:

Delete "recorded and insert "filed"

Page 92, line 8:

Delete "record" and insert "file"

Page 92, line 27:

Delete "AND POLITICAL SUBDIVISIONS"

Page 92, lines 28 - 29:

Delete all material and insert:

"This chapter applies to subdivision plats of undeveloped state land for disposal under AS 38.05 or AS 38.08, except that the platting authority may not disapprove the subdivision plat on the basis of requirements for capital improvements on or to state land included in the subdivision plat. Requirements for subdivision plats adopted after the platting authority is notified by the commissioner of natural resources of a proposed sale of subdivided state land under AS 38.05 or AS 38.08 do not apply to the state land in the proposed sale."

Page 93, line 1:

Delete all material

Page 93, line 8:

Delete "and"

Page 93, line 10:

Delete the period and insert a semi-colon

Page 93, following line 10:

Insert

"(3) a property tax in a service area for functions limited to the service area."

Page 95, line 27:

Delete "(a)" and insert "(a)(3) and (4)"

Page 99, line 5, following "exceed":

Insert "the assessed value of"

Page 107, line 22:

Delete "who" and insert ". The district recorder"

Page 110, line 2:

Delete "and amount of taxes"

Page 111, line 27:

Delete "at the rate of" and insert "not to exceed"

Page 112, line 2, following "forms.":

Insert "A penalty under this section may be imposed under a formula that increases the amount of the penalty as the length of time increases during which payment is delinquent or assessment forms are not returned."

Page 119, line 9:

Delete "at any time" and insert "within 10 years and"

Page 119, line 13:

Delete "at the rate of eight" and insert "not to exceed 15"

Page 119, following line 20:

Insert

"Sec. 29.45.480. PROCEEDS OF TAX SALE. (a) Upon sale of foreclosed real or personal property the borough or city shall divide the proceeds less cost of collection, between the borough and the city having unpaid taxes against the property. The division is in proportion to the respective municipal taxes against the property at the time of foreclosure.

(b) The former record owner of tax-foreclosed real property which has been held by a municipality for less than 10 years after the close of the redemption period and never designated for a public purpose which is sold at a tax-foreclosure sale is entitled to the portion of the proceeds of the sale which exceeds the amount sufficient to satisfy unpaid taxes, delinquent taxes assessed and levied as if the property had continued in private ownership, penalty, interest and costs of property sold, including costs incurred under AS 29.53.350(a). If the proceeds of the sale of tax-foreclosed property exceed the total of unpaid and delinquent taxes, penalty, interest, and costs, the borough or city shall provide the former owner of the property written notice advising of the amount of the excess and the manner in which a claim for the balance of the proceeds may be submitted. Notice is sufficient under this subsection if mailed to the former owner at his last address of record. Upon presentation of a proper claim, the municipality shall remit the excess to the former record owner. A claim for the excess filed after six months of the date of sale is forever barred."

Page 121, lines 25 - 26:

Delete "home rule or general law"

Page 122, lines 20 - 21:

Delete "A lien established under this section has the force, priority, and duration of a judgment lien." and insert "When recorded, a lien authorized under this section has priority over other liens except those for property taxes and special assessments."

Page 122, line 23:

Following "collects" insert "only"

Page 123, line 14:

Delete "(a)"

Page 123, lines 18

Delete all material

Page 143, line 8:

Delete "(0.1)"

Page 143, line 9, following "the":

Insert "per capita"

Page 148, line 12:

Delete "a Native village government" and insert "an unincorporated community"

Page 150, line 27:

Delete "NATIVE VILLAGE GOVERNMENTS" and insert "UNINCORPORATED COMMUNITIES"

Page 150, lines 28 - 29:

Delete "a Native village government for a village which is not incorporated as a city under this title" and insert "an unincorporated community"

Page 151, line 1:

Delete "Native village government" and insert "unincorporated community"

Page 151, line 1, following "means":

Insert "a place in the unorganized borough not incorporated as a city and in which 25 or more persons reside within two miles of each other."

Page 151, lines 2 - 7:

Delete all material

Page 168, line 15:

Delete '(a)"

Page 168, lines 17 - 18:

Delete all material

Page 168, line 19:

Delete "(a)"

Page 168, lines 25 - 26:

Delete all material

Page 168, line 27:

Delete "(a)"

Page 169, lines 3 - 4:

Delete all material

TITLE 29 COMMITTEE MARK-UP

Comments from Steven H. Morrissett

Attorney for the Matanuska-Susitna Borough

The Matanuska-Susitna Borough was probably the only Alaskan municipality to both declare itself malapportioned and change its form of government (from 5 to 7 members) in 1981. AS 29.23.023 and .025, adopted in 1980 are conflicting and create confusion in attempting to follow the statutory process. The following revisions are proposed to correct the conflicts for HB 170:

29.20.070. Delete subsection (d). It conflicts with subsection (b) of AS 29.20.080, which requires an ordinance adopting a plan or plans before submitting it to the voters.

29.20.080. Subsections (b), (d) and (e) appear redundant in part. The following amendments are suggested:

> Sec. 29.20.080. ASSEMBLY RECOMPOSITION AND REAPPORTIONMENT
>
> (a) Not later than two months after the official report of a federal decennial census, the assembly shall determine and declare by resolution whether the existing apportionment of the assembly meets the standards of AS 29.20.060.
>
> (b) At other times the assembly may review on its own initiative whether the existing reapportionment of the assembly meets the standards of AS 29.20.060.
>
> (c) [leave as is]
>
> (d) The assembly shall provide, by ordinance, for a change in the existing apportionment of the assembly whenever it determines that the apportionment does not meet the standards of AS 29.20.060. At the same time the assembly may, by ordinance, provide for a change of composition of the assembly. Any change must be submitted to the voters for approval. If the assembly submits to the voters a form of representation which includes election of assembly members under AS 29.20.070(b)(2) or (b)(3) the assembly shall submit with the proposition a proposed plan of apportionment which corresponds to the form of representation proposed. The assembly shall describe the plan of apportionment in the ballot proposition, and may present the plan in any manner which it believes accurately describes the apportionment which is proposed under the form of

representation. If the assembly determines that its existing apportionment meets the standards of AS 29.20 .060, it may submit the existing apportionment as a proposed plan of apportionment of assembly seats which corresponds to a form of representation wich is proposed. Any change must be approved by a majority of the voters voting on the question, except that if more than one alternative is presented, the alternative receiving the most votes over 40% of the total votes cast shall be adopted.

(e) The assembly shall adopt an ordinance and submit the proposition to the voters within six months from the date on which it determines that the apportionment does not meet the standards of AS 29.20.060. If, at the end of the six-month time period, an ordinance providing for reapportionment has not been approved by the voters, the commissioner shall provide for the reapportionment in accordance with the standards of AS 29.20.060 by preparing an order of reapportionment and delivering the order to the borough mayor.

Changes are suggested in Section 29.45.400, relating to the tax foreclosure redemption periods. The present language would never require tax payments to be brought current. Proposed:

Sec. 29.45.400. REDEMPTION PERIOD.

Properties transferred to the municipality are held by the municipality for at least one year. During the redemption period a party having an interest in the property may redeem it by paying the lien amount including all taxes due plus penalties, interest, and costs, including all costs incurred under AS 29.45 .440(a). Property redeemed is subject to all taxes, assessments, liens, and claims as though it had continued in private ownership.

Sen. Gilman 4934

November 30, 1981

Hon. Don Gilman
State Senator
Chairman, Senate Committee
on Community and Regional Affairs
Pouch V
State Capitol
Juneau, Alaska 99811

Hon. Pat O'Connell
State Representative
Chairman, House Committee
on Community and Regional Affairs
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Senator Gilman and Representative O'Connell:

Thank you for giving us the opportunity to comment on committee substitute for HB 170/SB 180, a revision of the existing Title 29 of the Alaska Municipal Code. The slowness of the mails (your letter was dated November 16 and received here on November 23) and the year-end rush prevents us from participating in your calendared hearing for December 5 and 6 in Juneau.

Nevertheless, please let us submit for the record the following comments with respect to the above draft bill:

1. I point out to the Committee that the 1972 revision of the Alaska Municipal Code deleted references to "city" or "borough" (except where required) and used the term "municipality". I do not see the utility of going back to using "city" or "borough", especially when the unified city and borough of Anchorage operates under the technical nomenclature of "Municipality of Anchorage".

2. With respect to AS 29.47.040 and 29.47.120 and 29-.47.200, in my opinion a sufficient and full expression of the nature of a general obligation bond or note is that "the full faith and credit of a municipality are pledged". Note that in the first two mentioned sections variant phrases are used (e.g.,

"a pledge of the full faith, credit and unlimited taxing power of the city and borough" is referred to in AS 29.47.040, line 23, and "the full faith, credit, taxing power and resources" is referred to in AS 29.47.120, line 26. All three sections should be made consistent and an adequate expression is to the "full faith and credit".

3. AS 29.47.180, line 13, the redundant phrase "negotiable or nonnegotiable" should be eliminated.

4. AS 29.47.190, line 16, the term "bond authorization ordinance" has required where applicable that lengthy ordinance proceedings must be undertaken by a municipality prior to submitting a bond proposition to the voters. Unless the Committee feels there are policy reasons for this requirement, the insertion of the term "or resolution" after the word "ordinance" would give municipalities the option to abbreviate this procedure prior to submission of the proposition to the voters.

5. The most important suggestion I would make would be to restore the language of 29.58.200(c) into next section 29.47-.350. This language provides "A municipality may also issue revenue bonds for any lawful purpose. The bonds are payable from any amounts pledged by the municipality except taxes and do not constitute general obligations of the municipality." The analogous provisions of proposed 29.47.350 would require that revenue bonds be payable solely from the revenue and property of the project being financed. This is an unnecessary limitation which was overcome by the above quoted language of 29.58.200(c). The reason for the AS 29.58.200(c) language was twofold:

(1) A municipality might desire to issue revenue bonds secured by the project being financed and another project already constructed. Such bonds would not be general obligation bonds, but would simply be bonds secured by the revenues of more than the project being financed.

(2) Secondly, a municipality might desire to issue industrial development bonds which are not necessarily secured by the project being financed, but are otherwise an obligation of the company on whose behalf the bonds are issued.

Both of these courses of action are desirable, but would be inhibited by the provisions of AS 29.47.350, page 138, lines 27 and 28; page 139, line 6 and line 14. In all these cases, revenue bonds may only be secured by the revenues of the

projects being financed. Finally, 29.47.350 should more appropriately be made a part of Article 4 or 6 of the Chapter. Perhaps as Section 270 or 460.

Thank you for the opportunity to comment on your proposed revision.

Very truly yours,

WOHLFORTH & FLINT

By _____
Eric B. Wohlforth

EBW:jr

cc: Mr. Robert Berry
Assistant to Senator Gilman

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

April 1, 1982

The Honorable Patrick M. O'Connell, Chairman
House Community & Regional Affairs Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative O'Connell:

RE: CSSB 180 (C&RA)am

This Department is pleased to note that CSSB 180am i being heard by your committee during this week. As you know, the Title 29 rewrite bill is a high legislative priority for this Department and we are hopeful it will receive prompt approval by your committee and the house.

The Department would, however, like to remind you of a concern we have regarding Sec. 29.60.140 (p. 154-155) of the current bill. This section pertains to making State Revenue Sharing payments to Native village governments. The language in this section is identical to present language found in AS 29.89.050. The Department's concerns about this language have been previously noted by the Joint Community and Regional Affairs Committee that worked on the Title 29 bill during the interim. However, that Joint Committee suggested that this language be revised in legislation specifically designed to amend the State Revenue Sharing Program. The Governor's legislation (SB 716/HB 746) to revise State Revenue Sharing substantially alters the process for funding unincorporated communities. We do, of course, hope to see enactment of the Governor's State Revenue Sharing bill as the solution to the present Native village government statute. However, in the event SB 716/HB 746 does not become law we would like to insure that AS 29.60.140 of CSSB 180am be addressed.

The enclosed September 2, 1981 Attoney General's opinion states that AS 29.89.050 is "unconstitutional if read literally to restrict aid to Native villages". The opinion goes on to say that the present law can only be interpreted as constitutional if the payments are made available to all similarly situated unincorporated communities regardless of racial or governmental status. Based on this opinion, the Department made FY 1982 State Revenue Sharing under AS 29.89.050 available on an application basis to all eligible unincorporated communities in the unorganized borough. This places the Department in a position of ignoring a statute, a position we would like to correct as soon as possible.

JPHH

Another Attorney General's opinion (copy enclosed) identifies an additional problem with AS 29.89.050. Specifically, that unincorporated communities within organized boroughs are not eligible to receive revenue sharing funds. Currently AS 29.89.050 contains no such specific prohibition. Based on this Attorney General's opinion, the Department is not paying revenue sharing funds to unincorporated communities within organized boroughs. Again, however, this puts us in a position of administering a statute in contradiction to its literal interpretation.

To alleviate this situation the Department requests that AS 29.60.140 be
1) deleted from the bill, or as an alternative,
2) amended in such a manner as to make eligible those unincorporated communities of 25 or more in the unorganized borough.

The Department recognizes the need to make a reliable source of funding available to unincorporated communities to provide services and maintain and operate projects constructed with SB 168 funds. However, this Department and the Department of Law have always questioned the propriety of administering a program for unincorporated communities as part of a Municipal Revenue Sharing concept. State Revenue Sharing is also an "entitlement" program and the inclusion of unincorporated communities in an ongoing entitlement program has also been a source of some concern. The Department prefers, as illustrated in the Governor's Revenue Sharing bill, a program whereby unincorporated communities compete by application on the basis of need and merit with other unincorporated communities for a segregated "pot" of funding (i.e. a modified version of the current Rural Development Assistance program authorized in AS 44). The second alternative language suggested above would "legitimize" the manner in which the Department currently administers the present State Revenue Sharing program.

If we can provide you with additional information on this matter, please advise.

Sincerely,

LEE McANERNEY
COMMISSIONER

BY: Palmer McCarter, Director
Local Government Assistance Division

Enclosures

cc: Senator Jon Gilman
Senator Arliss Sturgeluwski
Ginnie Chitwood, Alaska Municipal League
Tamara Brandt Cook, Legal Services

LM/PM/jl/0917S

board. The board shall state on its record and in writing to the applicant its reason for disapproval of a plat.

(b) The platting board shall submit an approved plat to the district recorder in compliance with AS 40.15.010—40.15.020. (§ 2 ch 118 SLA 1972)

Sec. 29.33.170. Waiver in certain cases. (a) The platting authority shall, in individual cases, waive the preparation, submission for approval, and recording of a plat upon satisfactory evidence that

(1) each tract or parcel of land will have adequate access to a public highway or street;

(2) each parcel created is five acres in size or larger and that the land is divided into four or fewer parcels;

(3) the conveyance is not made for the purpose of, or in connection with, a present or projected subdivision development;

(4) no dedication of a street, alley, thoroughfare or other public area is involved or required.

(b) In other cases the platting authority may waive the preparation, submission for approval, and recording of a plat, if the transaction involved does not fall within the general intent of §§ 29.33.150—29.33.240 of this chapter and AS 40.15 if it is not made for the purpose of, or in connection with, a present or projected subdivision development and no dedication of a street, alley, thoroughfare, park or other public area is involved or required. (§ 2 ch 118 SLA 1972)

Sec. 29.33.180. Information required. A plat shall show initial point of survey, original or reestablished corners and their descriptions, and actual traverse showing area of closure and all distances, angles and calculations required to determine initial point, corners and distances of the plat, as well as other information which may be required by ordinance. (§ 2 ch 118 SLA 1972)

Sec. 29.33.190. Penalties. (a) The owner or agent of the owner of land located within a subdivision who transfers, sells, or enters into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved, and recorded, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $500 for each lot or parcel transferred, sold, or included in a contract to be sold. The platting board may enjoin a transfer, sale, or contract to sell, and may recover the penalty by appropriate legal action.

(b) No person may record a plat or seek to have a plat recorded unless it bears the approval of the platting board. A person who knowingly violates this requirement is punishable upon conviction by a fine of not more than $500. (§ 2 ch 118 SLA 1972)

A M E N D M E N T

Offered in the HOUSE

By the Community and Regional Affairs Committee

TO: CSSB 180(C&RA) am

Page 31, lines 3 - 29:

Delete all material

Pages 32 - 34:

Delete all material

Page 35, lines 1 and 2:

Delete all material

Renumber following bill sections accordingly

Page 182, line 29:

Delete "AS 29.18 or AS 29.05, AS 29.14, or AS 29.65," and insert "AS 29.18.011 - 29.18.460, AS 29.18.510 - 29.18.610, AS 29.05, or AS 29.65, [AS 29.18]"

Page 187, lines 27 - 29:

Delete all material

Page 188, lines 1 - 26:

Delete all material

Renumber following bill sections accordingly

Page 189, lines 15 - 27:

Delete all material

Renumber following bill sections accordingly

Page 192, line 28:

Delete "AS 29.18" and insert "AS 29.18.011 - 29.18.460"