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COMMITTEE REPORT HOUSE

JUDICIARY

FURTHER:

2/7/83

Date: 2-7-83

Mr. Speaker:

The Committee on C & RA has had HR 172

An Act relating to municipal government; and providing for an effective date.

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HR 172 - (C & RA) same title
- new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note Sept #100
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Mr. Miller

Mr. Miller

CHAIRMAN

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tische, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff *Lacher*
DATE: April 25, 1983
RE: House Bill 172 amendment 1

Page 35, line 4:
After "request" insert "by a member of the governing body"

Page 35, line 5:
Delete "and"

Page 35, line 6:
After "request" insert "by a member of the governing body"

Page 35, line 8:
Delete "." insert ";

Page 35, after line 8:
Insert "(4) a municipal employee or official, ~~other~~ than a member of the governing body, may not participate in any official action in which the employee or official has a substantial financial interest.

(b) If a municipality fails to adopt a conflict of interest ordinance within 180 days after July 1, 1983, the conflict of interest provision of this section is automatically applicable to and binding upon that municipality."

Page 35, line 9:
Delete "(b)" and insert "(c)"

Page 163, line 24:
Delete "allocable" insert "allocatable"

passed
Keep

12

Alaska State Legislature



Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski

Room 104
State Capitol
Juneau, Alaska 99811
Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 2

The following changes are proposed by Ginny Chitwood, Alaska Municipal League.

Page 68, lines 5-7:
Delete section 29.26.250. ←

Page 68, line 15:
Delete "grounds of", insert "reasons for".

Page 68, line 24:
Delete "grounds" insert "reasons".

Page 69, lines 20,24:
Delete "25", insert "35".

Page 71, line 18:
Delete "grounds of" insert "reasons for".

Explanation: The issue of determining the sufficiency of grounds for a recall election was discussed by the committee. It appeared that a consensus was reached to eliminate the requirement for providing legal grounds to conduct a recall election and to increase signatory requirements for the petitioners.

Adopted

Yewoke

STATE OF ALASKA
THE LEGISLATURE

POUCH Y. STATE CAPITOL
GENERAL ALASKA OFFICE
907-465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 24, 1983

SUBJECT: Recall of municipal officials
(Work Order No. 13-0837)

TO: Representative Barbara Lacher

FROM: Tamara Brandt Cook
Legislative Counsel

TBC

You have asked what the responsibility of the clerk is in reviewing recall petitions for sufficiency.

What a recall petition must contain and the method of determining the sufficiency of a petition depends on the specific statute involved and these types of laws vary from state to state. Some statutes require only a general statement of the grounds for recall and an official may be recalled for purely political reasons. However, other statutes require grounds for recall that are more than simple disagreement with matters of policy and the grounds stated must actually constitute misfeasance, malfeasance or nonfeasance in office. McQuillan, Municipal Corporations, vol. 4, sec. 12.251b: Noel v. Oakland County Clerk, 284 N.W.2d 761 (Michigan 1979); Bent v. Ballantyne, 368 S.2d 351 (Florida 1979); Tolar v. Johns, 147 S.2d 196 (Florida 1962); Jacobsen v. Nagel, 96 N.W.2d 569 (Minnesota 1959).

Where petitioners are required to state only general grounds, the recall petition need not state the cause for removal with the same particularity as where the requirement is that reasons for removal be stated clearly. The purpose of a general statement of grounds is to furnish information to electors upon which a political and not a legal issue may be raised. Under statutes providing that a statement of grounds for recall is for the information of the electors, the question of the sufficiency of those grounds is also for the electors, but under provisions authorizing recall for malfeasance or similar language, the sufficiency of the grounds provided is a legal question. 63 Am. Jur.2d, Public

February 24, 1983

Officers and Employees, sec. 245; Pybus v. Smith, 141 P. 203 (Washington 1914).

Statutory provisions as to recall are to be liberally construed in favor of the electorate's right to exercise recall. Hazelwood v. Saul, 619 P.2d 199 (Colorado 1980). Under this principle and in the absence of statutory language limiting the recall to specific, indicated reasons, the adequacy of grounds stated in a petition is treated as a political matter and courts refuse to enjoin recall petitions on complaints that charges are insufficient. However, where recall is limited to specified grounds of malfeasance or similar language it is generally held that

. . . petitions are inadequate when they indicate only disagreement on matters of policy or political criticism. Antieau, Municipal Corporation Law, sec. 22.200, pages 22-304 - 22-305.

The officer designated to ascertain the sufficiency of a petition in a particular statute may be required to determine legal sufficiency rather than matters of form only. Unless an appeal is specifically provided for, the officer's determination as to sufficiency of a recall petition is final and subject only to judicial correction if the determination is capricious, arbitrary, or plainly erroneous as a matter of law. McQuillan, supra., vol. 4, sec. 12.251(d); Hold v. Trantham, 575 S.W.2d 83 (Texas 1979).

Article XI, section 8 of the Constitution of the State of Alaska provides:

All elected public officials, in the State, except judicial officers, are subject to recall by the voters of the State or political subdivision from which elected. Procedure and grounds for recall shall be prescribed by the legislature. (Emphasis added)

In carrying out this constitutional responsibility the legislature has provided under AS 29.28.140 that misconduct in office, incompetence, and failure to perform prescribed duties are the grounds for recall. In addition, under AS 29.28.150(a)(3), a petition for recall must contain ". . . a statement of the grounds of the recall stated with particularity as to specific instances". (Emphasis added)

The municipal clerk is required to review the petition
". . . for content and signatures . . ." under AS 29.28.160.

These statutory provisions dealing with recall have not been judicially construed by the Supreme Court in this state, so it cannot be determined with certainty whether the clerk is required to review the petition for signatures and form only or whether the clerk must determine as a legal matter whether the specific instances set out in a petition, if true, constitute misconduct in office, incompetence or failure to perform prescribed duties. Under the principles set out previously in this memorandum it appears that the clerk is required to determine whether the specific instances set out support a claim of misconduct in office, incompetence or failure to perform prescribed duties because AS 29.28.150 demands more than just a general statement of the grounds for recall and does not specifically indicate that the stated grounds are for the information of the voters only.

Under both versions of the bill revising Title 29, SB 1 and HB 172, the grounds for recall remain unchanged although the procedure for recall has been substantially changed. Nevertheless, an applicant for a recall petition under Sec. 29.26.260(a)(3) is still required to set out the grounds ". . . with particularity". The clerk must prepare a recall petition only if the clerk determines that the application for the petition meets the requirements of AS 29.26.260, including the requirement that grounds be ". . . stated with particularity" (Sec. 29.26.280). After a petition is filed the clerk must again determine whether the petition is sufficient and, if insufficient, ". . . identify the insufficiency and notify the sponsors. . ." (Sec. 29.26.290). It seems clear that since the clerk must identify the insufficiency, a determination of sufficiency is not limited to review of signatures, even though (b) and (c) of the section only provide for correcting a petition insufficient for lack of signatures. It appears under these sections that the clerk would still be required to determine whether the grounds stated, if true, actually constitute misconduct in office, incompetence, or failure to perform prescribed duties.

I believe that his interpretation conforms to the intent of the policy committee that produced the original version of a Title 29 revision bill. There was considerable discussion of the recall provisions by that committee and at one point

Representative Barbara Lacher

Page 4

February 24, 1983

the committee considered requiring only a general statement of reasons for recall and allowing recall to proceed upon purely political grounds. It was even suggested that grounds for recall be eliminated entirely. That approach was specifically rejected by the committee. Consequently, I would recommend that HB 172 be amended to clearly reflect the fact that the clerk is to review a recall petition for form and signatures only, and not to determine whether grounds stated actually constitute misconduct in office, incompetence, or failure to perform prescribed duties, if that is the result intended by the legislature.

TBC:ljb

Alaska State Legislature



Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski

Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 3

Page 76, lines 19 and 20:

Delete "determine fair market value" insert "acquire the certificate, equipment and facilities of the carrier, or that portion of the certificate that would be affected".

Explanation: The right of eminent domain is not used to determine fair market value. The determination of fair market value is a step in the process of exercising eminent domain. As written, the statement may not meet the intent of allowing municipalities to exercise the right of eminent domain to acquire certificates or property.

adopted
Keep

Alaska State Legislature



Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski

Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 4

Page 126, line 3:
Delete "\$100,000.00" insert "\$20,000.00".

Explanation: During Committee review of House Bill 172, there appeared to be a consensus of the committee that the minimum value of property to be foreclosed upon without notification to the owner by certified mail is too high (\$100,000.00).

adopted
Keep

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811
Pouch V
Juneau, Alaska 99811

House of Representatives
Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs

FROM: Staff

DATE: April 25, 1983

RE: House Bill 172 amendment 5

Page 204, lines 7 and 8:
Recommend change to read:

Sec. 85. AS 29.45 "as enacted in Sec. 11 of this Act is effective on January 1 of the year following enactment.

Explanation: HB 172 may be enacted into law in 1983 or 1984, depending on legislative action. The amendment will avoid the possibility of a "split" tax year and will provide time for municipal planning purposes.

S. Hanson

adopted

Keep

Alaska State Legislature



Barbara Lacher, Chairman
Mac Fischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski

Room 104
State Capitol
Juneau, Alaska 99811
Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 6

The attached letter of intent and proposed language for implementation was prepared during hearings of SB 1, comparison legislation to HB 172.

Present law requires first class and home rule cities in the unorganized borough to accept the responsibility for delivery of Educational services. It is perceived that the requirement to be responsible for educational services may be a deterrant to certain cities or areas to organizing or upgrading to first class or home rule status. The opposition for a city to assume the educational powers could come either from an existing REAA or the city.

The proposed change to HB 172 would resolve the issue of the assumption of education powers by vote of the residents in the city and in the REAA.

Failed

Failed

Alaska State Legislature

Senate

Committee on
Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 9.



Official Business

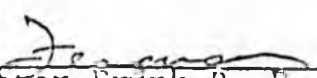
LETTER OF INTENT
TO CSSB 1

February 24, 1983

It is the intent of the Senate Community and Regional Affairs Committee that the assumption of the education power by newly formed or upgraded first class or home rule cities be dependent upon a vote in the existing Regional Education Attendance Area. If the vote both within the city and in the remainder of the REAA was not in favor of the city assuming the education power, it would not.

This Letter of Intent was discussed and unanimously approved by the Senate C & RA Committee. The attached page labelled "Proposed Amendment #10" is what the committee members had in front of them when the Letter of Intent was endorsed. The longer attached amendment, drafted by Legal Services, represents all of the actual changes that need to be made to SB 1 to carry out the Letter of Intent.

Though the committee strongly endorses this concept it was felt the full amendment should be available for review before it was adopted, which is why this method of presentation was followed. The Community and Regional Affairs Committee urges the Finance Committee to incorporate the intent of the attached proposed Amendment #10 into SB 1.



Senator Frank R. Ferguson
Chairman

S-E-N-A-T-E---A-M-E-N-D-M-E-N-T

PROPOSED SENATE AMENDMENT

By Community & Regional Affairs Committ

To: _____ SENATE BILL No. 1

To: _____ HOUSE BILL No. _____

PAGE: LINE:

Note: This change is listed as a proposal rather than an amendment because of the complex drafting that will be required to make sure all the necessary sections are cross referenced. Legal Services has reviewed this proposal and suggested this approach because of time constraints. If the Committee approves this proposal, Legal Services will incorporate it as part of the Committee Substitute.

Page 10, after line 19, insert new section:

"29.05.145. ASSUMPTION OF THE EDUCATION POWER. (a) When an unincorporated area or second class city that is part of a Regional Education Attendance Area incorporates or upgrades to first class or home rule city status, the assumption of the education power shall be in accordance with this section

(b) When an unincorporated area or city that is part of a REAA incorporates or upgrades to first class or home rule city status, that Director of Elections shall conduct an election in the REAA within 90 days of the incorporation.

(c) At this election, voters of the REAA shall be given an opportunity to approve or disapprove the assumption of the education power by the newly incorporated or upgraded first class or home rule city.

(1) The vote shall be counted separately within the city limits of the newly incorporated or upgraded city and in the remainder of the REAA.

(2) A majority of voters in both areas must approve the assumption of the education power by the newly incorporated or upgraded city or it may not assume the education power"

Alter other sections as necessary to conform.

A M E N D M E N T

Offered in the SENATE

By the Community and Regional

TO: CSSB 1 (C&RA)

Affairs Committee

Page 2, after line 25 insert:

"(f) A second class city in a regional educational attendance area that reclassifies to first class status after July 1, 1983 remains part of the regional educational attendance area unless education power is acquired under AS 29.35.270."

Page 10, after line 18 insert:

"(d) A first class or home rule city in a regional educational attendance area that incorporates after July 1, 1983 remains part of the regional educational attendance area unless the education power is acquired under AS 29.35.270."

Reletter the following subsection accordingly.

Page 34, after line 20 insert:

"(36) AS 29.35.270. (acquisition of education power)"

Reorder the following paragraphs accordingly.

Page 85, line 23:

Delete "A" and insert "Subject to AS 29.35.270, a"

30
Page 86, after line 5 insert:

"Sec. 29.35.270. ACQUISITION OF EDUCATION POWER. (a) A home rule or first class city formed in a regional educational attendance area after July 1, 1983 remains part of the regional educational attendance area and may not establish a city school district unless the education power is acquired by the city under this section.

(b) Within 90 days after a community in a regional educational attendance area is incorporated as a home rule or first class city or a second class city in a regional educational attendance area reclassifies to first class status or adopts a home rule charter, the director of elections shall conduct an election in the regional educational attendance area on the question of whether the city should acquire the education power and form a city school district.

(c) After an election under this section the vote shall be counted separately within the boundaries of the newly formed city and within the area of the regional educational attendance area outside the city.

(d) If a majority of voters within the newly formed city and a majority of the voters within the area of the regional educational attendance area outside of the newly formed city approve, the city shall assume the education power and form a school district. If a majority of voters in both areas do not approve, the city remains part of the regional educational attendance area.

(e) This section applies to home rule and general law cities."

30
Page 186, after line 6 insert:

"* Sec. 21. AS 14.08.031 is amended by adding a new subsection to read:

(e) A first class or home rule city in a regional educational attendance area that incorporates after July 1, 1983 and a second class city in a regional educational attendance area that reclassifies to first class status or adopts a home rule charter after July 1, 1983 shall be included in the regional educational attendance area boundary unless the city acquires the education power under AS 29.35.270."

Re-number following sections accordingly.

Page 186, after line 29 insert:

"* Sec. 24. AS 14.12.010(1) is amended to read:

(1) each home rule and first class city in the unorganized borough is a city school district, except as provided under AS 29.35.270;

* Sec. 25. AS 14.12.010(3) is amended to read:

(3) the area outside organized boroughs and outside home rule and first class cities is divided into regional educational attendance areas, except that a home rule or first class city may be included in a regional educational attendance area in accordance with AS 29.35.270."

Re-number following sections accordingly.

Page 205, line 20:

Delete "86" and insert "89"

Page 205, line 23:

Delete "86" and insert "89"

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
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Mike Szimanski



Room 104
State Capitol
Juneau, Alaska 99811
Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 7

During Committee review of HB 172 there was discussion but no apparent consensus concerning the exemption of greenhouses from assessment at full valuation for taxation purposes (Page 109, line 22).

The existing law does not give special treatment for greenhouses. The intent of providing special tax treatment for farm lands (not including barns, houses, sheds, etc.) was to assist the farmer in resisting the pressures of urban growth rather than being forced to subdivide farm land because of inflated land values. The effect of the new language is to provide a special tax treatment for greenhouses, including commercial greenhouses raising ornamental flowers.

adopted
make
special cover taking level
on farm use.

Alaska State Legislature



Barbara Lacher, Chairman
Mac Tischer, Vice-Chairman
Randy Phillips
Mdo Fritz
Don Clocksin
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Mike Szymanski

Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives
Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 8

Sec. 29.45.030 dealing with required tax exemptions contains new language that defines "developed" for the implementation of a required federal tax exemption (Page 105, line 10). The new definitions are supported by Alaska Native Corporations and are opposed by municipalities. Similar definitions were added as last minute floor amendments during legislative action on the municipal code revision in 1982 which were, in large part, responsible for the subsequent Governor's veto.

In that the purpose of HB 172 is to administratively revise Title 29 into a usable document and not to make substantive or controversial changes, staff recommends that all new materials pertaining to the federal tax exemption, including references to reverting to an undeveloped state, be deleted from HB 172 and that the issue be addressed in separate legislation.

*introduced -
need to fail -
taken care of in
Amend # 10*

30



THIRTEENTH ALASKA LEGISLATURE

FIRST SESSION

HB172 Suggested Amendments - Cape Fox Corporation

Line 15, Page 105

- (1) (m) (1) ... gainful and [or] productive present use...

Line 18-19, Page 105

- (2) (m) (1) ... process even though income may be derived from related incidental timber harvesting, utility usage, or similar activities.

Line 3, Page 106 - Add New Subsection:

- (3) (m) (4) "Gainful" means a condition resulting in net taxable income or when revenue derived from an activity taking place over the tax year of the property owner exceeds the expenses and deductions related to the activity.

Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-4801

BOROUGH ATTORNEY'S OFFICE

April 6, 1983



The Honorable Barbara Lacher
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Barbara:

Subject: HB 172 "DEVELOPED" DEFINITION

The present version of HB 172 provides for a tax exemption as required by 43 U.S.C. 16.20(d) for certain Native lands. This exemption provides a definition of "developed" for implementing the federal law. I recommend that this matter be treated in a separate bill rather than in HB 172 or SB 1, the parallel bills intended as housekeeping measures to revamp Title 29.

During the last legislative session certain amendments were made to the Title 29 bill on the House floor which caused a great deal of controversy. In re-introducing the Title 29 in the present legislature, all of these amendments were removed except for the provisions for implementing the tax exemptions under 43 U.S.C. 16.20(d). This amendment was incorporated in AS 29.45.030 of the bill.

Pursuant to federal law, certain Native lands are not taxable until "developed". The intent of the proposed definition in AS 29.45.030 is to clarify what improvements of land will constitute "development" for tax exemption status.

I believe that the intent of this section is to assure that lands will not be taxed simply because an access road is constructed to the property or improvements are placed on the property in anticipation of future development. However, the language is sufficiently ambiguous to permit the interpretation that even a regular, residential or commercial subdivision development would not be taxable until the lots were sold. Once land is subdivided, roads are constructed and other improvements are put in place, the available lots become the sale inventory of the real estate developer. An exemption from taxation of these lots would give the exempted developer an unfair advantage over other developers with which it was in competition.

Because this provision is not in existing Title 29 and because there is potential controversy involved, I recommend that

it not be included in HB 172, a housekeeping bill. As a separate bill, I believe that the Borough would support a definition between a taxable subdivision development and tax exempt lands which have been surveyed and have constructed roads.

Sincerely,



Steven H. Morrisett
Borough Attorney

er

cc: Steve VanSant, Borough Assessor



KENAI PENINSULA BOROUGH

BOX 850 • SOLDOTNA, ALASKA 99669
PHONE 262-4441

STAN THOMPSON
MAYOR

February 24, 1983

TO: Stan Thompson, Mayor

FROM: Don Thomas, Assessor

SUBJECT: Native Lands, Title 29 Revisions - see M #1 *Items 28 + 29*
140 100-101

By the definition included in the work draft of Title 29 the Kenai Peninsula Borough would loose approximately 13.9 Million in assessed valuation. This would equal about \$41,727 based on a 3 mill average.

This would also put the Native lands in a better position to develop and compete in the open market, if they wished. They could do all the preliminary work, such as roads, utilities, survey, and hold the property for the highest return, and still not pay taxes. *- this would only*
be a matter of time before the lands are in the hands of the
We currently have 13.9 million in assessed value that the different regions have been paying taxes on. We have had them on the tax rolls for 4 or 5 years and they paid their taxes without paying under protest. *a.*

Cook Inlet	7,281,205
Ninilchik	924,950
Seldovia Native	2,882,300
Slamatoff	599,500
English Bay	2,708,800
Port Graham	1,068,000
Total	<u>15,454,755</u>

*Also when you see up & Native Lands
we would have ^{be} ~~been~~ on the tax rolls - they they
would be exempt at a tremendous loss to
the Borough - until sold*



THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT - 586-5242

May 20, 1983

Bob Harris
House Community & Regional
Affairs Committee
Pouch V
Juneau, Alaska 99811

FILE: HB 172

SUBJECT: Substitute Utility Language
for Title 29 Revision

Dear Bob:

If the House Community and Regional Affairs Committee would like to consider alternative language to that which has been proposed for the utilities section of the Title 29 revision, may I suggest the following. This language, I believe, accommodates the interests of the municipalities and of the utilities. It would exempt from municipal regulation those utilities, including co-ops, which have elected to exempt themselves from APUC regulation by a vote of the subscribers or members. It would also exempt from municipal regulation those small electric, telephone and garbage utilities which are presently exempt from APUC regulation but which may come under APUC regulation if 25% of the subscribers petition the commission for regulation. In addition, it would exempt from municipal regulation those utilities which the APUC itself exempts upon a finding of no legitimate public interest in regulation if the commission also finds that the utility should also be exempt from municipal regulation. If cable TV is given an exemption from APUC regulation, and the legislature believes that it should also be exempt from municipal regulation, a simple amendment to the following language making reference to the statute exempting cable TV would extend the exemption to municipal regulation of cable TV also. The substitute language would be as follows:

AS 29.35.070 PUBLIC UTILITIES. (a) The assembly acting for the area outside all cities in the borough and the council acting for the area in a city may regulate the service and may fix, establish and change the rates and charges imposed for a utility service provided to the municipality or its inhabitants by a utility except as provided in (b).

(b) A municipality may not regulate a utility

(1) to the extent it is subject to regulation under AS 42.05; or

Re: HB 172 Substitute Language
May 20, 1983
Page Two

- (2) exempt from Alaska Public Utility Commission regulation under AS 42.05.711(d) if the commission finds that no legitimate public interest will be served by regulation by the commission or a municipality; or
 - (3) exempt from Alaska Public Utility Commission regulation under AS 42.05.711(e), (f), (g), (h) or (i); or
 - (4) specifically exempted by law from municipal regulation.
- (c) The municipality may provide for a reasonable deposit for meters and service to be given if interest is paid on the deposit.
- (d) Unless the utility is owned by the regulating municipality, all rates, charges and regulations established under this section shall be established as provided by an ordinance of the municipality which sets forth the procedures for regulating service and establishing and changing the rates and charges of the utility. The ordinance shall provide for notice, hearing and other procedures necessary to guarantee the utility due process. The rates and charges established shall be reasonable and shall permit a fair return on invested capital.
- (e) This section applies to home rule and general law municipalities.

Sincerely,



Gerald L. Sharp
City/Borough Attorney

GLS:jr

Alaska State Legislature



Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Mido Fritz
Don Clocksin
Jack McBride
Mike Szymanski

Room 104
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Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

MEMORANDUM

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 proposed amendment number 9

The attached amendment proposed by representatives of utility companies is a significant change from present law.

The net effect of the amendment is to prohibit municipalities from regulating utilities unless the type of regulation proposed or the particular utility is also subject to regulation by the Alaska Public Utilities Commission. Stated in another way, if the Alaska Public Utilities Commission does not or can not regulate a utility or a matter pertaining to a utility, then a municipality may not impose a regulation.

Present law provides municipalities the power to regulate utilities and matters pertaining to utility services to the extent the utilities are not regulated by the Alaska Public Utility Commission.

In several instances, the regulation of a condition of service by a utility company, or the regulation of a utility company is optional for the Public Utilities Commission, or optional for the utility.

In cases where utilities are not regulated by the Alaska Public Utilities Commission, Municipalities generally feel they need to have the authority to exercise regulatory powers. On the other hand, utility companies believe that; if the Alaska Public Utility Commission does not regulate them, then the municipalities should not have the authority to provide regulation.

*introduced -
needs to be
voted down. -
taken care of in
Amend # 10*

SENATE AMENDMENT

By Community & Regional Affairs CommittTo: _____ SENATE BILL No. 1

To: _____ HOUSE BILL No. _____

PAGE: 33 LINE: 2723

Insert "(26) 29.35.060 (franchise and permits)". Renumber following paragraphs accordingly.

✕ Page 33, line 29, insert:

"(28) 29.35.075 (disputes and conflicts with state certificated utilities)"

Page 77, after line ~~36~~, insert:

— "(c) This section applies to home rule and general law municipalities."

Page 77, line ~~4-19~~⁷⁻²², delete Section 29.35.070 and insert:

"Sec. 29.35.070. PUBLIC UTILITIES. (a) The assembly acting for the area outside all cities in the borough and the council acting for the area in a city may regulate the service, and may fix, establish, and change the rates and the charges imposed for a utility service provided to the municipality or its inhabitants by a utility except to the extent

(1) the utility is subject to regulation under AS 42.05; or

(2) municipal regulation is prohibited by AS 42.05.711(k) or otherwise specifically prohibited by law.

(b) The municipality may provide for a reasonable deposit for meters and service to be given if interest is paid on the deposit.

(c) Unless the utility is owned by the municipality that is regulating it, all rates, charges and regulations established under this section shall be established as provided by an ordinance of the municipality establishing

the procedures for regulating service and procedures for establishing and changing the rates and charges of the utility. The ordinance shall provide for notice, hearing and other procedures necessary to guarantee due process. The rates and charges established shall be reasonable and shall permit a fair return on invested capital.

(d) This section applies to home rule and general law municipalities.

Page 77, after line ²²~~19~~, insert:

"Sec. 29.35.075. DISPUTES AND CONFLICTS WITH STATE CERTIFICATED UTILITIES. (a) A dispute as to the reasonableness of the fees for or the terms, conditions, or exceptions to a permit for a utility certificated under AS 42.05 to use municipal streets, alleys or other public ways of the municipality shall be decided under AS 42.05.251."

(b) In case of a conflict between the provisions of AS 29.35.070 or AS 42.05 or an action taken under either as to the regulation of service, rates or charges of a utility, the provisions of AS 42.05.641 apply.

(c) This section applies to home rule and general law municipalities.

Page 195, after line ²²~~17~~, insert:

"*Sec. 62. AS 42.05.711 is amended by adding a new subsection to read:

delete

(k) Except for municipally owned and operated utilities subject to (b) of this section, municipalities may not regulate utility services, including but not limited to rates, terms and conditions of services, provided by a person, utility or cooperative that is exempt from regulation under AS 42.05.711."

Renumber following sections accordingly.

Lee Sharp
City - Boro ~~attorney~~ Jun 1981

Chugach Elec. Ass'n, Sup. Ct. Op. No. 1636 (File Nos. 2969, 2993), 580 P.2d 687 (1978); B-C Cable Co. v. City of Juneau, Sup. Ct. Op. No. 2112 (File No. 4567), 613 P.2d 616 (1980).

Sec. 42.05.711. Exemptions. (a) The provisions of AS 42.05.010 — 42.05.721 do not apply to a person who furnishes water, gas or petroleum or petroleum products by tank, wagon, or similar conveyance, unless the person is thereby supplying water, gas, petroleum or petroleum products to a public utility in which he has an "affiliated interest."

(b) Public utilities owned and operated by a political subdivision of the state and none of whose utilities is in competition with any other utility, are exempt from the provisions of AS 42.05.010 — 42.05.721, other than the provisions of AS 42.05.221 — 42.05.281, unless the owner and operator elects to be subject to all provisions of AS 42.05.010 — 42.05.721.

(c) The ownership in whole or part, of the corporate stock of a public utility does not make the owner a public utility.

(d) The commission, on a finding that no legitimate public interest will be served, may exempt a utility from all or any portion of AS 42.05.010 — 42.05.721.

(e) Notwithstanding any other provisions of AS 42.05.010 — 42.05.721, any electric or telephone utility that does not gross \$50,000 annually is exempt from regulation under AS 42.05.010 — 42.05.721 unless 25 percent of the subscribers petition the commission for regulation.

(f) Notwithstanding any other provisions of AS 42.05.010 — 42.05.721, an electric or telephone utility that does not gross \$325,000 annually may elect to be exempt from the provisions of AS 42.05.010 — 42.05.721 other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

(g) A utility, other than a telephone or electric utility, that does not gross \$100,000 annually may elect to be exempt from the provisions of AS 42.05.010 — 42.05.721 other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

(h) A cooperative organized under AS 10.25.010 — 10.25.650 may elect to be exempt from the provisions of AS 42.05.010 — 42.05.721, other than AS 42.05.221 — 42.05.281, under the procedure described in AS 42.05.712.

(i) A utility which furnishes collection and disposal service of garbage, refuse, trash, or other waste material and has annual gross revenues of \$200,000 or less is exempt from the provisions of this chapter, other than the certification provisions of AS 42.05.221 — 42.05.281,

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unless 25 percent of the subscribers or subscribers representing 25 percent of the gross revenue of the utility petition the commission for regulation.

(j) The provisions of this chapter do not apply to sales, exchanges or gifts of energy to an electric utility certificated under AS 42.05.010 — 42.05.721 when the energy which is the subject of the sale, exchange or gift is waste heat, electricity, or other energy which is surplus or the by-product of an industrial process. In an area in which no electric utility is certificated for service, energy provided by sale, exchange or gift may be provided to any utility which is certificated for service to that area. A contract for the sale, exchange or gift of energy exempt under this subsection does not make the supplier a public utility, and does not transfer the responsibility to provide utility services from a certificated utility to any other person. (§ 6 ch 113 SLA 1970; am § 3 ch 76 SLA 1973; am § 8 ch 83 SLA 1980; am §§ 7-9 ch 136 SLA 1980; am § 89 ch 59 SLA 1982)

Revisor's notes. — As enacted by chs. 83 and 136, SLA 1960, present subsections (j) and (i) were designated as subsections (n) and (j), respectively, but were redesignated by the revisor of statutes pursuant to AS 01.05.031(b). Former subsection (i) of this section was transferred as § 13, ch. 136, SLA 1980 to the 1980 Temporary and Special Acts and Resolutions by the revisor of statutes pursuant to AS 01.05.031(b).

Effect of amendments. — The first 1980 amendment added subsection (j).

The second 1980 amendment deleted "excepting the furnishing of collection and disposal service of garbage, refuse, trash or other waste material" following "none of whose utilities" near the beginning of subsection (b), deleted the former second sentence in subsection (b), which read: "Notwithstanding any other provisions of this chapter, municipalities providing collection and disposal service of garbage, refuse, trash or other waste material within their corporate boundaries are not subject to regulation by the Alaska Public Utilities Commission unless the municipality elects to be subject to the provisions of this chapter," substituted "\$50,000" for "\$25,000" following "does not gross" near the middle of subsection (e), substituted "under this chapter" for "hereunder" following "exempt from regulation" near the middle of subsection (e), and added subsections (n) through (i).

The 1982 amendment, effective May 28, 1982, deleted "on June 30, 1980" preceding

"a utility," and inserted "annual" preceding "gross revenue" in subsection (i).

Editor's notes. — Section 13, ch. 136, SLA 1980, as revised by the revisor of statutes, provides: "Cable television systems are exempt from the provisions of AS 42.05 [AS 42.05.010 — 42.05.721], other than the provisions of AS 42.05.221 — 42.05.281, until July 1, 1983. This exemption does not apply in cities or villages which have a population of less than 3,500 people and which are not located on a state road or marine highway. The effects of the exemption of cable television systems from rate regulation by the Alaska Public Utilities Commission provided in this section shall be reviewed by the legislature before July 1, 1983. If the legislature fails to extend the exemption before July 1, 1983, this section is repealed on that date and cable television systems lose their exempt status on that date and become subject to regulation by the Alaska Public Utilities Commission."

Opinions of attorney general. — An electrical utility owned and operated by a regional electrical authority would continue to qualify for the broad exemption from this chapter, available to political subdivisions under subsection (b) of this section once the regional electrical authority had completed its proposed organization as a nonprofit corporation pursuant to AS 10.20.005 et seq. June 7, 1976, Op. Att'y Gen.

Alaska State Legislature



Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski

Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

MEMORANDUM

To: Committee On Community and Regional Affairs

From: Staff

Re: HB 172, proposed utilities amendment.

The attached amendment to HB 172 has been requested by Mr. Dave Hutchins, representing the Alaska Rural Electric Cooperative Association.

The controversy over the proposed amendment is based on the authority of municipalities, or lack of authority, to regulate utilities that are not subject to regulation by the Alaska Public Utilities Commission under AS 42.05.

A summary of the controversial portions of the three options presented to the committee is as follows:

1. Present Statues:
 - a. Municipalities cannot regulate or grant franchises to any utility that is regulated by the Alaska Public Utilities Commission (APUC) under AS 42.05.
 - b. APUC approval is required for a municipality to extend a municipal utility's service area.

The present laws are silent on the authority--or lack of authority-- of municipalities to regulate non-municipal owned utilities that are not regulated under AS 42.05. Since a General Law municipality has only the powers granted by law, it would probably be upheld that a General Law municipality does not have the authority to regulate a non-municipal owned utility that is not regulated by APUC. This limitation does not apply to a Home Rule municipality.

2. HB 172 Provides:
 - a. Municipalities may grant franchises and regulate utilities to the extent they are not subject to regulation by APUC under AS 42.05, or not otherwise prohibited by law.
 - b. Municipal owned utility services may be extended outside of the municipal boundaries (subject to approval by APUC).

3. Amendment requested by utilities:
 - a. Whenever a utility is exempted from regulation by APUC or subject to regulation under AS 42.05, a municipality may not regulate the utility.
 - b. A municipality may only extend utility services to an area adjacent to the municipal boundaries. This provision would prevent a municipal utility from providing utility services to an area that is not adjacent to the municipal boundaries.

The utilities that are, or may be, exempted from APUC regulation and as such are the utilities that are at the center of this issue are identified in AS 42.05.711 (copy attached).

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

Page 33, after line 28, insert:

"(26) AS 29.35.060 (franchise and permits)"
 Renumber following paragraphs accordingly.

Page 33, after line 29, insert:

"(28) AS 29.35.075 (disputes and conflicts with state
 certificated utilities)"
 Renumber following paragraphs accordingly.

Page 74, line 12, delete:

"utility services,"

Page 77, after line 6 add a new subsection to read:

"(c) This section applies to home rule and general
 law municipalities."

Page 77, lines 7 through 22, delete present language and
 replace it with the following:

"Sec. 29.35.070. PUBLIC UTILITIES. (a) The
 assembly for the area outside all cities in the borough
 and the council acting for the area in a city may
 regulate a utility service and fix, establish, and
 change the rates and charges imposed for a utility
 service provided to the municipality or its inhabitants
 by a utility except to the extent

(1) the utility is subject to regulation under AS
 42.05; or

(2) municipal regulation is prohibited by AS
 42.05.711(k) or other law.

(b) A municipality may provide for a reasonable
 deposit for meters and service to be given if interest
 is paid on the deposit.

(c) A municipality that owns or operates a utility
 may extend service to adjacent areas outside its
 municipal boundaries. For that purpose the
 municipality may acquire, maintain, and operate utility
 facilities together with necessary interests in real
 property outside its municipal boundaries.

(d) Unless a utility is owned by the municipality
 that is regulating it, all rates, charges, and
 regulations shall be established by the municipality in
 accordance with an ordinance that provides procedures
 for regulating service and establishing and changing

rates and charges. The ordinance shall provide for procedures necessary to guarantee due process, including notice and hearing requirements. Rates and charges established under this section shall be reasonable and permit a fair return on invested capital.

(e) A dispute involving a utility certificated under AS 42.05 as to the reasonableness of the fees for or the terms, conditions, or exceptions to a permit to use municipal streets shall be decided under AS 42.05.251.

(f) In case of a conflict between the provisions of this section and AS 42.05 or concerning an action taken under this section or AS 42.05 involving the regulation of service or the rates or charges of a utility certificated under AS 42.05, the provisions of AS 42.05.641 apply.

(g) This section applies to home rule and general law municipalities."

Page 195, after line 22, add a new section to read:

"* Sec. 62. AS 42.05.711 is amended by adding a new subsection to read:

(k) A public utility that is exempt or partially exempt under (d) through (j) of this section from the provisions of AS 42.05.010 - 42.05.721 may not be regulated by a municipality."

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

Chugach Elec. Ass'n, Sup. Ct. Op. No. 1636 (File Nos. 2969, 2993), 580 P.2d 687 (1978); B-C Cable Co. v. City of Juneau, Sup. Ct. Op. No. 2112 (File No. 4587), 613 P.2d 616 (1980).

Sec. 42.05.711. Exemptions. (a) The provisions of AS 42.05.010 — 42.05.721 do not apply to a person who furnishes water, gas or petroleum or petroleum products by tank, wagon, or similar conveyance, unless the person is thereby supplying water, gas, petroleum or petroleum products to a public utility in which he has an "affiliated interest."

(b) Public utilities owned and operated by a political subdivision of the state and none of whose utilities is in competition with any other utility, are exempt from the provisions of AS 42.05.010 — 42.05.721, other than the provisions of AS 42.05.221 — 42.05.281, unless the owner and operator elects to be subject to all provisions of AS 42.05.010 — 42.05.721.

(c) The ownership in whole or part, of the corporate stock of a public utility does not make the owner a public utility.

(d) The commission, on a finding that no legitimate public interest will be served, may exempt a utility from all or any portion of AS 42.05.010 — 42.05.721.

(e) Notwithstanding any other provisions of AS 42.05.010 — 42.05.721, any electric or telephone utility that does not gross \$50,000 annually is exempt from regulation under AS 42.05.010 — 42.05.721 unless 25 percent of the subscribers petition the commission for regulation.

(f) Notwithstanding any other provisions of AS 42.05.010 — 42.05.721, an electric or telephone utility that does not gross \$325,000 annually may elect to be exempt from the provisions of AS 42.05.010 — 42.05.721 other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

(g) A utility, other than a telephone or electric utility, that does not gross \$100,000 annually may elect to be exempt from the provisions of AS 42.05.010 — 42.05.721 other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

(h) A cooperative organized under AS 10.25.010 — 10.25.650 may elect to be exempt from the provisions of AS 42.05.010 — 42.05.721, other than AS 42.05.221 — 42.05.281, under the procedure described in AS 42.05.712.

(i) A utility which furnishes collection and disposal service of garbage, refuse, trash, or other waste material and has annual gross revenues of \$200,000 or less is exempt from the provisions of this chapter, other than the certification provisions of AS 42.05.221 — 42.05.281,

unless 25 percent of the subscribers or subscribers representing 25 percent of the gross revenue of the utility petition the commission for regulation.

(j) The provisions of this chapter do not apply to sales, exchanges or gifts of energy to an electric utility certificated under AS 42.05.010 — 42.05.721 when the energy which is the subject of the sale, exchange or gift is waste heat, electricity, or other energy which is surplus or the by-product of an industrial process. In an area in which no electric utility is certificated for service, energy provided by sale, exchange or gift may be provided to any utility which is certificated for service to that area. A contract for the sale, exchange or gift of energy exempt under this subsection does not make the supplier a public utility, and does not transfer the responsibility to provide utility services from a certificated utility to any other person. (§ 6 ch 113 SLA 1970; am § 3 ch 76 SLA 1973; am § 8 ch 83 SLA 1980; am §§ 7-9 ch 136 SLA 1980; am § 89 ch 59 SLA 1982)

Revisor's notes. — As enacted by chs. 83 and 136, SLA 1980, present subsections (j) and (i) were designated as subsections (f) and (j), respectively, but were redesignated by the revisor of statutes pursuant to AS 01.05.031(b). Former subsection (i) of this section was transferred as § 13, ch. 136, SLA 1980 to the 1980 Temporary and Special Acts and Resolutions by the revisor of statutes pursuant to AS 01.05.031(b).

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Opinions of attorney general. — An electrical utility owned and operated by a regional electrical authority would continue to qualify for the broad exemption from this chapter, available to political subdivisions under subsection (b) of this section once the regional electrical authority had completed its proposed organization as a nonprofit corporation pursuant to AS 10.20.005 et seq. June 7, 1976, Op. Att'y Gen.

(a) The assembly acting for the area outside cities and the council acting for the area within a city may grant franchises, including exclusive franchise privileges, for the construction, operation and maintenance of bus transportation systems and public utilities not regulated under AS 42.05 and may permit them the use of streets and other public places under regulations prescribed by ordinance.

(b) No franchise is valid until it has been submitted to the qualified voters of the city or borough area outside cities in which it applies, and at least 55 per cent of the votes cast are in favor of the franchise. At least 30 days notice of a franchise referendum election shall be given in the same manner as is provided for notice of regular municipal elections, and the notice shall specify the purpose of the election. The ordinance granting a franchise shall provide for its submission for ratification to the qualified voters of the city or borough area outside cities at either a regular or special election, and the result of the election shall be canvassed publicly by the council or assembly and spread upon the records of the minutes and the result declared and certified in the same manner as in a regular election.

(c) Public utilities regulated under AS 42.05 have the right to use the streets and other public places, upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the assembly or council requires. A dispute as to whether fees, terms, conditions, or exceptions are

reasonable shall be decided by the Alaska Public Utilities Commission.

Sec. 29.48.060. PUBLIC UTILITIES RATES.

The assembly acting for the area outside cities and the council acting for the area within a city may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the municipality or its inhabitants by a municipally owned utility not regulated under AS 42.05.010 - 42.05.721 and may regulate and provide what is a reasonable deposit for meters and security for service to be given, provided that interest is paid on the deposit. All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return on invested capital.

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Sec. 29.48.060. PUBLIC UTILITIES RATES.

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Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

MEMORANDUM

TO: Committee on Community and Regional Affairs

From: Staff

Date: May 20, 1983

Re: Amendments to HB 172

The Committee has completed action on proposed amendments One through eight; except that representatives of the Cape Fox Corporation were offered an opportunity to prepare new language for amendment No. 8.

Amendment No. 8 deals with a definition of developed lands for tax exempt status. A revised definition has been prepared for Committee review.

Amendment No.9 has been requested by representatives of the Alaska Rural Electric Cooperative Association. A staff summary has been prepared in an attempt to clarify the basis of the issue.

Following Committee decision on the above proposed amendments, staff will request a Committee Substitute HB 172 that will incorporate all approved amendments.

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
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Following Committee decision on the above proposed amendments, staff will request a Committee Substitute HB 172 that will incorporate all approved amendments.



Fairbanks North Star Borough

Mayor: B.B. Allen

April 6, 1984

Honorable Mike W. Miller
Alaska State Legislature
State of Alaska
Pouch V
Juneau, Alaska 99811

Dear Mike:

Over the past eleven years a number of amendments to Title 29, the Municipal Code, have resulted in numerous conflicts and inconsistencies which make the title very difficult to use, let alone read and understand. Because of the difficulties with Title 29, a proposed revision of the entire title is before you which clarifies the municipal code without making major policy changes. I would like to request that you work to insure the adoption of this critical piece of legislation in this session. Though local governments are the only direct constituency for this legislation, all citizens of this state are affected.

I would also hope that this legislation could be passed without the type of controversial amendments which lead to its veto two years ago. Such a "clean" bill would provide us with the basis from which major policy changes could be addressed.

Thank you in advance for your positive consideration of this legislation.

Sincerely,

B.B. Allen
Borough Mayor

BBA:rlf

cc: Fairbanks North Star Borough Assembly

A M E N D M E N T

Offered in the HOUSE

BY THE COMMUNITY AND REGIONAL

TO: HB 172

AFFAIRS COMMITTEE

Page 35, line 4:

After "request" insert "by a member of the governing body"

Page 35, line 5:

Delete "and"

Page 35, line 6:

After "request" insert "by a member of the governing body"

Page 35, line 8:

Delete "." and insert ";"

Page 35, after line 8:

Insert:

"(4) a municipal employee or official, other than a member of the governing body, may not participate in any official action in which the employee or official has a substantial financial interest.

(b) If a municipality fails to adopt a conflict of interest ordinance within 180 days after July 1, 1983, the conflict of interest provision of this section is automatically applicable to and binding upon that municipality."

Page 35, line 9:

Delete "(b)" and insert "(c)"

Page 163, Line 24

Delete "allocable" and insert "allocatable"



THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT - 586-5242

May 16, 1983

Tony Strong
Sealaska Building
One Sealaska Plaza
Juneau, Alaska 99801

Kellus Sewell
8489 Jennifer Drive
Juneau, Alaska 99801

FILE: Legislature - 1983/84 - SB 260

SUBJECT: Proposed Substitute

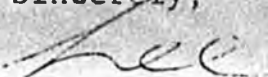
Gentlemen:

Enclosed is a proposed substitute for Senate Bill 260 which I believe incorporates the changes we agreed could be made to help clarify the definition of "developed" in the bill. As you requested, I have shown the changes which the three of us propose by using brackets and underlining.

I appreciate the time you spent with me in discussing the changes. Please note that I still feel that subsection (1) should be deleted as it will lead to a changing tax status for property which cannot be pinned down to some specific event such as a transfer of ownership. While I recognize that such a system may be beneficial to the native corporations, it creates a situation which will undoubtedly lead to disagreements (and perhaps court battles) between municipalities and native corporations.

While I believe the language in the attached proposed substitute is more clear than that in Senate Bill 260, I strongly suggest that this proposal be reviewed by the attorneys and assessors in other municipalities as well as other native corporations. The situation varies from municipality to municipality and from native corporation to native corporation. It may even be profitable to try to set up a meeting of officials from concerned municipalities and native corporations to try to work out something to which a majority of us can agree.

Sincerely,


Gerald L. Sharp
City/Borough Attorney

GLS:jr
Enclosure

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811
Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

*all in favor
except Tischer
296/3022*

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 1

Page 35, line 4:
After "request" insert "by a member of the governing body"

Page 35, line 5:
Delete "and"

Page 35, line 6:
After "request" insert "by a member of the governing body"

Page 35, line 8:
Delete "." insert ";"

Page 35, after line 8:
Insert "(4) a municipal employee or official, other than a member of the governing body, may not participate in any official action in which the employee or official has a substantial financial interest.

(b) If a municipality fails to adopt a conflict of interest ordinance within 180 days after July 1, 1983, the conflict of interest provision of this section is automatically applicable to and binding upon that municipality."

Page 35, line 9:
Delete "(b)" and insert "(c)"

Page 163, line 24:
Delete "allocable" insert "allocatable"

Alaska State Legislature

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Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 2

The following changes are proposed by ^{Phillips}~~Ginny~~ Chitwood, Alaska Municipal League.

Page 68, lines 5-7:
Delete section 29.26.250.

Page 68, line 15:
Delete "grounds of", insert "reasons for".

Page 68, line 24:
Delete "grounds" insert "reasons".

Page 69, lines 20,24:
Delete "25", insert "35".

Page 71, line 18:
Delete "grounds of" insert "reasons for".

Explanation: The issue of determining the sufficiency of grounds for a recall election was discussed by the committee. It appeared that a consensus was reached to eliminate the requirement for providing legal grounds to conduct a recall election and to increase signatory requirements for the petitioners.

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 3

Page 76, lines 19 and 20:

Delete "determine fair market value" insert "acquire the certificate, equipment and facilities of the carrier, or that portion of the certificate that would be affected".

Explanation: The right of eminent domain is not used to determine fair market value. The determination of fair market value is a step in the process of exercising eminent domain. As written, the statement may not meet the intent of allowing municipalities to exercise the right of eminent domain to acquire certificates or property.

Alaska State Legislature

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State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 4

Page 126, line 3:
Delete "\$100,000.00" insert "\$20,000.00".

Explanation: During Committee review of House Bill 172, there appeared to be a consensus of the committee that the minimum value of property to be foreclosed upon without notification to the owner by certified mail is too high (\$100,000.00).

Alaska State Legislature

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Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 5

Page 204, lines 7 and 8:
Recommend change to read:

Sec. 85. AS 29.45 "as enacted in Sec. 11 of this Act is effective on January 1 of the year following enactment.

Explanation: HB 172 may be enacted into law in 1983 or 1984, depending on legislative action. The amendment will avoid the possibility of a "split" tax year and will provide time for municipal planning purposes.

Alaska State Legislature

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Mike Szymanski



Room 104
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Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 6

The attached letter of intent and proposed language for implementation was prepared during hearings of SB 1, comparison legislation to HB 172.

Present law requires first class and home rule cities in the unorganized borough to accept the responsibility for delivery of Educational services. It is perceived that the requirement to be responsible for educational services may be a deterrant to certain cities or areas to organizing or upgrading to first class or home rule status. The opposition for a city to assume the educational powers could come either from an existing REAA or the city.

The proposed change to HB 172 would resolve the issue of the assumption of education powers by vote of the residents in the city and in the REAA.

Alaska State Legislature

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Room 104
State Capitol
Juneau, Alaska 99811
Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 7

During Committee review of HB 172 there was discussion but no apparent consensus concerning the exemption of greenhouses from assesement at full valuation for taxation purposes (Page 109, line 22).

The existing law does not give special treatment for greenhouses. The intent of providing special tax treatment for farm lands (not including barns, houses, sheds, etc.) was to assist the farmer in resisting the pressures of urban growth rather than being forced to subdivide farm land because of inflated land values. The effect of the new language is to provide a special tax treatment for greenhouses, including commercial greenhouses raising ornimental flowers.

Alaska State Legislature



Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski

Room 104
State Capitol
Juneau, Alaska 99811
Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 8

Sec. 29.45.030 dealing with required tax exemptions contains new language that defines "developed" for the implementation of a required federal tax exemption (Page 105, line 10). The new definitions are supported by Alaska Native Corporations and are opposed by municipalities. Similar definitions were added as last minute floor amendments during legislative action on the municipal code revision in 1982 which were, in large part, responsible for the subsequent Governor's veto.

In that the purpose of HB 172 is to administratively revise Title 29 into a usable document and not to make substantive or controversial changes, staff recommends that all new materials pertaining to the federal tax exemption, including references to reverting to an undeveloped state, be deleted from HB 172 and that the issue be addressed in separate legislation.

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
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Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

MEMORANDUM

TO: Committee on Community and Regional Affairs

FROM: Staff

DATE: April 25, 1983

RE: House Bill 172 proposed amendment number 9

The attached amendment proposed by representatives of utility companies is a significant change from present law.

The net effect of the amendment is to prohibit municipalities from regulating utilities unless the type of regulation proposed or the particular utility is also subject to regulation by the Alaska Public Utilities Commission. Stated in another way, if the Alaska Public Utilities Commission does not or can not regulate a utility or a matter pertaining to a utility, then a municipality may not impose a regulation.

Present law provides municipalities the power to regulate utilities and matters pertaining to utility services to the extent the utilities are not regulated by the Alaska Public Utility Commission.

In several instances, the regulation of a condition of service by a utility company, or the regulation of a utility company is optional for the Public Utilities Commission, or optional for the utility.

In cases where utilities are not regulated by the Alaska Public Utilities Commission, municipalities generally feel they need to have the authority to exercise regulatory powers. On the other hand, utility companies believe that; if the Alaska Public Utility Commission does not regulate them, then the municipalities should not have the authority to provide regulation.

City of Fairbanks

MEMORANDUM

APR 2 '84

The Fairbanks City Council has requested the attached Resolutions, passed and approved at their meeting of 3/26/84, be forwarded to your office.

Thank you,

Carma Roberson

Carma B. Roberson, City Clerk

Introduced by: Mayor Bill Walley
Date : March 26, 1984

RESOLUTION NO. 2515

A RESOLUTION REQUESTING THE THIRTEENTH
LEGISLATURE TO ADOPT THE REVISED ALASKA
STATUTE TITLE 29 AS PROPOSED.

WHEREAS, Title 29 of the Alaska Statutes, the Municipal Code,
has not been revised since 1972; and

WHEREAS, eleven years of amendments to Title 29 have created a
confusing patchwork that is very difficult to read and understand; and

WHEREAS, the proposed revision of Title 29 reorganizes and
clarifies the Municipal Code without making major policy changes; and

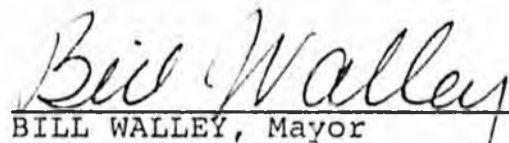
WHEREAS, major policy changes to Title 29 should be considered
in separate legislation in order to keep the Title 29 revision a "clean"
bill;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY
OF FAIRBANKS, ALASKA, as follows:

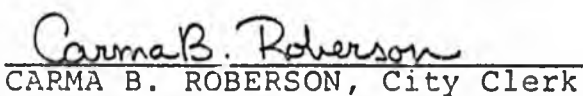
SECTION 1. That the thirteenth legislature is respectfully
requested to adopt in this legislative session the revised Title 29, of
the Alaska Statutes, as proposed, without any controversial amendments.

SECTION 2. That the City Clerk is hereby directed to send to
each member of the thirteenth legislature a copy of this Resolution.

PASSED and APPROVED this 26th day of March, 1984.


BILL WALLEY, Mayor

ATTEST:


CARMA B. ROBERSON, City Clerk

Introduced by: Mayor Bill Walley
Date : March 26, 1984

RESOLUTION NO. 2516

A RESOLUTION REQUESTING THE THIRTEENTH
LEGISLATURE TO FULLY FUND THE MUNICIPAL
ASSISTANCE PROGRAM.

WHEREAS, the Alaska State Legislature adopted a formula funding
the program for Municipal Assistance, which is thirty percent of the
previous year's corporate income tax; and

WHEREAS, that amount for fiscal year 1985 is estimated to be
\$90.9 million, which is \$20.4 million more than the \$70.5 million
requested by Governor Bill Sheffield in his fiscal year 1985 budget
request; and

WHEREAS, the municipalities of Alaska base their fiscal
planning on this formula and rely on the law; and

WHEREAS, partial and irregular funding of the formula causes
major budgeting problems for municipalities because local budgets must be
approved before the state budget is adopted; and

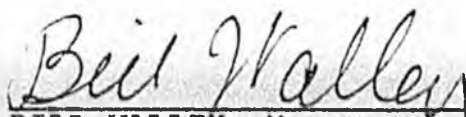
WHEREAS, reduced funding for the municipalities will result in
either increased local property taxes or reduced local services;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY
OF FAIRBANKS, ALASKA, as follows:

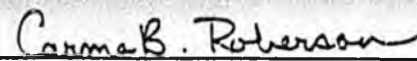
SECTION 1. That the thirteenth legislature is respectfully
requested to fully fund at the statutory adopted formula the Municipal
Assistance Program for fiscal year 1985 at \$90.9 million.

SECTION 2. That the City Clerk is directed to send to each
member of the thirteenth legislature a copy of this Resolution.

PASSED and APPROVED this 26th day of March, 1984.


BILL WALLEY, Mayor

ATTEST:


CAFMA B. ROBERSON, City Clerk

Alaska State Legislature

Representative Milo Fritz
District 5
P.O. Box 158
Anchor Point, Alaska 99556
(907) 235-8366



While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-4833

House of Representatives

MILO FRITZ

MEMORANDUM

TO: Representative Mike W. Miller
Chairman, House C & RA Committee

FROM: Representative Milo H. Fritz
Interim Chairman, House C & RA Committee *MHF*

DATE: January 17, 1984

SUBJ: HB 172 Amendments

During the interim, my staff and I have studied HB 172 and its effects and implications. I have changes and alternatives to suggest that the Committee consider. These ideas come from my review of this legislation during the first session and an analysis of the Interim Report on HB 172. I will briefly outline my reasoning for each change in the hope that my ideas will be of assistance to you and the committee.

I believe that current amendments #2 and #7 will not have the effect which is desired, and that the legislation should be left as currently written in HB 172. Amendment #2 eliminates the "legal grounds" for a recall election. Although this would remove the legal problem of determining the sufficiency of grounds, it leaves totally open the right to pursue a recall. If any group has an inclination to start a recall, they state "a reason" and start collecting signatures. It would indeed be difficult to gather the amount of signatures necessary to have a recall election. However, the group will have received much media attention, the person who they are trying to recall has had his/her image tarnished, and the whole political process put into a state of turmoil. This is not even considering the mental anguish caused by this action.

I do not want to see any group have the ability to singularly influence the destiny of a city or borough by the use of a threat of recalling one or more members of the governing body. If we do not have the "grounds" of a "recall", we will be allowing the recall system to be used for purely political/personal interest purposes.

Amendment #7 would eliminate the exemption of greenhouses from assessment at full valuation for tax purposes. The argument against this exemption was that "the purpose of the exemption was to allow farms to continue in spite of otherwise inflated land prices, and the corresponding taxes. I believe that the greenhouses in our state also need this help. If a greenhouse is to be successful, it must have the ability to get its produce to market, which is the urban population centers. The law is written so that a highly prosperous greenhouse, will be taxed at a high "true value of farm use", thereby seeing that equitable taxes are paid. This exemption will allow our fledgling greenhouse industry a chance to grow.

Amendments #8 and #9 should be withdrawn from consideration. The 13th Legislature, as a whole and with concurrence of the Governor, has dealt with these issues by the passage of SB 260 and HB 274, respectively. This decision should be incorporated into the Committee Substitute as recommended by amendment #10.

Amendment #11 was requested by the Alaska State Hospital Association and should be judged on its merits. Their claim of discrimination against a "special" hospital seems to be valid.

Amendment #12 was placed in the Interim Report because it is a part of the information, and is an alternative. However, I strongly urge the rejection of this amendment. The differences between the two bills, were caused in a large part, by the rejection of proposed amendment #6 during the first session. I believe the Senate may change their bill or accept our version if it passes first. The proper time to discuss any remaining differences will be in Conference Committee.

Amendment #13 is a matter of housekeeping.

In addition to the Municipal Code revision, the report to the 13th State Legislature examining court decisions and opinions of the Attorney General construing Alaska Statutes revealed a problem with the local preference law. AS 04.11.502 states that one or "several questions" can be placed before the voters. The preceding paragraphs which have been updated specifically state that only one question can be placed before the voters at a time. Correcting this oversight will only take a short amendment removing the words "or several questions" from A.S. 04.011.502 (a) and (b). This action was suggested on page 78 of the report.

TELEPHONE MESSAGE	TO	Shindley	DATE	2/29	TIME	2:00	AM PM
	FROM	M. Edie O'Brien	AREA CODE		NUMBER		
	OF	Houston, AK	EXTENSION				
	MESSAGE	would like to talk w/you about fiscal impact, etc. of Amendment in HB 172. She is the City Clerk for Houston, also on the Legislative Committee for					
PHONE	<input type="checkbox"/>	CALL BACK	<input type="checkbox"/>	RETURNED CALL	<input type="checkbox"/>	WANTS TO SEE YOU	<input type="checkbox"/>
				WILL CALL AGAIN	<input type="checkbox"/>	WAS IN	<input type="checkbox"/>
						URGENT	<input type="checkbox"/>

AICO FORM NO. 50-176

the Alaska Municipal League
 Please call her back tomorrow
 morning 892-6591.

Dorothy Jones

Box 109

TALKEETA 99676

MONG 17007

MARY/MATSU

TO: REP. M. W. MILLER

892-6638-
6869
6591

FR: ELSIE O'BRYAN
MEMBER, LEGISLATIVE COMMITTEE - ALASKA MUNICIPAL LEAGUE
P O BOX 24
HOUSTON 99694

RE: HB 172 - TITLE 29 REVISION

HAVE BEEN INFORMED THAT H. C&RA HAS REQUESTED A LEGAL OPINION ON HB 172. RESULTS NOT SCHEDULED TO BE AVAILABLE UNTIL MIDMARCH. CONSIDERING THE LEGISLATURE'S TIME SCHEDULE OF 120 DAYS, MARCH DATE MAY JEOPARDIZE PASSAGE OF THIS MUCH NEEDED LEGISLATION.

*Called lady 2/31/84.
explained about bill -
she is satisfied to
have us handle bill*

MSG 84-00019924 PRTY 1 03/02/84 08:48:13 ORIG: LM00 IN= 0006 OUT= 0019
FROM: MARY/MATSU TO: JNU INFO
TARGET: LJHK SUBJ: P O M 8

TO: REPS. M.W. MILLER, CATO, HURLBURT, LACHER, PHILLIPS, LINDAUER, MCBRIDE

FR: DOROTHY JONES
ELSIE O'BRYAN
MEMBERS OF THE ALASKA MUNICIPAL LEAGUE LEGISLATIVE COMMITTEE
P O BOX 24
HOUSTON 99694

RE: HB 172 - MUNICIPAL GOVERNMENT

THANK YOU FOR RESCINDING THE VOTE ON THE AMENDMENT WHICH WAS OFFERED BY
COMMISSION NOTTI. WE UNDERSTAND IT IS THE COMMITTEE'S INTENT TO EXPEDITE
PASSAGE OF THIS LEGISLATION WITHOUT ADDITION CHANGES. THIS PASSAGE
COMPLIES WITH THE INTENT OF WHAT THE ALASKA MUNICIPAL LEAGUE HAS IDENTIFIED
AS A MAJOR PRIORITY OF HAVING THIS BILL PASSED.

Contract
279-1441

452-1527

Anchorage, FAIRBANKS,

-586-5210
Juneau P.O.'s

for position PAPERS
on HB 562.

BOB
KAVER.

Nome - 443-5262

Valdez - 835-4560
Pete Shely

Palmer - 745-4811
McKiven

Ruth
Richard

733-2395

Dorothy Jones
Box 109
Tad Kuntz
9967 1/2

TITLE 29 FACT SHEET

SUMMARY OF HB 172/SB 1 - TITLE 29 (MUNICIPAL CODE)

HB 172 and SB 1 are comprehensive bills that reorganize and clarify Title 29 (Municipal Code), but do not substantially change that part of the state statutes that direct the operation of local government in Alaska.

History: The current Title 29, last revised in 1972, is a hodgepodge of 13 years worth of amendments. It is very difficult for the average citizen to read and understand.

Recognizing the problem, the Legislature adopted SCR 66 in 1980, directing the rewrite of Title 29. A broadly representative policy committee, with the assistance of a technical committee, prepared a revised code after an exhaustive series of meetings, hearings, and public presentations.

HB 170 and SB 180 were introduced in 1981. More hearings were held during the 1981 legislative session, during the interim, and continuing through the 1982 session. SB 180 passed the legislature, but because of controversial floor amendments, Governor Hammond vetoed the bill.

In 1983, SB 1 was introduced by Senators Sturgulewski and Gilman; HB 172, by Governor Sheffield. Both bills are basically the same as the bill that had passed the previous year minus the controversial amendments. More committee work was done in both the House and Senate on the 204 page bill.

Changes: For the most part, these bills reorganize and reword Title 29 for clarity and flexibility. Policy changes of any substance are very few. The main changes are:

Third Class Boroughs: The existing third class borough, Haines Borough, continues in existence, but there is no provision for incorporating new third class boroughs in the future.

Home Rule Status: Second class cities and unincorporated areas are authorized to adopt home rule charters, which must be ratified by a vote of the people.

Municipal Powers: A general grant of municipal powers is given to municipalities, instead of a long list of enumerated powers. The difference is more semantic than actual, since the list includes almost every conceivable municipal power. There is no change in the manner in which boroughs acquire powers.

Organizational Grants/Feasibility Studies: The organizational grants are increased and expanded, depending on the category of local government. Studies for the feasibility of local government are authorized.

Incorporation Requirements: The minimum number of people required for incorporation as either a first class or home rule city is increased from 400 to 600.

Ordinance Violation: Penalties for ordinance violations are increased from a maximum \$500 and 30-days to class B misdemeanor penalties, which are a maximum of \$1000 and 90-days.

Extraterritorial Jurisdiction: Solid and septic waste disposal, utility services, wharves, harbors, and other marine services are added to the list of powers that may be exercised outside the boundaries of the municipality, if the municipality has the authority to exercise the power inside its boundaries.

* Economic Development: Allow economic development as a non-area-wide power for second class

boroughs, without requiring a vote of the people to exercise it.

Franchise: Requires a vote on franchises of more than 5 years; current law requires a vote on all franchises.

Eminent Domain: Removes the requirement that second class cities get permission from the Department of Community and Regional Affairs and the voters before exercising the power of eminent domain.

Planning, Platting, and Land Use: Updates the language, changing "zoning" to "land use".

Run-Off Elections: Allows run-off election procedures and requirements to be changed by ordinance.

Personal Property: Allows exemption of personal property from taxation.

Taxation of Boats: Removes the \$5 and \$15 property tax limit on boats if assessed on the basis of net tonnage.

Penalties and Interest: Increases the maximum penalty on delinquent property and sales tax from 10% to 20% and interest from 8% to 15%.

Revenue Bonds: Authorizes revenue bonds to be payable solely from the revenue and property of the project.

Municipal Assistance Fund: Moves the administration of the Municipal Assistance Fund from the Department of Revenue to the Department of Community & Regional Affairs.

Municipal Property Disposal: Requires municipalities to adopt formal procedures by ordinance; current law sets out procedures including requiring an election on the disposal of any property valued at more than \$25,000.

The substantive differences between SB 1 and HB 172 are:

Hospital Definition: Proposed CSHB 172 (CRA) adds "special" hospitals to the definition section for revenue sharing eligibility.

Farm Use Greenhouses: Senate CRA amendment to SB 1 provides for the assessing of farm use greenhouses on the basis of full and true value for farm use.

Annexation and Detachment: Senate CRA amendment to SB 1 adds detachment language to the annexation sections and establishes a time deadline for Local Boundary Commission action.

Education Powers: Senate CRA recommends amending the powers section to provide for a double majority vote before a second class city or an unincorporated area in an REAA can assume the education power when incorporating as a first class or home rule city. The vote would be both in the proposed incorporating area and the rest of the REAA.

AMENDMENT TO CSHB 172:

Add in AS 29.60.140 after the word borough "or within an organized borough"

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 1, 1984

SUBJECT: Proposed amendment to the municipal
code revision bill (CSHB 172 C&RA))

TO: Representative Mike W. Miller
Chairman
House Community and Regional Affairs

FROM: Tamara Brandt Cook *TBC*
Deputy Director
Division of Legal Services

You have asked what the legal effect would be of adding language to Sec. 29.60.140(b) in CSHB 172 (C&RA) so that the subsection would read:

(b) In this section "unincorporated community" means a place in the unorganized borough or within an organized borough that is not incorporated as a city and in which 25 or more persons reside as a social unit. (New language underlined)

That section provides for aid to unincorporated communities. It replaces the current program of aid to Native village governments contained in AS 29.89.050 to reflect the way the program has actually been administered. Under sec. 29.60.140 each unincorporated community in the unorganized borough may receive an annual entitlement of \$25,000 if there is a qualified entity in the community to receive and spend the money. The amendment changes the definition of "unincorporated community" to include communities in boroughs as well as communities outside of boroughs. Under this amendment, an unincorporated community, no matter where it is located in the state, can qualify to receive a grant.

You have also asked whether this amendment would have any fiscal impact. Since under the section as it now appears, only certain communities may receive a grant (those in the unorganized borough), and since the amendment would have the effect of increasing the number of communities that would

Representative Mike W. Miller
Page 2
March 1, 1984

qualify for a grant by including communities in all the organized boroughs, it seems that the number of grants awarded under the section could increase substantially. Assuming an effort is made to fully fund the program, the program as amended will probably be significantly more expensive than it would have been under the original section. I have no way to determine how much additional money would be needed to fully fund the program.

You have also asked whether this amendment will encourage the formation of municipalities. I can think of no legal reason that this amendment would have that effect. Granting money to communities would not remove the limitation on incorporation of a cities under sec. 29.05.020 of the bill. In addition, some communities that would qualify for a grant on the basis of population would not be able to incorporate as a city for lack of 25 voters required to sign an incorporation petition. This is the minimum number of voters necessary for incorporation of a city. (See 29.05.060 (12)). To receive a grant, all that is needed is 25 residents, including children and others who might not be voters.

TBC:ojb
J4/029

Alaska State Legislature

Barbara Lacher, Chairman
Mac Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811
Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

Amend #12

TO: House C & R A Committee
FROM: Staff
SUBJECT: Difference between CSSB 1 and HB 172
DATE: March 22, 1983

HB 172 amendments needed to make it the same as CSSB 1:

p. 33, after line 28, insert new line (26) 29.35.060 (franchise and permits) and renumber following paragraphs accordingly.

p. 77, after line 6, add a new subsection
(c) this section applies to home rule and general law municipalities.

p. 77, line 9, after "regulate" delete [,] and add a utility service and"

p. 77, line 12 after "is" delete [not]
after AS 42.05, delete [and] and add "or"

p. 77, line 14 delete [(2)...law.] and add (2) municipal regulation is prohibited by AS 42.05.711 (k) or other law.

p. 77, line 17 -20, delete subsection (c) and add a new subsection
(c) A municipality that owns or operates a utility may extend service to adjacent areas outside its municipal boundaries. For that purpose, the municipality may acquire, maintain, and operate utility facilities together with necessary interests in real property outside its municipal boundaries.

p. 77, lines 21-22, delete subsection (d) and add a new subsection
(d) Unless a utility is owned by the municipality that is regulating it, all rates, charges, and regulations shall be established by the municipality in accordance with an ordinance that provides procedures for regulating service and establishing and changing rates and charges. The ordinance shall provide for procedures necessary to guarantee due process, including notice and hearing requirements. Rates and charges

Do not adopt

Rep. Lacher's copy

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811
Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: House C & R A Committee
FROM: Staff
SUBJECT: Difference between CSSB 1 and HB 172
DATE: March 22, 1983

HB 172 amendments needed to make it the same as CSSB 1:

- ✓ p. 33, after line 28, insert new line (26) 29.35.060 (franchise and permits) and renumber following paragraphs accordingly.
- ✓ p. 77, after line 6, add a new subsection (c) this section applies to home rule and general law municipalities.
- ✓ p. 77, line 9, after "regulate" delete [,] and add a utility service and"
- ✓ p. 77, line 12 after "is" delete [not] after AS 42.05, delete [and] and add "or"
- ✓ p. 77, line 14 delete [(2)...law.] and add (2) municipal regulation is prohibited by AS 42.05.711 (k) or other law.
- ✓ p. 77, line 17 -20, delete subsection (c) and add a new subsection (c) A municipality that owns or operates a utility may extend service to adjacent areas outside its municipal boundaries. For that purpose, the municipality may acquire, maintain, and operate utility facilities together with necessary interests in real property outside its municipal boundaries.
- ✓ p. 77, lines 21-22, delete subsection (d) and add a new subsection (d) Unless a utility is owned by the municipality that is regulating it, all rates, charges, and regulations shall be established by the municipality in accordance with an ordinance that provides procedures for regulating service and establishing and changing rates and charges. The ordinance shall provide for procedures necessary to guarantee due process, including notice and hearing requirements. Rates and charges

Included in Amendment #9

Included in Amendment #9

* established under this section shall be reasonable and permit a fair return on invested capital. p. 77, Sec. 29.35.070, add new subsection (e) A dispute involving a utility certificated under AS 42.05 as to the reasonableness of the fees or the terms, conditions, or exceptions to a permit to use municipal streets shall be decided under AS 42.05.251.

p. 77, Sec. 29.35.070, add a new subsection

* (f) In case of a conflict between the provisions of this section and AS 42.05 or concerning an action taken under this section or AS 42.05 involving the regulation of service or the rates or charges of a utility certificated under AS 42.05, the provisions of AS 42.05.641 apply.

p. 77, Sec. 29.35.070, add a new subsection

(g) This section applies to home rule and general law municipalities.

p. 195, line 22, add

* Sec. 62. AS 42.05.711 is amended by adding a new subsection (k) A public utility that is exempt or partially exempt under this section from the provisions of AS 42.05.010 - 42.05.721 may not be regulated by a municipality. This subsection does not apply to a public utility exempt under (b) of this section.

Renumber following sections accordingly.

1. p. 107, line 29, after "borough" delete [including...period;]

2. p. 61, line 10, after "(3) delete [is] and add "has been after "elections" add for at least 30 days immediately preceding the municipal election; and

3. p. 14, lines 17-26, after "action." add The standards and procedures established under this subsection that apply to detachment shall be the same as the standards and procedures that apply to annexation, except that the standards and procedures that apply to detachment must include provisions for equitable prorated payment of debts acquired by the municipality before the detachment.

p. 14, line 19 after (1) add, subject to (2) and (3) of this subsection,

p. 14, line 23 after "annexed" delete [by ordinance ...approval] and add or detached by ordinance without an election;

p. 14, line 24 after "annexed" add or detached

p. 14, after subsection (3) add a new subsection (4) within 90 days after receipt of a petition for annexation or detachment, the Local Boundary Commission shall make a decision on the petition.

Alaska State Legislature



Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski

Room 104
State Capitol
Juneau, Alaska 99811
Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 1

Page 35, line 4:

✓ After "request" insert "by a member of the governing body"

Page 35, line 5:

✓ Delete "and"

Page 35, line 6:

After "request" insert "by a member of the governing body"

Page 35, line 8:

Delete "." insert ";

Page 35, after line 8:

* 1
Insert "(4) a municipal employee or official, ^{final} other than a member of the governing body, may not participate in any official action in which the employee or official has a substantial financial interest.

+ 2
(b) If a municipality fails to adopt a conflict of interest ordinance within 180 days after July 1, 1983, the conflict of interest provision of this section is automatically applicable to and binding upon that municipality."

Page 35, line 9:

Delete "(b)" and insert "(c)"

Page 163, line 24:

Delete "allocable" insert "allocatable"

Amendment #1

All housekeeping changes, except for the two which are starred.

* 1 - The muni. must adopt a conflict of interest ordinance that provides that (read #1)

* 2 - If the muni. doesn't adopt a conflict of interest ordinance w/in 180 days after

Alaska State Legislature

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Room 104
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Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 2

The following changes are proposed by Ginny Chiswood, Alaska Municipal League. *Randy Phillips, Mike Szymanski*

1. Page 68, lines 5-7:
Delete section 29.26.250.
 2. Page 68, line 15:
Delete "grounds of", insert "-easons for".
 3. Page 68, line 24:
Delete "grounds" insert "reasons".
 4. Page 69, lines 20,24:
Delete "25", insert "35".
 5. Page 71, line 18:
Delete "grounds of" insert "reasons for".
- Amend*

Explanation: The issue of determining the sufficiency of grounds for a recall election was discussed by the committee. It appeared that a concensus was reached to eliminate the requirement for providing legal grounds to conduct a recall election and to increase signatory requirements for the petitioners.

Amendment #2

- #s 1, 2, 3, & 5 eliminate the specified "grounds for recall" which are:
misconduct in office, incompetence, or failure to perform prescribed duties.
- # 4 increases the signatory requirements for petitioners from 25% to 35%.

STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 24, 1983

SUBJECT: Recall of municipal officials
(Work Order No. 13-0837)

TO: Representative Barbara Lacher

FROM: Tamara Brandt Cook
Legislative Counsel

TBC

You have asked what the responsibility of the clerk is in reviewing recall petitions for sufficiency.

What a recall petition must contain and the method of determining the sufficiency of a petition depends on the specific statute involved and these types of laws vary from state to state. Some statutes require only a general statement of the grounds for recall and an official may be recalled for purely political reasons. However, other statutes require grounds for recall that are more than simple disagreement with matters of policy and the grounds stated must actually constitute misfeasance, malfeasance or nonfeasance in office. McQuillan, Municipal Corporations, vol. 4, sec. 12.251b; Noel v. Oakland County Clerk, 284 N.W.2d 761 (Michigan 1979); Bent v. Ballantyne, 368 S.2d 351 (Florida 1979); Tolar v. Johns, 147 S.2d 196 (Florida 1962); Jacobsen v. Nagel, 96 N.W.2d 569 (Minnesota 1959).

Where petitioners are required to state only general grounds, the recall petition need not state the cause for removal with the same particularity as where the requirement is that reasons for removal be stated clearly. The purpose of a general statement of grounds is to furnish information to electors upon which a political and not a legal issue may be raised. Under statutes providing that a statement of grounds for recall is for the information of the electors, the question of the sufficiency of those grounds is also for the electors, but under provisions authorizing recall for malfeasance or similar language, the sufficiency of the grounds provided is a legal question. 63 Am. Jur.2d, Public

Officers and Employees, sec. 245; Pybus v. Smith, 141 P. 203 (Washington 1914).

Statutory provisions as to recall are to be liberally construed in favor of the electorate's right to exercise recall. Hazelwood v. Saul, 619 P.2d 199 (Colorado 1980). Under this principle and in the absence of statutory language limiting the recall to specific, indicated reasons, the adequacy of grounds stated in a petition is treated as a political matter and courts refuse to enjoin recall petitions on complaints that charges are insufficient. However, where recall is limited to specified grounds of malfeasance or similar language it is generally held that

. . . petitions are inadequate when they indicate only disagreement on matters of policy or political criticism. Antieau, Municipal Corporation Law, sec. 22.200, pages 22-304 - 22-305.

The officer designated to ascertain the sufficiency of a petition in a particular statute may be required to determine legal sufficiency rather than matters of form only. Unless an appeal is specifically provided for, the officer's determination as to sufficiency of a recall petition is final and subject only to judicial correction if the determination is capricious, arbitrary, or plainly erroneous as a matter of law. McQuillan, supra., vol. 4, sec. 12.251(d); Hold v. Trantham, 575 S.W.2d 83 (Texas 1979).

Article XI, section 8 of the Constitution of the State of Alaska provides:

All elected public officials, in the State, except judicial officers, are subject to recall by the voters of the State or political subdivision from which elected. Procedure and grounds for recall shall be prescribed by the legislature. (Emphasis added)

In carrying out this constitutional responsibility the legislature has provided under AS 29.28.140 that misconduct in office, incompetence, and failure to perform prescribed duties are the grounds for recall. In addition, under AS 29.28.150(a)(3), a petition for recall must contain ". . . a statement of the grounds of the recall stated with particularity as to specific instances". (Emphasis added)

The municipal clerk is required to review the petition
". . . for content and signatures . . ." under AS 29.28.160.

These statutory provisions dealing with recall have not been judicially construed by the Supreme Court in this state, so it cannot be determined with certainty whether the clerk is required to review the petition for signatures and form only or whether the clerk must determine as a legal matter whether the specific instances set out in a petition, if true, constitute misconduct in office, incompetence or failure to perform prescribed duties. Under the principles set out previously in this memorandum it appears that the clerk is required to determine whether the specific instances set out support a claim of misconduct in office, incompetence or failure to perform prescribed duties because AS 29.28.150 demands more than just a general statement of the grounds for recall and does not specifically indicate that the stated grounds are for the information of the voters only.

Under both versions of the bill revising Title 29, SB 1 and HB 172, the grounds for recall remain unchanged although the procedure for recall has been substantially changed. Nevertheless, an applicant for a recall petition under Sec. 29.26.260(a)(3) is still required to set out the grounds ". . . with particularity". The clerk must prepare a recall petition only if the clerk determines that the application for the petition meets the requirements of AS 29.26.260, including the requirement that grounds be ". . . stated with particularity" (Sec. 29.26.280). After a petition is filed the clerk must again determine whether the petition is sufficient and, if insufficient, ". . . identify the insufficiency and notify the sponsors. . ." (Sec. 29.26.290). It seems clear that since the clerk must identify the insufficiency, a determination of sufficiency is not limited to review of signatures, even though (b) and (c) of the section only provide for correcting a petition insufficient for lack of signatures. It appears under these sections that the clerk would still be required to determine whether the grounds stated, if true, actually constitute misconduct in office, incompetence, or failure to perform prescribed duties.

I believe that this interpretation conforms to the intent of the policy committee that produced the original version of a Title 29 revision bill. There was considerable discussion of the recall provisions by that committee and at one point

Representative Barbara Lacher
Page 4
February 24, 1983

the committee considered requiring only a general statement of reasons for recall and allowing recall to proceed upon purely political grounds. It was even suggested that grounds for recall be eliminated entirely. That approach was specifically rejected by the committee. Consequently, I would recommend that HB 172 be amended to clearly reflect the fact that the clerk is to review a recall petition for form and signatures only, and not to determine whether grounds stated actually constitute misconduct in office, incompetence, or failure to perform prescribed duties, if that is the result intended by the legislature.

TBC:ljb

NOTES APPLICABLE TO FOLLOWING IMAGE

Editorial Comments

Amendments on this subject should be:

- 1) Pg. 75, delete lines 19-21.
2) Pg. 75, delete lines 27-29
- } These sections give the municipality the Authority to REQUIRE individuals to use the opt. provided garbage collection service rather than another method.

Boy, That's some "free market" when the government is allowed to come in + force a garbage collection company out of business + buy them out at a government-determined price !!

Amendment #3

This would clarify exactly what eminent domain is used for: (to acquire the certificate, equipment + facilities of the carrier, or that portion of the certificate that would be affected).

Eric's suggested amendment

Pg. 76, lines 18-20, Delete "A municipality may exercise the right of eminent domain to determine fair market value."

Alaska State Legislature

Barbara Lucher, Chairman
Mac Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811
Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 3

Page 76, lines 19 and 20:

Delete "determine fair market value" insert "acquire the certificate, equipment and facilities of the carrier, or that portion of the certificate that would be affected".

Explanation: The right of eminent domain is not used to determine fair market value. The determination of fair market value is a step in the process of exercising eminent domain. As written, the statement may not meet the intent of allowing municipalities to exercise the right of eminent domain to acquire certificates or property.

*Passed
& adopted,
voted no*

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 4

Page 126, line 3:
Delete "\$100,000.00" insert "\$20,000.00".

Passed

Explanation: During Committee review of House Bill 172, there appeared to be a consensus of the committee that the minimum value of property to be foreclosed upon without notification to the owner by certified mail is too high (\$100,000.00).

Amendment #4

The bill currently requires notice to all holders of a mortgage or lien on property only if the assessed value is \$100,000 or more. This would reduce the minimum to \$20,000.

Alaska State Legislature



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Mae Tischer, Vice-Chairman
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Don Clocksin
Jack McBride
Mike Szymanski

Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 5

Passed

Page 204, lines 7 and 8:
Recommend change to read:

Sec. 85. AS 29.45 "as enacted in Sec. 11 of this Act is effective on January 1 of the year following enactment.

Explanation: HB 172 may be enacted into law in 1983 or 1984, depending on legislative action. The amendment will avoid the possibility of a "split" tax year and will provide time for municipal planning purposes.

Sec. 29.40.210. ACTIVITIES AUTHORIZED BY STATE OR FEDERAL AGENCIES. (a) Ordinances, regulations, permit decisions, coastal management or other land use plans adopted or promulgated under AS 29.35.180, AS 29.45 or AS 46.40 may not preclude or otherwise impede a hydrocarbon, mineral or geothermal exploration, development or production activity or project conducted pursuant to a lease, license, permit or other authorization issued by a state or federal regulatory agency or department having jurisdiction over the activity or project.

(b) The provisions of this section apply to home rule and general home rule and general law municipalities.

SENATE AMENDMENT

MAR 15 1983

By Community & Regional Affairs CommitteeTo: _____ SENATE BILL No. 1

To: _____ HOUSE BILL No. _____

PAGE: 33 LINE: 27

Insert "(26) 29.35.060 (franchise and permits)". Renumber following paragraphs accordingly.

* Page 33, line 29, insert:

"(28) 29.35.075 (disputes and conflicts with state certificated utilities)"

Page 77, after line 3, insert:

"(c) This section applies to home rule and general law municipalities."

Page 77, line 4-19, delete Section 29.35.070 and insert:

"Sec. 29.35.070. PUBLIC UTILITIES. (a) The assembly acting for the area outside all cities in the borough and the council acting for the area in a city may regulate the service, and may fix, establish, and change the rates and the charges imposed for a utility service provided to the municipality or its inhabitants by a utility except to the extent

(1) the utility is subject to regulation under AS 42.05; or

(2) municipal regulation is prohibited by AS 42.05.711(k) or otherwise specifically prohibited by law.

(b) The municipality may provide for a reasonable deposit for meters and service to be given if interest is paid on the deposit.

(c) Unless the utility is owned by the municipality that is regulating it, all rates, charges and regulations established under this section shall be established as provided by an ordinance of the municipality establishing

the procedures for regulating service and procedures for establishing and changing the rates and charges of the utility. The ordinance shall provide for notice, hearing and other procedures necessary to guarantee due process. The rates and charges established shall be reasonable and shall permit a fair return on invested capital.

(d) This section applies to home rule and general law municipalities.

Page 77, after line 19, insert:

"Sec. 29.35.075. DISPUTES AND CONFLICTS WITH STATE CERTIFICATED UTILITIES. (a) A dispute as to the reasonableness of the fees for or the terms, conditions, or exceptions to a permit for a utility certificated under AS 42.05 to use municipal streets, alleys or other public ways of the municipality shall be decided under AS 42.05.251.

and (b) In case of a conflict between the provisions of AS 29.35.070 or AS 42.05 or an action taken under either as to the regulation of service rates or charges of a utility, the provisions of AS 42.05.641 apply.

* (c) This section applies to home rule and general law municipalities.

Page 195, after line 19, insert:

"*Sec. 62. AS 42.05.711 is amended by adding a new subsection to read:

(k) Except for municipally owned and operated utilities subject to (b) of this section, municipalities may not regulate utility services, including but not limited to rates, terms and conditions of services, provided by a person, utility or cooperative that is exempt from regulation under AS 42.05.711."

Re-number following sections accordingly.

SENATE AMENDMENT

BY Community & Regional Affairs CommitteeTo: _____ SENATE BILL No. 1

To: _____ HOUSE BILL No. _____

PAGE: 74 LINE: 9

Delete "utility services,"

Page 77, after line 17, insert:

"(d) A municipality that owns or operates a utility may extend service to adjacent areas outside its municipal boundaries. For that purpose the municipality may acquire, maintain and operate utility facilities together with necessary interests in real property outside its municipal boundaries."

Page 77, line 18, delete:

"(d)" and insert "(e)"

Alaska State Legislature

Representative Milo Fritz
District 5
P.O. Box 158
Anchor Point, Alaska 99556
(907) 235-8366



While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-4833

House of Representatives

MILO FRITZ

MEMORANDUM

TO: Representative Milo H. Fritz
FROM: David Schade, Staff *Duff*
DATE: August 16, 1983
RE: C&RA Interim Proposal

The House Community and Regional Affairs Committee has 25 Bills and Resolutions in committee at this time. 15 of these bills and resolutions can be researched and prepared for committee hearings in Juneau. 7 of these Bills are no longer valid and 3 Bills will require extensive research.

HB 92 Repeal AK Coastal Management Program by Bettisworth would require extensive research and public hearings. There seems to be much opposition to this bill by Boroughs and Cities around the state, and I do not know if the House Majority Coalition is in favor of this bill.

HB 172 RE: Municiple Government by Rules has had its hearings and is ready to be passed out of committee. I would suggest that staff prepare a report explaining how the different issues have been solved. As we discussed it will be important that the bill is not amended by poorly informed legislators after the bill is passed out of committee.

HB 317 RE: State Revenue Sharing/Municipal Assistance by Rules by request of the Governor is a complex bill. This bill was designed to combine existing revenue sharing and municipal assistance programs into a single program. It would also give increased minimum entitlements for local governments. According to Representative Lachers' Interim Proposal "... the legislation is deficient in equity and may cause unnecessary administrative burdens." It would seem to be beneficial to have public hearings around the state on this bill before session and to have researched and defined the problem areas.

Representative Lacher also proposed to hold public hearings and develop legislation to assist the unincorporated boroughs in the organization process. This was recommended by the Local Boundary Commission, but I do not know anything about this issue.

As you can see there is more work for the committee to do than time available. With only 4½ months before we return to Juneau it will be important to identify the projects that the coalition wants pursued, and allocate our time accordingly.

The following amendment is the differences between House Bill 172 and CS Senate Bill 1 at present. If adopted, both bills would be in line.

AMENDMENT #12 - page 33, after line 28, insert new line (26) 29.3-5.060 (franchise and permits) and renumber following paragraphs accordingly.

page 77, after line 6, add a new subsection - (c) this section applies to home rule and general law municipalities.

page 77, line 9, after "regulate" delete [,] and add a utility service and"

page 77, line 12 after "is" delete [not] and after AS 42.05, delete [and] and add "or"

page 77, line 14 delete [(2)...law.] and add (2) municipal regulat is prohibited by AS 42.05.711 (k) or other law.

page 77, line 17-20, delete subsection (c) and add a new subsection (c) A municipality that owns or operates a utility may extend service to adjacent areas outside its municipal boundaries. For that purpose, the municipality may acquire, maintain, and operate utility facilities together with necessary interests in real property outside its municipal boundaries.

page 77, lines 21-22, delete subsection (d) and add a new subsection (d) Unless a utility is owned by the municipality that is regulating it, all rates, charges, and regulations shall be established by the municipality in accordance with an ordinance that provides procedures for regulating service and establishing and changing rates and charges. The ordinance shall provide for procedures necessary to guarantee due process, including notice and hearing requirements. Rates and charges established under this section shall be reasonable and permit a fair return on invested capital.

*not introduced -
should not be
might be beginning
trail for Senate!*

page 77, Sec. 29.35.070, add new subsection (e) A dispute involving a utility certificated under AS 42.05 as to the reasonableness of the fees or the terms, conditions, or exceptions to a permit to use municipal streets shall be decided under AS 42.05.251.

page 77, Sec. 29.35.070, add a new subsection (f) In case of a conflict between the provisions of this section and AS 42.05 or concerning an action taken under this section or AS 42.05 involving the regulation of service or the rates or charges of a utility certificated under AS 42.05, the provisions of AS 42.05.641 apply.

page 77, Sec. 29.35.070, add a new subsection (g) This section applies to home rule and general law municipalities.

page 195, line 22, add Sec. 62. AS 42.05.711 is amended by adding a new subsection (k) A public utility that is exempt or partially exempt under this section from the provisions of AS 42.05.010 - 42.05.721 may not be regulated by a municipality. This subsection does not apply to a public utility exempt under (b) of this section.

Renumber the following sections accordingly.

page 107, line 29, after "borough" delete [including...period;]

page 61, line 10, after "(3) delete [is] and add "has been
after "elections" add for at least 30 days immediately
preceding the municipal election; and

page 14, lines 17-26, after "action." add The standards and procedures established under this subsection that apply to detachment shall be the same as the standards and procedures that apply to annexation, except that the standards and procedures that apply to detachment must include provisions for equitable prorated payment of debts acquired by the municipality before the detachment.

page 14, line 19 after (1) add, subject to (2) and (3) of this subsection,

page 14, line 23 after "annexed" delete [by ordinance ...approval] and add or detached by ordinance without an election;

page 14, line 24 after "annexed" add or detached

page 14, after subsection (3) add a new subsection (4) within 90 days after receipt of a petition for annexation or detachment, the Local Boundary Commission shall make a decision on the petition. (S.D.#20)

~~AMENDMENT #13 - Change effective dates to present year.~~

END

TO: House C & R A Committee

FROM: Staff

SUBJ: HB172 - Amendment #11

DATE: February 9, 1984

The following change is proposed in the definition section of Article 15, General Provisions, Section 29.60.800(2):

- (2) "hospital" means a licensed hospital determined by the Department of Health and Social Services to be a general OR SPECIAL hospital; the term excludes a facility operated or wholly supported by the state or the federal government.

adopt

Alaska
State
Hospital
Association

Amendment
#10

319 Seward St., Juneau, Alaska 99801 • (907) 586-1790

REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

Chairman of the Board
Donald A. Cavellias
Juneau Hospital Alaska
Juneau

Chairman-Elect
Mark Hawkins
Sitka Community Hospital
Sitka

Immediate Past Chairman
Tom Mingen
Sitka Memorial
Hospital
Sitka

Secretary-Treasurer
Howard Zaine
Wrangell Community
Hospital
Wrangell

Delegate to the American
Hospital Association
M. Camosao
Kodiak Hospital
Kodiak

Alternate Delegate to the
American Hospital Assoc.
Michael Lockwood
Central Peninsula Hospital
Sitka

Delegate to the American
Health Care Association
Anna G. Ivy
Angell Nursing Home
Juneau

Alternate Delegate to the
American Health Care
Association
Anna G. Ivy
Angell General Hospital
Juneau

Delegate to the Association
of Western Hospitals
Michael Mering
Central Peninsula Hospital
Juneau

Alternate Delegate to the
Association of Western
Hospitals
Neil Van Wieringen
Wrangell Island Hospital
Wrangell

Alternate Delegate to the
American Hospital Assoc.
Kathleen
Kodiak Providence
Hospital
Kodiak

Alternate Trustee Delegate
American Hospital
Association
John Jensen
Central Peninsula Hospital
Sitka

Regular Member of
American Hospital Assoc.
Dr. J. Berger, M.D.
Juneau

President
Dennis L. DeWitt
Juneau

March 17, 1983

The Honorable Bill Ray
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Subject: Senate Bill 1

Dear Senator Ray:

You have before you SB 1, the municipal code revision which includes in it revisions to the existing law, AS 29.89, state aid to municipalities and other eligible recipients for health facilities and hospitals.

That section as currently drafted, AS 29.60.120 in SB 1, continues to discriminate against the Juneau Regional Rehabilitation Hospital by excluding it from hospital revenue sharing. This, in spite of the fact that the facility was required to be built to acute hospital standards and functions as an acute facility with a specialty license. The specific problem is caused in the definition section of Article 15, General Provisions, Section 29.60.800(2). This should be changed to read as follows:

(2) "hospital" means a licensed hospital determined by the Department of Health and Social Services to be a general or special hospital; the term excludes a facility operated or wholly supported by the state or the federal government.

Your assistance in securing this amendment would be greatly appreciated.

Sincerely,

Dennis L. DeWitt
President

cc: Representative Mike Miller
Matthew Felix

23

TO: House Community and Regional Affairs Committee

FROM: Staff

SUBJ: HB172 - Amendment #13

DATE: February 8, 1984

All effective dates should be changed to the present year.

*needs introduction
& adoption*

TO: House C & R A Committee

FROM: Staff

SUBJ: HB172 - Amendment #11

DATE: February 9, 1984

The following change is proposed in the definition section of Article 15, General Provisions, Section 29.60.800(2):

- (2) "hospital" means a licensed hospital determined by the Department of Health and Social Services to be a general OR SPECIAL hospital; the term excludes a facility operated or wholly supported by the state or the federal government.

*Needs introduction,
adoption*

Alaska
State
Hospital
Association

319 Seward St., Juneau, Alaska 99801 • (907) 586-1790

REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

*Amendment
#10*

Chairman of the Board
Donald A. Cavellas
Sumner Hospital Alaska
 Anchorage

March 17, 1983

Chairman-Elect
Mark Hawkins
Tux Community Hospital
 Juneau

The Honorable Bill Ray
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Immediate Past Chairman
Tom Mirgen
Arbuckle Memorial
Hospital
 Fairbanks

Secretary-Treasurer
Edward Zaine
Cordova Community
Hospital
 Cordova

Subject: Senate Bill 1

Delegate to the American
Hospital Association
M. Camosso
Providence Hospital
 Anchorage

Dear Senator Ray:

You have before you SB 1, the municipal code revision which includes in it revisions to the existing law, AS 29.89, state aid to municipalities and other eligible recipients for health facilities and hospitals.

Alternate Delegate to the
American Hospital Assoc.
Michael Lockwood
Central Peninsula Hospital
 Kodiak

That section as currently drafted, AS 29.60.120 in SB 1, continues to discriminate against the Juneau Regional Rehabilitation Hospital by excluding it from hospital revenue sharing. This, in spite of the fact that the facility was required to be built to acute hospital standards and functions as an acute facility with a specialty license. The specific problem is caused in the definition section of Article 15, General Provisions, Section 29.60.800(2). This should be changed to read as follows:

Delegate to the American
Health Care Association
Dr.
Alaska Nursing Home
 Juneau

(2) "hospital" means a licensed hospital determined by the Department of Health and Social Services to be a general or special hospital; the term excludes a facility operated or wholly supported by the state or the federal government.

Alternate Delegate to the
American Health Care
Association
Mrs. G. Ivy
Angell General Hospital
 Anchorage

Your assistance in securing this amendment would be greatly appreciated.

Delegate to the Association
of Western Hospitals
Paul Herring
Central Peninsula Hospital
 Kodiak

Alternate Delegate to the
Association of Western
Hospitals
Paul Van Wieringen
Kauai Island Hospital
 Hilo

Sincerely,

Dennis L. DeWitt
President

Delegate to the
American Hospital Assoc.
Kadish
Providence
Hospital
 Anchorage

cc: Representative Mike Miller
Matthew Felix

Alternate Trustee Delegate
American Hospital
Association
Mr. Jensen
Central Peninsula Hospital
 Kodiak

Member of
F. Berger, M.D.

sent
Dennis L. DeWitt

DL

AMENDMENTS

The following is a list that presents a brief explanation of the amendments that were discussed and that received approval from the House Committee on Community and Regional Affairs during the 1983 legislative session. The following amendments 1 through 10, cover the concerns brought out from the proposals previously conducted by the Hammond Administration as well as progressively bringing further clarity and flexibility to Title 29.

passed
AMENDMENT #1 - clarifies the participation of a municipal employee or official in instances where the employee or official has substantial financial interest that may constitute a conflict of interest. Other items on the amendment are grammatical changes and general house keeping changes to further clarify the language (S.D.#9).

delete
AMENDMENT #2 - removes the requirement of determining the "sufficiency of grounds" for a recall election. It replaces "providing legal grounds" with "providing reasons for" and amends the percentage amount of signatures required to constitute a recall election from 25% to 35% (S.D.#10).

passed
AMENDMENT #3 - defines the intent of eminent domain process. As written, the statement may have not met the intent of allowing municipalities to exercise the right of eminent domain to acquire specific certificates or properties (S.D.#11).

passed
AMENDMENT #4 - lowers the minimum value of property to be foreclosed upon without notification to the owner by certified mail to \$20,000.00 from the proposed limit of \$100,000.00 (S.D.#12). Presently, property of any value must be notified.

passed
AMENDMENT #5 - specifies the date that Chapter 45 of Title 29 as written in House Bill 172 will go into effect. The amendment will avoid the possibility of a split tax year and will provide lead time for municipal planning and department assistance for mandated state and federal programs (S.D.#13).

AMENDMENTS

The following is a list that presents a brief explanation of the amendments that were discussed and that received approval from the House Committee on Community and Regional Affairs during the 1983 legislative session. The following amendments 1 through 10, cover the concerns brought out from the proposals previously conducted by the Hammond Administration as well as progressively bringing further clarity and flexibility to Title 29.

AMENDMENT #1 - clarifies the participation of a municipal employee or official in instances where the employee or official has substantial financial interest that may constitute a conflict of interest. Other items on the amendment are grammatical changes and general house keeping changes to further clarify the language (S.D.#9).

AMENDMENT #2 - removes the requirement of determining the "sufficiency of grounds" for a recall election. It replaces "providing legal grounds" with "providing reasons for" and amends the percentage amount of signatures required to constitute a recall election from 25% to 35% (S.D.#10).

AMENDMENT #3 - defines the intent of eminent domain process. As written, the statement may have not met the intent of allowing municipalities to exercise the right of eminent domain to acquire specific certificates or properties (S.D.#11).

AMENDMENT #4 - lowers the minimum value of property to be foreclosed upon without notification to the owner by certified mail to \$20,000.00 from the proposed limit of \$100,000.00 (S.D.#12). Presently, property of ~~any~~ ^{\$10,000} value must be notified.

AMENDMENT #5 - specifies the date that Chapter 45 of Title 29 as written in House Bill 172 will go into effect. The amendment will avoid the possibility of a split tax year and will provide lead time for municipal planning and department assistance for mandated state and federal programs (S.D.#13).

failed

~~AMENDMENT #6 - This amendment did not receive committee approval (S.D. #14).~~

delete

AMENDMENT #7 - deletes "greenhouses" from being considered under a special lower assessment for property taxes on farm use land. The special taxing provisions for farm use land is designed to help farmers resist pressures to sub-divide their land (S.D.#15).

not voted on but motion on floor delete

~~AMENDMENT #8 - deals with required tax exemptions which contain new language that defines "developed" for the implementation of a required federal tax program. This concern was addressed and resolved in Senate Bill 260 (S.D.#16).~~

not voted on but motion on floor delete

~~AMENDMENT #9 - relates to the Alaska Public Utilities Commission. The net effect of the amendment is to prohibit municipalities from regulating utilities unless the type of regulation proposed or the particular utility is not subject to regulation by the Alaska Public Utilities Commission (S.D.#17). Please review HB274 (S.D.#5) which dealt with this issue.~~

PROPOSED AMENDMENTS FOR CONSIDERATION DURING 1984 SESSION

adopt
adopted

AMENDMENT #10 - Legal Services is preparing this amendment, by request of the Chairman, to be considered by the Committee on Community and Regional Affairs during the 1984 legislative session. It will encompass all legislation that was signed into law during the 1983 session that pertains to Title 29. This action is necessary in order to reflect changes made to Title 29 that are not now incorporated in the revision bill.

Three separate pieces of legislation became law. SB85 relates to the certificate of need program and construction funding for health facilities (S.D.#18).

Senate Bill 260 which provides for the definition of "developed" as it relates to lands that are exempt from taxation as stated by federal law (S.D.#4). House Bill 274 would exempt a utility which furnishes cable television from the provisions of the Alaska Public Utilities Commission Act (AS 42.05.010 thru AS 42.05.721) with the exception of provisions requiring a certificate of public convenience and necessity (AS 42.05.221 thru AS 42.05.281), unless 25 percent of the subscribers petition the commission for regulation (S.D.#5).

adopt

AMENDMENT #11 - "special hospitals" to be included in definition of health facilities - AS 29.60.800(2), page 169, line 3 of House Bill 172. That section as currently drafted discriminates against special hospitals by excluding them from hospital revenue sharing. Since these facilities are required to be built to acute hospital standards and function as an acute facility with a specialty license, language to resolve this discrepancy may read as follows:

AS 29.60.800(2),

"hospital" means a licensed hospital determined by the Department of Health and Social Services to be a general or special hospital; the term excludes a facility operated or wholly supported by the state of the federal government (S.D.#19).

The following amendment is the differences between House Bill 172 and CS Senate Bill 1 at present. If adopted, both bills would be in line.

AMENDMENT #12 - page 33, after line 28, insert new line (26) 29.3-5.060 (franchise and permits) and renumber following paragraphs accordingly.

page 77, after line 6, add a new subsection - (c) this section applies to home rule and general law municipalities.

page 77, line 9, after "regulate" delete [,] and add a utility service and"

page 77, line 12 after "is" delete [not] and after AS 42.05, delete [and] and add "or"

page 77, line 14 delete [(2)...law.] and add (2) municipal regulation is prohibited by AS 42.05.711 (k) or other law.

page 77, line 17-20, delete subsection (c) and add a new subsection (c) A municipality that owns or operates a utility may extend service to adjacent areas outside its municipal boundaries. For that purpose, the municipality may acquire, maintain, and operate utility facilities together with necessary interests in real property outside its municipal boundaries.

page 77, lines 21-22, delete subsection (d) and add a new subsection (d) Unless a utility is owned by the municipality that is regulating it, all rates, charges, and regulations shall be established by the municipality in accordance with an ordinance that provides procedures for regulating service and establishing and changing rates and charges. The ordinance shall provide for procedures necessary to guarantee due process, including notice and hearing requirements. Rates and charges established under this section shall be reasonable and permit a fair return on invested capital.

page 77, Sec. 29.35.070, add new subsection (e) A dispute involving a utility certificated under AS 42.05 as to the reasonableness of the fees or the terms, conditions, or exceptions to a permit to use municipal streets shall be decided under AS 42.05.251.

page 77, Sec. 29.35.070, add a new subsection (f) In case of a conflict between the provisions of this section and AS 42.05 or concerning an action taken under this section or AS 42.05 involving the regulation of service or the rates or charges of a utility certificated under AS 42.05, the provisions of AS 42.05.641 apply.

page 77, Sec. 29.35.070, add a new subsection (g) This section applies to home rule and general law municipalities.

page 195, line 22, add Sec. 62. AS 42.05.711 is amended by adding a new subsection (k) A public utility that is exempt or partially exempt under this section from the provisions of AS 42.05.010 - 42.05.721 may not be regulated by a municipality. This subsection does not apply to a public utility exempt under (b) of this section.

Renumber the following sections accordingly.

page 107, line 29, after "borough" delete [including...period;]

page 61, line 10, after "(3) delete [is] and add "has been
after "elections" add for at least 30 days immediately
preceding the municipal election; and

page 14, lines 17-26, after "action." add The standards and procedures established under this subsection that apply to detachment shall be the same as the standards and procedures that apply to annexation, except that the standards and procedures that apply to detachment must include provisions for equitable prorated payment of debts acquired by the municipality before the detachment.

page 14, line 19 after (1) add, subject to (2) and (3) of this subsection,

page 14, line 23 after "annexed" delete [by ordinance ...approval] and add or detached by ordinance without an election;

page 14, line 24 after "annexed" add or detached

page 14, after subsection (3) add a new subsection (4) within 90 days after receipt of a petition for annexation or detachment, the Local Boundary Commission shall make a decision on the petition. (S.D.#20)

AMENDMENT #13 - Change effective dates to present year.

END

adopted

TO: House Community and Regional Affairs Committee

FROM: Staff

SUBJ: HB172 - Amendment #13

DATE: February 8, 1984

All effective dates should be changed to the present year.

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

March 29, 1984

To: All members of House Judiciary Committee
and Fairbanks Delegation

Re.: Opposition to CSHB 172 (C&RA), an act changing local
government law

Dear Legislators:

CSHB 172 conflicts with numerous constitutional provisions. In the past I have written extensively and pointed out the problems with this bill (attached is a copy of my twelfth letter to all Legislators, a letter to the editor and one addressed to Governor Hammond in 1982 concerning the basically same bill then, that was stopped by veto).

Now, like then, the public is not aware that this notorious administration-pushed bill is moving again. The public is uninformed of the changes in present law should CSHB 172 be passed and in fact is denied a fair opportunity to comment. This bill is to the public like a thief in the night that will rob the people of their constitutional right to maximum local self-government, to property, etc.

(Upon your request I will gladly, within a reasonable time, prepare a more detailed analysis of this bill with respect to the the provisions of the Alaska Constitution and the people as a whole.)

Without further public input, this bill should die in your committee. Present law provides adequately for the necessary administration and for maximum local self-government.

Very truly yours,


Wolfgang Falke

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

Twelfth open letter to all
Legislators of the State of Alaska

May 19, 1982

Re.: HCS CSSB 180(2d Fin) "An Act relating to municipal government"

Dear Legislator:

We have spent much time reviewing this version of SB 180 as well as the other committee versions. We only can react to a bill that comes out of a committee and the comments we make seem to be of no concern to the next committee scrutinizing and amending the same bill from their special point of interest. Therefore please consider the objections expressed from the viewpoint of the voters as enumerated in the letters I previously mailed to you plus the following:

With respect to the proposed procedures for the incorporation of home rule municipalities - in order to assure maximum local voter approval and local self-determination - the following changes must be made:

Delete proposed AS 29.05.060(13) "for a home rule municipality a proposed home rule charter" (at page 6);

delete proposed AS 29.05.110(d) "A home charter included in an incorporation petition under AS 29.05.060(13) is considered to be part of the incorporation question. The home rule charter is adopted if the voters approve incorporation of the municipality." (at page 8);

add "Because a home rule municipality has all legislative powers not prohibited by law or charter, a listing of each additional municipal power (additional to the mandatory powers of tax assessment and collection, education etc.) must appear separately on the ballot so that each could be voted on for the purpose of exclusion from exercise by the proposed new municipality.";

delete proposed AS 29.10.010(g) "The proposed charter for an unincorporated community or an area of the unorganized borough shall be filed with the incorporation petition filed under AS 29.05.060." (at page 28); and

add the following to AS 29.10.020:

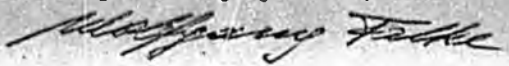
"Model charters may serve only as an example or as a guideline to the members of the charter commission and must not be made a part of the incorporation petition under AS 29.05.060."

With respect to penalties (AS 29.25.070 at page 57), violation (AS 29.-40.180 at page 92) and remedies (AS 29.40.190 at page 92) - in addition to the objections expressed in my previous letters - the following ought to be added:

"Harm must be established in an action under this Title. Harmless violation of a provision under this Title or of an ordinance or regulation shall not be construed as a punishable offence."

HB 170 or SB 180 in any form must not become law.

Very truly yours,


Wolfgang Falke

P.S.

The third class borough form of local government is not "only a school district"! Please see AS 29.41.010(b), and my 10th and 4th open letter to all Legislators.

The third class borough must remain law as a first step to borough organization.

10: Another Daily
Dear Gov
Please
Write up a letter
the Gov
Thank
Wolfgang

Jay S. Hammond, Governor
3rd Floor State Capitol
Fouch A
Juneau, Alaska 99811

June 3, 1982

Re.: HCS-CSSB-180(Jud)amH, "An Act relating to municipal government"

Dear Governor Hammond:

HCS-CSSB-180(Jud)amH, "An Act relating to municipal government", having passed both the House and the Senate, now comes across your desk for approval, inaction, or veto. Before you decide the fate of this bill, please consider the following comments for the good of the people of Alaska as a whole:

This bill has received little publicity and only in recent weeks was labeled by the Municipal League and the Associated Press as just revising or reorganizing "chaotic laws regulating cities". In reality this bill is fundamentally changing the form of borough government and eliminating local voter approval of additional municipal powers to be exercised by second class boroughs, as well as deleting the reclassification option from second to third class status and the formation of new third class boroughs. Among other fundamental changes, it will, without the vote of the people, allow second class boroughs to provide for economic development, i.e. unrestricted government business and government industrial development. That is something the Voters of Fairbanks turned down by about 75% "No"-votes at the last general election.

By conferring authority to exercise additional municipal powers without the approval of the local electorate, and by prohibiting the formation of new third class boroughs the legislature is violating the constitutional mandate to provide for maximum local self-government. The Municipal League is pushing for passage of the bill and hiding the bills true intention of stripping the local citizens of their right to voter approval for the exercise of additional powers by the borough governments. This is also evidenced in my recent letter to the Editor of the Fairbanks Daily News-Miner, copy of which is attached hereto.

At the time the people of Alaska adopted the Constitution of the State of Alaska it was their will to retain the right of self-determination over local government, and that any additional exercise of municipal powers or special services must be approved by the voters of the locality affected. It is your duty as Governor of the State of Alaska to support and defend the Constitution of the State of Alaska, therefore you are obligated, pursuant to Article I, Sections 2, 15, and 21, Article II Sections 13 and 19, and Article X of our Alaska Constitution to exercise your veto power over this unconstitutional enactment created in HCS-CSSB-180-(Jud)-am-H by our legislators.

For the good of the people as a whole I urge you to veto this bill.

Very truly yours,

Wolfgang Falke
Wolfgang Falke

cc: Editors of
Alaska newspapers

P.O.Box 1166
Fairbanks, Alaska 99707

May 29, 1982

Fairbanks Daily News-Miner
200 No. Cushman St.
Fairbanks, Alaska 99701

Dear Editor:

This is in response to the Juneau AP report in your May 26, 1982 issue regarding Senate Bill 180, "An act relating to municipal government", wherein it was stated:

"Alaska Municipal League Executive Director Ginny Chitwood defended the bill. She said city officials have struggled for years with Alaska's disorganized set of rules regulating their decisions, and the bill would straighten out the complicated municipal code."

A quick look at SB 180 and present law will convince overwhelmingly that the contrary is true! The proposed new law will allow existing second class boroughs to exercise many new additional powers circumventing local voter approval. Among such additional powers are the powers to provide for unrestricted government business and government industrial development, something that the voters of Fairbanks turned down by about 75 % "No" votes at the last general election. It is unconstitutional and unlawful for the legislature to "confer" the authority to exercise such powers to second class boroughs without the consent of the local voters.

The Municipal League's further statement, that

"... local governments formed under other law (general law, other than home-rule) may do only what is specifically allowed in the municipal code."

is false! Present law confers undiscriminatingly all municipal powers to any class of borough or city. Third class boroughs must exercise the areawide powers of tax assessment and collection, and education; second class boroughs must exercise the areawide powers of tax assessment and collection, education, and planning, platting and zoning. Any additional powers proposed for exercise by a second or third class borough must be approved by the local voters affected; and if more than one power is proposed, each must appear separately on the ballot. That is the law that was approved by the citizens when they voted to incorporate as a second or third class borough, and the legislature cannot legally change that law without the approval of the voters of

existing second or third class boroughs.

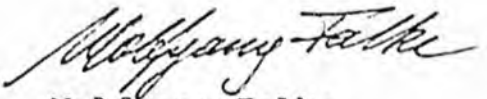
The Municipal League's further statement, that

"The reason for prohibiting any new third class boroughs is that state law limits the powers of third class boroughs making it difficult for the locality to spend revenue sharing money they collect from the state."

is a careless misconstrual. State law does not limit the powers of a second or third class borough - the citizens do, by a majority vote of the electorate! The citizens of a third class borough can approve by majority vote any additional municipal power they would like their local government to exercise on a service area basis, and should they desire their local government to exercise areawide or non-areawide additional powers they would vote to reclassify to second or first class status. It's not the legislature that limits the powers to be exercised by the local government, the local citizens do. The Alaska Constitution, Article X, Section 1, demands that the legislature shall prescribe law for maximum local self-government, and for different classes of boroughs and cities, and to provide for their reclassification. Therefore new incorporation of third class boroughs, as well as reclassification from second to third class borough status, must not be tampered with!

SB 180 MUST NOT BECOME LAW IN ANY FORM!

Very truly yours,


Wolfgang Falke