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Introduced: 2/13/84
Referred: Community & Regional
Affairs, Judiciary and Finance

1 IN THE HOUSE

BY LINDAUER, ADAMS AND HURLBERT

2

HOUSE BILL NO. 629

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act providing that certain Native governments and corporations are political subdivisions of the state for the purpose of receiving state funds."

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

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* Section 1. AS 29.73 is amended by adding a new section to read:

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Sec. 29.73.090. NATIVE GOVERNMENTS AND CORPORATIONS. A Native

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government organized under 25 U.S.C. 476 or a Native corporation

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organized under 25 U.S.C. 477 is a political subdivision of the state

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for the purpose of receiving state funds and qualifies for state

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assistance available to municipalities or other governmental entities.

STAFF NOTE:
Replacing with Comm. Substitute
gone to Dept. 3/5/84

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

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

949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508
PHONE: (907) 563-1073

March 28, 1984

POSITION PAPER

RE: CS HB 629 (C&RA)
SPONSOR: Representative Lindauer

PROGRAM EFFECTS:

This bill would qualify Native councils of a federally recognized tribe or an Indian Reorganization Act council to receive State assistance on the same basis as money is made available to second class cities. Native councils representing villages of less than 25 permanent resident voters, or representing villages that would not qualify to incorporate as cities due to population or location, would not be eligible.

Native councils receiving money under this section would have to meet the same requirements as those imposed on second class cities. This would include increased requirements in the areas of budgeting, certified financial statements, annual elections, regular and public council meetings, and a codification of ordinances passed by the council. The bill further requires that funds be used only for a public purpose in a nondiscriminatory way.

The Department shall, by January 1 of each year, certify and transmit to the Legislature a list of all communities which qualify under this provision.

The method used to implement these provisions is a bit confusing because it does not address, or even cross-reference, the actual sections of State law affected by this provision.

COMMENTS:

While the Department supports the concept of this bill, the items mentioned above would need to be addressed.

APPROVED:

Emil Notti

Emil Notti, Commissioner

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CS HB 629
 Title: "Native councils qualify to receive State assistance"
 Sponsor: C&RA Committee
 Requestor: House Finance Committee
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Community & Regional Affairs
 Program Category Affected: Community Development
 BRU, Program or Subprogram(s) Affected: Community Assistance Grants
Municipal Revenue Sharing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS		770.0				
800 MISCELLANEOUS						
TOTAL OPERATING		770.0				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		770.0				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		-0-				
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: N. WINTERS Phone: 465-4700
 Division: Commissioner's Office Date: _____

Approved by Commissioner: *N. Winters* Date: _____
 Agency: Community & Regional Affairs

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

700 Grants

Approximately 55 Native Councils in unincorporated communities now receive, or are eligible to receive, State Revenue Sharing of \$25,000 as unincorporated communities. To pay Native Councils as second class cities receiving minimum entitlements of \$25,000 plus a cost-of-living adjustment would increase the entitlement going to Native Councils by about \$8,000 per council government. Therefore, part of the fiscal impact of this bill is reflected by:

55 Native Councils X \$8,000 = \$440,000

In addition, the bill would pay about 10 Native Village Councils located outside cities but within organized boroughs about \$33,000 each on average. These communities do not presently receive anything under State Revenue Sharing. Therefore, the remainder of the fiscal impact of this bill would pay:

10 Native Councils inside organized boroughs X \$33,000 =
\$330,000

TOTAL FISCAL IMPACT \$770,000

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date

REQUEST

Bill/Resolution No: CS HB 629 (C&RA)
 Title: Providing for political sub-
 divisions for state funds.
 Sponsor: C&RA (Lindauer)
 Requestor: House C&RA
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Revenue
 Program Category Affected: _____
 General Government
 BRU, Program of Subprogram(s) Affected: _____
 Shared Taxes, Administrative Services
 Division _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<u>OPERATING</u>						
100 PERSONAL SERVICES	-	-0-	-	-	-	-
200 TRAVEL	-	-0-	-	-	-	-
300 CONTRACTUAL	-	-0-	-	-	-	-
400 SUPPLIES	-	-0-	-	-	-	-
500 EQUIPMENT	-	-0-	-	-	-	-
600 LANDS & STRUCTURES	-	-0-	-	-	-	-
700 GRANTS, CLAIMS	-	-0-	-	-	-	-
800 MISCELLANEOUS	-	-0-	-	-	-	-
<u>TOTAL OPERATING</u>	-	-0-	-	-	-	-
<u>CAPITAL</u>	-	-0-	-	-	-	-
<u>REVENUE</u>	-	-0-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-0-	-	-	-	-
FEDERAL FUNDS	-	-0-	-	-	-	-
OTHER	-	-0-	-	-	-	-
<u>TOTAL</u>	-	-0-	-	-	-	-

POSITIONS:

FULL-TIME	-	-0-	-	-	-	-
PART-TIME	-	-0-	-	-	-	-
TEMPORARY	-	-0-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: See attached.

Prepared By: Ervin B. Jones
 Division: Administrative Services

Phone: 465-2313
 Date: 3/30/84

Approved by Commissioner: Barry M. Wells
 Agency: _____

Date: 3/30/84

Distribution (by Agency preparing fiscal note):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Analysis for CS HB 629 (C&RA):

This bill will have no effect on the administrative cost of the municipal assistance program in the Department of Revenue. The effect of Section 1 would be to reduce the amount of municipal assistance shared with cities and organized boroughs currently covered under the law. The extent of this dilution would depend on the number of native governments and native corporations qualifying under Section 1. The impact would be to reduce the amount available for per capita sharing under AS 43.20.016.

16

TO: REPS HAYES, DAVIS, BETTISWORTH, KOPONEN, RINGSTAD, M.W. MILLER
SENS BENNETT, FAHRENKAMP, MOSS

HOUSE C & RA
REPS CATO, HURLBERT, LACHER, PHILLIPS, LINDAUER, MCBRIDE

FROM: THOMAS SCARBOROUGH
SR 10219
FAIRBANKS, ALASKA 99701
479-3412-H 479-5602-W

APR 4 '84

RE: HB 629, POLITICAL SUBDIVISION

MSG: REQUEST YOU OPPOSE HB 629. POLITICAL SUBDIVISION MUST NOT BE
ESTABLISHED ON THE BASIS OF RACE, RELIGION OR SEX.

-----EOM-----



Ukpeagvik Inupiat Corporation

March 21, 1984

Representative John Lindauer
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

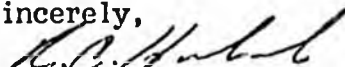
Dear Representative Lindauer:

On behalf of the Board of Directors and the Shareholders of the Ukpeagvik Inupiat Corporation, we would like to commend you on taking the initiative of introducing House Bill No. 629 in the Thirteenth Alaskan Legislature. UIC represents approximately 54 % of the North Slope Inupiat.

We believe that House Bill No. 629 is an important piece of legislation which merits a positive review by the Community and Regional Affairs, Judiciary and Finance Committees. The Ukpeagvik Inupiat Corporation Resolution 84-6, which is enclosed, affirms that position.

If we can be of any assistance to you whatsoever with reference to this legislation, please do not hesitate to contact me at your convenience.

Sincerely,


R.C. MARCHAREK, PH.D
Director of Technical Assistance

Enclosure;

cc: Files

RCH/el



Ukpeagvik Inupiat Corporation

RESOLUTION 84-6

WHEREAS, Ukpeagvik Inupiat Corporation is the village corporation of Barrow, Alaska organized pursuant to Sec. 8 of the Alaska Native Claims Settlement Act; and

WHEREAS, Article III of the Articles of Incorporation of UIC states the purposes for which this corporation is organized; and

WHEREAS, enumerated item number three (3) of Article III states as an organizational purpose: "To engage in all activities, whether economic, cultural, social or charitable to protect and preserve the well-being of the Native residents of the Native Village of Barrow, and to engage in and conduct any and all lawful activity necessary or convenient in furtherance thereof"; and

WHEREAS, enumerated item number five (5) of Article III states as an organizational purpose: "To do all and everything necessary suitable or proper for the accomplishment or attainment of any benefit or object herein set forth, including every act or thing necessary, incidental or pertinent to or growing out of or connected with the affairs of the Corporation"; and

WHEREAS, House Bill No. 629 in the Legislature of the State of Alaska, Thirteenth Legislature was introduced on 13 February 1984 by Representatives Lindauer, Adams and Hurlbert; and

WHEREAS, House Bill No. 629 in the State of Alaska Thirteenth Legislature Second Session states in §. 29.73.090. "Native Governments and Corporations. A Native government organized under 25 U.S.C. 476 or a Native Corporation organized under 25 U.S.C. 477 is a political subdivision of the state for the purpose of receiving state funds and qualifies for state assistance available to municipalities or other governmental entities."; and

WHEREAS, the Ukpeagvik Inupiat Corporation Board of Directors at their regular monthly meeting discussed and analyzed at length the intent and content of House Bill 629,

NOW THEREFORE BE IT RESOLVED, that the Ukpeagvik Inupiat Corporation be on record as endorsing House Bill 629: "An Act providing that certain Native governments and corporations are political subdivisions of the state for the purpose of receiving state funds."

BE IT FURTHER RESOLVED, that the Ukpeagvik Inupiat Corporation commends Representatives John Lindauer, Albert P. Adams and

UIC RESOLUTION 84

14 March 1984

Page two

Vern Hurlbert for taking the initiative of bringing this important matter before the House of Representatives.

FURTHER RESOLVED, that the Ukeagvik Inupiat Corporation requests the Community and Regional Affairs, Judiciary and Finance Committees to take action in support of this legislation.

DATED this 14th day of March, 1984.

Vern Hurlbert, Sr.

President

ATTEST: *Alice A. Solomon*

Corporate Secretary



STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 12, 1984

SUBJECT: State assistance to Native Councils
(CS HB 629 (C&RA))

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

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

Here is the section by section analysis that you requested of the attached draft.

Section 1 A traditional Native council or Native council organized under the Indian Reorganization Act is qualified to receive state aid under any law that makes money available to second class cities. The council receives the aid on the same basis as the city would. To qualify for aid the community represented by the Native council must not be incorporated as a city, must contain at least 25 resident voters or qualify by population and location for incorporation, and must be a Native village as defined under the Alaska Native Claims Settlement Act. (Note that, despite this provision, a Native council may not qualify to receive money under every program that a second class city receives money under. For example, AS 29.38 provides money to "taxing units" and a Native council, which probably does not impose local taxes, may not qualify as a "taxing unit.")

State money received by a Native council may be used only for public purposes and in a manner that does not discriminate. Expenditures are subject to audit and reporting requirements of the Department of Community and Regional Affairs. The department is authorized to adopt regulations to implement this section and is required to transmit to the legislature a list of all communities that qualify for state assistance annually. The section is not to be construed to increase or decrease the authority of a Native council.

Representative Mike W. Miller
Page 2
March 12, 1984

Section 2 The Act takes effect at the beginning of the next fiscal year.

You have also asked whether Metlakatla Indian Community will qualify for aid under this draft. Metlakatla does not qualify under sec. 29.73.090(a)(3) because it is not a Native village for purpose of ANCSA. If it is the intent of the committee that Metlakatla be included, that paragraph could be amended to read:

. . . is a Native village as defined under 43 U.S.C. 1602(c), or is a federally established Indian reserve in existence before enactment of 43 U.S.C. 1618(a) and continued in existence under 43 U.S.C. 1618(a).

If I can be of further assistance with this draft, please let me know.

TBC:ojb
J4/068 Attachment

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3300

March 28, 1984

The Honorable Mike W. Miller
Chairman, House Community
& Regional Affairs Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

Re: Proposed CS for HB 629 (C&RA)

Dear Representative Miller:

At the request of your staff we have reviewed the proposed Committee Substitute for House Bill 629, regarding state assistance to Native Councils. We limit this review to legal aspects only and do not address policy or administrative matters.

In our review of the original version of HB 629 we identified four constitutional problems and numerous other legal problems. The proposed committee substitute addresses the non-constitutional problems, but three of the four constitutional problems remain. Specifically,

- 1) the measure may contravene Article X, Section 2, which limits local governments to boroughs and cities, since it could be read as granting local government status, including the right to receive and spend public funds, to other entities;
- 2) the measure would commit the expenditure of public funds to the discretion of a group whose membership is racially restricted, i.e., to a quasi-government elected by citizens of only one race, in violation of Article I, Section 3;
- 3) the measure would be open to attack on equal protection grounds (Article I, Section 1) by similar groups, e.g., nonprofit organizations, performing similar functions in other communities.

The Honorable Mike W. Miller
Chairman, House Community
& Regional Affairs Committee

March 28, 1984
Page 2

In view of these problems, the Department of Law advises caution by the committee, and we are available to assist if the committee wishes to identify other avenues for providing services to rural communities which do not involve these constitutional problems.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 

Douglas K. Mertz
Assistant Attorney General

DKM:dlm

cc: Arthur H. Peterson
Assistant Attorney General

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date _____

REQUEST

Bill/Resolution No: HB 629
 Title: Providing for political sub-
 divisions for state funds.
 Sponsor: Lindauer
 Requestor: House C&RA
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Revenue
 Program Category Affected: _____
 BRU, Program of Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES	-	-0-	-	-	-	-
200 TRAVEL	-	-0-	-	-	-	-
300 CONTRACTUAL	-	-0-	-	-	-	-
400 SUPPLIES	-	-0-	-	-	-	-
500 EQUIPMENT	-	-0-	-	-	-	-
600 LANDS & STRUCTURES	-	-0-	-	-	-	-
700 GRANTS, CLAIMS	-	0-	-	-	-	-
800 MISCELLANEOUS	-	0-	-	-	-	-
TOTAL OPERATING	-	-0-	-	-	-	-
CAPITAL	-	-0-	-	-	-	-
REVENUE	-	-0-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-0-	-	-	-	-
FEDERAL FUNDS	-	-0-	-	-	-	-
OTHER	-	-0-	-	-	-	-
TOTAL	-	-0-	-	-	-	-

POSITIONS:

FULL-TIME	-	-0-	-	-	-	-
PART-TIME	-	-0-	-	-	-	-
TEMPORARY	-	-0-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: See attached.

Prepared By: Ervin B. Jones
 Division: Administrative Services Division

Phone: 465-2313
 Date: 03/05/84

Approved by Commissioner: [Signature]
 Agency: Revenue

Date: 3/5/84

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Analysis for HB 629:

This bill will have no effect on the administrative cost of the municipal assistance program in the Department of Revenue. The effect of Section 1 would be to reduce the amount of municipal assistance shared with cities and organized boroughs currently covered under the law. The extent of this dilution would depend on the number of native governments and native corporations qualifying under Section 1. The impact would be to reduce the amount available for per capita sharing under AS 43.20.016.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 629
 Title: Native Governments as
political subdivisions - funding
 Sponsor: Lindauer, Adams, Hurlbert
 Requestor: House Community & Regional Affairs
 Date of Request: _____

FISCAL DETAIL

Agency Affected: DCRA
 Program Category Affected: _____
 BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	975.	975.	975.			
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	975.					
FEDERAL FUNDS						
OTHER						
TOTAL	975.					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Jon Cecil Phone: 465-4733
 Division: MRAD Date: 3-5-84

Approved by Commissioner: *Quinn Walker* Date: 3-5-84
 Agency: Community & Regional Affairs

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 12/29/83

Bill/Resolution No.: HB 629
Title: Native governments as political subdivisions
- funding

ANALYSIS:

Assumptions:

Based on a rough estimate 60 IRA's would be eligible for \$25,000 payments under the Revenue Sharing Program.

Positions:

Other Expenditures:

Funding: This is assuming no additional general funds, but prorated division of appropriation.

Section Cost Analysis:

Computations:

Sixty communities @ \$25,000 plus 30% COLA (standard rate).

Economic Impact:

Impact on Local Government:

Attachments

Alaska
MUNICIPAL
League



TELEPHONES
(907) 586-1325
(907) 586-6526

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

To: House CRA Committee

From: Scott A. Burgess, Executive Director

Date: February 29, 1984

Re: HB 629 - Native Governments and Corporations

The brevity of HB 629 belies the complexity of the issues it raises. However, if Native governments and corporations are recognized as political subdivisions for the purpose of receiving state funds, the League urges that the total funding for the state programs for which these entities would be eligible be increased accordingly. This is necessary to preclude the dilution of funding to the current recipients, e.g. State Revenue Sharing.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 2, 1984

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

The Honorable Mike W. Miller
Chairman, House Community
& Regional Affairs Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

Re: HB 629

Dear Representative Miller:

At the request of your staff we have examined HB 629 for legal problems. The Department of Law believes HB 629, as written, has several significant defects which render it unconstitutional as well as impractical to implement. The bill would essentially designate native councils created under the Indian Reorganization Act ("IRA") of 1934 as "political subdivisions" of the state.

On the constitutional level, the bill may violate four separate provisions of the Alaska Constitution:

(1) Article X, Section 2 limits local government authority to boroughs and cities. HB 629 would effectively grant local government status -- including the right to receive and spend public revenues -- to entities which have not been created by the constitutional procedure for creating boroughs and cities;

(2) Article IX, Section 6 prohibits the appropriation of public money, or the transfer of public property, except for a public purpose. HB 629 would permit public funds, collected from state taxpayers, to be spent for whatever purposes the IRA council -- a group which does not represent all citizens -- deems proper. There is no requirement in the bill that these state funds be spent to benefit the whole public rather than a limited segment of it;

(3) Article I, Section 3 prohibits denial of political or civil rights on the basis of "race, color, creed, sex, or

national origin." HB 629 would designate as a political subdivision of the State of Alaska an organization which is open only to persons of one race. "Governmental" decisions on spending public funds would be made by a council for which members of all races except one are prohibited from voting;

(4) Even if the above problems were somehow avoided, the bill would still be open to challenge by other organizations occupying a parallel position in villages without IRA councils. Article I, Section 1 guarantees equal protection, which could conceivably be denied if there were no parallel provision for communities with traditional councils or other organization performing tasks similar to those performed by IRA's.

Several other legal/practical problems also exist:

(1) There are 212 communities in Alaska generally considered native villages. 117 of these have regular city governments, some 90 have traditional councils, and approximately 70 have IRA councils; there is quite a bit of overlap, with 46 communities having both city governments and IRA councils. HB 629 makes no distinction between IRA's in communities with city governments and IRA's in communities without them; presumably all IRA's could qualify, while all entities which are not IRA's would not.

(2) IRA councils vary greatly in the way they function in individual communities. In some communities they may perform functions somewhat akin to a limited local government; in other places, especially where there is a regular city government, IRA councils provide only cultural activities for the native segment of the community; in other places, IRA councils may exist on paper but are actually inactive and moribund. HB 629 contains no way to distinguish between these differing situations; presumably all IRA's, including those with no "governmental" role, would qualify.

(3) By officially designating IRA councils as "political subdivisions" of the State, HB 629 would strengthen the argument that such councils are sovereign local governments. The State is already confronting claims by IRA councils that their members are a) exempt from state fish and game laws; b) entitled to exclude non-natives from non-defined geographical areas; c) exempt from state taxation; d) entitled to state funding of social services provided by


IRA councils; and e) entitled to adjudicate the rights of members and non-members in council-created "courts." While it is clear that IRA councils may possess certain rights under federal law, the extent of those rights is not clear and is now in litigation. By designating IRA councils as "political subdivisions," HB 629 may have a serious effect on that litigation and on ongoing discussions with native sovereignty advocates aimed at gaining a consensus on these questions.

We urge the committee to be cautious in its approach to this bill in light of these comments.

Finally, we point out that if the real concern behind this bill is to provide adequate services for all rural communities, there are existing legal avenues, as well as other approaches which could be legally enacted, to achieve that end while avoiding the constitutional and practical pitfalls noted above. We would be happy to work with the committee to explore these alternatives.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
Douglas K. Mertz
Assistant Attorney General

DKM:d1m

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 24, 1984

SUBJECT: Native governments as political
subdivisions of the state (HB 629)

TO: House Community and Regional Affairs

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

You have asked what the effect of HB 629 is. That bill provides that corporations and governments organized under the Indian Reorganization Act are political subdivisions of the state for the purpose of receiving state funds and that they qualify for state assistance available to municipalities or other governmental entities.

This provision conflicts with the various statutes that provide for state assistance and probably cannot be reconciled with them. For example, AS 29.88 provides aid based on a formula that includes consideration of locally generated tax revenue. That formula would probably make little sense if applied to IRA councils and corporations, because it is unlikely that these entities tax at all. In addition, that program provides aid to "taxing units" defined as particular tax regions of municipalities. Despite HB 629, an IRA council or corporation cannot be deemed to be either a municipality or one of its specified taxing regions that qualify for aid. Even if the organization were found to qualify for aid, it would be impossible to determine the level of aid it qualified for under the formula provided in AS 29.88 because that formula was never designed to apply to that type of organization. If it is intended that IRA councils and corporations receive assistance under AS 29.88, that program needs to be adjusted to specifically include them. The same is true of other assistance programs. Each program must be specifically amended to include IRA councils and corporations. HB 629 as it is now written only creates confusion in the application of statutes providing for state assistance.

However, simply amending each aid program so that it applies to IRA councils and corporations could create a serious constitutional problem. The United States government has a special trust relationship with Native peoples which permits the federal government to accord certain types of preferential treatment to Natives. The preferential treatment is not considered to amount to racial discrimination so long as it furthers the federal government's trust obligation. Morton v. Varconi, 417 U.S. 535 (1974). However, even the federal trust obligation is a limited one that will not justify every form of legislative preference. United States v. Mitchell, 445 U.S. 535 (1980). It is interesting to note that the extent, or even existence, of a general federal trust responsibility to Alaska Natives has been questioned. North Slope Borough v. Andrus, 642 F2d 589 (1980). In any case, state governments do not have a special trust relationship with Natives that would justify special treatment along racial lines. Oklahoma Tax Commission v. United States, 319 U.S. 598 (1943); White v. Califano, 437 F. Supp. 543 (1977). Should IRA councils and corporations be included in various aid programs, care must be taken to avoid state involvement in racial discrimination. Perhaps this could be done by requiring, as a condition of receiving state assistance, that the state money be used for the benefit of the general public.

41 LED 2d 290 →

63 LED 2d 607 →

87 LCD 1612 →

pg. 611 (Set C)
Fed. Trust Resp.

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This section deals with trust responsibility.

STAFF NOTE:
The law library has these cases listed as above in the volume located in margin.

Another constitutional problem may be created by HB 629. To the extent that IRA councils and corporations are recognized as local governments, Article X, sec. 2 of the state constitution is violated. That article provides in pertinent part:

All local government powers shall be vested in boroughs and cities.

It should be remembered that, while IRA councils are at least governmental in nature, IRA corporations do not have the regulatory, tax, and police power of local governments and cannot properly be treated as governments. The use of IRA councils and corporations to provide local governmental services together with the granting of state money to finance governmental activities would raise them to a status dangerously close to that of local governments in violation of Article X, sec. 1, 2, 7 and 8. Consequently, if IRA councils and corporations are included in aid programs, the use that may be made of the money received by them must be carefully considered and defined by statute. For example,

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the municipal assistance program, AS 43.20.016, does not require that grant money be used for any particular purpose. The intent of the program is to reduce the level of local taxes imposed by recipient municipalities. Since this intent is not applicable to IRA councils and corporations, it would appear that this statute would have to be altered considerably if it were to include those organizations.

In restructuring the various aid programs to include IRA councils and corporations, consideration should be given to the relationship between those organizations and incorporated municipalities. Otherwise, conflicting jurisdictions and duplication of efforts to provide services will result, especially as to Native villages located in boroughs.

In conclusion I must point out that the legal effect of HB 629 is far from clear. The bill may, in fact, have no legal effect because of inconsistencies between it and other statutes, and because of uncertainties regarding constitutional matters.

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