

H B

559



STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

Joint H + S C+RA	4-12-88	3:35 p.m.
House C+RA	4-20-88	3:00 p.m.

BILL PREPARATION/ACTION\*

Bill # HB 559

Date Referred: 4/13/88

Out:

Title: Exempting Certain Interests in low-income housing from Municipal Taxation

Sponsor: CRA Committee

Referrals: HCRA + H Finance

CONTACTS:\*\*\*\*\*

Name

Joe Wilson

John Tillaghost

\*\*\*\*\*

REMARKS:

MEETINGS:\*\*\*\*\*

Date

Action

\*4-20-88

1<sup>st</sup> time adopt CS (1.1.1)

no out



Municipality of Palmer, Alaska Borough

P.O. BOX 1608, PALMER, ALASKA 99645-1608 • PHONE 745-9842


Spw/CRA  
copy pln

ASSESSMENT DEPARTMENT

REP  
SPRINGER

May 3, 1988

TO: House Community & Regional Affairs Committee  
House Finance Committee

FROM: Gary A. Lewis, Borough Assessor 

SUBJECT: CSHB 559

MAY - 3 1988

This substitute bill substantially changes the effect on local municipalities from the original bill.

Originally the bill contained mandatory exemption from local property tax of any unrecorded interest of an individual residing in property developed or improved with federal funds for low-income housing and managed by the Alaska State Building Authority or a regional housing authority formed under AS18.55.996.

The Committee Substitute changes character of exemption to a local option which has considerable effect on formula funding programs:

1. The optional exemption implies addition of these undefined interests in annual Full Value Determination.
2. The State Assessor must determine value of these interests without benefit of local knowledge or notice that there is a beneficial interest.
3. No provision has been made for the application of offsetting PILT payments contained in inter-governmental agreements entered into with the Secretary of Housing and Urban Development or Alaska State Building Authority. Clearly an equivalent amount of value is taxed through receipt of payments in lieu of taxes.
4. Analysis of frequency of such projects is very disproportionate among municipalities and will have great effect on future distributions of Revenue Sharing and School Foundation funds.

The original HB559 presented a more equitable and less confusing solution which would not severely impact some communities differently than others as regards state shared revenues.

Recommend passage of HB559 as originally presented.

cc: Scott Burgess, AML  
John Hale, Manager  
Dorothy Jones, Mayor  
Assembly Members



Original sponsor: Community and Regional  
Affairs Committee

1 IN THE HOUSE

BY THE COMMUNITY AND REGIONAL  
AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 559 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to an exemption from municipal  
7 taxation for certain interests in federally funded  
8 low-income housing; and providing for an effective  
9 date."

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

11 \* Section 1. AS 29.45.050 is amended by adding a new subsection to  
12 read:

13 (1) A municipality may by ordinance exempt from taxation an  
14 interest, other than record ownership, in real property of an indi-  
15 vidual residing in the property if the property has been developed,  
16 improved, or acquired with federal funds for low-income housing and  
17 is owned or managed as low-income housing by the Alaska State Building  
18 Authority or a regional housing authority formed under AS 18.55.996.  
19 This section does not prohibit a municipality from receiving payments  
20 in lieu of taxes authorized under federal law.

21 \* Sec. 2. This Act takes effect January 1, 1989.  
22  
23  
24  
25  
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29

# HOUSE COMMITTEE REPORT

(5)

Date referred: 4/13/88

FURTHER REFERRALS: Finance

DATE: APR 20 1988

The Community and Regional Affairs Committee has considered HB 559

HOUSE BILL NO.

"An Act exempting certain interests in low-income housing from municipal taxation; and providing for an effective date."

**RECOMMENDS:**

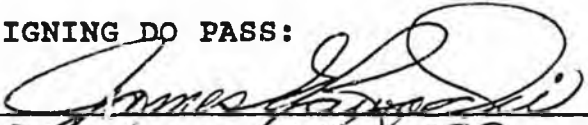

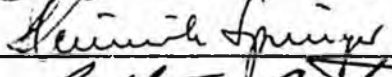
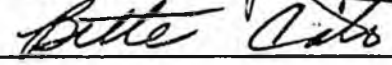
- replace with CS HB 559 (CRA)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

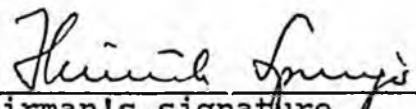
**SIGNING DO PASS:**

 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**SIGNING OTHER RECOMMENDATIONS:**

Zawacki \_\_\_\_\_  
 Collins \_\_\_\_\_  
 Springer \_\_\_\_\_  
 Cato \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Springer

  
Chairman's signature

1.1.1

5-2124B  
Cook  
4/14/88

Original sponsor: Community and Regional  
Affairs Committee

1 IN THE SENATE

2 *HB* *559 (ACRA)*  
CS FOR ~~SENATE~~ BILL NO. 500 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to an exemption from municipal  
7 taxation for certain interests in federally funded  
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19 This section does not prohibit a municipality from receiving payments  
20 in lieu of taxes authorized under federal law.

21 \* Sec. 2. This Act takes effect January 1, 1989.

23 *3-19-88*  
24 Draft will be  
25 over today

27 CS HB 559  
28 Identical to CS  
29 For SB# 500

*WETA THANKS*

*9:15 AM*

File Contents

HB 559 - Municipal Tax Exemption/Low-Income Housing  
[SB 500 - Senate Counterpart]

<u>No.</u>	<u>Description</u>
1.	Bill - HB 559
1.1.1	CSHB 559 - Work Draft
1.2	Zero Fiscal Note - DCRA
1.3	Position Paper - DCRA
2.	Packet from Senate - SB 500
3.	Letter, 4/12/88, to Sturgulewski from Alaska State Building Authority
4.	Letter, 4/6/88, to Springer from Tillinghast
5.	Article, 4/11/88, Anchorage Times
6.	Testimony, 4/12/88, Joseph Wilson
<del>7.</del>	<del>Testimony, 4/12/88, Gary Newman</del>
8.	SB 500
9.	Bill Review - Harrison

1.1.1 HB 559

5-2151B  
Cook  
4/19/88

Original sponsor: Community and Regional  
Affairs Committee

1 IN THE HOUSE

BY THE COMMUNITY AND REGIONAL  
AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 559 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

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20 in lieu of taxes authorized under federal law.

21 \* Sec. 2. This Act takes effect January 1, 1989.

1.1 #B 559

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An act..exemption..low income housing from municipal taxation.."  
Sponsor: Community & Regional Affairs Comm.  
Requestor: \_\_\_\_\_

Agency Affected: Community & Regional Affairs  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

*Jim Plasman*

Prepared by: Jim Plasman, Deputy Director  
Division: Municipal & Regional Assistance

Phone: 465-4750  
Date: 4/18/88

Approved by Commissioner: *James K. Bullard*  
Agency: Community & Regional Affairs

Date: 4/18/88

Distribution (by preparer):

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

# STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

- P.O. BOX B  
JUNEAU, ALASKA 99811-2100  
PHONE: (907) 465-4700
- 949 E. 36TH AVENUE, SUITE 400  
ANCHORAGE, ALASKA 99508-4302  
PHONE: (907) 563-1073

April 11, 1988

## POSITION PAPER

RE: Senate Bill 500: "An Act exempting certain interests in low-income housing from municipal taxation; and providing for an effective date."

SPONSOR: Community & Regional Affairs Committee

### Program Effects of Bill

The bill would require the privately held property interests in Alaska State Building Authority (ASBA) and Regional Native Housing Authority (RNHA) to be exempt from municipal property taxes.

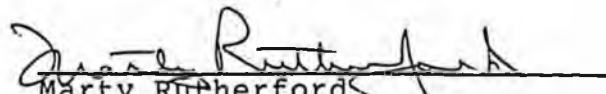
### Departmental Position

Support passage.

### Comments

In a draft legal opinion dated January 21, 1988, the Department of Law took the position that the privately held interests in RNHA property are currently taxable by municipalities under Alaska law. Although municipalities do not levy against those property interests at this time, it is certain they will begin doing so under that draft opinion. In the event SB 500 does not become law, and municipalities do begin to levy property taxes against those interests, the draft opinion stated further that the possibility exists that, under federal law, HUD would be required to withdraw funding for the RNHA projects.

The department does not believe a tax should be levied against the low income occupants of RNHA or ASBA housing. Coupled with that belief, the possibility that Alaska could lose federal funding for RNHA projects across the State has persuaded us to support passage of the bill.

  
Marty Rutherford  
Acting Deputy Commissioner

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act exempting low-income housing from municipal taxation."  
Sponsor: Senate C&RA Committee  
Requestor: Senate C&RA Committee

Agency Affected: Department of Education  
BRU: K-12 Support

Components: Foundation Program

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY '93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	-0-	-0-	-0-	355.4	373.2	391.9
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	355.4	373.2	391.9
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	355.4	373.2	391.9
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	355.4	373.2	391.9

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

It is estimated the property tax exemptions required under SB 500 would reduce the Full Value Determination statewide by \$88,841,750. At the four mill requirement for education funding under AS 14.17.025, local effort would subsequently be reduced by \$355,400.

Prepared by: Maureen Ruth Phone: 465-4750  
Division: Municipal & Regional Assistance Date: \_\_\_\_\_

Approved by Commissioner: Mark R. Rutledge Date: 4/11/88  
Agency: Community & Regional Affairs

Distribution (by preparer):

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

MUNICIPALITY	POPULATION	REAL PROPERTY ONLY FULL VALUE DETERMINATION INCLUDING	OBLIGATION FOR EDUCATION	REAL PROPERTY ONLY FULL VALUE DETERMINATION EXCLUDING	OBLIGATION FOR EDUCATION	DIFFERENCE
		ASBA OR NRHA		ASBA OR NRHA		
ANCHORAGE	248,263	\$11,768,570,800	\$47,074,283	\$11,761,689,000	\$47,046,756	\$27,527
BRISTOL BAY BOROUGH	1,326	\$63,258,700	\$253,035	\$62,558,860	\$250,235	\$2,799
FAIRBANKS NORTH STAR BORO	75,079	Apply average per capita difference				\$10,167
HAINES BOROUGH	1,991	\$79,043,000	\$316,172	\$77,954,360	\$311,817	\$4,355
C&B OF JUNEAU	29,370	Apply average per capita difference				\$3,977
KENAI PENINSULA BOROUGH	43,612	\$3,012,330,700	\$12,049,323	\$3,011,145,500	\$12,044,582	\$4,741
KETCHIKAN GATEWAY BOROUGH	12,982	\$663,563,300	\$2,654,253	\$662,330,300	\$2,649,321	\$4,932
KODIAK ISLAND BOROUGH	14,127	\$398,049,400	\$1,592,198	\$394,589,032	\$1,578,356	\$13,841
MATANUSKA-SUSITNA BOROUGH	44,280	Apply average per capita difference				\$5,997
NORTH SLOPE BOROUGH	2,308	\$187,163,100	\$748,652	\$157,163,100	\$628,652	\$120,000
NORTHWEST ARCTIC BOROUGH	6,696	\$163,045,800	\$652,183	\$160,017,470	\$640,070	\$89,500
C&B OF SITKA	8,160	Apply average per capita difference				\$1,105
DILLINGHAM	2,153	\$79,064,200	\$316,257	\$77,120,200	\$308,481	\$7,776
GALENA	998	Apply average per capita difference				\$8,941
HOONAH	906	\$14,472,000	\$57,888	\$11,672,640	\$46,691	\$11,197
HYDABURG	475	\$6,854,600	\$27,418	\$5,493,800	\$21,975	\$5,443
KING COVE	713	Apply average per capita difference				\$6,388
KLAWOCK	760	\$8,199,200	\$32,797	\$5,749,760	\$22,999	\$9,798

NDME	3,876	Apply average per capita difference	\$34,725
PELICAN	273	Apply average per capita difference	\$2,446
ST. MARY'S	458	Apply average per capita difference	\$4,103
SAND POINT	890	Apply average per capita difference	\$7,974
SKAGWAY	712	Apply average per capita difference	\$6,379
TANANA	418	Apply average per capita difference	\$3,745
UNALASKA	1,331	Apply average per capita difference	\$11,024
YAKUTAT	456	Apply average per capita difference	\$4,085
			<hr/>
			\$355,367

# DRAFT

Hon. David G. Hoffman  
Commissioner  
Department of Community &  
Regional Affairs  
AND  
Mike Worley, State Assessor

January 21, 1988

663-88-0103

465-3600

Taxation of privately  
held possessory interests  
in RNHA property

Marjorie L. Odland  
Assistant Attorney General  
Governmental Affairs-Juneau

You have asked us to review and expand on our opinion of July 24, 1985 (1985 Inf. Op. Att'y Gen. (663-85-0449; July 24)), and address the state constitutional issue as to whether private possessory interests in regional Native housing authorities (RNHA) projects, particularly those private interests created when a person enters into a federally-authorized homeownership incentive program (homebuyer agreement), are subject to municipal property taxation and, if so, whether the federal requirement that "low income projects" be exempt from municipal taxation applies to projects that encompass homeownership incentive programs. In short, it is the opinion of this office that the homebuyer agreements create private possessory interests that are subject to taxation by a municipality. Furthermore, we believe there is a possibility that federal law requires that the private interests created under homebuyer agreements are to be exempt from local taxation in order to receive federal aid because they are assisted by annual contributions until such time the homebuyer has fee simple title in the property.

## I. ALASKA CONSTITUTIONAL ISSUES

In your opinion request, you made reference to article IX, section 5, of the Alaska Constitution, as being a mandate that private interests in RNHA property must be taxed to the extent of the interests. Article IX, section 5 reads as follows:

Interests in Governmental Property. Private leaseholds, contracts, or interests in land or property owned or held by the United States, the State, or its political subdivisions, shall be taxable to the extent of the interests.

This section of the constitution refers solely to "governmental" property. It requires that if the United States, the state, or a political subdivision, in its proprietary capacity, conveys an interest in its land for private use (e.g., lease of state owned airport property) that the holder of the interest in

the property must be taxed to the extent of the interest the same as other private property that is taxed by the government. However, this section of the constitution is inapplicable to property of an RNHA. This office has previously opined that RNHA's are not state agencies. 1982 Inf. Op. Att'y Gen. (J66-220-82A; June 8) (RNHA's do not have any characteristics common to a state agency even though RNHA's are established pursuant to statutory authority: (1) they are not placed in a department in the executive branch; (2) their members of the board are not appointed nor serve at the pleasure of the governor; and (3) no annual report of the RNHA is required to be given to the state government.). Therefore, the property at issue is not "governmental property" and the mandate that private interests in the property is taxable is not governed by article IX, section 5 of the Alaska Constitution.

Under article X, section 2 of the Alaska Constitution, taxing powers may be delegated to cities and boroughs. Additionally, article X, section 11 states that "a home rule borough or city may exercise all legislative powers not prohibited by law or by charter." In spite of the broad grant of legislative powers given by the constitution, it is a general rule that a municipality has no inherent power to exempt from taxation property which it is authorized by statute or charter to tax. However, the legislature may delegate to municipalities the power to exempt certain property from taxation, or it may itself exempt certain property from taxation. 16 E. McQuillin, The Law of Municipal Corporations § 44.65 (3d ed. rev. 1984). In Alaska, the statutory provisions concerning exemptions are found in AS 29.45, et seq. The established rules of statutory construction are, for the most part, applicable to laws prescribing exemptions from municipal taxation. Such laws are to be strictly construed. Id., § 44.66. A grant of exemption is never presumed. On the contrary, no presumption in favor of exemptions will be made unless plainly or unmistakably warranted by the letter and spirit of the law granting the exemption. Id., § 44.67.

① At present, there is no express law exempting private property interests held in property of a housing authority, and more particularly, property of an RNHA. Therefore, for a borough or city to exempt by ordinance such private interests in property, an express, enabling law would have to be enacted by the legislature.

② A discussion of the private possessory interests in RNHA property created by the homebuyer agreements occurs in section III of this memorandum.

## II. FEDERAL LAW

Federal statute regulates the taxability of low income housing projects as it concerns the taxability of the property of a housing authority and whether the federal government will provide aid to the housing authority. 42 U.S.C. § 1437d(d) reads, in pertinent part:

(d) EXEMPTION FROM PERSONAL AND REAL PROPERTY; PAYMENTS IN LIEU OF TAXES; CASH CONTRIBUTION OR TAX REMISSION. Every contract for annual contributions with respect to a lower income housing project shall provide that no annual contributions by the Secretary shall be made available for such project unless such project (exclusive of any portion thereof which is not assisted by annual contributions under this chapter) is exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political subdivision; and such contract shall require the public housing authority to make payments in lieu of taxes equal to 10 per centum of the sum of the annual shelter rents, .... If any such project is not exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political subdivision, such contract shall provide, in lieu of the requirement for tax exemption and payments in lieu of taxes, that no annual contributions by the Secretary shall be made available for such project unless and until

....

(Emphasis added.)

42 U.S.C. § 1437d(c)(4)(D) is the enabling statute to establish homeownership opportunity programs, and reads as follows:

(D) the development of local housing authority managements of viable homeownership opportunity programs for low-income families capable of assuming the responsibilities of homeownership.

An important question arises as to the definition of "project" in 42 U.S.C. § 1437d(d), and whether a project is of the type required to be exempt from local taxation in order for the RNHAs to receive funding from the federal government. 42

U.S.C. § 1437d(d), states that "such project ... (exclusive of any portion thereof which is not assisted by annual contributions under this chapter), must be exempt from taxation to qualify for federal aid." It is evidently not at issue, for the purposes of this opinion, whether "low income rental RNHA housing projects are exempt from local taxation under this federal statute, since title to the property is considered to be held by the RNHA. At issue is whether "project" includes the homeownership incentive programs authorized under 42 U.S.C. § 1437d(c)(4)(D) since they are programs "assisted by annual contributions."

According to counsel from HUD, virtually all of the homeownership incentive programs in the state are under the Mutual Help Ownership Opportunity Program. 24 C.F.R. 905, et seq. The other type of program in Alaska is Turnkey III. 24 C.F.R. 904, et seq. Both programs are assisted by annual contributions on the property which is the subject of a homebuyer agreement. The benefit of the annual contributions assists the potential "homebuyer" in achieving homeownership; the contributions do not just benefit the RNHA.

Therefore, under a literal interpretation of 42 U.S.C. § 1437d(d), it appears likely that the federal government would discontinue aid to RNHA homeownership incentive programs if a municipality taxed the privately held interest in the property.

### III. PRIVATE INTERESTS IN RNHA PROPERTY

You have requested our opinion as to whether the "homebuyer agreements" used under the Mutual Help Homeownership Opportunity Program (MHHOP) and the Turnkey III program create a private possessory interest in the property that is taxable by a municipality. As stated earlier, it is our opinion that the agreements create such a private interest in the property.

Counsel for Housing and Urban Development (HUD) has stated that the federal government considers both the MHHOP and Turnkey III homebuyers' agreements to be "lease-purchase" agreements that do not create any taxable interest in the property until such time the homebuyer is deeded the property in fee. However, HUD has not cited any federal law or regulation that supports this conclusion.

A taxing authority may penetrate the form of a transaction to determine its substance. Sisters of Providence in Washington v. Municipality of Anchorage, 672 P.2d 446 (Alaska 1983). A review of the homebuyer agreements approved by HUD (whether MHHOP or Turnkey III programs), provide that the home-

buyer will achieve "homeowner" status and fee simple title to the property if the homebuyer satisfies certain contractual conditions.

±

In our opinion, it is insignificant that HUD refers to the agreements as lease-purchase agreements. It is also irrelevant that the homebuyer may never build up any actual "monetary" equity in the property since that is not an absolute requirement to achieving title to the home. If contractual conditions are met, the homebuyer will be deeded the property in the future, and, similar to a mortgagor, he has possessory rights to the property pending satisfaction of the conditions of a contract to be deeded the property.

ML0/pjg

LAW OFFICES

BIRCH, HORTON, BITTNER, PESTINGER AND ANDERSON

A PROFESSIONAL CORPORATION

ONE SEALASKA PLAZA, SUITE 301 • JUNEAU, ALASKA 99801 • TELEPHONE (907) 586-2890 • TELECOPIER (907) 586-9814

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 LLOYD V. ANDERSON\*\*  
 LUANN E. BAILEY  
 RONALD G. BIRCH\*\*  
 WILLIAM H. BITTNER\*\*  
 KATHRYN A. EILACK  
 CORY R. BORJESON  
 RODNEY B. CARMAN\*\*  
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 PATRICK B. COLE  
 PAUL L. DILLON

KIM DUNN  
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SHERIDAN STRICKLAND\*\*  
 JONATHAN K. TILLINGHAST  
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April 11, 1988

Statement in Support of Senate Bill 500  
 "An Act exempting certain interests in  
 low-income housing from municipal taxation;  
 and providing for an effective date."

This proposed amendment to AS 29.45.030(a), governing municipal tax exemptions, states that interests in federally funded low-income housing projects are exempt from general taxation, so long as the projects are owned or managed by Regional Native Housing Authorities.

The need for the legislation arises as follows. In 1971, the legislature authorized the formation of 15 Regional Native Housing Authorities (RNHA's) to build, administer, and own public housing. Unquestionably, RNHA property is exempted from municipal taxation by statute.<sup>1</sup> However, the question of taxation has arisen in connection with certain home-ownership incentive programs designed and funded by the Department of Housing and Urban Development (HUD) and administered by RNHAs. This amendment is designed to prevent the occupants of such low-income ownership opportunity projects from being taxed prior to the time that they receive actual conveyance of the homes.

Under these programs, an occupant of a "Mutual Help" or "Turnkey III" RNHA project executes a lease agreement with a purchase option. Over a period of years, if the occupant complies with the agreement, making monthly income-based payments and maintaining the home, the cost of exercising the purchase option steadily decreases. Generally, the projects are designed to enable eligible participants to purchase the homes no later than 25 years from construction or acquisition of the project. Until the occupant successfully exercises the purchase option, the RNHA retains legal title to or legal control of the home. These homeownership opportunity programs are limited to low-

<sup>1</sup> AS 18.55.996(b), AS 18.55.250.

income participants, pursuant to HUD regulations and RNHA guidelines.

Although they are exempt from municipal taxation, RNHA's pay property tax equivalents, which, in accordance with federal law, are calculated at 10 per cent of the monthly payments made by project residents.<sup>2</sup>

Apparently, for several years the Department of Community and Regional Affairs has taken the position that while the RNHA --the legal owner of these homes -- is exempt from taxation, the low-income occupants may nevertheless be taxed by virtue of their possessory interest. Up til now, the Department has not ordered municipalities to levy taxes upon RNHA project occupants, due in part to a 1985 Attorney General's opinion concluding that taxation would be contrary to the intent of the RNHA enacting statute.<sup>3</sup> However, the Department recently asked for a second Attorney General's opinion regarding the taxability of occupants' interests. The draft version of that opinion states that an occupant's interest is taxable, comparing the occupant's interest to that of a mortgagor. Further, the draft opinion concludes that municipalities have no authority to exempt occupants' interests in RNHA property absent specific statutory authority. Once the opinion is finalized, the Department will require municipalities to assess taxes against participants in these low-income ownership opportunity programs.

The results of such a requirement would be disastrous. In addition to the fact that an unexpected tax burden would suddenly be cast upon project residents, taxation would cause the bankruptcy of every RNHA currently administering these projects. This is because HUD, the funding agency for these projects, will immediately withdraw its funds from any project that is taxed. Federal law prohibits HUD from funding any project that is not exempt from "all real or personal property taxes."<sup>4</sup> To HUD, it makes no difference that the municipality would be taxing the interest of the individual occupant, rather than the RNHA. HUD's regional counsel states that HUD is powerless to authorize the funding of taxed projects, regardless of the impact that withdrawal of funds would have on Alaska's low income housing. The moment a tax is assessed, HUD will withdraw its funds. Without HUD funds, the RNHAs cannot operate.

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<sup>2</sup> 42 U.S.C. 1437d(d)

<sup>3</sup> Op. Attorney General, July 24, 1985, "Municipal property taxation of private leasehold interests."

<sup>4</sup> 42 U.S.C. 1437d(d).

To illustrate, Tlingit Haida Housing Authority owns and manages over 375 low-income ownership opportunity units in Southeast. Each of these households would suddenly be required to pay and to be personally liable, from an extremely limited income, for this unforeseen tax burden. Without HUD funds, THRHA could not maintain or operate its Turnkey III and Mutual Help projects. Across the state, the impact upon RNHAs and project residents would be the same.

Moreover, since the taxation issue has become known, municipalities have been hesitant to authorize the building or acquisition of new projects by RNHA's. As a prerequisite to applying to HUD for new housing units, the RNHA must obtain the municipality's agreement to exempt the proposed project from taxation. So long as the state advises that exemptions are not authorized for the occupants of such homes, municipalities are understandably reluctant to sign such agreements, no matter how desirable and necessary the new housing may be. For example, the application and municipal approval process for initiating a Juneau acquisition project is being delayed pending the decision on this bill. Until this question is resolved, new projects will be stalled, potentially lost through delay, or rejected by municipalities.



Exempt is in ASIAA with 18. 55. 996

## Tlingit-Haida Regional Housing Authority

P. O. Box. 2237 • Juneau, Alaska 99803 • (907) 780-6442



### COOPERATION AGREEMENT

THIS AGREEMENT made this \_\_\_\_ DAY of \_\_\_\_\_, 19 \_\_\_\_

BY AND BETWEEN Tlingit-Haida Regional Housing Authority herein called the "Authority".

AND City of Juneau, herein called the "City".

#### WITNESSETH:

In consideration of the mutual covenants hereinafter set forth, the parties hereto do agree as follows:

1. Whenever used in this agreement:
  - (a) The term "Project" shall mean any low-rent housing hereinafter developed or acquired by the Authority with financial assistance of the United States of America acting through the Secretary of Housing and Urban Development (herein called the "Government"); excluding, however, and low-rent housing project covered by any contract for loans and annual contributions entered into between the Authority and the Government, or its predecessor agencies, prior to the date of this Agreement;
  - (b) The term "Taxing Body" shall mean the State or any political subdivision or taxing unit thereof in which a Project is situated and which would have authority to assess or levy real or personal property taxes or to certify such taxes to a taxing body or public officer to be levied for its use and benefit with respect to a Project if it were not exempt from taxation;
  - (c) The term "Shelter Rent" shall mean the total of all charges to all tenants of a Project for dwelling rents and nondwelling rents (excluding all other income of such Project), less the cost to the Authority of all dwelling and nondwelling utilities;
2. The Authority shall endeavor to secure a contract with the Government for loans and annual contributions covering one or more Projects consisting of approximately 50 units. The Authority shall plan, develop or acquire and administer the Project which shall be located within the corporate limits of the City. The obligations of the parties hereto shall apply to each such Project and the City shall have no contractual responsibility with respect to the Project other than as expressly provided in this Agreement.
3. (a) Under the Constitution and laws of the State of Alaska, the Project is exempt from all real and personal property taxes and special assessments levied or imposed by any Taxing Body. So long as either (i) the Project is owned by a public body or governmental agency and is used for low rent housing purposes, or (ii) any contract between the Authority and the Government for loans or annual contributions, or both, in connection with such Project remains in force and effect, or (iii) any bonds issued in connection with such Project or any monies due to the Government in connection with such Project remain unpaid, whichever period is the longest, the City agrees that it

Cooperation Agreement  
Page 2

will not levy or impose any real or personal property taxes or special assessment upon such Project or upon the Authority with respect thereto. During such period, the Authority shall make annual payments (herein called "Payments in Lieu of Taxes") in lieu of such taxes and special assessments and in payment for the public services and facilities furnished from time to time without other cost or charge for or with respect to such Project.

- (b) Each such annual Payment in Lieu of Taxes shall be made after the end of the fiscal year established for such Project, and shall be in an amount equal either (i) ten percent (10%) of the Shelter Rent charged by the Authority in respect to such Project during such fiscal year or (ii) the amount permitted to be paid by applicable State law in effect on the date such payment is made, whichever amount is the lower.
  - (c) No payment for any year shall be made to the City in excess of the amount of the real property taxes which would have been paid to the City for such year if the Project were not exempt from taxation.
  - d) Upon failure of the Authority to make any Payment in lieu of Taxes, no lien against any Project or assets of the Authority shall attach, nor shall any interest penalties accrue or attach on account thereof.
4. During the period commencing with the date of the acquisition of any part of the site or sites of any Project and continuing so long as either (i) such Project is owned by a public body or governmental agency and is used for low-rent housing purposes, or (ii) any contract between the Authority and the Government for loans or annual contributions, or both, in connection with such Project remains in force and effect, (iii) any bonds issued in connection with such Project or any monies due to the Government in connection with such Project remain unpaid, whichever period is the longest, the City, without cost or charge to the Authority or the tenants of such project (other than the Payments in Lieu of Taxes), shall:
- (a) Furnish or cause to be furnished to the Authority and the tenants of such Project public services and facilities of the same extent as are furnished from time to time without cost or charge to other dwelling and inhabitants in the City;
  - (b) Notwithstanding the date of acquisition the City shall vacate such streets, roads, and alleys within the area of such Projects as may be necessary in the development thereof, and convey without charge to the Authority, such interest as the City may have in such vacated areas; and insofar as the City is lawfully able to do so without cost or expense to the Authority or to the City, cause to be removed from such vacated areas, insofar as it may be necessary, all public or private utility lines and equipment;
  - (c) Insofar the City may lawfully do so, (i) grant such deviation from the building code as are reasonable and necessary to promote economy and efficiency in the development and administration of such Project, and at the same time, safeguard health and safety; and (ii) make such changes in any zoning of the site and surrounding territory of such Project as are reasonable and necessary surrounding territory;

Cooperation Agreement  
Page 3

- (d) Accept grants of easements necessary for the development of such Project; and
  - (e) Cooperation with the Authority by such other lawful action or ways as the City and the Authority may find necessary in connection with the development and administration of such Project.
5. In respect to any Project, the City further agrees that within a reasonable time after receipt of a written request therefor from the Authority:
- (a) It will accept the dedication of all interior streets, roads alleys, and adjacent sidewalks within the area of such Project, together with all storm and sanitary sewer mains in such dedicated areas, after the Authority or its Developer has completed the grading, improvements, paving and installation thereof, in accordance with specification acceptable to the City;
  - (b) It will accept necessary dedications of land for, and will grade, improve, pave and provide sidewalks for, all streets bounding such Project or necessary to provide adequate access thereto (in consideration whereof the Authority or its Developer shall pay to the City such amounts as would be assessed against the Project sites for such work if such site were privately owned); and
  - (c) It will provide, or cause to be provided, water mains and storm and sanitary sewer mains, leading to such Project and serving the bounding streets thereof (in consideration whereof the Authority or its Developer shall pay to the City such amounts as would be assessed against the Project site for such work if such site were privately owned).
6. If by reason of the City's failure or refusal to furnish or cause to be furnished any public services or facilities which it has agreed hereunder to furnish or cause to be furnished to the Authority or to the tenants of any Project, the Authority incurs any expense to obtain such services or facilities, then the Authority may deduct the amount of such expenses from any Payment in Lieu of Taxes due or to become due to the City in respect to any Project or any other low-rent housing projects owned or operated by the Authority.
7. The City agrees to exempt the tenants of the Project and the Authority from the payment of sales taxes in conjunction with rents.
8. No Cooperation Agreement heretofore entered into between the City and the Authority shall be construed to apply to any Project covered by this Agreement.
9. No member of the governing body of the City or any other public official of the City who exercises any responsibilities or functions with respect to any Project during his tenure or for one year thereafter shall have any interest, direct or indirect, in any project or any property included or planned to be included in any Project, or any contracts in connection with such Projects or property. If any such governing body member or such other public official of the City involuntarily acquires or had acquired prior to the beginning of his tenure any such interest, he shall immediately disclose such interest to the Authority.

Cooperation Agreement  
Page 4

10. So long as any contract between the Authority and the Government for loans (including preliminary loans) or annual contributions, or both, in connection with any Project remains in force and effect, or so long as any bonds issued in connection with any project, or any monies due the Government in connection with any Project remain unpaid, this Agreement shall not be abrogated, changed, or modified without the consent of the Government. The privileges and obligations of the City hereunder shall remain in full force and effect with respect to each Project so long as the beneficial title to such Project is held by the Authority or by any other public body or governmental agency, including the Government, authorized by law to engage in the development or administration of low-rent housing projects. If at any time, the beneficial title to, or possession of, any Project is held by such other public body or governmental agency, including the Government, the provisions hereto shall inure to the benefit of and may be enforced by, such other public body or governmental agency, including the Government.

IN WITNESS WHEREOF, the City and the Authority have respectively signed this Agreement and caused their seals or be affixed and attested as of the day and year first above written.

CITY OF JUNEAU

BY: \_\_\_\_\_,  
Mayor  
City of Juneau

SEAL

ATTEST:

\_\_\_\_\_, City Clerk

TLINGIT-HAIDA REGIONAL  
HOUSING AUTHORITY

BY: Matthew Fred  
Matthew Fred, Chairman

SEAL

ATTEST:

Joseph G. Wilson, Assistant Secretary

# STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

April 15, 1988

(1,2) HB 559

STEVE COWPER, GOVERNOR

- P.O. BOX B  
JUNEAU, ALASKA 99811-2100  
PHONE: (907) 465-4700
- 949 E. 36TH AVENUE, SUITE 400  
ANCHORAGE, ALASKA 99508-4302  
PHONE: (907) 563-1073

## POSITION PAPER

RE: CSHB 559: "An Act allowing exemptions for certain interests in low-income housing from municipal taxation; and providing for an effective date."

SPONSOR: Community & Regional Affairs Committee

### Program Effects of Bill

The bill would allow the exemption of the privately held property interests in Alaska State Building Authority (ASBA) and Regional Native Housing Authority (RNHA) from municipal property taxes.

The committee substitute (CS) for HB 559 resolves the concern with the original bill regarding fiscal impact to the State. By making the exemption optional rather than mandatory, the Full Value Determinations for affected municipalities will not be altered. As a result, the CS has eliminated any obligation of the Department of Education to provide additional education foundation funding to make up for decreased local contributions.

### Departmental Position

Support passage.

### Comments

In a draft legal opinion dated January 21, 1988, the Department of Law took the position that the privately held interests in RNHA property are currently taxable by municipalities under Alaska law. Although municipalities do not levy against those property interests at this time, it is certain they will begin doing so under that draft opinion. In the event CSHB 559 does not become law, and municipalities do begin to levy property taxes against those interests, the draft opinion stated further that the possibility exists that, under federal law, HUD would be required to withdraw funding for the RNHA projects.

# Alaska State Legislature

(2) HB 559

[SB 500]

ARLISS STURGULEWSKI, Chairman  
TIM KELLY, Vice Chairman  
RICK HALFORD  
MIKE SZYMANSKI  
FRED ZHAROFF



P. O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-4989

APR 12 1988

## Senate Community and Regional Affairs Committee

April 11, 1988

TO: Members,  
Senate Community and Regional Affairs Committee

FROM: Staff *MCA*  
Senate Community and Regional Affairs Committee

RE: SB 500 - "An Act exempting certain interests in low income housing from municipal taxation, Efd."

Both the Alaska State Building Authority and Native Regional Housing Authorities receive federal funds for the provision of low-income housing. Both of these programs transfer ownership to the residents if they live in the house for a designated number of years (usually 25), pay a monthly sum determined by their income, and abide by the other terms of the program.

While living in such housing, residents gradually acquire a possessory interest in the unit. Federal law states that if this possessory interest is taxed by the municipality the federal funds will be withdrawn. Municipalities have traditionally signed agreements with Regional Housing Authorities exempting these interests from taxation.

A draft AG's opinion has been prepared which says that without a specific statutory exemption, municipalities must tax this interest. The attached bill provides a specific tax exemption for such possessory interests. This bill will allow the continuation of federal funding for low-income housing in Alaskan municipalities.

In this packet is a position paper and fiscal note from the Department of Community and Regional Affairs, a fiscal note from the Department of Education, a copy of the draft AG's opinion, a paper in support of the bill from Birch, Horton, et al, and a sample agreement from a regional housing authority.

The fiscal note shows an impact of \$355,000, starting in 1990, in School Foundation funding. This results from the decrease in the full value determination causing a decrease in local effort and a corresponding increase in state contribution. Representatives of the Departments of Community and Regional Affairs and Education will be at the meeting to explain the note.



③ HB 559

SB 500

April 12, 1988

The Honorable Arliss Sturgulewski  
Alaska State Senate  
P.O. Box V  
Juneau, Alaska 99811

Re: Outstanding Debt Financed by HUD  
in Homeownership Programs (SB500)

Dear Senator Sturgulewski:

The Alaska State Building Authority has participated in the development and construction of several homeownership programs in rural Alaska. There remains considerable outstanding debt concerning two of these programs, Bethel and Nome. The debt is paid through annual contributions under contractual arrangement with the U.S. Department of Housing and Urban Development.

The remaining amount expected to be paid with federal funding for the Nome program is \$2,041,986. The remaining amount expected to be paid with federal funding at the current level for the Bethel program is \$5,642,661.

We have been informed by the U.S. Department of Housing and Urban Development that, if the property is not exempt from local taxation of possessory interests, HUD will be precluded from making the annual contributions necessary to retire these debts of the Authority. We, therefore, urge passage of SB500.

Sincerely,

ALASKA STATE BUILDING AUTHORITY

Barbara Morse-Quinn  
Executive Director

BMQ/laj

APR - 6 1988

(4) #B 559

LAW OFFICES

BIRCH, HORTON, BITTNER, PESTINGER AND ANDERSON

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April 6, 1988

Rep. Heinrich Springer  
Alaska House of Representatives  
P. O. Box V  
Juneau, Alaska 99811

Re: Proposed Legislation on Taxation of  
Low Income Housing

Dear Representative Springer:

David Harrison has asked that I write you regarding proposed legislation that would exempt from municipal property taxation the interest of residents in federally subsidized low income housing. I am interested in this legislation because my client, the Tlingit-Haida Regional Housing Authority, hopes to establish a low income housing program in Juneau in the near future. Unless this legislation is enacted, the project won't be approved by the U. S. Department of Housing and Urban Development. In fact, without this bill, HUD funding for all low income housing projects throughout the state will probably cease.

The back-up materials that you have already been provided explain the problem in detail. In a nutshell, in order to obtain federal funding for the development or operation of low income housing projects, the governing municipality must assure the federal government that the project will be exempt from property taxation. While there is no question that regional housing authorities themselves are exempt, the Attorney General is about to reverse a 1985

April 6, 1988

Page 2

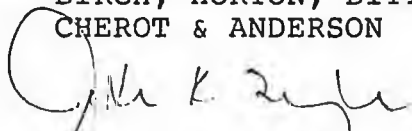
opinion, and conclude that municipalities must tax each individual resident's interest in the low income home which he occupies. HUD has made it clear, in no uncertain terms, that if this taxation occurs, funding for all Alaska projects will end.

Mr. Harrison asked me to explain the relationship of this bill to the protections of the Alaska Native Claims Settlement Act. The answer is that there is no relationship at all. Section 21(d)(1) of ANCSA protects property conveyed under the Claims Act from local property taxation for a period of 20 years -- as long as the property remains undeveloped. However, the property involved in low income projects was normally not conveyed under the Claims Act; and, moreover, it obviously has been "developed." Indian housing programs administered by HUD under the Federal Housing Act are not influenced by the provisions of ANCSA.

On behalf of THRHA, I want to thank you for your interest in the legislation. It is critically important to the continued provision of low income housing in the state. As the legislation progresses, I'd be delighted to provide whatever assistance your office, or others on your committee, may require.

Sincerely,

BIRCH, HORTON, BITTNER  
CHEROT & ANDERSON



Jonathan K. Tillinghast

JKT/jrm

springer/thcc

# Report outlines poor housing of rural Alaska

5 HB 559

Monday, April 11, 1988, The Anchorage Times

By Sue Cross  
Associated Press

JUNEAU — State officials hope a new report calling for \$1.5 billion in rural housing improvements will forestall further cuts in federal housing funds and spotlight poor living conditions in many Alaska villages.

The report, commissioned by the Department of Commerce and Regional Affairs, says rural Alaskans need 6,740 new houses to replace those in too bad of shape to be rebuilt and those sheltering three or more generations.

More than 20,000 other homes should be replaced or expanded to relieve overcrowding, the study found.

"The condition of rural housing is, generally it's pretty sad. We work on houses that are falling down around people. But the state doesn't have a cohesive rural housing policy," said Glenn Collver, weatherization director for the Rural Alaska Community Action Program, or RurALCAP.

Collver's staff cataloged 1,549 homes in 40 communities, recording their condition, size, availability of water and sewer and similar factors.

Among their findings:

- Rural homes allow each occupant an average 333 square feet, equivalent to a floor space roughly 18 feet square. The average Anchorage resident has almost twice as much room.

In the Calista and NANA regions where housing is most crowded, almost a third of the houses allow each occupant 100 square feet or less — a space about 10-by-10.

- Despite the smaller size of rural homes, more people live in each dwelling. The number of people in an Anchorage home averages 2.7; in the bush the household size averages 3.7.

- Many rural homes are old and deteriorating. In the Bristol Bay regions, 43 percent of the house foundations needed major repair. Foundation heaving causes door and window frames to separate, often reversing efforts to seal houses against the

Surveyors found ice coating of interior walls and windows, snow-filled attics and damaged roofs.

One old couple was trapped in a home because moisture leaked out and sealed the door shut with frost, Collver said.

Lack of insulation is one of the worst problems, he said.

"I've seen houses out there that are 600 square feet that cost \$3,500 a year to heat," Collver said.

RurALCAP gets federal and state funds to weatherize homes, and has worked on about 1,500 in

the last four years. The agency has cut back its efforts since state funding was reduced last year, Collver said.

The \$1.5 billion price tag on improvements suggested in the report was based on the average cost of housing financed by the state and the U.S. Housing and Urban Development Department.

A replacement home costs an average \$116,000, with about \$92,000 of that paid for by HUD and managed by regional housing authorities in Alaska.

Collver said there are less expensive alternatives, but the agency was reluctant to recommend them because RurALCAP isn't sure they'd work in Alaska's cold weather conditions.

Sen. Willie Hensley, who convinced his colleagues to appropriate \$91,000 last year for the study, said he hopes it will prompt people to find less costly repair techniques and replacement homes.

"I know we aren't going to come up with a billion-and-a-half dollars, but the report shows the extent of the problem," the Kotzebue Democrat said.

He said he requested the report because he was afraid publicity about a glut of housing in Anchorage would make people forget the Alaskans who live in poor conditions.

"The impression might be we didn't need housing in this state," and that is not true, Hensley said.

Community and Regional Affairs Deputy Commissioner Bob Brean said the report will be distributed in Washington D.C., with hopes it will inspire HUD to increase its housing subsidies for Alaska.

HUD had been financing construction of about 500 housing units a year in Alaska until 1987, when the number was cut to 197 because of federal budget reductions.

... 'this state needs housing'

HB 559 Additional  
IN FORMATS

⑥ HB 559

4/12/88  
SCRA  
mtg.

STATEMENT RE SB 500

/ HB 559

My name is Joseph G. Wilson, and I am testifying today on behalf of the Association of Alaska Housing Authorities. That Association represents 14 regional Native housing authorities which together own and operate approximately 4,700 low income housing units throughout the State of Alaska. I wanted, at the outset, to thank both houses for holding a hearing on SB 500 so promptly. This action shows that your committees recognize the gravity of the situation that has developed over the past few weeks, and is very encouraging.

The purpose of SB 500 is to avert a crisis in low income housing in Alaska that has been caused by the apparent change in the Attorney General's position on whether municipalities are required to tax individual interests in low income housing projects. The purpose of this bill is to preserve the status quo by continuing the existing exemption for those interests. Without the bill,

the U.S. Department of Housing and Urban Development will not make any additional funds available for low income housing projects in the state, and will cease funding of existing projects.

All of the Association's low income housing projects are funded by HUD. Congress has required, as a condition of HUD funding of the construction or operation of these projects, that the project be exempt from municipal real and personal taxation. As a further condition of that funding, housing authorities are required to execute a so-called Cooperation Agreement with the city involved, in which the city agrees, and I quote, that it "will not levy or impose any real or personal property taxes or special assessment upon such project or upon the authority with respect thereto."

Until now, these requirements have not presented a problem. Unquestionably, housing authorities themselves are exempt from municipal property taxation. And, up until now, the interest of individual occupants of these homes has also been exempt. This is because, in 1985, Assistant Attorney General John Rubini concluded that individual interests were

exempt from taxation. Rubini said that because the whole purpose of the legislature's creation of regional housing authorities was to receive HUD financing, that it wouldn't make any sense to interpret those statutes in a way that would prevent those authorities from receiving federal grants.

As a result, until now, no municipality has ever levied a tax on whatever property interests individual residents might have in a low income housing project. That doesn't mean that municipalities aren't receiving direct revenues from these projects. Under federal law, municipalities receive payment in lieu of taxes equal to 10% of the total monthly payments that the housing authority receives for each low income project.

Now, however, the attorney general has issued a draft opinion saying that individual interests are taxable. HUD has made it clear to us that if this reversal becomes the law, and municipalities are forced to begin taxing individual interests, that low income housing funding in the state will cease. That means not only will there be no

funds for any new low income housing; it also means that no funds will be available to maintain existing units.

By "individual interests," I mean that, under federal law, people who reside in low income units have a portion of their monthly payment set aside in what is essentially a savings account. Eventually, that savings account may be used to purchase the home from the authority, and over time that account may grow to several thousand dollars. It is this savings account which the attorney general now says must be taxed. Of course, everyone recognizes that if the savings account were ever withdrawn, or if the home were ever purchased, that it would be fully taxable. What is at issue here is whether a tax should now be levied on that savings account while it remains in the custody and control of the housing authority.

The fiscal effect on the State of Alaska from this legislation is zero. In fact, the fiscal effect on the municipalities is zero, since no city currently taxes these individual interests. The economic and social consequences of not enacting this legislation, however, are severe. A number of regional housing authorities in the state are

considering new low income projects this year. My own housing authority has a proposal to convert 25 foreclosed, urban area homes into HUD financed low income units. This proposal will not only provide critically needed low income housing in a time of economic distress; it will also take about 25 housing units out of a glutted housing market. Unfortunately, the tendency of the attorney general's opinion has clouded the future of this project, as I am sure it has other projects in the state.

Let me say, in closing, that we are sorry to have to come to you so late in the session; however, this development is a very recent one, and we should be thankful, at least, that it arose while the legislature was still here to deal with it. We appreciate the speed with which you have taken on this issue, and hope this legislation can be enacted as soon as possible.

(9) HB 559



# Alaska State Legislature

## House of Representatives

### Committee on Community & Regional Affairs

Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-4833

April 14, 1988

TO: Henry Springer, Chairman HCRA

FROM: David C. Harrison, HCRA Staff *DCH*

SUBJECT: HB 559 "An Act exempting certain interests in low-income housing from municipal taxation; and providing for an effective date."

SPONSOR: Community and Regional Affairs Committee

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Section 1. AS 29.45.030 (a) is amended to read:  
Page 2 lines 1 through 7:

(8) an interest, other than record ownership,  
in real property of an individual residing in the property  
if the property has been developed or improved with federal  
funds for low-income housing and is owned or managed as low-  
income housing by the Alaska State Building Authority or a  
regional housing authority formed under AS 18.55.996; this  
paragraph does not prohibit a municipality from receiving  
payments in lieu of taxes authorized under federal law.

REVIEW: On page 1, lines 11 through 29, relate to current tax exemptions allowed by state law.

#### PROGRAM EFFECTS OF THIS SECTION OF THE BILL

On page 2, lines 1 through 7, would require the privately held property interests in Alaska State Building Authority (ASBA) and Regional Native Housing Authority (RNHA) to be exempt from municipal property taxes.

#### COMMENTS:

Article IX, section 4, of the State Constitution provides:  
"Other exemptions of like or different kind may be granted

by general law." (Refers to tax exemptions under conditions as defined by law).

ARTICLE X, section 2 of the State Constitution, states that "The State may delegate taxing powers to organized boroughs and cities only."

According to AG's draft opinion, a grant of exemption is never presumed and that without a specific statutory exemption, municipalities must tax possessory interests. HB 559 and SB 500 provides a specific tax exemption for possessory interests. As such, would allow the continuation of federal participation in low-income housing in Alaskan municipalities.

It is noted that the State of Alaska under AS 18.55.300 and AS 18.55.995 declaration of purpose that there was an acute shortage of low-income rental housing for families of the state and at that time required positive action by the legislature.

Federal Law 42 U.S.C. §1437d(c)(4)(D) establishes homeownership opportunity programs with intended results that low-income families will be capable of assuming responsibilities of homeownership.

There is a compelling need to protect and hold onto what has been done in the area of low-income housing for families in Alaska from the federal interest as well as Alaska's interest. The need still exists to continue to in providing low-income housing through Alaska State Building Authority and regional housing authority formed under AS 18.55.996.

Dept. of Education fiscal analysis on estimated property tax exemptions required under SB 500 and (HB 559 identical bill) would reduce the Full Value Determination statewide by \$88,841,750. At the four mill requirement for education funding under AS 14.17.025, local effort would subsequently be reduced by \$335,400, starting in 1990, in School Foundation funding. The decrease in the full value determination causes a decrease in local effort and a corresponding increase in state contribution.

Attached is a copy of Position Paper by DCRA 4/11/1988. DOE Fiscal Note 4/11/88. (See attachment to fiscal note.) AG Draft to Commissioner of DCRA & Mike Worley, TA, 1/21/88. Birch, Horton, Bittner, et.al, Statement of Support 4/11/88. Tlingit-Haida Regional Housing Authority copy of contract. Memo to SCRAC Members from SCRAC Staff 4/11/88. Memo from Brenda to Rep. Springer, Chairman HCRA - no date.

# Alaska State Legislature

ARLISS STURGULEWSKI, Chairman  
TIM KELLY, Vice Chairman  
RICK HALFORD  
MIKE SZYMANSKI  
FRED ZHAROFF



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## Senate Community and Regional Affairs Committee

April 11, 1988

TO: Members,  
Senate Community and Regional Affairs Committee

FROM: Staff *MCA*  
Senate Community and Regional Affairs Committee

RE: SB 500 - "An Act exempting certain interests in low income housing from municipal taxation, Efd."

Both the Alaska State Building Authority and Native Regional Housing Authorities receive federal funds for the provision of low-income housing. Both of these programs transfer ownership to the residents if they live in the house for a designated number of years (usually 25), pay a monthly sum determined by their income, and abide by the other terms of the program.

While living in such housing, residents gradually acquire a possessory interest in the unit. Federal law states that if this possessory interest is taxed by the municipality the federal funds will be withdrawn. Municipalities have traditionally signed agreements with Regional Housing Authorities exempting these interests from taxation.

A draft AG's opinion has been prepared which says that without a specific statutory exemption, municipalities must tax this interest. The attached bill provides a specific tax exemption for such possessory interests. This bill will allow the continuation of federal funding for low-income housing in Alaskan municipalities.

In this packet is a position paper and fiscal note from the Department of Community and Regional Affairs, a fiscal note from the Department of Education, a copy of the draft AG's opinion, a paper in support of the bill from Birch, Horton, et al, and a sample agreement from a regional housing authority.

The fiscal note shows an impact of \$355,000, starting in 1990, in School Foundation funding. This results from the decrease in the full value determination causing a decrease in local effort and a corresponding increase in state contribution. Representatives of the Departments of Community and Regional Affairs and Education will be at the meeting to explain the note.

MEMORANDYM

TO: Henry

FROM: Brenda *BR*

SUBJECT: Taxation on Privately held Possessory  
Interest in Regional Native Housing Authority  
(RNHA) Property

Sam Kito dropped this draft memo of the A.G.'s opinion off for your review and wanted to discuss with you the possibility of the House Community and Regional Affairs Committee, Senate CRA Committee and the Department of Community and Regional Affairs drafting legislation that would exempt private property interests held in property of a housing authority.

Sam met with Senator Sturgulewski, Rod Mourant, (with her staff) and Commissioner Hoffman on this issue. According to Rod Mourant, Mike Shuler with the Bristol Bay Housing Authority will contact this office, Senator Zharoff and Commissioner Hoffman about this issue.

After Mr. Shuler has discussed the problem with you, Sen. Zharoff and Dept. of Community and Regional Affairs he will get back to Sen. Sturgulewski's office to see if everyone is in agreement before a bill is drafted. Senator Sturgulewski is not going to begin drafting any legislation until she has had an opportunity to meet will all who would be interested in this issue.

Sam is lobbying for the Housing Authority.