
HB

159

Mike's Work

3-are good-

Sec-2- has consensus

1) If Municipalities value them

Don't value 29,45,110

→ 29.05.50 -

Fixed-

2) Optional Exemption,

20 types of properties,

 *
 * DELIVER TO: LIOCDAR *
 *
 * ORIGINAL *
 * SENT: 04/10/90 TIME: 15:36 *
 * FROM: LIOCKOT *
 * SUBJECT: 90-04-030; PL; HB159; 4-10 *
 * PRINT DATE: 04/10/90 TIME: 16:17 *
 *

T/C NO: 90-04-030
 DATE: 4-10-90
 SPONSOR: (S)C & RA
 SUBJECT: HB 159 HB 104
 MODERATOR: DOUG NEAL
 SITE: KOTZEBUE

PARTICIPANT LIST

 TESTIFIED

*Bourough & James
 NW. Arctic Research
 supports, supports the c/s
 Support!*

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. RICK ERLICH/NWAB	BOX 565 KOTZEBUE	442-3070	HB 159
2.			
3.			
4.			
5.			

 OBSERVED

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1.			
2.			
3.			
4.			
5.			

 TESTIFIED:
 UNABLE:
 OBSERVED:
 TOTAL:

MEMORANDUM

State of Alaska

Community and Regional Affairs

TO: Marty Rutherford
Acting Deputy Commissioner
Municipal and Regional
Assistance Division

DATE: April 28, 1988

FILE NO: 0252Q/JP

TELEPHONE NO: 465-4750

STATE ASSESSOR'S
FILE

THRU:

SUBJECT: Exemption of
"in-place"
natural reserves

FROM: Jim Plasman
Deputy Director
Municipal and Regional
Assistance Division

We have now received a copy of the Attorney General's Opinion requested by the Governor's Office on this matter. I have discussed this matter with Mike Worley. The thrust of the opinion is consistent with our belief that this property value must be included in the local assessment roll ("we believe that the present state assessor has correctly pointed out that 'in place' natural resources may be included in municipal assessments, and properly should be included.") However, we are concerned that this point is not made strongly enough, in terms of the local responsibility to do so under existing law, i.e., "AS 29.45.110(a) allows for 'in place' natural resources to be assessed" (emphasis added) Our fear is that this may be read to imply that municipalities may optionally include or exclude these values, whereas these "in place" natural reserves may not be excluded from the full and true value of property assessed by municipalities under existing law. (Article IX, Section 4 of the constitution states in part "exemptions may be granted by general law" AS 29.45.010(c) requires "the [municipal property] tax must be assessed, levied, and collected as provided in this chapter.")

It is our desire to seek legislation to address this situation by making such in place natural resource reserves exempt from local taxation. We believe this to be sound public policy for the following reasons:

1. It would be virtually impossible for many local municipalities to accurately value such resources, opening the potential for undervaluation and tax avoidance by the property owner, especially if the resource is a major one.
2. It would be very costly for the state to accurately value the resource for full and true value purposes, requiring additional resources of the nature of trained geologists to assess the nature and value of such resources.

3. Inclusion of such values would work a tremendous hardship on municipalities such as the Northwest Arctic Borough, which, because of the enormous potential value of the resources at the Red Dog mine, would be forced to contribute many times its current obligation for the education foundation formula. Additionally, the size of the local contribution would be such that it may unbalance the formula beyond the equalization limits required by federal law to receive federal P.L. 874 funds.

4. It would reduce the temptation to municipalities to unequally tax such a resource under a property tax as has been tried in other jurisdictions.

5. It would not leave the jurisdictions without a source of revenue from the resource, as municipalities have the power to levy a severance tax, which would be easier to administer than a property tax, in terms of this type of resource.

6. This proposal is consistent with various provisions of existing law. For instance, AS 43.56.020(a)(3) exempts oil and gas reserves from local taxation. Section 21(d) of ANCSA exempts property held by native corporations from local taxation until it is either 1) developed or 2) leased to a third party.

7. It statutorily recognizes the status quo.

The opinion states that "no liability attaches to the state for failure to insist on the assessment of these resources at this time." This would seem to give us the breathing room to seek a legislative response to the situation.

However, we are soon to be faced with the situation that some municipalities will be putting this property on their tax rolls while others will not. We are aware of at least one and possibly two municipalities in Southeast that have sent assessment notices to property owners which include the value of subsurface property rights.

That leaves us with the issue of what the policy of the state should be between now and the time legislation is either adopted or not enacted. We recommend the following elements:

1. In response to questions we would answer that we think such property is taxable.

2. We do not intend to send letters of major error until we have conclusively determined it is taxable.

Marty Rutherford
April 28, 1988
Page Three

3. We are seeking further clarification from the Attorney General on specific issues including:

- how do we handle the issue of split surface/subsurface rights (such as in the case of ANCSA property split between the village and regional corporations);
- how do we treat full value determinations for municipalities which include resource reserve valuation in their assessments;
- what is the extent of different resources the proposed statutory exemption should cover.

4. We will not include natural resource reserves in place in full and true value determinations because, in any case, we are unable to value them and lack "substantial evidence" to make that determination.

5. We are seeking legislative clarification of the status of such property.

This policy is consistent with the manner in which we handled the issue of taxability of interests in Regional Native Housing Authority property.

It is my intention to send a briefing memo with this information to Bob Evans sometime after session and offer to sit down with him to discuss these issues and get started on a legislative proposal for next year. In the meantime, we intend to act in a manner consistent with the standards set out above.

cc: Mike Worley, State Assessor

6-0723J
Cook
4/26/90

Original sponsor(s): REP. MACLEAN, Cato, Zawacki

1 IN THE HOUSE

BY THE C&RA COMMITTEE

2 SENATE CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 159 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to an exemption from municipal
7 property taxation for natural resources in place, and
8 to a study of options for taxation of natural re-
9 sources by municipalities; and providing for an
10 effective date."

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

12 * Section 1. PURPOSE. It is the primary purpose of the legislature in
13 providing for a temporary tax exemption for natural resources in place to
14 gain the time necessary for an orderly and comprehensive study of the
15 issues relating to exempting natural resources in place from municipal
16 property taxation.

17 * Sec. 2. TEMPORARY TAX EXEMPTION. Natural resources in place, includ-
18 ing proven or unproven mineral and other deposits of valuable materials and
19 timber stumpage, are exempt from property taxation by a municipality.

20 * Sec. 3. STUDY AND REPORT. (a) The Department of Community and
21 Regional Affairs shall study and compare the potential effects of various
22 natural resource taxation options including

23 (1) total exemption from municipal property taxation for natural
24 resources in place;

25 (2) partial exemption from municipal property taxation for
26 natural resources in place;

27 (3) no exemption from municipal property taxation for natural
28 resources in place;

29 (4) total or partial exemption from municipal property taxation

1 for natural resources in place at the option of each municipality;

2 (5) taxation of natural resources in place by municipalities
3 other than property taxation.

4 (b) The Department of Community and Regional Affairs shall select
5 representatives of municipalities and of unincorporated communities in
6 boroughs and in the unorganized borough to advise in the design and exe-
7 cution of the study under (a) of this section. The Department of Community
8 and Regional Affairs shall conduct the study in concert with the Department
9 of Revenue and with the Alaska Municipal League. The study must include
10 consideration of

11 (1) tax treatment by other states of natural resources in place;

12 (2) the point in time that natural resources in place acquire a
13 value for tax purposes; and

14 (3) methods for determining the value of natural resources in
15 place that may be applied on a uniform basis in all municipalities.

16 (c) By January 15, 1992, the Department of Community and Regional
17 Affairs shall report to the legislature its findings and recommendations
18 regarding municipal property taxation of natural resources in place.

19 * Sec. 4. This Act is repealed July 1, 1992.

20 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

6-0723J
Cook
4/24/90

Original sponsor(s): REP. MACLEAN, Cato, Zawacki

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28 resources in place;

29 (4) total or partial exemption from municipal property taxation

1 for natural resources in place at the option of each municipality;

2 (5) taxation of natural resources in place by municipalities
3 other than property taxation.

4 (b) The Department of Community and Regional Affairs shall select
5 representatives of unincorporated communities in the unorganized borough to
6 advise in the design and execution of the study under (a) of this section.
7 The Department of Community and Regional Affairs shall conduct the study in
8 concert with the Department of Revenue and with the Alaska Municipal
9 League. The study must include consideration of

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A M E N D M E N T

OFFERED IN THE SENATE

BY SEN. SZYMANSKI

TO: SCS SSHB 159(C&RA)

Page 2, line 8:

After "Revenue" insert ", the Department of Commerce and Economic Development,"

Delete "with"

Page 2, line 12:

Delete "and"

Page 2, line 14, after "municipalities":

Insert "; and

(4) potential effects of municipal property taxation of natural resources in place on the state's economy, affected industries, and employees of affected industries"

6-0723J

Cook

4/26/90

Original sponsor(s): REP. MACLEAN, Cato, Zawacki

1 IN THE HOUSE

BY THE C&RA COMMITTEE

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23 (2) partial exemption from municipal property taxation for
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25 (3) no exemption from municipal property taxation for natural
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27 (4) total or partial exemption from municipal property taxation
28 for natural resources in place at the option of each municipality;

29 (5) taxation of natural resources in place by municipalities

1 other than property taxation for purposes of determining whether a perma-
2 nent exemption from property taxation is the most desirable approach.

3 (b) The Department of Community and Regional Affairs shall select
4 representatives of municipalities and of unincorporated communities in
5 boroughs and in the unorganized borough to advise in the design and exe-
6 cution of the study under (a) of this section. The Department of Community
7 and Regional Affairs shall conduct the study in concert with the Department
8 of Revenue and with the Alaska Municipal League. The study must include
9 consideration of

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17 regarding municipal property taxation of natural resources in place.

18 * Sec. 4. This Act is repealed July 1, 1992.

19 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).
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22
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6-0723J
Cook
4/7/90

Original sponsor(s): REP. MACLEAN, Cato, Zawacki

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BY THE C&RA COMMITTEE

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3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to determination of full and true
7 value of taxable property in a municipality, and to a
8 study of options for taxation of natural resources by
9 municipalities; and providing for an effective date."

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

11 * Section 1. PURPOSE. It is the primary purpose of the legislature in
12 providing for a temporary deletion for natural resources in place from the
13 determination of full and true value to gain the time necessary for an
14 orderly and comprehensive study of the issues relating to exempting natural
15 resources in place from municipal property taxation.

16 * Sec. 2. TEMPORARY TAX EXEMPTION. The full and true value of natural
17 resources in place, including proven and unproven mineral or other deposits
18 of valuable materials and timber stumpage, may not be included in the full
19 and true value determination under AS 14.17.140 or the determination of the
20 millage rate equivalent under AS 29.60.030 for a municipality unless the
21 property is assessed by the local assessor under AS 29.45.110.

22 * Sec. 3. STUDY AND REPORT. (a) The Department of Community and
23 Regional Affairs shall study and compare the potential effects of various
24 natural resource taxation options including

25 (1) total exemption from municipal property taxation for natural
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27 (2) partial exemption from municipal property taxation for
28 natural resources in place;

29 (3) no exemption from municipal property taxation for natural

1 resources in place;

2 (4) total or partial exemption from municipal property taxation
3 for natural resources in place at the option of each municipality;

4 (5) taxation of natural resources *Alternative methods of revenue generation* in place by municipalities
5 other than property taxation.

6 (b) The Department of Community and Regional Affairs shall select
7 representatives of unincorporated communities in the unorganized borough to
8 advise in the design and execution of the study under (a) of this section.
9 The Department of Community and Regional Affairs shall conduct the study in
0 concert with the Department of Revenue and with the Alaska Municipal
1 League. The study shall include consideration of

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- ITEM 3: Testimony in Support - Northwest Arctic Borough
- ITEM 4: Memo to Commissioner David Hoffman - State Assessor
- ITEM 5: Attorney General Opinion - "In Place Resources"
- ITEM 6: Supporting Resolution - Alaska Association of Assessing Officers
- ITEM 7: Supporting Resolution - Alaska Municipal League
- ITEM 8: Letter of Support - Arctic Slope Regional Corp.
- ITEM 9: Letter of Support - Matanuska-Susitna Borough Assessor
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- ITEM 11: Letter of Support - Mayor of Mat-Su Borough
- ITEM 12: Letter from DCRA - State Assessor

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act, exemptions, municipal property taxation."
Sponsor: Rep Maclean
Requestor: _____

Agency Affected: Community & Regional Affairs
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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)

Prepared by: Jim Plasmann, Deputy Director
Division: Municipal & Regional Assistance
Phone: 465-4750
Date: 3 2 90

Approved by Commissioner: [Signature]
Agency: Community & Regional Affairs
Date: 3/11/90

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Changes in SCS 55 HB 159 (Res)
have no fiscal impact.
This fiscal note is
appropriate.

NORTHWEST ARCTIC BOROUGH

P.O. BOX 1110

KOTZEBUE, AK 99752

(907) 442-2500 / FAX 442-2930

Statement of Dennis J. Tiepelman, Ass't to the Mayor,
Northwest Arctic Borough before the Senate Community and
Regional Affairs Committee, March 02, 1989

MISTER CHAIRMAN:

The Northwest Arctic Borough would like to go on record as supporting Senate Bill 181, "An act relating to an exemption from municipal property taxation for natural resources in place..."

The bill resolves an immediate issue if it is enacted into law: It will exempt for a period of time a requirement that resources be assessed and taxed of an unknown quantity and value on these same resources (e.g. minerals).

The borough supports the concept that in-place resources be permanently exempt in State law, but we recognize that it should be studied and a report be made reflecting what these issues might be in the way of future legislative recommendations. There are differing opinions.

The borough is part of the Alaska Municipal League which passed a resolution in November, 1988 urging the State legislature to seek legislative remedy for an assessment of minerals in-place, and it is currently required by the Department of Community & Regional Affairs, State Assessors Office.

Knowing that the Department of Revenue, Department of Natural Resources, and the Office of the Governor needs to look at the full implication of exempting minerals-in-place, this Senate Bill 181 establishes a process and allows an exemption to be in place until a final report and legislation is enacted within two (2) years. This should allow ample opportunities for other agency concerns to be addressed.

STATEMENT OF DENNIS J. TIEPELMAN
SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
MARCH 02, 1989
PAGE TWO

Northwest Arctic Borough does not in its current administrative structure maintain an assessor's office which may create a financial liability if no exemption is immediately allowed. We are also acutely aware that the proposed Red Dog mining project in our borough will go into production in about a year, and no one knows its actual resource potential of lead and zinc in terms of realistic dollar amounts.

However, the authority to impose a property tax on improvements at the mine site and the ability to impose a severance tax are much better alternatives than requiring us to place an unknown or arbitrary value on minerals-in-place. These other taxing mechanisms should be considered viable remedies in existence.

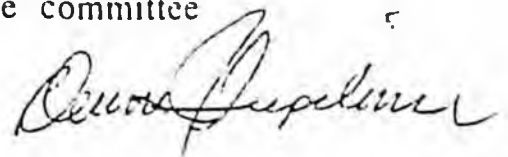
Natural resources as they exist in-place is not very prudent in methods to determine such a value. Large-scale mining as well as the small-time prospector/miner would have difficulty assessing what is the value of minerals before it could ever be developed and extracted for use elsewhere.

Other taxing districts throughout the State have similar problems, and I would urge that an immediate exemption and a prepared report will resolve any questions in due time so that some unforeseen future revenues will not jeopardize the current need for an exemption to be enacted.

The Northwest Arctic Borough is just completing its second year as a "home-rule borough", and there are many other organizational priorities we are working on, including land selections, planning, and financial stability without incurring additional duties of assessing what is taxable or taxing schemes which would now include natural resources in-place.

I would urge speedy deliberations and enactment of legislation that seems to appease every interest group and at the same time does not close the door on changes that might happen in the ensuing two (2) year period.

Thank you for this opportunity to address the committee



MEMORANDUM

State of Alaska

Community and Regional Affairs

TO: Bob Evans
Legislative Liaison
Office of the Governor

DATE: November 14, 1988

FILE NO: 741X/MWW/JP/1410.2

TELEPHONE NO: 465-4750

THRU: David G. Hoffman
Commissioner

SUBJECT: Proposal To Exempt
Natural Resources
In-Place

FROM: *Worley*
Michael Worley
State Assessor
Municipal and Regional
Assistance Division

The Director of the Municipal and Regional Assistance Division, Harry Rutherford requested that I prepare a briefing for you regarding issues and questions which might arise when the above subject is discussed at the AML Conference. I believe the municipalities will be supportive of the proposal. I have not heard from one municipal official who is in favor of assessing these resources. The initial reaction to our proposal at the municipal level has been that people who do not understand the facts perceive our proposal to be a denial to local governments of a valuable revenue resource. However, once they do understand the issue, they regard this mandatory taxing arrangement as an untenable requirement under state law which they wish to have removed. If our proposed bill is not introduced by the Governor, I am concerned that their perception will be that the Cowper Administration wants to impose this mandate against the wishes of municipalities. In any event, this proposal is advanced on behalf of municipalities. If they do not want it, we will recommend it be withdrawn.

The issue will probably be discussed at the Policy Section Meeting on taxation and finance on Thursday, the 17th from 1:00 to 3:00 P.M. Among others, Commissioner Hugh Malone, Gary Lewis (Ketchikan Borough Assessor) and I will be on the panel for that meeting.

Attached is a resolution paper which states briefly the pros and cons of this issue as we see them. Also attached is a copy of the questions of concerns and questions posed by State Economist [unclear].

Additional questions re this issue, if we can be of any help, please don't hesitate to call on us.

Michael Worley

November 14, 1938

POSITION PAPER

RE: Proposal to exempt natural resources-in place.

SPONSOR: Rules by Request of the Governor

Effects of the Bill:

This bill would stabilize municipal taxing practices, the State Revenue Sharing Program, and the Education Funding Formula by by statutorily recognizing the current property tax practices of municipalities in the State, and the procedures utilized by the Office of the State Assessor in estimating Full Value Determinations. The assessment practices and procedures currently being used by municipalities and the Office of the State Assessor in regard to in-place natural resource reserves are not consistent with existing state law.

Comments:

Although Alaska law technically requires these in-place natural resource reserves to be included in local tax rolls and in the full value determination for municipalities, they have not been so included because of the technical difficulty and expense of accurately determining the value of such reserves. The treatment of these values has become an issue because of the continuing development, lease or sale of the property conveyed to regional corporations under the Alaska Native Claims Settlement Act (ANCSA). As these ANCSA properties are developed or conveyed to other parties, they enter taxable status. Under ANCSA, the surface and subsurface estates to these properties were conveyed separately to village and regional corporations, respectively. Because municipalities must assess property rights to "the record owner" under AS 29.45.160(b), assessors should value resources separately and assess their value to the proper corporation. Although this issue was triggered by ANCSA, it is not confined to only those properties. The municipal assessor must treat all property in a uniform manner; therefore, the practice of valuing these resources will automatically extend to all properties. Several options have been suggested in attempting to solve problems. The following is a discussion of these options and the position:

Position Paper
RE: PROPOSAL TO EXEMPT NATURAL RESOURCES IN-PLACE
November 14, 1988
Page Two

Option 1: Do Nothing.

Because of the developments discussed above, doing nothing will not preserve the status quo. It will, in fact, require substantial changes in assessment practices throughout the state, increasing the administrative and fiscal burden on municipalities and the state to determine the values of in-place reserves in municipalities. The addition of these values to municipal tax rolls and full value determinations will have effects at both the local and state level. The values of some resources would be high enough on larger tracts (homesteads, farms, etc.) that the owners would very likely be forced to develop the resources in order to pay property taxes, or face property tax foreclosure. The inclusion of these values in full value determinations will reduce revenue sharing funds to municipalities with additional in-place reserve value and will increase the mandatory local contribution under the education formula to those municipalities. Depending upon the amount of these resource reserves, the fiscal impact to local governments could be substantial.

The positive side to this option is that municipalities would continue to have the capacity to levy against a category of taxable property. In most municipalities, we believe the resource value would not be very high. In some, however, it could be higher than the combined value of all other property located in the jurisdiction.

Option 2: Adopt Legislation Permitting Municipalities to Tax Resources in Place by Local Option.

The advantage to this approach is that the State is not depriving municipalities of new property tax dollars which are currently available to them. At the same time, the requirement for municipalities to tax the resources, whether they want to or not, is removed.

Unfortunately, there are many hidden problems associated with this option. The Full Value Determination includes value for all property with a taxable under state law. Under the local option concept the value of these resources would be required to be included in the Full Value Determination whether municipalities elected to tax them or not. Therefore, we would still have the education funding problem which exists in some resource-rich, revenue-poor municipalities (see attached memo). It has been suggested that perhaps the resource values should be added to full value determinations only if municipalities elected to tax them.

Position Paper

RE: PROPOSAL TO EXEMPT NATURAL RESOURCES IN-PLACE

November 14, 1988

Page Three

This proposal raises a significant policy question in the rationale and equity for allowing such treatment for only this type of optionally exempt property but not for other types such as personal property, motor vehicles, boats, or the first \$10,000 on homes, the value of which is required to be included in their full value determinations whether or not it is taxed. It seems likely that allowing one exception to the rule that optionally exempts property to be included in the full value determination would lead to calls from affected municipal governments for the exclusion of other types of optionally exempt property, based upon the amount of such property within each municipality. If all optionally exempted property values were removed the concept of the full value determination would be dramatically altered in that it would represent only the willingness of municipalities to generate property tax revenues, regardless of their potential to do so. The Department of Education has expressed concern that under the optional exemption concept, local education funding could be dramatically increased or reduced each year through the exercise of the option, thereby causing fiscal instability within school districts.

Option B: Mandatorily Exempt Resources In-Place from Municipality Levy.

The chief disadvantage of this approach is that municipalities would be unable to tax resources in-place if they desired to do so. Municipalities in Alaska do, however, have the power to levy a severance tax against the extraction or removal of the resources at their option. Therefore, the inability to tax the resources would apply only to those not being developed.

No municipality in Alaska has attempted to assess or even to develop a separate value for resources in-place. Therefore, this option would maintain the status quo in that regard. Similarly, the Office of the State Auditor has never attempted to include a value for these resources in municipal full value determinations. For resources potentially extracted under this option, the lower of either the assessed value or the severance tax would be the amount levied, thereby maintaining the existing status quo.

The danger of substantially increasing property taxes on better sites of land such as homesteads and farms would be alleviated. With the option of adopting a severance tax, however, municipalities could tax those resources in the event they were developed.

Position Paper

RE: PROPOSAL TO EXEMPT NATURAL RESOURCES IN-PLACE

November 14, 1988

Page Four

In summary, we believe Option 3 provides the most logical way to resolve these problems. It guards against disruption of revenue sharing and education funding activities, and insures the status quo will be maintained in both municipal property taxation and the Full Value Determination.

MEMORANDUM

State of Alaska
Department of Law

TO: Bob Evans, Legislative Liaison
Office of the Governor

DATE: April 26, 1988

FILE NO: 663-88-0410

TEL NO: 465-3600

SUBJECT: Exemption of "in place" natural resources

FROM: *Marjorie L. Odland*
Marjorie L. Odland
Assistant Attorney General
Governmental Affairs-Juneau

You have requested our opinion regarding a draft bill exempting "in place" natural resources from municipal taxation (Our file: 773-88-0061). You have several concerns regarding the effect and necessity of this bill which will be addressed individually below.

1. What is the state's current obligation regarding the assessment of "in place" natural resources in the full-value determination of a borough or municipality?

The standard by which a local assessor must assess property is set out in AS 29.45.110(a), which reads:

The assessor shall assess property at its full and true value as of January 1 of the assessment year, except as provided in this section, AS 29.45.060 and 29.45.230. The full and true value is the estimated price that the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

Under the above statute, a local assessor must assess all taxable property in accordance with the standard. The determination as to whether "in place" natural resources must be included in the assessment of property and the state's liability for insuring the inclusion of assessment of "in place" natural resources by municipalities is central to your question.

To date, municipalities have not assessed "in place" natural resources. Additionally, the state has not required municipalities to include these resources when determining full and true value of property under AS 29.45.110. There is no case law in Alaska interpreting AS 29.45.110 with respect to assessment requirements of "in place" natural resources nor is there a case

in Alaska holding that it is mandatory for these resources to be included in property assessment. However, it is the opinion of this office that "in place" natural resources may correctly be included in the full value determination of a municipality under AS 29.45.110(a) and that the Alaska Supreme Court would support this opinion.

Looking to other states' court opinions and treatise law, it is generally held that the right to tax is purely of statutory creation, and practically all of the authorities are to the effect that assessors, in valuing property, may take into consideration the fact that property contains undeveloped minerals in such quantity as to enhance the value of the land over its mere surface value. See 2 A.L.R. 1550-1553 and cases cited therein. It has also been held that minerals in place are not rendered nontaxable merely because of lack of legislative method and regulation for determining their value. Greene County v. Lattas Creek Coal Co., 100 N.E. 561 (Ind. 1913); 72 Am.Jur.2d State and Local Taxation § 764.

There is case law supporting the view that assessors are required to value for taxation all real property according to its market value. Under those decisions, value is measured by all the circumstances and advantages that tend to enhance it, of which underlying minerals, if accessible, are most important items, so that they must necessarily be included in the valuation. See, e.g., Logan v. Washington County, 29 Pa. 373, 14 Mor. Min. Rep. 108 (Penn. 1857). Any element of value tending to affect selling price "may" be taken into consideration by the assessor in arriving at a proper valuation for assessment purposes. Washington County v. Marquis, 82 Atl. 756 (Penn. 1912). The decisions of the courts in these two cases appear to have been based upon statutes similar in wording to AS 29.45.110(a).

Of main import, is that none of the authorities we found held for the premise that liability attaches to the state or local taxing entity for failure to include "in place" natural resources in their assessments. The authorities we found were based upon cases where a taxpayer was challenging the authority of the taxing jurisdiction to include the value of "in place" natural resources in the assessment of their property.

Furthermore, we found no cases holding that local or state assessors are required to search out "in place" natural resources in order to include them in the assessment of property. The cases mainly hold that it is correct for assessors to take into consideration all "facts" directly affecting the value. It is our opinion that this general rule concerns facts which affect

the value of the property that are known or prospective; not sought or speculative.

There is authority supporting the view that assessors may take into consideration prospective value of property as well as present value in making assessments and that an added value may be given property for purposes of taxation where there is "sufficient reason" to believe that the property contains mineral deposits in sufficient quantity to give it a value as a prospective mine. However, there is also authority to the effect that not only must property be valued at its present value at the time of the assessment, but that such value cannot be based on a speculative prospective value. See generally 72 Am.Jur.2d State and Local Taxation, §§ 763-764.

In summary, it is our opinion that AS 29.45.110(a) allows for "in place" natural resources to be assessed and included in the full value determination of a municipality. The issue of whether the state is mandated to assess these resources will be included under the next section dealing with any potential state liability for failure to include assessment of "in place" natural resources in the full value determination of a municipality.

2. If "in place" natural resources are not currently exempted from the full value determination, what liability may the state face if the state assessor does not include these in his assessments?

As pointed out above, the state has never required municipalities to assess "in place" natural resources in order to arrive at the full and true value of property in the municipality. The issue is not whether AS 29.45.110(a) can be interpreted to allow for assessment of "in place" natural resources, since we believe that the Alaska Supreme Court would rule that it does. The issue here centers around the state's longstanding application of this statute in not requiring these resources to be assessed and whether the state faces liability for not including "in place" resources in the assessments. In short, we do not believe that the state faces any present liability for failure to require municipalities to assess "in place" natural resources without a specific exemption in the law.

We are assuming that the liability anticipated by your question concerns a situation where one municipality complains that the state should be requiring another municipality to assess its known "in place" natural resources in the full value determination as it affects the distribution of municipal revenue sharing and education funding. However, a municipality's claim

Bob Evans, Legislative Liaison
Office of the Governor
663-88-0410

April 26, 1988
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of deprivation of due process or equal protection against the state must fail. The Alaska Supreme Court recently ruled that a municipality is not a "person" and therefore may not assert due process or equal protection claims against its creator, the state. Kenai Peninsula Borough v. State, ___ P.2d ___, Op. No. 3277 (Alaska, Mar. 4, 1988).

If the state changes its application of AS 29.45.110-(a), rules of contemporaneous construction generally hold that a reversal in interpretation of a statute by the administering agency will be applied only prospectively. 2A N. Singer, Sutherland Statutory Construction § 49.05, (4th ed. 1984 rev.) (hereafter "Sutherland"). In other words, if the state reverses its interpretation and administration of AS 29.45.100(a) requiring municipalities to assess "in place" natural resources in their determinations of full value, the state's new interpretation most likely will apply only to future years; not retroactively.

We note that there is caselaw in other states supporting the following viewpoint:

the mere failure of public officers charged with the duty to enforce statutory and constitutional provisions in respect to the levy and collection of taxes, or the acquiescence of public officers in conditions that exempted certain property from taxation, should not be permitted to stand in the way of the "correct" administration of the law, or be construed to estop more diligent and efficient public officers when they attempt to perform their duty by bringing in to the revenue proper subjects of taxation that had theretofore been allowed to escape the payment of taxes.

Sutherland § 49.05 (citing Louisville v. Board of Education, 154 S.W. 379, 380-381 (Ky. 1913)).

Based upon the above viewpoint, we believe that the present state assessor has correctly pointed out that "in place" natural resources may be included in municipal assessments, and properly should be included. However, as noted above, it is the opinion of this office that no liability attaches to the state for failure to insist on the assessment of these resources at this time.

3. Is it your opinion that this exemption from municipal resources is necessary?

Bob Evans, Legislative Liaison
Office of the Governor
663-88-0410

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Probably yes, for the main purpose of addressing the issue and clarifying the state's application and interpretation of AS 29.45.110(a). We do not believe any retroactive liability will attach if the state does not immediately provide for this exemption in the law. Additionally, the state may wish to consider whether it wants to make the exemption of "in place" natural resources from municipal taxation mandatory upon the municipalities or whether to allow municipalities the option of providing for the exemption of these resources from taxation.

We hope this addresses your concerns. Please do not hesitate to contact us if you need further assistance on this matter.

MLO/pig

6

Introduced by: Alaska Association of
Assessing Officers

Date: November 17, 1988

RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE

RESOLUTION NO. 88 - 2

A RESOLUTION RECOMMENDING TAX EXEMPT STATUS
OF "IN PLACE" RESOURCE RESERVES.

WHEREAS, "current Alaska law requires municipalities which levy a property tax to assess, levy, and collect property taxes on natural resources in place, except oil and gas resources which are mandatorily exempted and

WHEREAS, the Office of the State Assessor is required under current law to include values for those natural resources in place in the Full Value Determination for municipalities across the State and

WHEREAS, currently neither municipalities nor the Office of the State Assessor includes values for those resources on local assessment rolls or in the Full Value Determination, and neither has the staff or fiscal resources to value natural resources in place and

WHEREAS, the inclusion of values for those resources on local property tax rolls or in the Full Value Determination would be likely to have substantial negative tax impacts on farms, ranches, homesteads and other residential property, and substantial negative impacts on municipalities under the State Revenue Sharing and education funding formulas and

WHEREAS, municipalities already have the power to levy severance taxes and sales taxes against those resources at the time they are developed and sold;

NOW, THEREFORE, BE IT RESOLVED THAT THE Alaska Municipal League supports the passage of legislation which would require, under A.S. 29.46.030, the exemption from municipal property taxes of all natural resources in place, together with language which would insure preservation of the power of municipalities to levy severance taxes and sales taxes against the development and sale of those natural resources.

This resolution was passed by the governing body of the

Alaska Association of Assessing Officers on November 15, 1988


#7

Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325
FAX 461-5480

217 SECOND STREET, SUITE 200
JUNEAU, ALASKA 99801

TO: Representative Eileen Mclean, Chair
Members of the House Community and Regional Affairs Committee

FROM: Scott A. Burgess, Executive Director 

DATE: March 13, 1989

SUBJECT: Sponsor Substitute for HB 159 - Municipal Property Tax Exemption
for In Place Resources

The Alaska Municipal League supports Sponsor Substitute for HB 159. Recognizing the significance of the issue of municipalities imposing or not imposing a property tax on natural resources in place, the AML membership passed Resolution No. 89 - 21 (attached) at the annual business meeting in November 1988. After further analysis, the AML Board of Directors added the legislative resolution of the concern raised by the Department of Community and Regional Affairs earlier this year to its 1989 legislative priorities outlined in the AML Municipal Platform. SSHB 159 reflects the approach supported by the AML and the AML urges passage by the Legislature.

As outlined in AML Resolution No. 89 - 21, municipalities and the State of Alaska are required by law to include the values of natural resources in place (e.g. minerals, timber etc.) on local assessment rolls and in the full value determination, respectively, for purposes of taxation. Neither does because neither has the staff or fiscal resources to value the resources, and the inclusion of values for those resources would likely have a negative impact on residential property and on municipalities under the state revenue sharing and education funding formulas. Exempting the resources from property tax would recognize the difficulty of taxing natural resources in place and the status quo.

However, given the decline in state aid to municipalities and the increasing demand to provide additional local services with local tax dollars, limiting a potential tax base should be approached with caution. When the issue of taxing in place resources was raised earlier this year, the Department of Community and Regional Affairs stimulated significant discussion and debate around the State, especially among the municipalities and with the Department of Revenue. SSHB 159 calls for a temporary, two-year property tax exemption on natural resources in place to recognize the status quo, and it also calls for a study by the Department of Community and Regional Affairs to compare the potential effects of total exemption, partial exemption, no exemption and optional exemption. In conducting the study, DC&RA will consult with the Department of Revenue and the AML. The approach outlined in SB 159 with a temporary exemption and a study will take care of

AML Testimony on SSHB 159
March 13, 1989
Page 2

the immediate situation and provide for more understanding of the issue, a discussion of alternatives, and the development of a consensus on a long-term or permanent solution.

The July 1, 1991 repeal date in Section 3 would provide adequate time for the study to develop recommended long-term legislative solutions (two years) and for the legislature to act. Assessment roles are determined as of January 1st of each year; therefore, in order for the municipality to add property to the assessment rolls if required by legislation passed in 1991 session and to assess in 1992, the assessors would have to do their work during the summer and fall of 1991 and have the property on the rolls by January 1, 1992. If the 17th Legislature does not act in the First Session to implement the recommendations of the study, it will have to extend the temporary exemption.

Finally, the AML wants to clarify in its testimony that municipalities have the authority under law to place a severance tax on natural resources whether or not natural resources in place are exempt from property tax. This is confirmed in an Alaska Attorney General opinion dated April 29, 1986 to the Commissioner of Community and Regional Affairs.

Again, the AML supports SSHB 159 as a legislative priority of municipalities across the State.

Attachment

Testimony\sbl81

Resolution of the Alaska Municipal League

Resolution No. 89-21

A RESOLUTION RECOMMENDING TAX-EXEMPT STATUS OF
"IN PLACE" RESOURCE RESERVES

WHEREAS, current Alaska law requires municipalities that levy a property tax to assess, levy, and collect property taxes on natural resources in place, except oil and gas resources, which are mandatorily exempted, and

WHEREAS, the Office of the State Assessor is required under current law to include values for those natural resources in place in the full value determination for municipalities across the State, and


WHEREAS, neither municipalities nor the Office of the State Assessor includes values for those resources on local assessment rolls or in the full value determination, and neither has the staff or fiscal resources to value natural resources in place, and

WHEREAS, the inclusion of values for those resources on local property tax rolls or in the full value determination would be likely to have substantial negative tax impacts on farms, ranches, homesteads, and other residential property, and substantial negative impacts on municipalities under the state revenue sharing and education funding formulas, and

WHEREAS, municipalities already have the power to levy severance taxes and sales taxes against those resources at the time they are developed and sold;

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League supports the passage of legislation that would require, under AS 29.45.030, the exemption from municipal property taxes of all natural resources in place, together with language that would insure preservation of the power of municipalities to levy severance taxes and sales taxes against the development and sale of those natural resources.

Adopted this 18th day of November 1988 in Fairbanks, Alaska.


Heather Flynn, President

ATTEST:


Scott A. Burgess, Executive Director



P.O. BOX 129 BARROW, ALASKA 99723
PHONE (907) 852-8533 OR 852-8833
PANAFAX TELECOPIER (907) 852-5733

February 5, 1989

The Honorable Eileen MacLean
State of Alaska
House of Representatives
Pouch V
Juneau, Alaska 99811

Re: Taxation of In-Place Minerals

Dear Eileen:

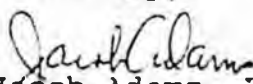
We have reviewed the proposal bill to exempt in-place minerals and natural resources from property taxation. Generally, we would support this provision. Any attempt to tax resources before they are severed would have a negative and deleterious affect on the state and industry. It would not stimulate development to impose such a tax, and it would be extremely difficult to value the resources prior to really knowing what might be produced.

One item that should be added to the list of natural resources is gravel. This is an in place natural resource that does not have significant value unless it can be mined and used. It is also often difficult to realistically determine the value of gravel until the market develops. Amounts in place, quality and costs associated with development are difficult to pre-assess.

Other major natural resources, such as oil and gas, are structured to be taxed on a severance basis, not in place. This approach is appropriate for the natural resources listed in the bill as well. I assume this section would be consistent with AS 43.56, even though it does not reference the oil and gas exemption that already exists; you may wish to have someone check that. Also, the breadth of coverage for all timber as "stumpage" and fish and shell fish "farms" might be considered.

Again, ASRC supports the proposed amendment to AS 29.45.030(a) by adding the exemption for in place natural resources. Further, we would urge the addition of gravel as an example to be clear that is included. If we can provide additional comments, please do not hesitate to contact us.

Sincerely,


Jacob Adams, President
ARCTIC SLOPE REGIONAL CORPORATION

CHAIRMAN OF THE BOARD
Edward E. Hopson, Sr.

PRESIDENT
Jacob Adams

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Matanuska-Susitna Borough # 3

P.O. BOX 1805, PALMER, ALASKA 99645-1808 • PHONE 745-8842

ASSESSMENT DEPARTMENT

March 9, 1989

House Community & Regional
Affairs Committee
P.O. Box BH
Juneau, AK. 99811

Dear Committee Members:

The Matanuska Susitna Borough strongly supports HB159. We are a resource rich borough with very present awareness of the dilemmas regarding resource inventory regarding timber. Let us illustrate what current law requires and why taxation of resources in place should be changed through passage of this bill.

I. Consider your reaction if your assessor came to you and said:

You have 30 trees around your home; that equates to 10 cords of firewood, at \$40.00 a cord. The in place resource value of trees is \$400.00, therefore we are adding \$400.00 to your annual assessment.

Conversely if you cut down trees; the assessor says you have X number of stumps --- therefore your assessment is reduced.

Surprisingly this is a realistic extension of what current Title 29 requires. This is also true of other resources; imagine the case of gravel, gold, coal, peat, etc. Any resource that has potential present or future value, even wild grass which could be harvested for hay.

II. Unexplored resources present a different problem:

For instance, everyone knows coal seams exist in the Susitna River basin but where, how much, or what quality would require extensive drilling and sampling. Whether those seams transverse taxable property in the area is completely unknown or within the Borough's or State's reasonable capacity to identify.

Some exploration has occurred and statements made that the BTU value of those reserves equal BTU value of Prudho Bay Oil. If true, untaxed resource value exceeds total value of the Borough by many times. As the assessor I would be very presumptuous to tax private property based on speculation that someday the highest and best use may be for coal extraction. Accurate exploration information ranks very high on the list of industry secrets as the State found in relation to oil and gas reserves. The State's solution was a severance tax, which is also a better solution for municipalities.

III. Finally, I'll give you the example of Nome:

Alaska Gold Company owns mining claims under subdivisions. What is the value of the gold vs the value of displacing whole subdivisions to obtain it. This illustrates the very complex issue of surface and subsurface estates and decisions required as regards when the highest and best use of one estate supercedes the other. Also, it raises the question of division of property value of the two estates when ownership is divided.

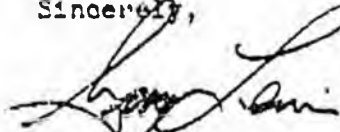
These examples are all preliminary complexities assuming one can determine a value per unit of resource reflecting markets, infrastructure, feasibility and capitalization required. As you can see, it would be prudent for the municipality required to value resources in place to plan on employing foresters, geologists and a bunch of attorneys.

Beside from the almost comical problems of implementing a program of unknown in place resource taxation, the real issue is that of equity of State DCRA Full Value Determination of untaxed or escaped in place resource value. This is the reason this bill is before you. In some cases resource values are known; MSB timber inventory studies, and Wishtone Hill coal reconnaissance, EPB Beluga coal exploration, Juneau gold mines, Nome gold fields, etc., but what resource deposits cannot be estimated nor accurately determined to be escaped property by the State Assessor. And what effect will the addition of some, but not all, resource values have on equitable School Foundation Funding distribution and Revenue Sharing distribution. These are the issues this bill seeks to resolve.

This summarizes the reasons the passage of this bill is supported by unanimous resolution of the Alaska Municipal League, Alaska Association of Assessing Officers and Alaska Association of Municipal Finance Officers.

Please: DO PASS

Sincerely,



Gary A. Lewis

Matanuska-Susitna Borough Assessor
AML Taxation & Finance Comm. Co-Chair

**Municipality
of
Anchorage**



OFFICE OF THE MAYOR

P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4431

TOM FINK,
MAYOR

March 21, 1989

The Honorable Representative Eileen MacLean
State of Alaska
Pouch V
Juneau, Alaska 99811

Re: House Bill No. 159 - Exemption of Natural Resources in Place

Dear Representative MacLean:

You have asked for the position of the Municipality of Anchorage regarding House Bill No. 159 which exempts from taxation undeveloped natural resources in place.

The Municipality introduced a resolution at the Alaska Municipal League at Fairbanks in November supporting this type of exemption. Although Anchorage is not considered one of the resource rich municipalities in the State, it is our position that failure to provide this exemption could be costly to those which are resource rich. To my knowledge, there is no municipality in the State which assesses and taxes undeveloped resources in place due to the complexity of a system and the expense required to make value determinations.

It is our understanding that if such an exemption is not mandated, the State Assessor's office within Community & Regional Affairs will be forced to make an estimate of the value (at an undetermined cost to the taxpayers of the state) and include that value in the full value determination which his office prepares each year. If that value were included, many municipalities would realize a reduction in revenue sharing and educational assistance.

It is for these reasons that the Municipality of Anchorage supports the passage of House Bill 159.

Sincerely,

Tom Fink
Mayor



Matanuska-Susitna Borough

P.O. BOX 1608, PALMER, ALASKA 99645-1608 • PHONE 745-9682

BOROUGH MAYOR

December 10, 1988

The Honorable Steve Cowper
Governor, State of Alaska
P. O. Box A, Mail Stop 0101
Juneau, AK. 99811-0101

Dear Governor Cowper:

SUBJECT: Tax Exemption of Resources In Place

A Resolution for the state to pass legislation exempting natural resources in place from property taxation was adopted by AML in November (attached).

This emanates from realization that DCRA has not appraised or included value of untaxed or inventoried natural resources in Full Value Determination for municipalities. Likewise, because of cost of inventory and lack of verification of amount and value of particularly subsurface resources, municipalities have not taxed this form of property interest.

The issue arises as, due to ANSCA, subsurface and surface rights are divided between local and regional native owners. There are cases where mineral extraction causes identifiable taxable resources.

Current thought is that the exemption of in place natural resources will:

Avoid tremendous administrative costs involved in identifying and valuing unproven resources both by the state and municipalities.

and;

Avoid onerous disruption of formula funding program distributions between resource rich and resource poor municipalities.

A more reasonable, equitable and less regressive method of taxation appears to be severance tax applied to natural resources at time of production:

It recognizes ability to pay at time of marketability.

It will not punish (funding formulas) those municipalities which inventory and identify natural resources in efforts to diversify economic base.

It is much simpler to administer at the local level.

These may be the same reasons why the State opted to tax Oil and Gas reserves through a severance tax. The Matanuska-Susitna Borough urges your reconsideration of the introduction of legislation exempting resources in place, even with an option that municipalities adopt a severance tax in lieu of property tax.

Sincerely,

Dorothy Jones
Dorothy Jones Mayor

cc: Scott Burgess - AML Executive Director
Gary Lewis - Taxation & Finance Co-Chairman

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

MUNICIPAL & REGIONAL ASSISTANCE DIVISION

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PHONE (907) 486-5736

☐ P.O. BOX 350
KOTZEBUE, ALASKA 99752-0350
PHONE (907) 442-3696

☐ P.O. BOX 41
NOME, ALASKA 99762-0041
PHONE (907) 443-5457

March 15, 1989

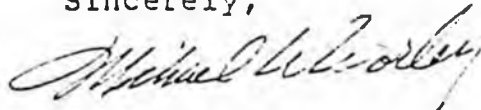
Ken Johnson
Legislative Aide
Representative Sam Cotten's Office
Pouch V
Juneau, AK 99811

Dear Mr. Johnson:

You have asked for the technical position of our office regarding the effects of sponsor substitute for House Bill 159 on the power of the State of Alaska to levy taxes against natural resources in place. The bill clearly states that the temporary tax exemption provided for is from taxation by municipal governments only. The State's authority to levy taxes against these resources is not affected in any way by this legislation.

If you have other questions, or if we can assist you on other matters, please feel free to contact me.

Sincerely,



Michael W. Worley
State Assessor

cc: Representative Eileen MacLean

OUTLINE FOR RESOURCES IN PLACE STUDY

Division of Labor:

Juneau DCRA

1. Develop current practices questionnaires and mail to lower 48.
2. Develop current practices questionnaires and mail to all Alaska municipal assessors.
3. Coordinate and compile all incoming information and draft final report.
4. Develop recommendations (if any) to Legislature in conjunction with AML and DOR.

Anchorage DCRA

1. Work with DNR and local groups to estimate type and quantity of natural resources in Unorganized Borough.

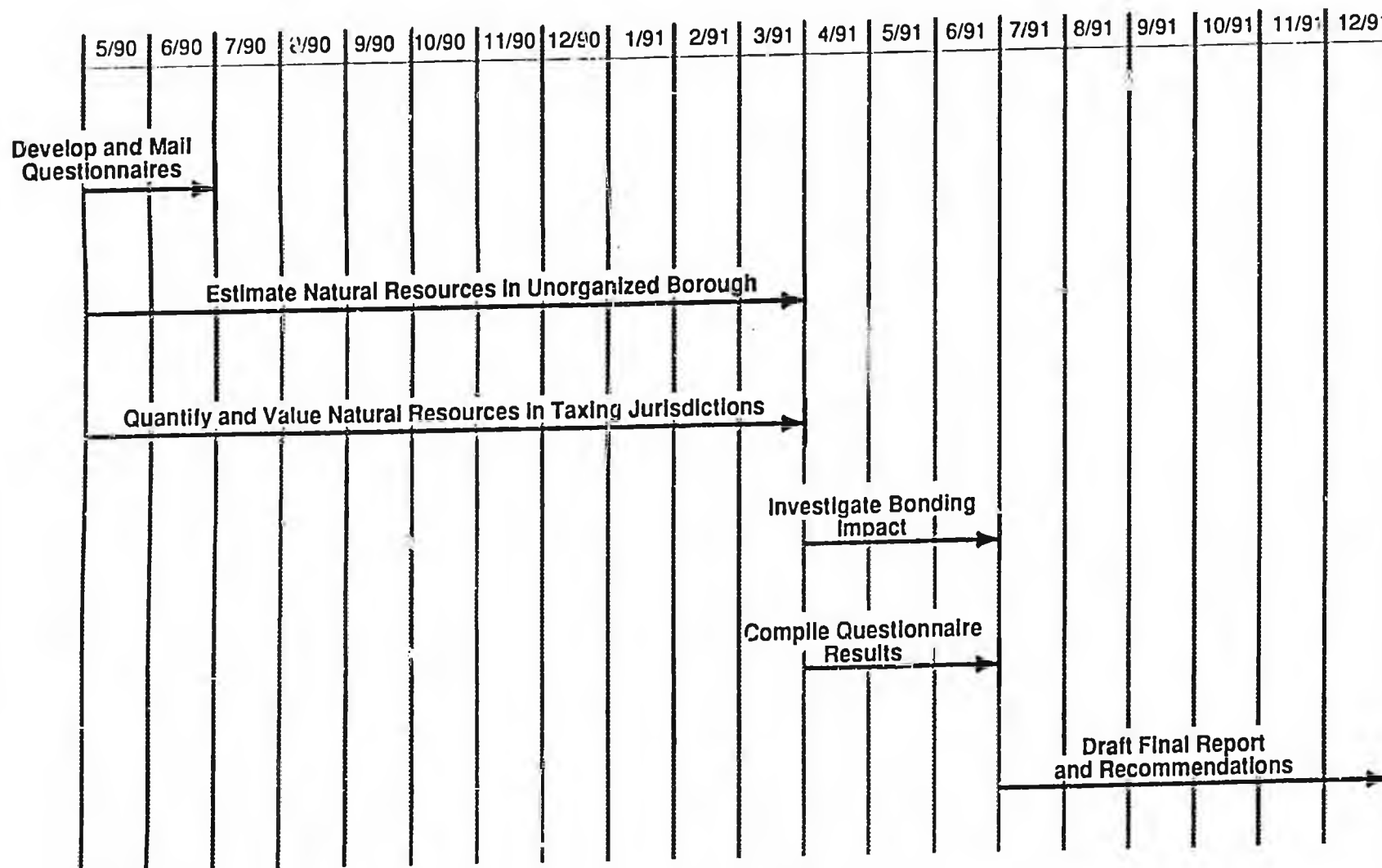
Alaska Municipal League

1. Attempt to quantify resources in place in respective jurisdictions (working with local assessors).
2. Describe methodology they would use in trying to estimate values of resources.
3. Estimate values of quantified resources.

Department of Revenue

1. Survey different types of taxation (excise, severance, income, etc.) in other states.
2. Investigate bonding impact to State (if any).

Estimated Time Lines for Resources in Place Study



OUTLINE ISSUES

Natural resources "in place" have not been a traditional part of local government taxation in Alaska, although they form a substantial part of local government tax bases in some counties and cities in other states.

However, total exemption of this potential source of revenue from possibility of taxation may have very serious consequences.

Existing local governments, particularly borough governments, are existing organizations with staff, funding, and political access to deal with changes in their revenue base--if a major revenue source declines or is lost, they can shift to another. Since these existing boroughs do not depend on taxation of natural resources in place today, they are not likely to be greatly affected by an outright exemption.

The real difficulty comes in for local governments that are not yet formed. Natural resources, and their taxation, are likely to be the only real possibility of a tax base that would allow or encourage formation of boroughs in the unorganized area of the state.

Prohibition of allowing taxation might simply mean prohibition of any meaningful local governments in the unorganized borough. No dough, no go.

In order to encourage local government formation, we must be careful to make sure we provide the maximum opportunity for people in rural Alaska to control their own local affairs.

Excepting the natural resource value from the full and true value count will leave the present scheme intact, and set no unfortunate precedent of prohibition. During this interim exemption, a study can be made that looks at more than limiting local government taxes on natural resources, which would be too narrow a focus. The study should include a look at what the alternatives would be or should be if local governments are prohibited in whole or in part from a property tax. On Natural Resources in place. Specific statutory authorization for a severance tax or a net profits tax might well be the proper alternatives, but they must be looked at.

Finally, we should make sure that the people who have the most to lose by any prohibition, or the most to gain if viable local government can be created, are given a solid right to participate in the study. These are the people from the unorganized borough. We must make sure they are not disenfranchised.



Alaska State Legislature

SENATE

Special Committee on International Trade and Tourism

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4978/4979
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Senator Mike Szymanski, Chair

Senator Rick Halford
Senator Arliss Sturgulewski
Senator Rick Uehling
Senator Fred Zharoff

April 6, 1990

MEMORANDUM

TO: Tam Cook, LAA Legal
FROM: Senator Mike Szymanski
RE: Amendments to HB 159

A handwritten signature in cursive script that reads "Mike".

Please add the following amendments to SB 159:

- 1) line 16: after "including," add "but not limited to,"
- 2) direct the Department of Community and Regional Affairs to include the following points in the study:
 - a) at what point are resources in place assigned value?
If it is while the resources are still in place, then a standard assumption must be established to determine value. For timber, the value would be based on designated areas which have been cruised for value. For mineral resources, the value would be based on whether the deposit is under development or has been proven and announced.
 - b) how do other states treat similar in-place resources?

AMENDMENT TO SCS SS HB 159 (Resources)

Page 1, lines 25-28:

Delete all material and insert:

"(b) In conducting the study under (a) of this section, the Department of Community and Regional Affairs shall conduct the study in concert with the Department of Revenue and the Alaska Municipal League. The Department of Community and Regional Affairs will form an advisory group consisting of representatives of communities outside of the organized boroughs to advise in the design and execution of this study. By January 15, 1992, the"

AMENDMENT TO SCS SS HB 159 (Resources)

Page 1, line 24,

Delete "municipality" and insert "municipality;"

Page 1, after line 24:

Insert:

"(5) alternative taxes for local governments."

AMENDMENTS TO SCS SS HB 159 (RESOURCES)

NEW LANGUAGE FOR SECTION ONE

Section 1. TEMPORARY EXEMPTION OF NATURAL RESOURCES IN PLACE FROM FULL AND TRUE VALUE DETERMINATION. The full and true value of natural resources in place, including proven or unproven mineral or other deposits of valuable materials and timber stumpage, are exempt from inclusion in the full and true value determination under AS 14.17.140 (Determination of full and true value by the Department of Community and Regional Affairs) and AS 29.60.030 (Determination of millage rate equivalent) unless the property is assessed by the local government under AS 29.45 (Municipal Taxation). The primary purpose of this exemption is to provide the necessary time for an orderly and comprehensive study of the issues relating to an exemption of natural resources in place from property taxation by municipalities.

Offered: 3/6/90
Referred: Rules

6-0723H

Original sponsor(s): REP. MACLEAN, Cato, Zawacki

1 IN THE HOUSE BY THE RESOURCES COMMITTEE
2 SENATE CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 159 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to an exemption from municipal
7 property taxation for natural resources in place; and
8 providing for an effective date."

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

10 * Section 1. TEMPORARY TAX EXEMPTION. Natural resources in place,
11 including proven or unproven mineral and other deposits of valuable mate-
12 rials and timber stumpage, are exempt from property taxation by a munic-
13 ipality.

14 * Sec. 2. STUDY AND REPORT. (a) The Department of Community and
15 Regional Affairs shall study and compare the potential effects of various
16 natural resource taxation options including, but not limited to:

17 (1) total exemption from municipal property taxation for natural
18 resources in place;

19 (2) partial exemption from municipal property taxation for
20 natural resources in place;

21 (3) no exemption from municipal property taxation for natural
22 resources in place;

23 (4) total or partial exemption from municipal property taxation
24 for natural resources in place at the option of each municipality; and

25 (5) other alternatives to taxation of natural resources in place.
(b) In conducting the study under (a) of this section, the Department

26 of Community and Regional Affairs shall consult with the Department of
27 Revenue and ~~the~~ the Alaska Municipal League. ^{see next page} By January 15, 1992.

28 Department of Community and Regional Affairs shall report to the legis-
29 lature its findings and recommendations regarding municipal property taxes:

1 of natural resources in place.

2 * Sec. 3. This Act is repealed July 1, 1992.

3 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

Insert line 27

This study shall take into consideration the overall effects of economic development in Alaska with respect to the various effected industries.

APR-10-90 TUE 10:58

ALASKA MINERS ASSOC.

FAX NO. 9072787997

P.02



ALASKA MINERS ASSOCIATION, INC.

sshb159.bor

4/10/90

TESTIMONY on CS for SSHB 159 (Resources)
and on CS for SSHB 159 (C&RA)
NATURAL RESOURCES EXEMPT FROM PROPERTY TAX

The Alaska Miners Association supports the Resources Committee substitute for HB 159 with some minor changes and we appreciate the opportunity to testify in favor of it.

General Comments

We are very concerned regarding the in-place taxing of minerals. The entire exploration process is one of trying to learn what minerals are present, where they are concentrated, what mining methods and which metallurgical processes will be required to produce them at a profit. The mere existence of minerals does not mean that it will be economically feasible to develop them.

Taxing the minerals in the ground would place a tremendous burden on the owner and on the municipality to show what is or is not there. This effort would also detract from the goal of bringing the project into production. The effect would be that marginally economic projects or projects with geologic uncertainties, ore grade uncertainties, metallurgical uncertainties, or other disadvantages would not be explored. Companies would not be willing to pay taxes on projects that fit these situations. It has been estimated that only one out of every 1000 prospects explored actually becomes a producing mine.

The burden from taxing in-place resources falls on the companies and individuals that do not yet have revenue from their resources. Personal initiative and entrepreneurial effort are prized attributes in Alaska, but taxing in-place resources would block such efforts.

Investors will simply take their funds to Indonesia, the Phillipines, etc. and the mineral wealth of Alaska will not be developed. Along with that, the potential jobs both in the rural areas at the minesite and in the service centers of Fairbanks, Anchorage and Juneau will be lost.

It is therefore important that the taxing of in-place resources not be allowed and that the topic be thoroughly evaluated to understand its true consequences.



ALASKA MINERS ASSOCIATION, INC.

Specific Comments Regarding the C&RA Committee Substitute and the Resources Committee Substitute

We recommend that the C&RA Committee substitute be removed and replaced with the Resources Committee substitute.

We feel that the Community and Regional Affairs substitute reduces the clarity of the bill. In the new Section 1 PURPOSE, that substitute adds the phrase "full and true value". "Full and true value" is a real estate term but has no meaning in the minerals industry or in the courts regarding resources and is dependent on the assumptions and viewpoint being taken. "Market value" is a workable and definable term regarding natural resources. The phrase "full and true value" should therefore be dropped.

In the C&RA substitute, Section STUDY AND REPORT states in (a) "...study and compare the potential effects of various natural resource taxation options." The real issue and concern is that determining the "value" of in-place is not feasible or workable and that in-place taxation is a serious disincentive to developing minerals. This was described above in my general comments. Alternatives other than in-place taxation must also be addressed. Item (5) should be replaced with the words "alternatives other than taxation of natural resources in-place". If the study addresses only variations of in-place taxation it will not answer the real questions.

Another word change is needed in Section 3(a) where in the first paragraph it now reads "...taxation options including". This should be changed to read "...taxation options including but not limited to".

Another change is needed in Section 3 to where the Department of Natural Resources and the Department of Commerce and Economic Development along with the Department of Revenue should be a part of the study and report preparation. Inclusion of these two departments will help insure that the study provides a true and accurate report.

Law Office of
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April 12, 1990

Senator Szymanski, Chrm.,
Comm. & Reg. Aff. Comm.,
P.O. Box V,
Juneau, AK 99811

RECEIVED

APR 18 1990

re: Comments on CS for H.B. 15^o dated 4/7/90 (4/7/90)

Dear Senator Szymanski:

Per your request, attached is Mayor Greene's statement for the record. Alternative language for Section 3(a)(5) follows:

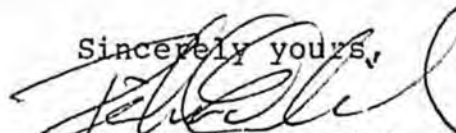
(5) revenue alternatives for municipalities regarding natural resources in place other than property taxation and the impacts of such alternatives on both the industry and municipalities.

Please understand the perspective of the Northwest Arctic Borough. The Assessor has informed us that, if legislation is not adopted this session, he intends to assess resources in place. As you suggested at the hearing, the NAB does not want to waste funds suing the State over this issue. It is absolutely essential that some type of resource exemption legislation pass this session! It is our hope that Revenue, the Assessor, and the Committee will be able to resolve their differences.

There is a difference between the House version and the Committee Substitute. The Borough's objective is to have legislation adopted which prohibits the value of resources in place from being included in the full and true value determination, pending the study. We understand that both the Assessor and mining industry have difficulty with the present legislation. However, from a pragmatic perspective, the present legislation meets the Borough's objective, if it is passed.

Again, thank you for your courtesy and do not hesitate to contact the Borough if we can be of any assistance.

Sincerely yours,



Richard H. Erlich

Encl:
cc: Mayor Greene
Senator Adams
Rep. MacLean

STATEMENT OF THE HONORABLE CHARLES GREENE,
MAYOR OF THE NORTHWEST ARCTIC BOROUGH
BEFORE THE SENATE COMMUNITY & REGIONAL AFFAIRS COMM.
ON CS FOR HOUSE BILL NO. 159, APRIL 10, 1990

MR CHAIRMAN AND MEMBERS OF THE COMMITTEE:

MY APOLOGIES FOR NOT BEING PRESENT, HOWEVER, A SUBSISTENCE MEETING IS BEING HELD IN ANCHORAGE WHICH IS ALSO OF IMPORT TO OUR CITIZENS. I HAVE AUTHORIZED MR. ERLICH, BOROUGH ATTORNEY, TO PRESENT THESE COMMENTS AND ANSWER ANY QUESTIONS.

THE LEGISLATION YOU HAVE BEFORE YOU WILL AFFECT THE DEVELOPMENT OF NATURAL RESOURCES WITHIN THE ENTIRE STATE. ALTHOUGH IT MAY IMPACT THE FORMATION OF NEW BOROUGHES, THE MAJOR EFFECT OF THIS LEGISLATION WILL BE ON THE ORGANIZED BOROUGHES. IT IS ABSOLUTELY ESSENTIAL THIS LEGISLATION, PROVIDING FOR A MANDATORY TAX EXEMPTION OF RESOURCES IN PLACE, BE ADOPTED AT THIS LEGISLATIVE SESSION.

THE STATE ASSESSOR DETERMINES THE FULL AND TRUE VALUE (FTV) OF EACH BOROUGH. IN ADDITION TO OTHER LEGISLATIVE MANDATES, THIS VALUATION IS PART OF THE REQUIRED 4 MIL LOCAL CONTRIBUTION TO EDUCATION. THE UNORGANIZED BOROUGH IS NOT REQUIRED TO MAKE THIS MANDATORY 4 MIL CONTRIBUTION TO EDUCATION. IT IS ONLY THE ORGANIZED BOROUGHES WHICH ARE REQUIRED TO MAKE THIS MANDATORY CONTRIBUTION BASED UPON THE ASSESSED VALUATION.

WITHIN THIS STATE, MANY BOROUGHES HAVE BOTH DEVELOPED AND UNDEVELOPED NATURAL RESOURCE PROPERTIES. THE NORTHWEST ARCTIC BOROUGH IS ONLY ONE OF THE MUNICIPALITIES AFFECTED BY THIS LEGISLATION. YOU ARE ALL AWARE OF POTENTIAL COAL AND OTHER MINING DEVELOPMENTS WITHIN THE STATE. PRESENTLY, ALTHOUGH THESE INDUSTRIES ARE VALUED AND TAXED BASED UPON THEIR DEVELOPMENT, RESOURCES IN PLACE ARE NOT VALUED OR TAXED. IT IS OUR UNDERSTANDING THAT NO MUNICIPALITY PRESENTLY IMPOSES TAXES ON NATURAL RESOURCES IN PLACE. HENCE, ANY ACTION IN THIS AREA MAY AFFECT THE FUTURE DEVELOPMENT OF THE STATE BY THE NATURAL RESOURCE INDUSTRY.

TAXATION IS THE MEANS BY WHICH GOVERNMENTS FINANCE THEIR OPERATIONS. ONLY THE ORGANIZED BOROUGHES WHICH ARE REQUIRED TO MAKE THE MANDATORY FOUR MIL CONTRIBUTION TO EDUCATION. THIS IS OBVIOUSLY AN ADDITIONAL OBLIGATION FOR LOCAL GOVERNMENT, FOR WHICH ADDITIONAL REVENUES ARE REQUIRED.

Mayor Greene,
April 10, 1990,
Page 2

ALTHOUGH MUNICIPALITIES MAY CONTROL EXPENDETURES, BASED UPON INCOME, THE MANDATORY FOUR MIL EDUCATIONAL CONTRIRUTION IS BASED UPON VALUATION NOT INCOME. THIS IS A SIGNIFICANT PROBLEM. IF THE VALUE OF RESOURCES IN PLACE ARE COMPUTED AS PART OF THE FTV, THEN OBVIOUSLY THERE IS A CORRESPONDING INCREASE IN THE MANDATORY EXPENSES OF THE ORGANIZED BOROUGHES IN MAKING THE LOCAL EDUCATION PAYMENT.

AS THESE COMMENTS INDICATE, THE REAL PURPOSE OF THIS LEGISLATION IS THE STUDY, SECTION 3! IT IS INTENDED THAT THE STUDY WILL GIVE YOU BOTH POLICY AND PRAGMATIC OPTIONS TO CONSIDER REGARDING THE ISSUES OF VALUATION, TAXATION AND THEIR IMPACT ON BOTH THE ORGANIZED AND UNORGANIZED BOROUGHES. IT IS OUR EXPECTATION THAT THE STUDY WILL ADDRESS THE FOLLOWING ISSUES:

1. THE STUDY SHOULD MAKE RECOMMENDATIONS AS TO WHAT VALUATION METHODOLOGY WILL BE USED STATEWIDE. A UNIFORM METHODOLOGY MUST BE USED. IF NOT, THE OPPORTUNITY FOR ABUSE AND DISPARATE TREATMENT IS TOO GREAT.

2. THE STUDY SHOULD MAKE RECOMMENDATIONS AS TO WHETHER THESE RESOURCES SHOULD BE VALUED AND SHOULD BE PRAGMATICALLY BASED. THERE ARE MANY UNDEVELOPED RESOURCES WITHIN THIS VAST STATE. IF MUNICIPALITIES MUST ASSESS THESE UNDEVELOPED AND SOMETIMES UNKNOWN RESOURCES THEN THERE MUST BE A PRAGMATIC METHODOLOGY DEVELOPED.

3. THE IMPACT OF SUCH VALUATION AND METHODOLOGY IN BOTH THE ORGANIZED AND UNORGANIZED BOROUGH MUST BE EXAMINED. WHATEVER IS FINALLY DONE, MUST BE ACCOMPLISHED IN A NEUTRAL MANNER, SUCH THAT THERE IS NO GREATER BENEFIT TO DEVELOP RESOURCES IN THE UNORGANIZED BOROUGH OVER THE ORGANIZED BOROUGH BECAUSE OF STATE VALUATION OR TAXATION POLICY.

4. SECTION 3(a)(5), ON PAGE 2, SHOULD BE BROADER IN SCOPE. THERE IS PRESENTLY AN A.G.'S OPINION REGARDING TAXATION OF RESOURCES BY LOCAL MUNICIPALITIES. BROADER LANGUAGE: SUCH AS "REVENUE ALTERNATIVES" NOT ONLY EXPANDS THE SCOPE OF THE INQUIRY, BUT ALSO DOES NOT SUBVERT THE PRESENT A.G.'S OPINION.

BY EXPANDING THE SCOPE OF THIS SECTION TO INCLUDE OTHER ALTERNATIVES, IN ADDITION TO TAXATION, AGREEMENTS IN LIEU OF TAXES CAN ALSO BE EXPLORED. PRESENTLY AGREEMENTS IN LIEU OF

MAYOR GREENE,
APRIL 10, 1990,
PAGE 3

TAXATION ARE ONLY RECOGNIZED FROM STATE OR FEDERAL ENTITIES. THE AIDEA STATUTE ALSO PROVIDES FOR SUCH AGREEMENTS. SUCH AN OPTION MAY BE OF VALUE TO BOTH THE ORGANIZED AND UNORGANIZED BOROUGH AND SHOULD BE EXPLORED.

SO YOU CAN BETTER UNDERSTAND THE PRACTICAL SITUATION CONFRONTED BY THE NORTHWEST ARCTIC BOROUGH, LET ME BRIEFLY DESCRIBE OUR SITUATION. THE ASSESSED VALUATION OF THE BOROUGH EXCLUDING THE MINE IS APPROXIMATELY \$143 MILLION. THIS IS ESTIMATED TO BE APPROX. ONE-THIRD OF THE TOTAL BOROUGH VALUATION, INCLUDING THE MINE. THIS ESTIMATE DOES NOT INCLUDE THE VALUATION OF THE RESOURCES IN PLACE AT THE MINE.

WITH THE INCLUSION OF RESOURCES IN PLACE AS PART OF THE VALUATION FIGURE, IT IS ANTICIPATED THAT OUR LOCAL CONTRIBUTION TO EDUCATION WILL CORRESPONDINGLY BE INCREASED. HOWEVER, THE UNCERTAINTY FROM NOT KNOWING WHETHER RESOURCES IN PLACE WILL BE INCLUDED IN THE VALUATION AND THE VALUE OF SUCH VALUATION CAUSES ANXIETY IN PLANNING OUR LOCAL OBLIGATIONS.

I CANNOT UNDERSTATE OUR CONCERNS REGARDING POTENTIAL FEARS REGARDING THE IMPACT OF THIS STUDY. IF RESOURCES IN PLACE ARE TO BE VALUED, THEN THERE MUST BE A UNIFORM METHODOLOGY AND THERE MUST BE A UNIFORM IMPACT IN BOTH THE ORGANIZED AND UNORGANIZED BOROUGH. ADDITIONALLY, THE ISSUE OF DEVELOPED AND UNDEVELOPED RESOURCES MUST BE RESOLVED. OUR NIGHTMARE IS THAT AFTER THE STUDY IS COMPLETE, THE EFFECT OF YOUR POLICY DECISIONS WILL BE TO PROMOTE RESOURCE DEVELOPMENT IN THE UNORGANIZED BOROUGH WHILE STIFLING SUCH DEVELOPMENT IN THE ORGANIZED BOROUGH; YOU WILL INCREASE THE OBLIGATIONS OF THE ORGANIZED BOROUGH WHILE THERE IS NO CORRESPONDING INCREASE IN THE OBLIGATIONS OF THE UNORGANIZED BOROUGH AND FINALLY YOU WILL FORCE THE ORGANIZED BOROUGH TO FINANCE SUCH INCREASED OBLIGATIONS WHILE IMPOSING NO SUCH PRESSURE ON THE UNORGANIZED BOROUGH.

IT IS OUR HOPE THAT THE RESULTS OF THIS STUDY WILL PROVIDE SUFFICIENT INFORMATION TO DEVELOP EQUITABLE POLICIES FOR THE ORGANIZED BOROUGH. ACCORDINGLY, IT IS ESSENTIAL THIS LEGISLATION BE ADOPTED. IT ALLOWS US ALL TO FURTHER EXPLORE THE ISSUES IN AN OBJECTIVE AND EQUITABLE MANNER.

MR. RICHARD ERLICH IS AVAILABLE TO ANSWER ANY QUESTIONS YOU MAY HAVE.