

HB

223

COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
TUESDAY
APRIL 25, 1989

JUDICIARY CS FOR HB 223: AN ACT AUTHORIZING MUNICIPAL CLERKS TO
TAKE OATHS, AFFIRMATIONS AND ACKNOWLEDGEMENT IN THE STATE.

SPONSOR: CATO

FISCAL: NONE

AN ACT AUTHORIZING MUNICIPAL CLERKS TO TAKE OATHS,
AFFIRMATIONS AND ACKNOWLEDGEMENTS IN THE STATE. THIS BILL
ADDS MUNICIPAL CLERKS TO THOSE AUTHORIZED TO TAKE OATHS IN
ALASKA. THERE IS NO FISCAL IMPACT TO THIS BILL

STEVE SOENKSEN FROM REPRESENTATIVE CATO'S OFFICE IS HERE TO
TESTIFY FURTHER ON THE BILL.

SENATE COMMITTEE REPORT

FURTHER

4/13/89

DATE TURNED INTO OFFICE 4.25.89

Mr. President:

C&RA Committee considered CSHB 223 (JUD)

authorizing municipal clerks to tak oaths, affirmations, and
acknowledgements
and recommended

- replace with _____ CS _____) same title
- or adopt _____ CS _____) new title
- attached amendment(s) and technical title change (HB only)
- _____ letter of intent adopted

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

FISCAL NCTE(S) zero fiscal impact appropriation no FN
 new updated previous
 same as previous fiscal note(s) published _____

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Handwritten signature]

[Handwritten signature]

[Handwritten signature] - DO PASS

 Chairman signature and recommendation

Committee Backup attached

CITY OF SEWARD

PO BOX 167
SEWARD, ALASKA 99664



- Main Office (907) 224-3331
- Police (907) 224-3338
- Harbor (907) 224-3138
- Fire (907) 224-3445
- Telecopier (907) 224-3248

February 22, 1989

THE HONORABLE BETTE CATO
ALASKA STATE HOUSE OF REPRESENTATIVES
PO Box V
Juneau, AK 99811

Dear Bette:

I am hoping that you can solve a minor problem for municipal clerks throughout the state.

Most clerks have Code or Charter provisions requiring that they attest to the Manager's or Mayor's signature on all contracts, deeds, plats and other official city documents. Many of these same documents then have to be recorded with the District Recorder's Office.

The Recorder's Office requires that all documents recorded be signed and the signature notarized or witnessed. AS 09.63.010 lists the officials who may witness documents for recordation. Since "municipal clerk" is not one of the designated witnesses, the Recorder's Office will not accept the Clerk's attestation as a valid witness. In fact, since the Clerk's signature appears on the document, both the Manager or Mayor and the Clerk must have their signatures notarized before a document can be recorded.

This extra step often involves adding another sheet of paper to the document which must be recorded, thus adding extra recording costs as well as extra time and aggravation to what should be a very simple task.

I have talked to representatives from the four districts and have been assured that if "municipal clerk" is added to the designated witnesses in AS 09.63.010, the clerk's signature will be recognized as a valid witness.

I would very much appreciate your help in getting a bill through this session with such a provision. Thanks for your help.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Community & Regional Affairs
 Title: "An Act authorizing municipal clerks to take oaths, affirmations.." BRU: _____
 Sponsor: Rep Cato Components: _____
 Requestor: _____

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 Plasman, Deputy Director Phone: 465-4750
 Division: Municipal & Regional Assistance Date: 3-27-89
 Approved by Commissioner: [Signature] Date: 3-27-89
 Agency: Community & Regional Affairs

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

Collateral references. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 282; 62 C.J.S., Municipal Corporations, § 695.

for municipality. 66 ALR 119; 30 ALR2d 944.

Attorney's compensation for services in matters involving municipalities. 145 ALR 529; 56 ALR2d 13.

Attorney's authority to compromise suit

- Sec. 29.20.380. Municipal clerk.** (a) The municipal clerk shall
- (1) give notice of the time and place of meetings of the governing body to the governing body and to the public;
 - (2) attend meetings of the governing body and keep the journal;
 - (3) arrange publication of notices, ordinances, and resolutions;
 - (4) maintain and make available for public inspection an indexed file containing municipal ordinances, resolutions, rules, regulations, and codes;
 - (5) attest deeds and other documents;
 - (6) perform other duties specified in this title or prescribed by the chief administrator or by the governing body.

(b) The governing body may combine the office of clerk with that of treasurer. If the offices are combined, the clerk-treasurer shall, as required of the treasurer, give bond to the municipality for the faithful performance of the duties as clerk-treasurer. (§ 7 ch 74 SLA 1985)

NOTES TO DECISIONS

No liability for unintentional error in performing discretionary duty. — When a public officer was charged with duties which called for an exercise of his judgment and discretion, he was not liable

for an erroneous performance under a former, similar provision, unless he had been guilty of willful wrong, malice, or corruption. Churchhill v. McKay, 17 Alaska 633, 163 F. Supp. 339 (D. Alaska 1958).

Collateral references. — 62 C.J.S., Municipal Corporations, § 699

Sec. 29.20.390. Municipal treasurer. (a) Except as provided in AS 14.14.060, the treasurer is the custodian of all municipal funds. The treasurer shall keep an itemized account of money received and disbursed. The treasurer shall pay money on vouchers drawn against appropriations.

(b) The treasurer shall give bond to the municipality in a sum that the governing body directs. (§ 7 ch 74 SLA 1985)

Collateral references. — 62 C.J.S., Municipal Corporations, §§ 697, 1880.

Sec. 09.60.060. Security for costs where plaintiff a nonresident or foreign corporation. When the plaintiff in an action resides out of the state or is a foreign corporation, security for the costs and attorney fees, which may be awarded against the plaintiff, may be required by the defendant, if timely demand is made within 30 days after the defendant discovers that the plaintiff is a nonresident. When required, all proceedings in the action shall be stayed until an undertaking executed by one or more sufficient sureties is filed with the court to the effect that they will pay the costs and attorney fees which are awarded against the plaintiff, for not less than \$200. A new or an additional undertaking may be ordered by the court upon proof that the original undertaking is insufficient in amount or security (§ 5.12 ch 101 SLA 1962); am § 1 ch 3 SLA 1971)

NOTES TO DECISIONS

This section is substantive. *Ware v. City of Anchorage*, Sup. Ct. Op. No. 477 (File No. 882), 439 P.2d 793 (1968).

It creates new right and new liability. — This section creates a new right in the resident defendant and a new liability

in the nonresident plaintiff which are separate and apart from, and go beyond, the procedure of computing and assessing costs and attorney's fees. *Ware v. City of Anchorage*, Sup. Ct. Op. No. 477 (File No. 882), 439 P.2d 793 (1968).

Collateral references. — Waiver of statute or court rule declaring nonresident plaintiff to give security for cost, 8 ALR 1510.

Statute regarding security for cost as

mandatory or permitting exercise of discretion, 84 ALR 252.

Nonresident's duty to furnish security for costs as affected by joinder or addition of resident, 158 ALR 737.

Chapter 63. Oath, Acknowledgment and Other Proof.

Section	Section
10. Oath, affirmation, and acknowledgment in the state	80. Recognition of certificate of acknowledgment
20. Certification of documents	90. Certificate of acknowledgment
30. Notarization	100. Forms of acknowledgment
40. Verification	110. Uniformity of interpretation
50. Recognition of notarial acts performed outside the state	120. Definition
60. Authentication of authority of officer	130. Title
70. Certificate of person taking acknowledgment	

Sec. 09.63.010. Oath, affirmation, and acknowledgment in the state. The following persons may take an oath, affirmation, or acknowledgment in the state:

(1) a justice, judge, or magistrate of a court of the State of Alaska or of the United States;

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- (2) a clerk or deputy clerk of a court of the State of Alaska or of the United States;
- (3) a notary public;
- (4) a United States postmaster; or
- (5) a commissioned officer under AS 09.63.050(4). (§ 1 ch 37 SLA 1981)

Collateral references. — 58 Am. Jur. 2d, Oath and Affirmation, §§ 6 — 10. 67 C.J.S., Oaths and Affirmations, §§ 5 — 7. Disqualification of attorney, otherwise qualified, to take oath or acknowledgment from client, 21 ALR3d 483.

Sec. 09.63.020. Certification of documents. (a) A matter required or authorized to be supported, evidenced, established, or proven by the sworn statement, declaration, verification, certificate, oath, or affidavit, in writing of the person making it (other than a deposition, an acknowledgment, an oath of office, or an oath required to be taken before a specified official other than a notary public) may be supported, evidenced, established or proven by the person certifying in writing "under penalty of perjury" that the matter is true. The certification shall state the date and place of execution, the fact that a notary public or other official empowered to administer oaths is unavailable, and the following:

"I certify under penalty of perjury that the foregoing is true."

(b) A person who makes a false sworn certification which the person does not believe to be true under penalty of perjury is guilty of perjury. (§ 1 ch 37 SLA 1981)

Collateral references. — 1 Am. Jur. 2d, Acknowledgments, §§ 32 — 79. 1 C.J.S., Acknowledgments, §§ 83 — 145.

Sec. 09.63.030. Notarization. (a) When a document is required by law to be notarized, the person who executes the document shall sign and swear to or affirm it before an officer authorized by law to take the person's oath or affirmation and the officer shall certify on the document that it was signed and sworn to or affirmed before the officer.

(b) The certificate required by this section may be in substantially the following form:

Subscribed and sworn to or affirmed before me at _____
on _____.

(date)

Signature of Officer

Title of Officer

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act..municipal clerks to take
 oaths, affirmations, & acknowledgements."
 Sponsor: House Judiciary Committee
 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						
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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 Plasman*
 Jim Plasman, Deputy Director
 Division: Municipal & Regional Assistance
 Phone: 465-4750
 Date: 4/25/89

Approved by Commissioner: *David C. Miller*
 Date: 4-25-89
 Agency: Community & Regional Affairs

Distribution (by preparer) :
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