

S B

207

**C&RA COMMITTEE
THURSDAY
MARCH 23, 1989**

**SB 207: AN ACT RELATING TO LIENS ON REAL PROPERTY TO SECURE
PAYMENT FOR SERVICES PROVIDED BY A UTILITY OWNED BY A
MUNICIPALITY
SPONSOR: YOU
FISCAL: NONE**

THE NEXT BILL BEFORE THE COMMITTEE IS SENATE BILL 207, AN ACT RELATING TO LIENS ON REAL PROPERTY TO SECURE PAYMENT FOR SERVICES PROVIDED BY A UTILITY OWNED BY A MUNICIPALITY. I INTRODUCED THIS BILL AT THE REQUEST OF SENATOR COGHILL AND THE CITY OF NENANA. IN YOUR PACKET IS A LEGAL OPINION STATING THE NEED FOR THIS LEGISLATION. THERE ARE ALSO SUPPORTING DOCUMENTS FROM SOME JOINT UTILITIES AND THE CITY OF NORTH POLE.

BEFORE YOU IS A COMMITTEE SUBSTITUTE FOR YOU TO CONSIDER. THIS SUBSTITUTE REMOVES A SENTENCE THAT WAS ON LINES 16 THROUGH 18 ON THE ORIGINAL BILL THAT GAVE THESE LIENS PRIORITY OVER OTHER LIENS EXCEPT LIENS ON PROPERTY TAXES, SALES AND USE TAXES AND SPECIAL ASSESSMENTS. THIS CHANGE IS AGREED TO BY SENATOR COGILL.

THERE IS A ZERO FISCAL NOTE IN YOUR PACKET.

6-0949E
Cook
3/21/89

Original sponsors: Adams and Coghill

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 207 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to liens on real property to secure
7 payment for services provided by a utility owned by a
8 municipality."

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

10 * Section 1. AS 29.35.070 is amended by adding a new subsection to
11 read:

12 (e) A municipality may by ordinance provide for creation, record-
13 ing, and notice of a lien on real property to secure payment for
14 services provided by a utility owned by the municipality and for the
15 interest, penalties, and administration costs charged by the munic-
16 ipality in the event of delinquency.) The lien may be enforced as
17 provided in AS 29.45.320 - 29.45.490 for enforcement of a property tax
18 lien.

19
20 → [WHEN RECORDED, A LIEN AUTHORIZED UNDER THIS
21 SECTION HAS PRIORITY OVER OTHER LIENS EXCEPT
22 THOSE FOR PROPERTY TAXES, SALES & USE TAXES
23 & SPECIAL AGREEMENTS.]

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 2, 1989

SUBJECT: Liens for Utility Services
(Work Order No. 16-0949)

TO: Senator Al Adams

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

You have asked whether a municipality has the power to impose a lien on real property to secure payment for utility services provided by a utility owned by the municipality. A municipality probably does have that power under its general authority to exercise by ordinance any power not prohibited by law. (See AS 29.35.200 - 29.35.220) However, it does not have specific authority to establish liens for these purposes as is granted under AS 29.45.300 for property taxes, AS 29.45.650(e) for sales and use taxes, and AS 29.46.-080(c) for special assessments.

The enclosed draft would provide specific authority for a municipality to provide for liens for these utility services by ordinance. In addition, the enforcement provision now in place for foreclosure of property tax liens is made applicable to utility liens under this draft.

TBC:gc:kb
WKG7/083

Enclosure

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act..liens on real property to secure payment..services..utility.."
 Sponsor: Senators Adams & Coghill
 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 Plasman, Deputy Director Phone: 465-4750
 Division: Municipal & Regional Assistance Date: 3/20/89
 Approved by Commissioner: [Signature] Date: 20 March 89
 Agency: Community & Regional Affairs

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



City of Nenana

State of Alaska

February 14, 1989

Senator John B. Coghill
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 99811

Dear Senator Coghill,

The City has introduced an ordinance which creates a lien against real property if the charges for water and sewer services provided to the property are not paid.

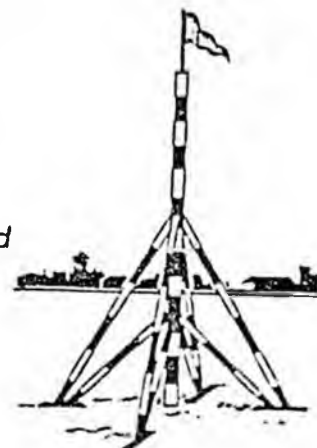
The State supreme court has never decided whether a home rule municipality, such as Nenana, has the authority to create liens without statutory authority. There is no provision in Alaska law which specifically prohibits Nenana from creating these liens, and under the state constitution a home rule municipality can do anything which is not prohibited by law.

The legislature could easily resolve the question as to the City's authority by simply making a small change in Title 29 - specifically 29.35.070. To this end I would suggest the following addition to Section 29.35.070. Public Utilities: [additions underlined, deletions bracketed]

Sec. 29.35.070. Public Utilities. [a] The assembly acting for the area outside all cities in the borough and the council acting for the area in a city may regulate, fix, establish, and change the rates and charges imposed for a utility service provided to the municipality or its inhabitants by a utility that is not subject to regulation under AS 42.05 unless that utility is exempted from regulation under AS 42.05.711(a) or [d] - [k].

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

[c] Unless the utility is owned by the municipality, all rates, charges, and regulations established under this section shall be established



by ordinance and shall be reasonable and permit a fair return on invested capital.

(d) A municipality may provide for the creation, recording, notice, and foreclosure of a lien on real property to secure the payment of charges for water, sewer, electric, and other utilities provided to the property by the municipality, and the interest, penalties, and administration costs in the event of delinquency. When recorded the utility lien has priority over all other liens except (1) liens for property taxes and special assessments; (2) liens that were perfected before the recording of the utility lien for amounts actually advanced before the recording of the utility lien; (3) mechanic's and materialman's liens for which claims of lien under AS 34.35.070 or notices of right of lien under AS 34.35.060 have been recorded before the recording of the utility lien; and (4) sales and use tax liens created under AS 29.45.650 (e).

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

Subsection (d) which is added above is copied verbatim from the language enacted by the legislature last session to establish the priority of liens for delinquent sales and use taxes. The statute which was copied is AS 29.45.650(e).

Please call should you have any questions, but basically all we are trying to do here is make everyone responsible for their own bills. There are always some utility customers who don't feel obligated to pay, and this effort would help in collecting past due accounts.

Sincerely,



Steve Bainbridge
City Administrator

cc Representative Richard Shultz

Chapter 35. Municipal Powers and Duties.

Article

1. General Powers (§ 29.35.070)
3. Additional Powers (§ 29.35.210)
8. Hazardous Chemicals, Materials, and Wastes (§§ 29.35.500, 29.35.520, 29.35.530, 29.35.560, 29.35.590)

Article 1. General Powers.

Section

70. Public utilities

Sec. 29.35.070. Public utilities. (a) The assembly acting for the area outside all cities in the borough and the council acting for the area in a city may regulate, fix, establish, and change the rates and charges imposed for a utility service provided to the municipality or its inhabitants by a utility that is not subject to regulation under AS 42.05 unless that utility is exempted from regulation under AS 42.05.711(a) or (d) — (k).

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

(c) Unless the utility is owned by the municipality, all rates, charges, and regulations established under this section shall be established by ordinance and shall be reasonable and permit a fair return on invested capital.

(d) This section applies to home rule and general law municipalities. (§ 10 ch 74 SLA 1985)

Editor's notes. — This section is set out to correct an error in enactment.

Article 3. Additional Powers.

Section

210. Second class borough powers

Sec. 29.35.210. Second class borough powers. (a) A second class borough may by ordinance exercise the following powers on a nonareawide basis:

- (1) provide transportation systems;
- (2) regulate the offering for sale, exposure for sale, sale, use, or explosion of fireworks;
- (3) license, impound, and dispose of animals;
- (4) provide garbage, solid waste, and septic waste collection and disposal;
- (5) provide air pollution control in accordance with AS 46.03.140 — 46.03.230;
- (6) provide water pollution control;

P.O. BOX 88109
NORTH POLE, ALASKA
99705



TOP OF THE WORLD
PHONE: 807-488-2281
AT YOUR SERVICE

March 21, 1989

The Honorable Senator Jack Coghill
P. O. Box V
Juneau, Alaska 99811

Re: SB 207, Municipal Utility Liens

Dear Jack:

Just a short note to let you know that we are in receipt of and support Senate Bill 207. As you are well aware, collection of utility charges has posed a major problem for small municipalities. Often, the only remedy is Small Claims Court. In instances where the delinquent party has left the area, there is little recourse.

The provisions of SB 207 would take tremendous strides toward alleviating this problem. You have the full support of The City of North Pole. Please let us know to whom we may make further contacts to aid in passage.

Sincerely,

Carleta Lewis
Mayor, City of North Pole

CL/kl

NOME JOINT UTILITY SYSTEM

BOX 70

NOME, ALASKA 99702

(907) 443-5288

TELEFAX (907) 443-3028

March 22, 1989

Senator Al Adams
Alaska State Legislature
Juneau, Alaska
FAX 465-3700

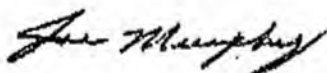
Dear Senator Adams:

Please find attached a copy of Nome Joint Utility System Resolution 89-09, A Resolution Supporting Senate Bill No. 207, "An Act Relating to Liens on Real Property to Secure Payment for Services Provided by a Utility Owned by a Municipality."

Resolution 89-09 was passed by the Nome Joint Utility Board on March 21, 1989, to establish a record of the Board's support of Senate Bill No. 207.

Thank you for your time.

Sincerely,



Joe Murphy, General Manager
NOME JOINT UTILITY SYSTEM

JM/mt

NOME JOINT UTILITY SYSTEM

RESOLUTION 89-09

A RESOLUTION SUPPORTING SENATE BILL NO. 207,
AN ACT RELATING TO LIENS ON REAL PROPERTY TO SECURE PAYMENT
FOR SERVICES PROVIDED BY A UTILITY OWNED BY A MUNICIPALITY

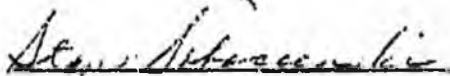
WHEREAS, there is a Senate Bill No. 207 in the Legislature of the State of Alaska Sixteenth Legislature - First Session, and

WHEREAS, this Bill is "An Act relating to liens of real property to secure payment for services provided by a utility owned by a municipality.", and

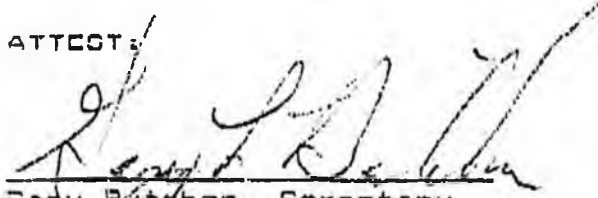
WHEREAS, the Nome Joint Utility Board would like to go on record as being in support of this Bill,

NOW THEREFORE BE IT RESOLVED that the Nome Joint Utility Board, sitting in Regular Session on March 21, 1989, supports Senate Bill No. 207, An Act Relating to Liens on Real Property to Secure Payment for Services Provided by a Utility Owned by a Municipality.

SIGNED THIS 21 DAY OF MARCH, 1989 AT NOME, ALASKA.


Stan Sobocienski, Chairman
NOME JOINT UTILITY BOARD

ATTEST:


Gary Butcher, Secretary
NOME JOINT UTILITY SYSTEM