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438

SENATE STATE AFFAIRS COMMITTEE

BILL NUMBER SB 438

SPONSOR Coghill

BILL TITLE Fire Protection

DATE REFERRED

HEARING SCHEDULED 3.26.90

FISCAL NOTE PREPARED ✓✓

SPONSOR CONTACTED ✓

INTERESTED PARTIES CONTACTED

OTHER

SENATE COMMITTEE REPORT

DATE: 3/7/90

FURTHER: Finance

DATE TURNED INTO OFFICE: _____

State Affairs

Committee considered

SB 438

"An Act relating to the provision of fire protection services by a municipality outside its boundaries."

and recommended:

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

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Dept/Date:

fiscal note(s) _____

zero fiscal note(s) _____

appropriation-no fiscal note

APPROVES PREVIOUS:

Dept/Date:

fiscal note(s) _____

zero fiscal note(s) _____
DPS 2-20-90

Governor's bill w/fiscal note
D.C.R.A. 2-26-90

SIGNING DO PASS:

Jan Fails

Tom Kelly

OTHER RECOMMENDATIONS:

Fin def (No Rec)

[Signature]

Chair: Signature and Recommendation

TELECONFERENCE; YOU NEED TO ANNOUNCE LIMITED TESTIMONY TODAY DUE TO THE LARGE NUMBER OF BILLS. (Warning. . Anchorage is a site, which means Charles McKee, which is not a pleasant thought given the Burma Bill)

*Due to rescheduling this bill, we will not have the public participation we had set up for Friday, March 23 when we had 15 teleconference sites available with small community representatives on line.

TO TESTIFY;

Senator Coghill

NOTES;

1. You should be aware that I have been able to make very few contacts concerning this bill. I notified the Mat-Su Borough, City of Wasilla, City of Palmer, Petersburg. The unincorporated areas do not have "officials" per se and they are the ones impacted.

2. Senator Coghill states this bill is at the request of the communities of Hoonah and Nenana.

3. The positive side of this bill is that it legally allows firefighters to do what many are already doing, responding to emergency situations regardless of "where the county line is". In speaking with several rank and file firefighters, they hope this bill will pass as it is very difficult for people trained to save lives and property to ignore a life threatening situation.

Senator John B. (Jack) Coghill

Alaska State Legislature

Box V
Juneau, Alaska 99811
(907) 465-4797

Box 55028
North Pole, Alaska 99705
(907) 488-0862



MEMORANDUM

DATE: March 23, 1990

TO: Senator Pat Pourchot, Chair
Senate State Affairs Committee

FROM: Senator Jack Coghill

SUBJECT: Senate Bill 438 - Sponsor Statement

BILL SUMMARY:

Senate Bill 438 "An Act relating to the provision of fire protection services by a municipality outside its boundaries" is a piece of legislation which would amend AS 29.35.020 to add "fire protection services" to the list of services and facilities that a municipality can provide outside its boundaries.

FISCAL IMPACT:

Zero fiscal note from the Department of Public Safety, Division of Fire Prevention.

Zero fiscal note from the Department of Community & Regional Affairs, Division of Municipal & Regional Assistance.

ABOUT THE BILL:

SB 438 would give municipalities the authority to extend their fire protection services outside the city limits, and the right to regulate those services. Currently, there is no law which allows this.

This provision is especially important in small rural cities which presently may be held liable when the fire department responds to a call outside the city boundaries and leaves the city and the taxpayers unprotected.

Alaska
MUNICIPAL
League


TELEPHONE
(907) 586-1325
FAX 463-5480

217 SECOND STREET, SUITE 200
JUNEAU, ALASKA 99801

February 23, 1990

FEB 26 1990

TO: Senator Mike Szymanski, Chair, and
Committee Members
Senate Community and Regional Affairs Committee

FROM: Scott A. Burgess, Executive Director 

SUBJECT: SB 438 - Relating to provision of fire protection services by a
municipality outside its boundaries

SB 438 would add fire services to the list of facilities and services municipalities may provide outside their boundaries. It also clarifies that municipalities have the authority to regulate the use and operation of facilities and services provided to the extent that the jurisdiction in which they are located does not regulate them.

Under present law, municipalities do not have the specific authority to provide fire services outside their boundaries, which means that fire departments must justify each decision to operate outside their boundaries on the basis of life safety issues. A fire department may want to provide protection to, for instance, a residence just outside municipal boundaries to protect property within the boundaries, but questions of liability coverage as well as an unwillingness to expose the department to public criticism about operating outside the taxing district may deter such a decision.

Giving fire departments authority to provide fire services outside their boundaries would insure that liability and workers compensation insurance would cover all job-related actions of firefighters. It would also extend fire fighters' statutory immunity for job-related actions to actions outside municipal limits.

The Alaska Municipal League supports this legislation as providing greater protection for municipalities, for municipal fire fighters, including volunteers, and for the general public.

cc: Senator Jack Coghill

CSS/LEG:SB398

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: An act relating to fire protection
by a municipality outside its boundaries. BRU: Fire Prevention
 Sponsor: Senator Coghill Component: Fire Prevention
 Requestor: Senate C & R A Operations

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
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)

No fiscal impact.

Prepared by: Gordon E. Brunton *GB*
 Division: Fire Prevention
 Approved by Commissioner: A.H. English
 Agency: Department of Public Safety

Phone: 465-4331
 Date: 2/15/90
 Date: 2-20-90
 Page 1 of 1

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2/15/90

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

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

February 26, 1990

POSITION PAPER

RE: Senate Bill 438

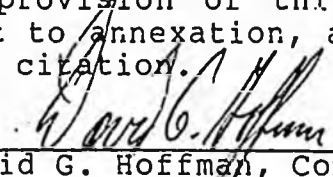
SPONSOR: Senator Coghill

Program Effects of the Bill

The bill amends AS 29.35.020(a) by adding language which would authorize municipalities to exercise the power of fire protection outside their boundaries. Existing AS 29.35.020(a) authorizes municipalities to provide the following services outside their boundaries: parks, playgrounds, cemeteries, emergency medical services, solid and septic waste disposal, utility services, airports, streets (including ice roads), trails, transportation facilities, wharves, harbors and other marine facilities.

Comments

Extraterritorial powers have been added to AS 29.35.020 incrementally as needed or requested by municipal governments. This bill to permit fire protection powers appears to fit within this tradition and would clear up existing ambiguities as to the power of municipalities to exercise this service on an extraterritorial basis. The provision of this service is not expected to act as a deterrent to annexation, any more than the other powers listed under this citation.



David G. Hoffman, Commissioner

CITY OF PALMER



231 W EVERGREEN AVE
PALMER, ALASKA 99645



A HOME BLUE CITY



Phone (907) 745-3271

February 22, 1990

The Honorable Jack Coghill
Senator
State of Alaska
Box V
Juneau, Alaska 99811

RE: Senate Bill 438
Fire Protection Service Outside Municipalities

Dear Senator Coghill,

I have read Senate Bill 438 which has been proposed by you and Senator Fischer and fully support it.

However, it could go one step further. In the Matanuska-Susitna Borough, Fire Service Areas have been established and one is the Grater Palmer Fire Service Area. The City of Palmer has its own fire department and contracts with the Matanuska-Susitna Borough to provide fire service to the areas which are a part of the Greater Palmer Fire Service Area.

The majority of the residents as well as the Fire Service Area supervisors would like to be a part of the City of Palmer Fire Department rather than under the Matanuska-Susitna Borough auspices. There are several reasons for this desire, but most importantly are the joint funding and managerial operation of the department.

In expanding your proposed Senate Bill 438 to incorporate the ability of a Fire Service Area to petition a municipality for fire protection services, this would alleviate a problem such as ours as well as other fire service areas throughout the State.

Letter from City of Palmer 2/22/90

A GROWING FRONTIER IN THE HEART OF THE MATANUSKA VALLEY

The Honorable Jack Coghili
February 22, 1990

If you feel an amendment to your bill would be in order and need additional information, you may contact either Chief Dan Contini or myself regarding this issue.

Should you have any questions, please feel free to contact me.

Yours truly,

David L. Soulak
City Manager
City of Palmer

DLS/cac

cc: Fire Chief Dan Contini
Representative Curt Menard
Representative Ron Larson
Senator Jalmar Kerttula
Senator Mike Szymanski
Alaska Municipal League

City of Klawock Alaska

P.O. Box 113
Klawock, Alaska 99925

Phone: (907) 755-2261
or: (907) 755-2262

"Site of the First Cannery in Alaska"

February 20, 1990

Senator Coghill
Pouch V
Juneau, AK 99811

Dear Senator Coghill,

The City of Klawock supports Senate Bill 438 which would include fire protection under extra territorial jurisdiction for this would provide needed fire protection for the residents residing outside of the City limits such as a trailer court where approximately One Hundred persons reside and fire protection for the Klawock Alaska Timber Saw Mill which employs approximately One Hundred persons in three shifts and lives and property of those residing on the Saw Mill site. In fact the City had submitted an application for a fire protection grant to provide needed fire protection for the residents of Klawock and those residing outside of the City limits. The grant application was rated high by one of the review board but rated low by two others because they believed that the fire department should not leave the City limits to extinguish fires.

In the past the Klawock Volunteer Fire Department has responded to fires outside the City limits. In 1989 the Klawock Volunteer Fire Department had to respond to Sanitary Landfill fires. Had those fires not been extinguished, the cities of Klawock and Craig would not have had a site to dispose of solid waste. The Klawock Volunteer Fire Department has also responded to emergency medical, police and fires in the trailer court outside the City limits and fires at the Saw Mill. Had the Saw Mill been destroyed or even partially destroyed by fire many would be unemployed until necessary repair work was completed, also lives and property were in jeopardy. Therefore it is very important to those living and working outside City limits to have fire protection. This has been discussed with the insurance company. There should not be an increase in insurance premium for the City. Currently the City does face potential liability by City limits. Passage of Senate Bill 438 would eliminate that liability and provide needed fire protection for those living and working outside the City limits.

An amendment to Senate bill 438 that should be considered is Police Protection. Currently City police jurisdiction is within City limits. Alaska State Troopers deputize City police to allow the City police to respond to police protection needs outside City limits. Does deputizing City Police Officers to allow them to respond to police protection needs outside City limits protect the City from any potential liability should the City police be unable to respond to police protection needs within the City limits because the City police was responding to police protection needs outside the City limits? It is the City tax payers that are paying the wages of the City police officers. Also the City has no documentation to justify or authorize spending City tax dollars for police protection outside the City limits, nor does the City derive any revenues other

Continued...

Senator Coghill
February 20, 1990
Page TWO

than for traffic violations for police protection outside the City limits.

The aforementioned are mentioned in consideration as a possible amendment to Senate Bill 438.

Respectfully,

Aaron T. Isaacs, Jr.
Mayor

by: Al P. Macasaet, Sr.
Administrative Assistant

AM/lf

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: DCRA
 Title: An act relating to fire protection outside municipalities BRU: _____
 Sponsor: Senator Coghill Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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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 Phone: 465-4750
 Division: Municipal & Regional Assistance Date: 2/26/90
 Approved by Commissioner: [Signature] Date: 2-26-90
 Agency: Community & Regional Affairs

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

Chapter 28. Elections.

[Repealed, § 88 ch 74 SLA 1985.]

Chapter 33. Areawide Borough Powers and Duties.

[Repealed, § 88 ch 74 SLA 1985.]

Chapter 35. Municipal Powers and Duties.

Article

1. General Powers (§§ 29.35.010 — 29.35.145)
2. Mandatory Areawide Powers (§§ 29.35.150 — 29.35.180)
3. Additional Powers (§§ 29.35.200 — 29.35.220)
4. City Powers (§§ 29.35.250 — 29.35.260)
5. Acquisition of Additional Powers (§§ 29.35.300 — 29.35.350)
6. Construction of Powers (§§ 29.35.400 — 29.35.420)
7. Service Areas (§§ 29.35.450 — 29.35.490)
8. Hazardous Materials and Hazardous Wastes (§§ 29.35.500 — 29.35.590)

Article 1. General Powers.

Section

10. General powers
20. Extraterritorial jurisdiction
30. Eminent domain
40. Emergency disaster powers
50. Garbage and solid waste services
60. Franchises and permits
70. Public utilities
80. Alcoholic beverages

Section

90. Municipal property
100. Budget and capital program
110. Expenditure of borough revenues
120. Post audit
130. Emergency services communications centers
140. Regulation of transportation carriers
145. Regulation of firearms

Sec. 29.35.010. General powers. All municipalities have the following general powers, subject to other provisions of law:

- (1) to establish and prescribe a salary for an elected or appointed municipal official or employee;
- (2) to combine two or more appointive or administrative offices;
- (3) to establish and prescribe the functions of a municipal department, office, or agency;
- (4) to require periodic and special reports from a municipal department to be submitted through the mayor;
- (5) to investigate an affair of the municipality and make inquiries into the conduct of a municipal department;
- (6) to levy a tax or special assessment, and impose a lien for its enforcement;

of all ordinance,

(8) to acquire, manage, control, use, and dispose of real and personal property, whether the property is situated inside or outside the municipal boundaries; this power includes the power of a borough to expend, for any purpose authorized by law, money received from the disposal of land in a service area established under AS 29.35.450;

(9) to expend money for a community purpose, facility, or service for the good of the municipality to the extent the municipality is otherwise authorized by law to exercise the power necessary to accomplish the purpose or provide the facility or service;

(10) to regulate the operation and use of a municipal right-of-way, facility, or service;

(11) to borrow money and issue evidences of indebtedness;

(12) to acquire membership in an organization that promotes legislation for the good of the municipality;

(13) to enter into an agreement, including an agreement for cooperative or joint administration of any function or power with a municipality, the state, or the United States;

(14) to sue and be sued. (§ 10 ch 74 SLA 1985)

NOTES TO DECISIONS

The rule of strict construction did not apply to the mode adopted by the corporation to carry into effect powers expressly or plainly granted under a former, similar provision. The power having been granted, the municipal corporation had the power to exercise such power in any reasonable way it saw fit. *Femmer v. City of Juneau*, 9 Alaska 175 (1927), aff'd, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

Taxing authority consistent with liberal construction requirements. — The broad grant of taxing authority, limited only by other provisions of law, is consistent with the second sentence of Alas. Const., art. X, § 1, which requires that a "liberal construction shall be given to the powers of local government units." *Liberati v. Bristol Bay Borough*, Sup. Ct.

Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978), decided under former, similar law.

Imposition of civil penalties. — The power of a municipality to impose a civil penalty for failure to timely file or pay sales taxes is granted primarily because Alaska Const., art. X, § 1, requires that a liberal construction be given to the powers of municipalities. *Bookey v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 2199 (File No. 4878), 618 P.2d 567 (1980), decided under former, similar law.

There is no general prohibition against like municipal and state taxes. *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978), decided under former, similar law.

Collateral references. — 56 Am. Jur. 2d, *Municipal Corporations, Counties, and Other Political Subdivisions*, §§ 193-230.

Estoppel as to claim against municipality. 1 ALR2d 338.

Contributory negligence as defense in action by municipality. 1 ALR2d 827.

Granting or taking of lease by muni-

pality as within authorization of purchase or acquisition thereof. 11 ALR2d 168.

Compromise of claim, power of city as to. 15 ALR2d 1359.

Death action against municipal corporation as subject to statute of limitations governing wrongful death actions or that governing actions against a municipality

for injury to person or property. 53 ALR2d 1068.

Mandamus, liability of municipal corporation for damages to successful plaintiff or relator in. 73 ALR2d 930; 34 ALR4th 457.

Waiver of, or estoppel to rely upon, contractual limitation of time for bringing action against municipality or other political subdivision. 81 ALR2d 1039.

Pledging parking meter revenues as unlawful relinquishment of governmental power. 83 ALR2d 649.

Revocation, prior to execution of formal written contract, of vote for decision of public body awarding contract to bidder. 3 ALR3d 864.

Power of municipal corporation to submit to arbitration. 20 ALR3d 569.

Right of municipal corporation to recover back from contractor payments made under contract violating competitive bidding statute. 33 ALR3d 397.

Liability of municipality on quasi contract for value of property or work fur-

nished without compliance with bidding requirements. 33 ALR3d 1164.

Power of eminent domain as between state and subdivision or agency thereof, or as between different subdivisions or agencies themselves. 35 ALR3d 1293.

Validity of "freezing" ordinances or statutes preventing prospective condemnee from improving, or otherwise changing, the condition of his property. 36 ALR3d 751.

Validity and construction of statute or ordinance providing for repair or destruction of residential building by public authorities at owner's expense. 43 ALR3d 916.

Right of governmental entity to maintain action for defamation. 45 ALR3d 1315.

Power of municipal corporation to lease or sublet property owned or leased by it. 47 ALR3d 19.

Recovery of exemplary or punitive damages from municipal corporation. 1 ALR4th 448.

Sec. 29.35.020. Extraterritorial jurisdiction. (a) To the extent a municipality is otherwise authorized by law to exercise the power necessary to provide the facility or service, the municipality may provide parks, playgrounds, cemeteries, emergency medical services, solid and septic waste disposal, utility services, airports, streets (including ice roads), trails, transportation facilities, wharves, harbors and other marine facilities outside its boundaries and may regulate their use and operation to the extent that the jurisdiction in which they are located does not regulate them. A regulation adopted under this section must state that it applies outside the municipality.

(b) A municipality may adopt an ordinance to protect its water supply and watershed, and may enforce the ordinance outside its boundaries. Before this power may be exercised inside the boundaries of another municipality, the approval of the other municipality must be given by ordinance.

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

NOTES TO DECISIONS

Power granted does not deprive city of other powers. — There was no reason that the grant to the council of power to extend roads and trails from its limits to certain points without its limits under a former, similar provision in any manner deprived the council of any of the implied

or necessary powers which it would have enjoyed, in the absence of any such express grant in the charter. *Town of Ketchikan v. Zimmerman*, 4 Alaska 336 (1911).

If authority had not been expressly given by a former, similar provision for a

city to purchase land outside of the incorporated limits and to divert a stream beyond its limits and prevent it from reach-

ing the incorporated limits, such authority was necessarily implied. *Town of Seward v. Margules*, 9 Alaska 354 (1938).

Collateral references. — 56 Am. Jur. 2d, *Municipal Corporations, Counties, and Other Political Subdivisions*, §§ 227, 228, 436, 560 et seq.

62 C.J.S., *Municipal Corporations*, § 141; C3 C.J.S., *Municipal Corporations*, §§ 1050-1052.

Standing of municipal corporation or other governmental body to attack zoning of land lying outside its borders. 49 ALR3d 1126.

Sec. 29.35.030. Eminent domain. (a) A municipality may, only within its boundaries, exercise the powers of eminent domain and declaration of taking in the performance of a power or function of the municipality under the procedures set out in AS 09.55.250 — 09.55.460. In the case of a second class city, the exercise of the power of eminent domain or declaration of taking must be by ordinance that is submitted to the voters at the next general election or at a special election called for that purpose. A majority of the votes on the question is required for approval of the ordinance.

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

Collateral references. — Cost of substitute facilities as measure of compensation paid to state or municipality for condemnation of public property. 40 ALR3d 143.

Consideration of fact that land owner's remaining land will be subject to special assessment in fixing severance damages. 59 ALR3d 534.

Sec. 29.35.040. Emergency disaster powers. (a) A municipality that is wholly or partially in an area that is declared by the President or governor to be a disaster area may participate in and provide for housing, urban renewal, and redevelopment in the same manner as a home rule city. The exercise of these powers by a borough shall be on a nonareawide basis, except a borough may exercise the powers transferred to it by a city as provided by AS 29.35.310.

(b) Powers granted by this section must be initiated within a period of not more than five years after the date of declaration of a natural disaster by the President or governor, but these powers may be extended for an additional period of not more than three years. (§ 10 ch 74 SLA 1985)

Sec. 29.35.050. Garbage and solid waste services. (a) A municipality may by ordinance

(1) provide for the establishment, maintenance, and operation of a system of garbage and solid waste collection and disposal for the entire municipality, or for districts or portions of it;