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FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. CS HB 128

Revision Date: \_\_\_\_\_ Department Affected: Community & Regional Affairs  
 Title: Office of Municipal Clerk/ BRU: State Assessor  
Clerk-Treasurer Component: \_\_\_\_\_  
 Sponsor: Rep. C. Davis  
 Requestor: House C&RA COMPONENT SERIAL NO. 

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-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						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Henderson, Director *Remond Henderson* Phone: 465-4708  
 Division: Administrative Services Date: 4/10/91  
 Approved by Commissioner: Edgar Blatchford *Edgar Blatchford*  
 Agency: Community & Regional Affairs Date: 4/10/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

HOUSE COMMITTEE REPORT

(7) Date Referred: February 8, 1991 FURTHER REFERRALS: Judiciary

Date of Committee Action: 4-10-91

The COMMUNITY AND REGIONAL AFFAIRS Committee considered: HB 128

HOUSE BILL NO. 128 OFFICE OF MUNICIPAL CLK & CLK/TREASURER

"An Act relating to the offices of municipal clerk and clerk-treasurer."

RECOMMENDATIONS: [X] the same title
be replaced with CS HB 128 [ ] a new title
[ ] have attached amendments(s)
[X] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)
[ ] fiscal impact \_\_\_\_\_ [ ] fiscal note(s) \_\_\_\_\_
[X] zero fiscal note DCRA [ ] zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Table with 4 columns: Name, Check appropriate column:, Do Not Pass, No Rec, Amend. Includes signatures of Gail Phillips, Richard Stokes, Dan W. Sule, Cheri Davis, J. E. Mackie, and JOML.

Chairman's Signature (Signature) Mackie



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
**BILL ANALYSIS**

DEPARTMENT DCRA	DIVISION MRAD	BILL NUMBER HB 128	SPONSOR Reps C.Davis, Ellis etc
SHORT TITLE OF BILL Offices of municipal clerk and clerk-treasurer.			
DEPARTMENT POSITION None.			
PREPARED BY Mike Worley	DATE 3/26/91	COMMISSIONER'S SIGNATURE <i>Edgar Blatchford</i> Edgar Blatchford	DATE 3/26/91

**SUMMARY**

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL

FISCAL IMPACT:  NONE  FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

ANALYSIS OF BILL/PROGRAM EFFECTS

Does not affect this department.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

FISCAL NOTE

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1991 LEGISLATIVE SESSION

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LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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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						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Ronald Henderson Phone: 465-4708

Division: Administrative Services Date: 3/26/91

Approved by Commissioner: Er. Beck

Agency: Community & Regional Services Date: 3-26-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).



# Alaska State Legislature

Please enter into the record my testimony to the House CRA  
 committee name  
 committee on HB 128, dated 2/08/91  
 bill/subject

I'm Clerk of the Kodiak Island Borough and I'm Chairman of the AAMC Legislative Committee and Chair of AML's Legislative Comm on Education, Elections and Local Govt. Powers. I have been a municipal clerk in Alaska for over 12 years.

This bill was introduced at the request of the AAMC and I'd like to thank Rep. Chris Davis and the co-sponsors for introducing it.

AAMC will support a substitute bill which will delete sections 1 and 2 and amend section 3.

AAMC feels that the duties listed belong in the clerk's office. On most municipalities they are currently being done by the clerk.

Again, we support a substitution and urge "Do Pass".

Thank you.

Signed: Ray Vaughan  
 Testifier

Kodiak Island Borough / Alaska Assn. of Municipal Clerks  
 Representing (Optional)

710 Mill Bay Rd. Kodiak  
 Address

486-5736  
 Phone No.

March 19, 1991

Honorable Jerry Mackie  
Chair Community & Regional Affairs Committee  
House of Representatives  
P. O. Box V  
Juneau, Alaska 99811

RE: Support of House Bill 128

Dear Representative Mackie:

My name is Susan Bethel. I live at 718 Deermount, Ketchikan, Alaska. I have approximately 5 and 1/2 years experience as a municipal clerk in the State of Alaska. I am writing in favor of HB 128, relating to the offices of municipal clerk and clerk-treasurer, and would like to explain why.

I was the City Clerk for the City of Thorne Bay for approximately four years. This was a new 2nd class city with an administrator. Not a manager or a strong mayor form of government. The only direction I had was Alaska Statute Title 29. During the time I worked there, there were 8 administrators. One lasted 11 months. So you can see the government wasn't stable. Many times I was alone, a new clerk, with no training.

I have now worked as the Deputy Borough Clerk for the Ketchikan Gateway Borough for a year and a half. I feel these changes are needed to maintain ethics and competence in local government. There may not always be an ethical and competent manager/mayor in a municipality. Normally in municipalities the Clerk has no experience. This outline of duties needs to be written down and easily assessable.

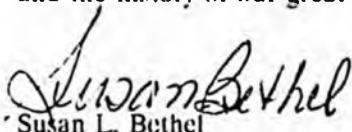
If it hadn't been for the Department of Community and Regional Affairs staff, the Alaska Association of Municipal Clerk's, AML and the other clerks in Southeast Alaska I would have been completely lost. As it was I called for advice in all areas of government for the municipality. I've been able to learn from experienced clerks and have become aware of the "Municipal" laws of the State.

Checks and balances are needed in government. If it is left to only the "manager or Mayor" to run the day to day operations in the municipality there is a great chance of malfeasants. You would never write a check in a municipality with only one signature. There has to be checks and balances in government.

We are public servants and we handle the "peoples" business in local government. We have to be honest and prepared to help the people we work for and represent in all areas of our position. I think you know what I mean being a representative in the State House. As a Clerk we don't play favorites.

Please pass HB128 to help insure local government has guidelines for duties of the Municipal Clerk, for the assemblies, councils, mayors and administrators in our State. If we have one "higher power" be it a Mayor/Manager or Administrator, to run the municipalities we are not a democratic government we are becoming a dictatorship.

Local ordinances are not enough. They are easily changed. We may not always have ethical competent people in charge. We need the checks and balances to insure government is fair and equitable in our municipalities and the history of our great state is recorded properly.



Susan L. Bethel  
718 Deermount  
Ketchikan, Alaska 99901

312 Front Street  
Ketchikan, AK 99901  
March 15, 1991


The Honorable Jerry Mackie  
House of Representatives  
P.O. Box V  
Juneau, Ak 99801

Dear Jerry:

Representative Davis' bill relating to municipal clerks, HB 128, has my support as a former Assemblyman of the Ketchikan Gateway Borough. As you and I both know, I have a long-standing involvement in local, state and federal government both as an interested Alaskan and member of the business community. I personally know all four municipal clerks in Ketchikan and have a lot of respect for the jobs that they do.

A long time ago I too was one of the many people who didn't realize the many hats and capabilities of the municipal clerk. Most of all, the safeguard of the checks and balance system is important to the taxpayers. I support having the manager, attorney, and clerk responsible to the Assembly.

Sincerely,



James B. Elkins

P.O. Box 188  
Barrow, Alaska 99723  
March 1, 1991

Honorable Eileen P. MacLean  
Alaska State Legislature  
Box V  
Juneau, Alaska 99811

Dear Representative MacLean:

I am writing in reference to HB 128, a Title 29 bill that would transfer the appointment of the municipal clerk from the mayor of a municipality to the governing body of said municipality.

While I do like the concept of this bill and the spelling out the duties of the municipal clerk, there are some questions that I have should this bill be passed and made into law. I would like to expound upon my experience regarding this matter.

The Alaska Municipal League supports this bill and did specifically include it into their 1991 policy statement (1991 PS, VII B 2). However, I as a Barrow City Councilman, introduced an ordinance (see enclosed Ordinance 91-01) to reflect the AML policy statement. The mayor, Donald Long, was opposed to this because he said that it would hinder the normal course of city business where if he needed something with the official seal of the city affixed to it, he would have to wait until the council gave approval for it at their next regular meeting, or call a special meeting for the simple task of getting approval for a document that may not need council approval (i.e. proclamations, licenses, deeds, etc.). There were also other considerations such as evaluating employee performance, discipline and the immediate supervisor of the city clerk.

These matters were expressed by the mayor at a workshop of the council on February 6, 1991 and was reiterated during the public hearing of regular council meeting the following evening. Because I had very little argument on behalf of the ordinance, the ordinance failed to pass the council upon voting on it.

While HB 128 is now in the Community and Regional Affairs committee and will enter the Judiciary committee at a later date, I feel that more work needs to be done to improve this bill and make it more applicable for small municipalities where the mayor is the chief administrator for the municipality, otherwise those municipalities will suffer the same scenarios as was brought up before the Barrow City Council.

I hope that you may pass this information on the Community and Regional Affairs chairman and the Judiciary chairman so that a committee substitute may be introduced.

If you have any questions regarding this matter, or would like more information, please do not hesitate to contact me at 852-7181.

Sincerely,

Michael D. McDermott, Councilmember  
City of Barrow

MDMc:ss  
Enclosure

cc: Hon. Jerry Mackie, Chairman; House Committee on Community and  
Regional Affairs  
Hon. Dave Donley, Chairman; House Judiciary Committee  
Scott Burgess, Executive Director; Alaska Municipal League  
Hon. Don Long, Mayor; City of Barrow  
Hon. Johnny Leavitt, Councilmember  
Hon. Miranda Rexford, Councilmember  
Hon. Rosabelle Rexford, Councilmember  
Hon. William F. Brown, Councilmember  
Hon. Lucy Brown, Councilmember

ORDINANCE 91-01

AN ORDINANCE AMENDING SECTIONS 2.20.020 AND 2.20.030 OF THE BARROW CODE OF ORDINANCES, RELATING TO THE APPOINTMENT OF THE CITY CLERK BY THE CITY COUNCIL.

- Section I. CLASSIFICATION. This ordinance is of a general and permanent nature and shall become apart of the City of Barrow Code of Ordinances.
- Section II. EFFECTIVE DATE. This Ordinance shall become effective upon adoption by the City Council.
- Section III. AMENDMENTS. Section 2.20.020 and 2.20.030 of the Barrow Code of Ordinances is amended as follows: (material to be added is typed in boldface and material to be deleted is typed in [brackets].)

2.20.020 Appointment. A. The [city clerk,] finance director and city attorney are appointed by the mayor acting as the chief administrative officer of the city. [Officers] The finance director and the city attorney serve at the pleasure of the mayor, subject to ordinance. Appointments by the mayor are subject to confirmation by the city council.

B. The city clerk is appointed by the city council acting as the legislative body for the city. The city clerk shall serve at the pleasure of the city council, subject to ordinance. Appointments by the city council shall require a two-thirds majority vote.

2.20.030 City Clerk. There shall be a city clerk, who shall be an officer of the city appointed by the [mayor] city council subject to [council approval] two-thirds majority vote of council to serve for an indefinite term. The city clerk shall serve as the clerical officer of the council. He shall maintain the journal of the proceedings of the council, and shall enroll in a book or books kept for that purpose all ordinances and resolutions passed by it. He shall be the custodian of such documents and records as may be provided by law or ordinance, shall keep a correct record of city boundaries and changes therein, and shall have such powers and duties relating to elections as this chapter and council may prescribe. He shall have such other powers, duties and functions as may be prescribed by applicable law or by ordinance.

Introduced: \_\_\_\_\_

Public Hearing: \_\_\_\_\_

## Position Statement - CS for HB 128

### Introduction

This position statement is made with all due respect to the Alaska State Legislature and to the Alaska Association of Municipal Clerks (AAMC). None of the points contained herein should be construed to question the motives or integrity of either of these groups.

### Description

House Bill 128, as originally introduced, would have mandated that the clerk in all non-home rule municipalities be hired by the local legislative body and would have provided for the combining of the clerk with the treasurer. Title 29 now gives the local legislative bodies the right to delegate the hiring of this position to the mayor or to the manager, depending on the locality's form of government. The original bill also mandated certain duties to be performed by the clerk and seemed to require all municipalities to hire a clerk. Currently, Title 29 contains a short and broad definition of the general duties of the position.

A substitute for HB 128 was introduced on April 4th. This bill deletes the hiring requirements for the clerk and the language regarding the combining of that office with that of the treasurer. However, it retains all of the mandated duties of the original bill, plus adding an additional duty for the clerk to perform.

### Background

The AAMC developed and presented to the Alaska Municipal League a "policy statement" regarding the hiring and the duties of clerks. This statement was incorporated into the 59 page "Alaska Municipal League Policy Statement 1991" adopted by the AML at its Annual Meeting last November in Anchorage. The clerks then subsequently drafted what was to become HB 128. As indicated, the bill has since been amended and reintroduced as CSHB 128. It should be noted, however, that while the AML "supports legislation that would update and clarify the powers and duties of the municipal clerk", it has not endorsed the specific list of duties contained in CSHB 128.

### The "Philosophy" of CSHB 128

While the revised bill drops the requirement that the clerk be hired by the local governing body, it still involves the state legislature in what should be strictly a local government's decision: what duties a particular employee shall perform on behalf of the local government. It could thereby set an inadvisable precedent. If the legislature decides to determine job duties for the clerk, why not for the planning director, or the

finance director, or the superintendent of schools? A local governing body is in a much better position than the legislature to determine what a particular local government official's job duties should and should not be.

Even though some principles in support of the bill are contained in the AML's Policy Statement, they run against the AML's more fundamental position on the State of Alaska's relationship with local government: Home rule, and maximum flexibility and independence for local governments. Page 45 of the Policy Statement, for example, provides as one of AML's basic policies that of "Local Autonomy":

"The League supports legislation that would promote more effective and independent local government in all organized boroughs and cities and opposes any legislation that unduly restricts local government operations. [Underlining added.]

The underlying philosophy of CSHB 128 seems to be that the legislature is more qualified than local governments in determining what duties the municipal clerk should perform. Furthermore, the clerk is being singled out for this special legislation. No other position in local government is given this "privilege" in Title 29 of having the state mandate such a specific list of duties, except perhaps the manager in a manager form of government. (While Title 29 does delineate duties of the manager, it should be remembered that the manager plan must be approved by the local government's voters.) Even in its amended form, this is not merely an "updating" or a minor "housekeeping" bill. It goes against the basic principles of Title 29 and could, in fact, "break the mold" of this carefully crafted state law, which skillfully delineates the role separation of local and state governments.

The AAMC's stated reason for advocating this legislation is to improve the professionalism and image of clerks in Alaska. This is certainly a worthwhile and well intentioned goal. However, the appropriateness of trying to achieve this goal through requiring a clerk's employer to assign certain job duties by state mandate is, at best, questionable.

Usually, there are two basic reason why uniformity in local government practices or procedures is required by the state. Either there is strong evidence of abuse at the local level or there are pervading arguments of a need for state wide uniformity. Neither of these two conditions exist, at least to the degree that would necessitate mandating this rather lengthy and detailed list of duties for the municipal clerk. Each municipality has its own unique needs and its own policies regarding its organization and the proper role of each of its employees. The stature of a local

position, its professionalism, and even its place within the local organization should not be determined by state mandate.

The contents of this bill also seem to indicate a lack of trust and confidence by the clerks in local government and in the local government process. All of the issues addressed in the bill can easily be dealt with at the local level. It could be interpreted that the clerks wish to "bypass" the very government they state they are supporting and to force local governments, through state legislation, to assign certain duties that should rightly be determined by each local governing body, based upon its on unique needs and resources.

#### A Reply to "Position Statement" by Clerks on this Bill

On March 15, the AAMC issued a "Policy Statement in Support of House Bill 128". This Statement addresses the "image" of the clerk's office. "In order to create a better image of the clerk's position, AAMC is undertaking a positive approach to sell...our skills, our caring, our self-esteem, our attitude and continuing education to create an image that is believable and trusted. Updating the 'powers and duties of the municipal clerk' or the 'legal mandates' of the clerk's office is one step in that process".

While the improving of a position's "image" may be a worthwhile goal, mandating the duties of the position through state law is not the proper way to do it. Is the prestige of the position and its positive image only achievable if local governments are forced to assign certain duties to the clerk? Professionalism in the performance of duties at the local level is the more proper way to improve the "image" of a position. If the "image" of the clerks is not satisfactory to the AAMC, then it should address the real reasons for this less than satisfactory image, rather than trying to overcome it through a legislative mandate. Why are no other municipal officers demanding this type of legislation to improve their own professional "image"? Why are the clerks the only identifiable group that sees the "need" for this type of legislation? Title 29 is not the place to improve the "image" of a municipal official's position.

Great exception is also taken to the statement that "The municipal clerk plays a unique role in the balance of powers in local government". It could be said that "balance of powers" at the local level is actually another term for inefficiency. The local government is directly responsible to its constituents and is directly accessible by the voters of the community. "Balance of powers" is an irrelevant concept for the relatively small local governments in Alaska. It is also historically been proven to

often lead to inefficiency and conflict, rather than to better and more responsive local government. The real "balance of power" at the local level is the balance between local authority and state and federal authority. CSHB 128 could be a precedent in starting to "unbalance" the roles of the state and local governments so carefully structured under the present Title 29.

The statement, "The governing body/manager form of government ...is based on a philosophy of separation of powers that establishes separate legislative and administrative branches" is simply not true, and demonstrates a fundamental misunderstanding of the manager form of government. That form has never been based on a "balance of powers" concept. In fact, its fundamental concepts are just the opposite of "balance of powers". They involve unity of power, accountability, cooperation, and teamwork. It was established for efficiency and effectiveness rather than for a brokerage of power. All power in the manager form of government is assigned to the legislative body. (Ironically, CSHB 128 would take away some of that power--specifically the power to determine the job duties of a particular employee.) There is no separation of powers. The manager is directly accountable to the governing body. A separation of powers weakens the elected legislative body and anticipates conflict, rather than cooperation and teamwork.

The manager form was modeled after the structure of most private corporations: The stockholders (voters) elect a board of directors (council or assembly) which, in turn, hires a chief administrative officer (manager) to administer the company (government) on its behalf. The manager works at the pleasure of the council or assembly, and exercises power only at the behest of the duly elected body.

The manager plan for local government evolved out of the old commission form, popular in the early part of this century, in which each department head was elected and served as a member of the council (commission). That form, which was based upon "separation of powers", soon proved so inefficient and unwieldy that the "structure of choice" rapidly changed to the manager form of government. The "heart and soul" of the manager plan is efficient and responsive management by and accountability of an appointed professional administrator, serving at the pleasure of the elected body.

The AAMC statement that "The role of the municipal clerk appropriately becomes the link between the legislative and administrative branches" thereby becomes irrelevant, especially in a manager form of government. If the manager works at the pleasure of the council or assembly and is directly accountable to that body, with no "separation of powers", why is there a need for a "link" between the manager and the legislative body?

The AAMC states that "In Alaska the positions of both the municipal clerk and the municipal attorney may enjoy a distinctive status in the administrative branch of local government." The key word here is "may". CSHB 128 would change that, at least for the clerks, to "shall". Again, that should be a local decision, not one mandated by the state legislature. And, if mandated for the clerks, why not for the attorneys or any other "administrative" position?

AAMC states that the bill is not a limitation of home rule powers because it does not apply to home rule municipalities. This statement avoids the issue of its interference with the "home rule" powers of non-home rule municipalities. It is also an implicit admission that it does in fact interfere with local government control and authority in non-home rule municipalities. It can also be argued that the bill is discriminatory against non-home rule power municipalities, by forcing them to assign duties to a municipal officer without requiring the same of home rule governments. If there is an overriding need for this legislation (because of abuse or a need for uniformity) why shouldn't it apply to home rule municipalities as well?

The AAMC policy statement also contends that "House Bill 128 updates the legal mandates of the municipal clerk....The minor word changes from the former language as presented in...the bill are offered to enhance the reader's understanding of the duties and responsibilities and they are not intended to be insidious."

The proposed legislation, as indicated, is more than merely an "update", and the new list of duties goes far beyond "minor word changes" to the existing Title 29. It lists ten specific duties of the clerk, whereas the current provision lists only five more general assignments. (Actually, within the new list are six additional duties not mentioned in the current Title 29 or elsewhere in state law.) It thereby greatly expands the list of legally mandated duties for the clerk above and beyond the general duties now assigned. Some of the specific duties actually could conflict with Sec. 29.20.500 of Title 29. Paragraph (2) of this Section provides that the Manager shall "supervise the enforcement of municipal law and carry out the directives of the governing body."

The specific list of duties assigned to the clerk also reduces the flexibility of the local government to organize itself as it sees fit and to provide for organizational development. Rather than an update, in many respects CSHB 128 is a regression away from the flexibility and meticulously crafted document that became a complete Title 29 update in 1986. This update should not be tinkered with in such a piecemeal basis.

Legally mandating such a list of duties also detracts from the accountability of the clerk. If all of the clerk's duties are mandated by state law, then the clerk is less accountable to legislative body (or mayor/manager) responsible for the hiring and supervising of this position. Accountability would be reduced to merely assuring the clerk satisfactorily carries out authorities and duties mandated by state law.

#### Specific Comments on the Mandated Duties

1) CSHB 128 wording: "attend meetings of the governing body and its boards and committees as required and keep the journal".

Present wording: "attend meetings of the governing body and keep the journal".

Comment: This new requirement, mandating that the clerk attend all meetings of all boards and committees as required (required by the governing body?), is actually superfluous. Title 29 already requires the clerk to perform other duties as required. In addition, there are some real practical and logistical problems in having the clerk attend all such meetings. Does this requirement, for example, include meetings of the planning commission? All service area boards?

2) CSHB 128 wording: "have custody of the municipal seal".

Present wording: none.

Comment: This is a new mandate. No specific objections are raised for this new requirement, other than the fact that who has custody of the municipal seal should be a local question.

3) CSHB 128 wording: "assure that notice and other requirements for public meetings are complied with and assure that public records are available for public inspection as required by law".

Present wording: "give notice of the time and place of meetings of the governing body to the governing body and to the public"; and "arrange publication of notices, ordinances, and resolutions".

Comment: "Assure that public records are available" might create real logistical problems. Does this mean all public records, including those of other municipal departments? Does this provision give the clerk a state mandated authority to "inspect" these other departments to make sure that their records are "available for public inspection?"

4) CSHB 128 wording: "manage municipal records and develop retention schedules and procedures for inventory, storage, and destruction of records as necessary".

Present wording: none.

Comment: This seems to require that sole authority be placed with the clerk to develop retention schedules and procedures for

the inventory, storage and destruction of records. Does this mean there is no authority by the council (assembly), the manager, the mayor, or any department head over their own records? There is also a potential conflict with 29.20.500(5), which mandates that the manager (under the manager plan) "exercise custody over all real and personal property of the municipality". Could such "personal property" include records? What about the records of the real and personal property?

5) CSHB 128 wording: "maintain an indexed file of all permanent municipal records, provide for codification of ordinances, and authenticate or certify records as necessary."

Present wording: "maintain and make available for public inspection an indexed file containing municipal ordinances, resolutions, rules, regulations, and codes" and "attest deeds and other documents"

Comment: No particular objection, since this is basically a restatement of what is already in Title 29.

6) CSHB 128 wording: "prepare agendas and agenda packets as required by the governing body".

Present wording: none.

Comment: This is a major new power that would be given to the clerk, potentially taking authority away from the legislative body, the mayor, and/or the manager, all of whom in a number of municipalities have a role in preparing the agenda and agenda packets. This could create very serious role conflicts. Again, is it really the state's concern who is responsible for these duties at the local level?

7) CSHB 128 wording: "administer all municipal elections".

Present wording: none.

Comment: This would be a completely new, major authority. While the clerks do administer the elections in many local governments, is there a real need to impose this requirement on all municipalities employing clerks? The clerk is not necessarily, in all cases, the most qualified municipal official to administer local elections. Perhaps the municipal attorney, for example, might be more qualified in certain instances.

8) CSHB 128 wording: "assure that the municipality complies with 42 U.S.C. 1971-1974 (Voting Rights Act of 1965, as amended)".

Present wording: none.

Comment: All municipalities have to comply with this federal law. Is it really advisable to make the clerk responsible for this? Compliance with such a comprehensive piece of federal legislation in many cases should be the responsibility of the municipal attorney.

9) CSHB 128 wording: "take oaths, affirmations, and acknowledgements as necessary".

Present wording: none.

Comment: There is probably no particular problem with this provision. Apparently AS 09.63.010 already gives the clerk this authority.

10) CSHB 128 wording: "act as parliamentary advisor to the governing body".

Present wording: none.

Comment: This takes away the flexibility of local government in its ability to designate the person most qualified to act as "parliamentary advisor" (parliamentarian?). Usually, such a person advises the presiding officer, not the body as a whole. In addition, do all clerks have the background and expertise necessary to act as the parliamentarian? In many municipalities, the attorney quite logically and satisfactorily fulfills this role.

11) CSHB 128 wording: "perform other duties required by law or the governing body".

Present wording: "perform other duties specified in this title or prescribed by the chief administrator or by the governing body."

Comment: The proposed wording takes away the authority of the chief administrator (mayor or manager) to assign duties, even in those municipalities where the clerk is appointed by the administrator.

It should also be noted that this rather long and detailed list of duties would greatly eliminate the authority of the manager, administrator, mayor, or even the elected governing body to prescribe duties for the clerk. Such a list also reduces flexibility of hiring, particularly in smaller communities. What if a local government can only hire a part time clerk? Would this part time employee still be responsible for all of the mandated duties?

### Summary and Conclusions

Title 29 underwent a complete revision several years ago. At that time, all of the major concerns expressed by municipalities with that state law were addressed, and the new Title 29 seems to be working quite well. As noted earlier, Title 29 is a carefully crafted and integrated document that should not be tinkered with in a piecemeal fashion. This is particularly so given the fact that no real problem with these existing provisions have been identified by the clerks. "If it's not broke, why fix it?" Everything in CSHB 128 can be directly addressed at the local level. Any "job duty" problems perceived by the clerks should be addressed directly with their own employers. The clerks have stated that "our goal is

obviously to enhance the importance of the clerk's position." CSHB 128 is therefore "special interest" legislation that may be of some benefit to the Clerks themselves, but which provides no demonstrated significant benefit to local government.

--Submitted by the Ketchikan Gateway Borough  
April 9, 1991

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AML

February 15, 1991

Scott Burgess, Executive Director  
Alaska Municipal League  
217 Second Street, Suite 200  
Juneau, AK 99801

Re: HB 128 (Appointment and Duties of Clerk and  
Clerk/Treasurer)

Dear Scott:

The following comments are my own as adviser to the AML Legislative Committee. They do not reflect the position of the firm nor are they made on behalf of any client of the firm.

The subject bill has three major effects. First, it provides that the municipal clerk is appointed only by the governing body and does not even permit the governing body to authorize appointment of the clerk by the chief administrative officer. Currently, the municipal clerk is appointed by the chief administrator and confirmed by the governing body unless provided otherwise by ordinance. This permits the governing body to take control of the appointment of the municipal clerk if it so desires. Considering the League policy that local government should be free to decide how it wants to order its affairs, this bill would constitute a clear incursion on that flexibility. Under current law, if the governing body wants to take control of the appointment of the clerk it may do so. This legislation is not needed to give the governing body the authority to appoint the clerk.

The second effect is to add a subsection (b) to AS 29.20.360 authorizing the governing body to combine the offices of clerk and clerk/treasurer and providing for the appointment of the clerk-treasurer only by the governing body. The comments in the preceding paragraph apply here as well. Additionally, the authority to combine the office of clerk and treasurer already exists in AS 29.20.380(b). The effect of sections 2 and 3 of the bill is to move this specific authority to combine the offices from sections 380 to section 360. Thus, unless the municipalities want to restrict their options as to who is to act as appointing authority for the clerk or clerk-treasurer, sections 1 and 2 of this bill appear to be unnecessary.

Section 3 adds to, deletes and rearranges the statement of various duties of the clerk. By adding specific duties to the clerk, once again, the legislature would be restricting the options of the municipality. For example, under proposed section 29.20.380(1) a new duty is added requiring the clerk to attend meetings of all boards and committees of the governing body as required (presumably by the governing body). This appears superfluous as the statute already requires that the clerk perform other duties as required by law or the governing body. New subsection (4) appears to place, within the sole discretion of the clerk, the authority to develop retention schedules and procedures for the inventory, storage and destruction of records. Query whether this implies that neither the administration nor the assembly has any control over records retention and management. Subparagraph (6) is superfluous as it is covered by the requirement that the clerk perform other duties as required by the governing body. If it is felt that subparagraph (7) is required, perhaps something should be added to indicate that the clerk is also required to ensure that all local ordinance requirements are complied with, however, the phrase requiring assurance that various laws are complied with, appears superfluous. Subparagraph (9) again takes away flexibility of the governing body as it permits only the clerk to be the parliamentary advisor. I presume that by "parliamentary advisor" it is meant "parliamentarian." Traditionally, the parliamentarian is the advisor to the presiding officer, and not to the body as a whole. I know that the practice in a lot of communities permit members of the body to make direct inquiry of the parliamentarian, but this is not in accordance with Roberts Rules. As the parliamentarian is the advisor to the presiding officer, the presiding officer should be permitted to select his or her own parliamentarian. Further, not all clerks come to the job with either the background or knowledge necessary to act as a parliamentarian. There may be another member of staff or member of the governing body that is much better equipped to act parliamentarian. Why shouldn't the governing body or the presiding officer have the flexibility of determining who will act, from time to time, as the parliamentarian? The addition of subparagraph (8) regarding to oaths and affirmations clearly expands the authority of the clerk without infringing on the flexibility of the municipality and is probably a good addition. One of the other changes that will occur is the elimination of the authority of the chief administrator to prescribe duties for the clerk (compare the existing subparagraph (6) with its counterpart (10) in the bill). The clerk is responsible for the maintenance of all the official records of the municipality. The bulk of these records are actually generated by the administration. Thus, there may be situations where the chief administrator should be giving directions to the clerk. This would be particularly so if the clerk is appointed by the chief administrator. Again, as with the question of where the appointing authority should lie, the

Scott Burgess  
February 15, 1991  
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legislature should leave to each municipality the ability and the authority to determine what will work best for its municipality.

Sincerely,

PRESTON THORGRIMSON  
SHIDLER GATES & ELLIS

By:



Gerald Lee Sharp

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