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7-LS2077J ✓  
Chenoweth  
4/7/92

CS FOR HOUSE BILL NO. 522 ( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVE KOPONEN

A BILL

FOR AN ACT ENTITLED

1 "An Act imposing a real estate conveyance tax; providing for sharing with municipalities  
2 of a portion of the revenue obtained from the tax; authorizing certain municipalities to  
3 levy and collect a real estate conveyance tax; adding to the duties of the recorder  
4 applicable to disclosure of information involving certain public records, and amending the  
5 formal requisites of recording a conveyance; and providing for an effective date."

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

7 \* Section 1. AS 43 is amended by adding a new chapter to read:

8 CHAPTER 33. REAL ESTATE CONVEYANCE TAX.

9 Sec. 43.33.010. TAX IMPOSED. There is imposed an excise tax upon each conveyance  
10 of real property at the rate of one percent of the selling price of the real property.

11 Sec. 43.33.020. TAX CONSTITUTES LIEN. The tax imposed by AS 43.33.010 and the  
12 interest or penalties on the tax are a specific lien upon each piece of real property conveyed from  
13 the time of conveyance until the tax has been paid.

1           Sec. 43.33.030. SELLER'S OBLIGATION TO PAY TAX. Payment of the tax imposed  
2 by this chapter is the obligation of the seller.

3           Sec. 43.33.040. EVIDENCE OF PAYMENT. (a) The tax shall be paid to and collected  
4 by the recorder of the recording district in which the real property that was conveyed is located.  
5 The recorder shall affix a stamp evidencing satisfaction of the lien to the instrument of  
6 conveyance before its recording. A receipt issued by the recorder for the payment of the tax  
7 imposed under this chapter is evidence of the satisfaction of the lien of the tax and may be  
8 recorded in the manner prescribed for recording satisfactions of mortgages.

9           (b) An instrument evidencing a conveyance subject to the tax may not be accepted by  
10 the recorder for filing or recording under AS 40.17 until a tax affidavit form has been completed,  
11 the tax has been paid, and the stamp affixed. In a case in which the tax is not due on the  
12 transfer, the instrument may not be accepted for recording until suitable notation of the exception  
13 has been made on the instrument by the recorder.

14           Sec. 43.33.050. REPORTING REQUIREMENTS FOR CONVEYANCE. The department  
15 shall prescribe

16                   (1) minimum standards for uniformity in reporting, application, and collection of  
17 the tax;

18                   (2) a tax affidavit form that must contain, at least, the following:

19                           (A) identification of the seller and purchaser;

20                           (B) description of the property involved, including the tax parcel or  
21 account number;

22                           (C) date of conveyance, type of instrument of conveyance, and nature of  
23 transfer;

24                           (D) gross sales price of the parcel; and

25                           (E) signatures of both the purchaser and seller, under oath.

26           Sec. 43.33.060. DETERMINING SELLING PRICE. (a) The department shall

27                   (1) provide by regulation for cases where the selling price is not separately stated  
28 or is not ascertainable at the time of conveyance, and for payment of the tax at a time when the  
29 selling price is ascertained, in which case suitable security may be required for payment of the  
30 tax; and

31                   (2) provide for the determination of the selling price under (1) of this subsection

1 by an appraisal by the state assessor, a municipal assessor, or a local appraiser, based on the full  
2 and true market value of the property conveyed; an appraisal under this paragraph is prima facie  
3 evidence of the selling price of the real property.

4 (b) The department shall provide by regulation for the determination of the selling price  
5 in the case of a lease with option to purchase, and may provide that the tax is not payable, if  
6 inequity will otherwise result, until the option is exercised and the property sold.

7 Sec. 43.33.070. DISTRIBUTION OF REVENUE. Subject to legislative appropriation,  
8 from the proceeds of the tax collected under this chapter, excluding penalties and the amount  
9 determined to have been spent by the state in its collection, the department shall pay one-half of  
10 the revenue received

11 (1) to each unified municipality, each city in the unorganized borough, and each  
12 borough for the area outside cities, in proportion to the revenue that was earned within them; and

13 (2) to cities and boroughs for the area of each borough that is inside cities, in  
14 proportion to the revenue that was earned within them; the payment under this paragraph shall  
15 be divided equally between the city and the borough.

16 Sec. 43.33.100. DEFINITIONS. In this chapter,

17 (1) "conveyance"

18 (A) means

19 (i) a grant, assignment, quitclaim, sale, or transfer of the ownership  
20 of or title to real property, or any estate or interest in real property for a valuable  
21 consideration;

22 (ii) a contract for a conveyance, grant, assignment, quitclaim, or  
23 transfer of real property;

24 (iii) a lease with an option to purchase real property, or any estate  
25 or interest in real property; or

26 (iv) a contract under which possession of the property is given to  
27 the purchaser, or another person at the purchaser's direction, and title is retained  
28 by the seller as security for the payment of the purchase price;

29 (B) does not include

30 (i) a lease, except a lease under (A)(iii) of this paragraph;

31 (ii) a transfer by gift, devise, or inheritance;

- 1 (iii) a cancellation or forfeiture of a purchaser's interest in a  
2 contract for the conveyance of real property, whether or not the contract contains  
3 a forfeiture clause;
- 4 (iv) a deed in lieu of foreclosure of a mortgage or the assumption  
5 by a grantee of the balance owing on an obligation that is secured by a mortgage  
6 or deed in lieu of forfeiture of the purchaser's interest in a contract of sale of real  
7 property, where no consideration passes;
- 8 (v) a partition of property by tenants in common by agreement or  
9 as the result of a court decree;
- 10 (vi) a transfer, conveyance, or assignment of property or interest  
11 in property from one spouse to the other under the terms of a decree of divorce  
12 or in fulfillment of a property settlement agreement;
- 13 (vii) the assignment or other transfer of a seller's interest in a  
14 contract for the sale of real property, even though accompanied by a conveyance  
15 of the seller's interest in the real property involved;
- 16 (viii) a transfer by appropriation or decree in condemnation  
17 proceedings brought by the United States, the state, or a municipality;
- 18 (ix) a mortgage or other transfer of an interest in real property to  
19 secure a debt or the assignment of a debt, or a document that reconveys or  
20 releases an interest that was held to secure a debt;
- 21 (x) a transfer or conveyance made under an order of sale by the  
22 court in a mortgage or lien foreclosure proceeding or upon execution of a  
23 judgment, or deed in lieu of foreclosure to satisfy a mortgage;
- 24 (xi) a conveyance to the Federal Housing Administration or the  
25 United States Department of Veterans Affairs by an authorized mortgagee made  
26 under a contract of insurance or guaranty with the Federal Housing Administration  
27 or the United States Department of Veterans Affairs;
- 28 (xii) a transfer in compliance with the terms of a lease or contract  
29 upon which the tax as imposed by this chapter has been paid or where the lease  
30 or contract was entered into before January 1, 1993;
- 31 (xiii) the sale of a grave or lot in an established cemetery;

1 (xiv) a sale by or to the United States, the state, or a municipality;  
 2 (xv) a conveyance of land or an interest in land by a Native  
 3 corporation, as that term is defined in 43 U.S.C. 1602, to the United States if the  
 4 conveyance of the land or the interest by the Native corporation is made for cash  
 5 or credit;

6 (2) "real property" means an estate in land, and includes mobile homes;

7 (3) "selling price"

8 (A) means the consideration, including money or anything of value, paid  
 9 or delivered or contracted to be paid or delivered in return for the conveyance of the real  
 10 property or an estate or interest in real property;

11 (B) includes the amount of a lien, mortgage, contract indebtedness, or  
 12 other encumbrance, either given to secure the purchase price or as a part of the purchase  
 13 price, or remaining unpaid at the time of conveyance of the real property or an estate or  
 14 interest in real property;

15 (C) does not include the amount of an outstanding lien or encumbrance  
 16 in favor of the United States, the state, or a municipality for taxes or special assessments;

17 (4) "tax" means the real estate conveyance tax imposed by AS 43.33.010.

18 \* Sec. 2. AS 29.10.200 is amended by adding a new paragraph to read:

19 (51) AS 29.45.750 (real estate conveyance tax)

20 \* Sec. 3. AS 29.45 is amended by adding a new section to read:

21 ARTICLE 6. REAL ESTATE CONVEYANCE TAX.

22 Sec. 29.45.750. REAL ESTATE CONVEYANCE TAX AUTHORIZED. (a) A unified  
 23 municipality and a first or second class borough may impose an excise tax upon each conveyance  
 24 of real property within the municipality. If the unified municipality imposes a tax, the rate of  
 25 the tax may not exceed one percent of the selling price of the real property.

26 (b) The tax levied by a unified municipality or first or second class borough under (a)  
 27 of this section shall be paid to and collected by the recorder of the recording district in which  
 28 the real property that was conveyed is located. The recorder shall affix a stamp evidencing  
 29 satisfaction of the lien to the instrument of conveyance before its recording. A receipt issued by  
 30 the recorder for the payment of the tax imposed under this chapter is evidence of the satisfaction  
 31 of the lien of the tax and may be recorded in the manner prescribed for recording satisfactions

1 of mortgages.

2 (c) The recorder shall remit payment of the tax imposed by a unified municipality or a  
3 first or second class borough under (a) of this section to the municipality in which the real  
4 property that was conveyed is located.

5 (d) An instrument evidencing a conveyance subject to the tax may not be accepted by  
6 the recorder for filing or recording under AS 40.17 until the tax has been paid and the stamp  
7 affixed. In a case in which the tax is not due on the transfer, the instrument may not be accepted  
8 for recording until suitable notation of the exception has been made on the instrument by the  
9 recorder.

10 (e) In this section,

11 (1) "conveyance" has the meaning given in AS 43.33.100;

12 (2) "selling price" has the meaning given in AS 43.33.100;

13 (3) "tax" means the real estate conveyance tax authorized by (a) of this section.

14 (f) This section

15 (1) applies to home rule boroughs and general law boroughs;

16 (2) does not apply to third class boroughs, whether home rule or general law.

17 \* Sec. 4. AS 40.17.030(a) is amended to read:

18 (a) To be eligible for recording, a document must be

19 (1) legible or capable of being converted into legible form by a machine or device  
20 used in the recording office;

21 (2) capable of being copied by the method used in the recording office;

22 (3) accompanied by the proper fee for recording and include or be accompanied  
23 by information, stamps, certificates, taxes, or fees that under AS 29.45.750, AS 43.33, and other  
24 laws are necessary to qualify the document for recording;

25 (4) accompanied by or include the information needed to index the document  
26 under regulations of the department;

27 (5) accompanied by or include the name and address of the person to whom the  
28 document is to be returned after recording; and

29 (6) accompanied by or include the mailing addresses of all persons named in the  
30 document who grant or acquire an interest under the document if it is a conveyance; this  
31 paragraph does not apply to a release of a security interest.

1 \* Sec. 5. AS 40.17.070 is amended by adding a new subsection to read:

2 (j) After recording, the recorder shall report to the assessor of a municipality in which  
3 property subject to the tax imposed by AS 43.33 is located the gross sales price, as stated in the  
4 tax affidavit prescribed under AS 43.33.050, of each parcel of property that is conveyed within  
5 the municipality and that is subject to that tax.

6 \* Sec. 6. This Act takes effect January 1, 1993.

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

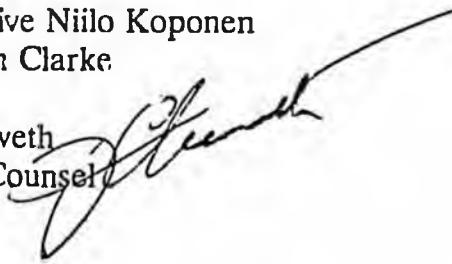
240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

**MEMORANDUM**

April 7, 1992

**SUBJECT:** Draft CSHB 522 ( ) (Work Order No. 7-LS2077J)

**TO:** Representative Niilo Koponen  
ATTN: Ron Clarke

**FROM:** Jack Chenoweth  
Legislative Counsel 

Since I've not heard from the House Community and Regional Affairs Committee staff, I am sending the draft to you. You may offer it to the Community and Regional Affairs Committee.

While there is a sound argument to be offered in support of removal of sections 2 and 3 of the bill, caution suggests that explicit municipal authority to levy and collect this tax remain. Under AS 29.35.010(6), all municipalities have the right to "levy a tax or special assessment . . . ." The breadth of the grant is consistent with article X, section 1's directive that "[a] liberal construction shall be given to the powers of local government units." Liberati v. Bristol Bay Borough, 584 P.2d 1115, 1120 (Alaska 1978) (municipal levy of raw fish tax upheld). There are no prohibitions in AS 29 as to a municipality's levying and collecting a real estate conveyance tax. Those who argue that state law need not explicitly authorize the levy and collection of this kind of tax by municipalities have the weight of that argument in their favor.

However, the subject matter does involve a tax and, at least in other jurisdictions, historically courts have usually tended to construe the authority to levy and collect taxes narrowly. While there is every good reason to believe that the courts would follow the constitutional directive and the general statutory grant to uphold a municipality's levy and collection of a conveyance tax without the enactment of these two sections, that conclusion is not certain. Moreover, by implication, the provisions in this bill would preclude cities from the levy and collection of the tax.

So, in my view, the provision probably should remain. It must remain if, as you have sought, only certain unified municipalities and boroughs are to levy the tax (leaving third class boroughs and all cities without the ability to levy). But even if you were

Representative Niilo Koponen

April 7, 1992

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to allow all municipalities to levy and collect the conveyance tax, putting the authority into the statutes probably forecloses litigation as to whether these municipalities may do so. Out of an abundance of caution, I would retain the provisions but, based on the justification set out above, their removal would not necessarily preclude municipalities from enacting an ordinance to impose the levy at the local level.

JBC:pl

92-246.plm

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 522

Revision Date: \_\_\_\_\_  
Title: Real Estate Conveyance Tax  
Sponsor: Representative Koponen  
Requestor: Representative Koponen

Department Affected: Community and Regional Affairs  
BRU: Local Government Assistance  
Component: State Assessor

COMPONENT SERIAL NO. 

0	6	7	3
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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 FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	*0	*0	*0	*0	*0	*0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	*0	*0	*0	*0	*0	*0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

ANALYSIS: (Attach a separate page if necessary.)

\* The impact on the State Assessor's office is indeterminate but thought to be minimal. The only reference to the department or the State Assessor's office is on page 2, line 30, and only creates the possibility of a duty to provide service.

Prepared By: Remond Henderson  
Division: Administrative Services Division  
Approved by Commissioner: Ed. Ruth  
Agency: Department of Community and Regional Affairs

Phone: 465-4708  
Date: 3/31/92  
3 - 81-92 /  
Date: \_\_\_\_\_

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 522

Revision Date: March 31, 1992  
Title: Real estate conveyance tax and providing for tax sharing  
Sponsor: Rep. Koponen  
Requestor: \_\_\_\_\_

Department Affected: Department of Revenue  
BRU: Revenue Operations  
Component: Income and Excise Audit

COMPONENT SERIAL NO. | 1 | 1 | 3 |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	5.8	5.8	5.8	5.8	5.8	5.8
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	5.8	5.8	5.8	5.8	5.8	5.8
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE FUND SOURCE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	5.8	5.8	5.8	5.8	5.8	5.8
FEDERAL FUNDS						
OTHER FUND SOURCE						
TOTAL	5.8	5.8	5.8	5.8	5.8	5.8

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS:

SEE ATTACHED

Prepared By: Paul Dick Phone: (907) 465-2320  
Division: Income and Excise Audit Date: March 31, 1992  
Approved by Commissioner: Darrel J. Rexwinkel Date: \_\_\_\_\_  
Agency: Department of Revenue

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

### **Intent**

HB 522 imposes an excise tax on real property conveyances and provides for sharing a portion of the revenues collected to municipalities based on the location of the real property. This bill also authorizes municipalities and boroughs to impose local conveyance taxes in conjunction with the state conveyance tax.

### **Analysis**

Effective January 1, 1993, this bill imposes an excise tax upon each real property conveyance at a rate of 1% of the selling price of the property. Under this bill, the tax will be paid to and collected by the recorder of the recording district in which the real property was conveyed. Before any conveyance could be recorded, the recorder would be required to affix a stamp to the instrument as evidence of payment of the tax.

This bill requires the Department of Revenue to prescribe standards for collecting and reporting the tax, and specifications for a tax affidavit to be filed with the recorder. The department would also be required to establish regulations in regard to determination of the sales price for conveyances.

Administratively, the recorder would account for and deposit all conveyance tax receipts and then periodically report to the Department of Revenue the total taxes collected along with a schedule of the locations of the conveyances for tax sharing purposes.

The Department of Revenue would assess and collect delinquent state conveyance taxes, penalties and interest as authorized under AS 43.05 and AS 43.10 respectively. Because the municipal and borough conveyance taxes are codified under AS 29 in this bill, the department would not have authority to assess and collect local taxes.

### **Tax Sharing**

Under section 1 of this bill, 50% of revenues collected by the state will be shared to communities where the conveyances were located. For those cases in which the city is located in an organized borough, the department would share the 50% amount equally between the city and the borough, thus the city would receive 25% and the borough 25% of the tax receipts.

The department would annually share the state taxes to the municipalities and boroughs after the close of the fiscal year ending June 30. For municipal or borough conveyance taxes, the recorder would directly remit those taxes collected to the respective municipality or borough.

Penalties and the amount spent by the state in collection of the conveyance taxes would be excluded from the amount shared to municipalities and boroughs.

### Operating Costs

The Department of Natural Resources (recorders) will collect and account for the conveyance taxes. The Department of Revenue's involvement in administering the tax program will be limited to sharing taxes and collecting delinquent taxes. Accordingly, the personal services costs in this fiscal note reflect the apportioned time needed for the department to administer its duties.

Personal Services			<u>\$5.8</u>
Accounting Technician II	Tax Sharing	75 hours	2.2
Accounting Technician I	Collections	150 hours	3.6

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 522

Revision Date: 1-Apr-92 Department Affected: Natural Resources  
 Title: Real Estate Conveyance Tax BRU: Management & Administration  
 Components: Recorder's Office  
 Sponsor: Representative Koponen  
 Requestor: House Community & Regional Affairs COMPONENT SERIAL NO. 802

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	307.3	240.8	240.8	240.8	240.8	240.8
TRAVEL	15.0	15.0	15.0	15.0	15.0	15.0
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	9.0	9.0	9.0	9.0	9.0	9.0
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	336.3	269.8	269.8	269.8	269.8	269.8

CAPITAL	* 3,000.0					
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REVENUE						
Funding Source:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER GF/PR						
Funding Source: 1007	3,336.3	269.8	269.8	269.8	269.8	269.8
TOTAL	3,336.3	269.8	269.8	269.8	269.8	269.8

POSITIONS:

FULL-TIME	4.0	4.0	4.0	4.0	4.0	4.0
PART-TIME	2.0	2.0	2.0	2.0	2.0	2.0
TEMPORARY	1.0					

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

\* Revolving Loan Fund for Appraisal.  
See Attached

Prepared by: Cindy Wilkinson Phone: 465-3425  
 Division: Management and Administration Date: 1-Apr-92

Approved by Commissioner: Harold C. Heinze Date: 1-Apr-92  
 Agency: Department of Natural Resources

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

FISCAL NOTE HB 522

This bill would change the procedures for the recording of conveyance documents in the Recorder's/UCC Section, Commissioner's Office, Department of Natural Resources.

EFFECTS OF ENACTMENT ON RECORDER'S/UCC SECTION:

**Sec. 43.33.010. TAX IMPOSED.** This bill imposes an excise tax upon each conveyance of real property at the rate of 1% of the selling price of the real property.

**Sec. 43.33.020. TAX CONSTITUTES LIEN.** Interest and penalties would have to be figured by someone other than the Recorder's office for collection.

**Sec. 43.33.040. EVIDENCE OF PAYMENT.** The excise tax will be collected by the recorder's office in which the real property being conveyed is located. According to this section of the bill, a receipt will be issued by the recorder for the payment of the tax, and is evidence of the satisfaction of the lien of the tax, and may be recorded in a manner prescribed for recording satisfactions of mortgages. The statewide total of all deeds and sales contracts for calendar year 1991 was 28,356 documents. This figure does not include leases with option to purchase, or notices of interest in real property. Currently, the recording and receipting time for a conveyance averages 5 to 10 minutes. With the state excise tax, the time to record the tax affidavit (Sec. 43.33.050) and the conveyance concurrently, will increase the recording time by another 15 minutes. At an estimated 30,000 conveyances, the total time for recording and receipting will increase by 7,500 hours. This will create the need for an additional 4 full time recorder positions.

**Sec. 43.33.060. DETERMINING SELLING PRICE.** The Department of Natural Resources will be responsible for writing regulations to determine the selling price of real property. This will require a Certified Public Accountant position at a Range 20 for one year.

**Sec. 43.33.070. DISTRIBUTION OF REVENUE.** Costs to load data on to the table file will be an initial \$1200, and \$2000 a year to generate checks to the municipalities for one or both taxes.

Sec. 29.45.750. REAL ESTATE CONVEYANCE TAX AUTHORIZED. A unified municipality and a first or second class borough may impose an excise tax of up to 1% to be collected by the recorder in the recording district where the real property is being conveyed. With a state and municipal/borough tax, the time to record and receipt the taxes will increase the recording time for a conveyance by 20 minutes. At an estimated 30,000 conveyances, the total time for recording and receipting will increase for the year by 12,500 hours. This will create the need for an additional 7 full time positions.

Increased revenue: There will be an increase in revenue in the recording fees created by this bill. With the state tax affidavit recorded as a separate document from the conveyance, an extra \$15 per affidavit will be generated. At an estimated 30,000 conveyance documents, the increased revenue would be \$450,000.

Personal Services (100)				\$307.3
Auditor (CPA)	20A	Anchorage	66.5	(1 year only)
Recorder II (0339)	10F	Bethel	19.9	(4 mo.)
Recorder II (0333)	10J	Nome	20.0	(4 mo.)
Recorder II (0364)	10E	Sitka	15.0	(4 mo.)
Recorder II (0329)	10B	Ketchikan	19.7	(6 mo.)
Recorder I	8A	Anchorage	32.8	
Recorder I	8A	Fairbanks	33.9	
Recorder I	8A	Fairbanks	33.9	
Recorder I Part time	8A	Kenai	16.4	
Recorder I Part time	8A	Ketchikan	16.4	
Recorder I	8A	Palmer	32.8	

A Certified Public Accountant position, Range 20, will need funding for one year. This position will write the regulations needed under Sec. 43.33.060.

Travel (200)

15.0

Travel is needed for Regional Manager's to travel to satellite offices for training in new procedures. Travel for public meetings to be held in all locations. CPA travel to unified municipalities and first/second class boroughs during the regulation writing process.

Contractual (300)

5.0

Courier services in Anchorage and Fairbanks only for transportation of bank deposits.

Commodities (400)

9.0

State tax stamps

State excise stamps will have to be printed in different values to equal the amount of the tax paid. If municipal/borough taxes are imposed, stamps for these taxes will also have to be printed. A mechanical hand stamp could be procured to take the place of regular stamps.

Capital

Revolving loan fund

3,000.0

A 3,000.000 revolving loan fund will be established for appraisal fees. These fees will be reimbursed to the recorder at the time the excise tax is paid.

TOTAL

\$3,336.3

NOTES:

1. State tax, Sec. 43.33.040 will require additional recorder positions. The following Recorder II's will be reinstated to full time from part time positions:

Bethel, Range 10F

Nome, Range 10J

Sitka, Range 10E

Ketchikan, Range 10B

The following offices will need one full time Recorder I:

Fairbanks, Range 8A

Anchorage, Range 8A

Formula for figuring extra positions: 30,000 documents X 15 minutes extra time = 450,000 minutes. 450,000 minutes divided by 60 minutes = 7,500 hours. 7,500 hours divided by 7.5 = 1,000 days. 1,000 days divided by 250 working days = 4

Municipal/borough tax, Sec. 29.45.750 will require an additional 3 Recorder positions together with the 4 positions needed for the state tax. The following offices will need one full time Recorder I positions:

Anchorage, Range 8A  
Fairbanks, Range 8A

Palmer, Range 8A  
Fairbanks, Range 8A  
Kenai, Range 8A, Part time  
Ketchikan, Range 8A, Part time

Formula for figuring extra positions: 30,000 documents X 25 minutes = 750,000. 750,000 divided by 60 minutes = 12,500 hours. 12,500 hours divided by 7.5 hours = 1,667 days. 1,667 working days divided by 250 working days = 7 employees.



ALASKA ASSOCIATION OF REALTORS, INC.  
741 Sesame Street, Suite 100 • Anchorage, Alaska 99503  
Telephone 907-563-7133

March 18, 1992

Representative Niilo Koponen  
Room 503, Capitol  
P.O. Box V  
Juneau, AK. 99811

Dear Sir,

I am writing on behalf of the Alaska Association of REALTORS® concerning H.B. 522, the Real Estate Conveyance Tax bill. The Association, by an action of the Board of Directors, is opposing passage of H.B. 522.

To impose a conveyance tax for the transfer of real property in a barely recovering real estate market does nothing but hamper that recovery. Many Alaskan homeowners are still saddled with a negative home equity, making it difficult to sell, if not impossible.

In addition, although H.B. 522 provides only for a 1% tax, historically opening the door on this type of tax is just the beginning! Several other states, such as Connecticut, have seen the reconveyance tax rise from 1% to 7% or 8%. (Or in real dollar terms, from \$1,000 on a \$100,000 home sale to \$7,000 or \$8,000 on a \$100,000 sale.)

The State of Alaska has made a commitment to safe, affordable housing for all its citizens; the Association requests reconsideration of H.B. 522 in light of its effect on that goal and the ultimate results.

Sincerely,



Dale Price  
President

cc: AAR Board of Directors  
CRA Committee





*DON BRENDGARD*  
CRB, ASSOCIATE BROKER

3/5/92

Representative Jerry Mackie  
Alaska State Legislature  
State Capitol Room #110-C  
Juneau, AK 99801-1182

Dear Representative Mackie,

I am writing to express my objection to HB #522, a bill to allow the imposition of a real estate conveyance tax.

This bill will have an impact on the buyers of real estate in the state of Alaska that will be very negative to the economy. On a home valued at only \$100,000 it could have the affect of adding an extra \$2,000.00 in closing costs and there by eliminate a large group of people from buying homes. I think this is counter productive to getting the state into a healthy economy.

The thing to do, instead of raising taxes like this bill would do, would be to broaden the tax base by encouraging people to buy homes, not hinder them from buying.

I feel very strongly we as a state must reduce our spending, not raise more taxes.

Sincerely,

A handwritten signature in black ink, appearing to read "Don", written in a cursive style.

Don Brendgard

3230 "C" Street #102  
Anchorage, AK 99503  
FAX (907) 273-2473

**HERITAGE**  
REAL ESTATE  
(907) 562-1222 Office

3431 Harrier Cir  
Anchorage, AK 99504  
(907) 337-0687 Home

February 28, 1992

Jerry Mackie  
Ch:Community and Regional Affairs  
Room 124 Capital Building  
Juneau, AK 99801-1182

Dear Honorable Jerry Mackie,

In regards to HB 522;

I am in favor in the passage of this bill. It should come as no surprise to any of your constituents that the North Slope Gravy Train is nearing its economic life span. After examining the bill in its present form it would appear that Municipalities with no tax base except for real property belonging to native corporations could at least potentially participate in paying for their share of education and other essential services now provided at no cost.

Full disclosure and a public record of the sales price would be a tremendous value to the Fairbanks North Star Borough for purposes of accurate property tax assessment. It would also assist appraisers, real estate salespersons, and lenders in determining fair market value for real property.

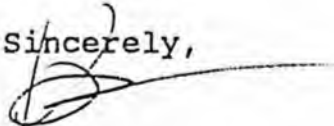
I suggest that there be an exemption for single family houses and duplexes. rather than pick a dollar number out of the air I recommend using the Acquisition cost limits that Alaska Housing Finance uses for their Tax-exempt financing program as the amounts of the exemption.

Single family - new	\$146,610
Single family - existing	\$93,780
Duplex - existing	\$105,596

These limits are increased from time to time to inflation proof the program. An amendment using these limits as the exemption amount would help to mollify expected howls of protest from the real estate community as well as not making it difficult for a home-buyer to purchase a modestly priced home.

Please distribute copies of this letter to your committee members

Sincerely,

  
Karl Schroeder  
Sales Associate

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

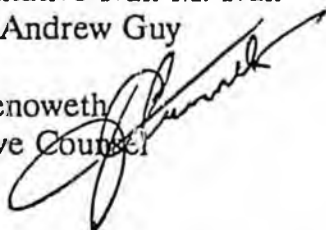
MEMORANDUM

March 17, 1992

**SUBJECT:** House Bill 522: Impact of real estate conveyance tax on land conveyances and exchanges under Alaska Native Claims Settlement Act (Work Order No. 7-LS2077/D)

**TO:** Representative Ivan M. Ivan  
ATTN: Andrew Guy

**FROM:** Jack Chenoweth  
Legislative Counsel



House Bill 522 would impose a state real estate conveyance tax and would authorize municipal governments to impose a similar tax. You have asked whether any of the following land transactions would be subject to taxation under a state real estate conveyance tax or under a real estate conveyance tax levied by a local government:

- (1) conveyances from the Bureau of Land Management to the regional and village corporations pursuant to the Alaska Native Claims Settlement Act;
- (2) conveyances from village corporations to individuals under sec. 14(c) of that Act (43 U.S.C. 1613(c)); and
- (3) land exchanges between regional and village corporations.

Under 43 U.S.C. 1620(d), protection against taxation is given to undeveloped land that is "conveyed under [the Alaska Native Claims Settlement Act] to a Native individual, Native Group, Village, or Regional Corporation . . ." A state statute, AS 43.80.015(b), currently provides:

(b) The receipt of land or an interest in it under the [Alaska Native Claims Settlement] Act or of cash in order to equalize the values of property exchanged under Sec. 22(f) of that Act or AS 38.50 is not subject to any form of state or local taxation. The basis for computing gain or loss on subsequent sale or other disposition of this land or interest in land for purposes of a state or local tax imposed on

or measured by income is the fair value of the land or interest in land at the time of receipt.

(Emphasis added.) To my mind, these federal and state provisions are sufficient to protect from taxation, either by the state or by a local government, the original conveyances that are required by the Alaska Native Claims Settlement Act from the Bureau of Land Management to the regional and village corporations.

Since the land conveyances by regional and village corporations to individuals are also directed by the federal Act, the federal Act and the state statute would also be sufficient to protect against state or local real estate conveyance taxation the section 14(c) conveyances to individuals.

While, as a matter of corporate authority, the regional and village corporations may enter into land exchange agreements, I did not find explicit authority for two-party land exchanges between the regional and village corporations in the Alaska Native Claims Settlement Act. I checked with the Land Division of the Alaska Federation of Natives and learned that the most common land exchange transactions have typically involved three parties--the village corporation, the regional corporation, and an agency. Land exchanges involving the a Native corporation with the federal government or the State of Alaska are addressed in the original Alaska Native Claims Settlement Act. See 43 U.S.C. 1621(f).

Broad protection for two-party land exchanges is provided under 43 U.S.C. 1620(d)(2), added by the Alaska National Interest Lands Conservation Act. Under that subsection:

Any real property interest, not developed or leased to third parties, acquired by a Native individual, Native Group, Village or Regional Corporation, or corporation established pursuant to [43 U.S.C. 1613(h)(3)] in exchange for real property interests which are exempt from taxation pursuant to [43 U.S.C. 1620(d)(1)] shall be deemed to be a property interest conveyed pursuant to this Act and shall be exempt from taxation as if conveyed pursuant to this Act, when such an exchange is made with the Federal Government, the State government, a municipal government, or another Native Corporation . . . .

And, under 43 U.S.C. 1602(m), "Native corporation" means any village, regional, urban, or group corporation. So, it appears to me that this provision of the federal Act provides protection against taxation of the land exchange conveyances. <sup>1/</sup>

In summary, none of the land exchange transactions you have identified should be subject to taxation under the provisions of HB 522. Federal and state law together would prohibit imposition of taxes on direct conveyances and reconveyances, while the federal provision cited, alone, provides similar protection to land exchanges.

I trust this is sufficient for your purposes.

JBC:gc  
92-239.glc

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<sup>1/</sup> There was similar protection against taxation as a part of state law. AS 43.80.015(b), quoted in the memo, directs that receipt of cash in order to equalize values in a land exchange authorized under 43 U.S.C. 1621(f) is not taxable. The underlying land exchange itself is, under AS 43.80.015(c), also to be treated as a transaction that, before December 18, 1991, could not be taxed:

(c) A real property interest conveyed under the federal Act, AS 38.50, or AS 38.95.050, including land received in an exchange under Sec. 22(f) of the federal Act or AS 38.50, to a Native individual or corporation incorporated under Alaska law pursuant to the federal Act, which interest is not developed or leased to third parties, is exempt from state and local real property taxes and local assessments until December 18, 1991. . . . In Sec. 21(d) of the federal Act, the exemption of real property interests from local real property taxes includes exemption from local assessments and extends to land received in an exchange under Sec. 22(f) of the federal Act or AS 38.50.

Representative MacLean is sponsoring legislation to revise and extend the tax exemption identified in state law in order to give it effect after the December 18, 1991, deadline date. See House Bill 451.

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

MEMORANDUM

March 20, 1992

**SUBJECT:** House Bill 522, imposing a real estate conveyance tax and authorizing municipalities to do so (Work Order No. 7LS-2077D)

**TO:** Representative Ivan M. Ivan  
ATTN: Andrew Guy

**FROM:** Jack Chenoweth  
Legislative Counsel 

I read Mr. Neimeyer's March 20 letter--particularly the last part of the second paragraph--as addressing lands that are being given up by a Native corporation (in exchange for "chits" or credits to acquire other (federal) assets) rather than land that is being acquired by a Native corporation.

For all the reasons set out in my memo, if the land is being acquired by the Native corporation, it would not be subject to the proposed conveyance tax.

However, I read the letter as describing a different situation. Depending on the actual circumstances of the land exchange, then I agree with Mr. Neimeyer that a Native corporation's giving up title to its land is a transaction subject to the conveyance tax.

If you believe that the March 20 letter of counsel outlines a situation that deserves change, you should be prepared to offer an amendment to HB 522 to make sure that these land transactions are exempted from taxation under the proposed conveyance tax. May I suggest something like the following:

Page 4, following line 31, after "municipality;"

Insert: "(xv) a conveyance of land or an interest in land by a Native corporation, as that term is defined in 43 U.S.C. 1602, to the United States if the conveyance of the land or the interest by the Native corporation is made for cash or credit."

JBC:pl  
92-196.plm

# Calista Corporation

601 W. 5th Avenue, Suite 200, Anchorage, Alaska 99501-2225 ♦ (907) 279-5518 ♦ FACSIMILE (907) 272-5080

March 20, 1992

Representative Ivan M. Ivan  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Dear Representative Ivan:

Thank you for your prompt response concerning our questions on HB 522's affect on ANCSA land issues.

There apparently is some confusion, however, in the third question we posed to you. The response you received from the Legislative Counsel, dated March 17, answered the question dealing solely with land exchanges. This addresses only half of our concerns.

Section 22(f) of ANCSA provides specific authority to the Secretary of Interior to engage in land exchanges with ANCSA corporations. This form of acquisition has fallen out of public and, apparently congressional favor. Use of exchanges has become the exception rather than the rule for federal acquisitions. Public and congressional debate has focused on cash acquisitions of ANCSA lands of high public interest. Due to the scarcity of public funds available for this purpose, in Alaska, much additional consideration has been given to the concept of exchanging ANCSA lands for "chits" that can be used as script to purchase surplus federal assets.

I believe public acquisitions of ANCSA lands either by cash purchase or "chit" packages would be subject to the 1% excise tax imposed by HB 522. Most ANCSA corporations would generally prefer land exchanges as the most desirable method of public interest acquisitions. Some corporations statewide, including Calista and several of its village corporations, have opted to participate in cash or "chit" package acquisitions.

An excise tax would reduce the benefits to ANCSA corporations involved in these transactions. Since these seem to be the preferred acquisition methods at this time, it may have a chilling effect on public acquisitions of lands with high public value. Many acres of ANCSA lands have such values to the public.

More important to us, however, is the reduction in benefits the ANCSA corporations receive as a result of the tax. Many ANCSA corporations are only

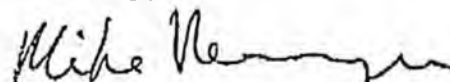
Representative Ivan M. Ivan  
March 20, 1992  
Page two

hanging on by a thread. Several are even in bankruptcy court. One to two percent of a sale could mean a great deal to these corporations survival.

Like any other business in the state, ANCSA corporations are currently faced with poor economic conditions. Unlike many other businesses in Alaska, however, ANCSA corporations operate in bush Alaska where the economy is always poor. This state must do something to help stimulate the sagging economy of the rural areas. It should not be placing additional roadblocks like this excise tax in rural Alaska.

As you can see, the opinion from the Legislative Counsel did identify and resolve some potential problems that HB 522 may pose for ANCSA corporations. It failed, however, to address the preferred alternatives currently being used to address land status and acquisition problems associated with ANSCA lands. I believe HB 522 would provide a chilling effect on land acquisitions that are in the public interest, as well as, place unacceptable burdens on many ANCSA corporations that already face enormous pressures and burdens associated with operating in rural Alaska.

Sincerely,



Mike Neimeyer  
Vice President  
Land & Natural Resources

lj

(att. 2)

# NFIB Alaska

National Federation of  
Independent Business

POSITION PAPER

OF

NATIONAL FEDERATION OF INDEPENDENT BUSINESS  
(NFIB/ALASKA)

ON

TAXES

HB 522 - REAL ESTATE CONVEYANCE TAX.

HB 523 - CONVERTING THE BUSINESS LICENSE FEE TO A GROSS  
BUSINESS LICENSE TAX.

HB 524 - A TAX ON TRANSFERS OF LIMITED ENTRY PERMITS.

HB 525 - PERSONAL INCOME TAX.

State Office  
9159 Skywood Lane  
Juneau, AK 99801  
(907) 789-4278



The Guardian of  
Small Business

CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS RESA JERREL, AND I AM THE STATE DIRECTOR FOR NATIONAL FEDERATION OF INDEPENDENT BUSINESS - NFIB/ALASKA.

NFIB/ALASKA IS COMPRISED OF 5,292 SMALL AND INDEPENDENT BUSINESS OWNERS. THE LEGISLATIVE AGENDA OF NFIB/ALASKA IS DETERMINED BY OUR BALLOT. THE BALLOT IS OUR ANNUAL POLL OF OUR MEMBERS ON A SERIES OF ISSUES DEEMED CRITICAL TO SMALL BUSINESS. A MAJORITY VOTE, OF THE MEMBERS IN RESPONSE TO THE POLL, SETS OUR POLICY AND POSITION ON LEGISLATIVE ISSUES. WE THEN SHARE THE RESULTS OF OUR POLL WITH THE LEGISLATURE AND ADMINISTRATION. THERE IS NOT ENOUGH SPACE ON THE ANNUAL POLL TO PLACE EVERY POSSIBLE ISSUE BEFORE OUR MEMBERS. THEREFORE, WE ALSO USE THE PREVIOUS YEARS BALLOT RESULTS AS GUIDANCE ON ISSUES.

ON THE 1986 STATE BALLOT THE MEMBERS OVERWHELMINGLY VOTED, (96%) TO REDUCE STATE GOVERNMENT BEFORE INCREASING PRESENT TAXES OR IMPOSING NEW TAXES.

ALSO, IN 1990 THE MEMBERS VOTED CLEARLY TO REJECT, (80%) THE REINSTATEMENT OF THE STATE PERSONAL INCOME TAX.

ADDITIONALLY, ATTACHED ARE THE RESULTS OF SEVERAL BALLOT QUESTIONS REGARDING GOVERNMENT COMPETITION.

NFIB/ALASKA OPPOSES HB 522, HB 523, HB 524 AND HB 525 BECAUSE THE STATE BUDGET NEEDS TO BE CUT BEFORE IMPOSING NEW TAXES. IF YOU SINCERELY WANT TO CUT THE BUDGET THEN PROHIBIT OR REDUCE THE COMMERCIAL ACTIVITIES OPERATED BY STATE AND LOCAL AGENCIES. SMALL BUSINESSES IN ALASKA FACE COMPETITION FROM STATE AND LOCAL GOVERNMENT AGENCIES IN A WIDE VARIETY OF COMMERCIAL ACTIVITIES. THE MANY SMALL BUSINESSES FACING GOVERNMENT COMPETITION ARE:

- PRINTING FIRMS
- GIFT SHOPS
- VIDEOTAPE OUTLETS
- DAY-CARE CENTERS
- SERVICE STATIONS
- LANDSCAPING
- ROAD REPAIR AND MAINTENANCE
- LABORATORIES
- MEDICAL CARE PROVIDERS
- PHARMACIES
- ARCHITECTURE AND ENGINEERING FIRMS
- OFFICE FURNITURE
- AUTO BODY REPAIR

GETTING GOVERNMENT OUT OF BUSINESS WOULD GO A LONG WAY TO BRINGING THE SIZE AND COST OF STATE AND LOCAL GOVERNMENT DOWN TO REASONABLE AND AFFORDABLE LEVELS - WITHOUT RAISING TAXES OR IMPOSING NEW TAXES.

NFIB/ALASKA THANKS YOU FOR THE OPPORTUNITY TO COMMENT ON THIS LEGISLATION. IF YOU HAVE ANY QUESTIONS I WOULD BE HAPPY TO TRY AND ANSWER THEM.

ATTACHMENT

The following is the result of the 1988 NFIB/Alaska ballot question regarding unfair competition:

Should legislation be enacted to restrict the commercial activities of government entities so they are not permitted to compete with existing private enterprises?

Yes 78%

No 12%

Undecided 10%

The following is the result of the 1990 NFIB/Alaska ballot question regarding government competition:

Should legislation be passed that would restrict government agencies from competing with private business in Alaska?

Yes 83%

No 6%

Undecided 11%

More recently, the following is the result of the 1991 NFIB/Alaska ballot question on this issue:

Should the legislature establish a Private Enterprise Preservation Task force in order to study and recommend legislation to limit competition with private business by state and local government?

Yes 67%

No 23.1%

Undecided 9.9%



Att 3.

March 30, 1992

TO: Representative Jerry Mackie, Chair,  
and  
Members, House Committee on Community and Regional Affairs

FROM: Scott A. Burgess, Executive Director

RE: HB 522 - Imposing a real estate conveyance tax; providing for sharing with municipalities; authorizing certain municipalities to levy and collect a real estate conveyance tax; amending the requisites of recording a conveyance

The Alaska Municipal League supports the concept of HB 522, which would authorize the imposition of a state-collected real estate conveyance tax, half of which would be shared with municipalities. Not only would such a tax provide additional revenue to Alaska's municipalities through the sharing mechanism and by specifying that certain types of municipalities could impose a local real estate conveyance tax, it could also make data on real estate selling prices available to municipal tax assessors, thus enabling them to do their jobs better, more equitably, and more accurately. An amendment to HB 522 to require that sales price data be made available to municipalities is requested. Banks and other lending institutions would also benefit from information on real estate values based on actual sales.

The 1992 Alaska Municipal League Policy Statement includes the following statement: "The League urges the Alaska Legislature to enact legislation requiring that real property transaction values be reported and these reports be shared with the appropriate municipalities" (Part I, D.7). Alaska is one of only fourteen states in the nation that do not require recording of real property transaction values. Lack of market data has been linked to failures of financial institutions nationwide, and many feel Alaska should require recording for the benefit of the banking and real estate communities. Since municipalities are required to base local property taxes on full and true value, it is equally important that any data collected on real estate transactions be made available to municipalities if uniformity and equity in assessment are to be maintained.

Under the provisions of HB 522, one-half of the revenue received by the state from the real estate conveyance tax (net of the costs of collecting it) would be paid to municipalities, thus providing an additional source of revenue to support governmental services. The bill also provides that a unified municipality or a first or second class borough could impose an additional real estate conveyance tax. Unified municipalities would be limited to a tax of not more than 1 percent of the selling price. However, by limiting the authority to impose a real estate conveyance tax to unified municipalities and first and second class boroughs and by imposing a maximum tax of 1 percent, the bill limits the taxation power and authority of municipalities. The League is concerned about "clarifying" existing powers of municipalities and how that might affect the courts' interpretation of Alaska's broad grant of powers to municipal governments.

The League supports the concept of HB 522 because it could provide both additional revenue and additional information to local governments. The League requests an amendment specifically requiring reporting of real property transaction values to the municipalities in which the transaction took place.

C92test:HB522mem.330

**CS FOR HOUSE BILL NO. 522 (CRA)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**SEVENTEENTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): REPRESENTATIVE KOPONEN**

**A BILL**  
**FOR AN ACT ENTITLED**

1 "An Act imposing a real estate conveyance tax; providing for sharing with municipalities  
2 of a portion of the revenue obtained from the tax; authorizing certain municipalities to  
3 levy and collect a real estate conveyance tax; adding to the duties of the recorder  
4 applicable to disclosure of information involving certain public records, and amending the  
5 formal requisites of recording a conveyance; and providing for an effective date."

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

7 \* Section 1. AS 43 is amended by adding a new chapter to read:

8 **CHAPTER 33. REAL ESTATE CONVEYANCE TAX.**

9 **Sec. 43.33.010. TAX IMPOSED.** There is imposed an excise tax upon each conveyance  
10 of real property at the rate of one percent of the selling price of the real property.

11 **Sec. 43.33.020. TAX CONSTITUTES LIEN.** The tax imposed by AS 43.33.010 and the  
12 interest or penalties on the tax are a specific lien upon each piece of real property conveyed from  
13 the time of conveyance until the tax has been paid.

1           Sec. 43.33.030. SELLER'S OBLIGATION TO PAY TAX. Payment of the tax imposed  
2 by this chapter is the obligation of the seller.

3           Sec. 43.33.040. EVIDENCE OF PAYMENT. (a) The tax shall be paid to and collected  
4 by the recorder of the recording district in which the real property that was conveyed is located.  
5 The recorder shall affix a stamp evidencing satisfaction of the lien to the instrument of  
6 conveyance before its recording. A receipt issued by the recorder for the payment of the tax  
7 imposed under this chapter is evidence of the satisfaction of the lien of the tax and may be  
8 recorded in the manner prescribed for recording satisfactions of mortgages.

9           (b) An instrument evidencing a conveyance subject to the tax may not be accepted by  
10 the recorder for recording under AS 40.17 until a tax affidavit form has been completed, the tax  
11 has been paid, and the stamp affixed. In a case in which the tax is not due on the transfer, the  
12 instrument may not be accepted for recording until suitable notation of the exception has been  
13 made on the instrument by the recorder.

14           Sec. 43.33.050. REPORTING REQUIREMENTS FOR CONVEYANCE. The department  
15 shall prescribe

16                     (1) minimum standards for uniformity in reporting, application, and collection of  
17 the tax;

18                     (2) a tax affidavit form that must contain, at least, the following:

19                             (A) identification of the seller and purchaser;

20                             (B) description of the property involved, including the tax parcel or  
21 account number;

22                             (C) date of conveyance, type of instrument of conveyance, and nature of  
23 transfer;

24                             (D) gross sales price of the parcel, or the appraised market value of the  
25 property if the transaction is an exchange; and

26                             (E) signatures of both the purchaser and seller, under oath.

27           Sec. 43.33.060. DISTRIBUTION OF REVENUE. Subject to legislative appropriation,  
28 from the proceeds of the tax collected under this chapter, excluding penalties and the amount  
29 determined to have been spent by the state in its collection, the department shall pay one-half of  
30 the revenue received

31                     (1) to each unified municipality, each city in the unorganized borough, and each

1 borough for the area outside cities, in proportion to the revenue that was earned within them; and  
 2 (2) to cities and boroughs for the area of each borough that is inside cities, in  
 3 proportion to the revenue that was earned within them; the payment under this paragraph shall  
 4 be divided equally between the city and the borough.

5 Sec. 43.33.10(f). DEFINITIONS. In this chapter,

6 (1) "conveyance"

7 (A) means

8 (i) a grant, assignment, quitclaim, sale, or transfer of the ownership  
 9 of or title to real property, or any estate or interest in real property for a valuable  
 10 consideration;

11 (ii) a contract for a conveyance, grant, assignment, quitclaim, or  
 12 transfer of real property;

13 (iii) a lease with an option to purchase real property, or any estate  
 14 or interest in real property; or

15 (iv) a contract under which possession of the property is given to  
 16 the purchaser, or another person at the purchaser's direction, and title is retained  
 17 by the seller as security for the payment of the purchase price;

18 (B) does not include

19 (i) a lease, except a lease under (A)(iii) of this paragraph;

20 (ii) a transfer by gift, devise, or inheritance;

21 (iii) a cancellation or forfeiture of a purchaser's interest in a  
 22 contract for the conveyance of real property, whether or not the contract contains  
 23 a forfeiture clause;

24 (iv) a deed in lieu of foreclosure of a mortgage or the assumption  
 25 by a grantee of the balance owing on an obligation that is secured by a mortgage  
 26 or deed in lieu of forfeiture of the purchaser's interest in a contract of sale of real  
 27 property, where no consideration passes;

28 (v) a partition of property by tenants in common by agreement or  
 29 as the result of a court decree;

30 (vi) a transfer, conveyance, or assignment of property or interest  
 31 in property from one spouse to the other under the terms of a decree of divorce

1 or in fulfillment of a property settlement agreement;

2 (vii) the assignment or other transfer of a seller's interest in a  
3 contract for the sale of real property, even though accompanied by a conveyance  
4 of the seller's interest in the real property involved;

5 (viii) a transfer by appropriation or decree in condemnation  
6 proceedings brought by the United States, the state, or a municipality;

7 (ix) a mortgage or other transfer of an interest in real property to  
8 secure a debt or the assignment of a debt, or a document that reconveys or  
9 releases an interest that was held to secure a debt;

10 (x) a transfer or conveyance made under an order of sale by the  
11 court in a mortgage or lien foreclosure proceeding or upon execution of a  
12 judgment, or deed in lieu of foreclosure to satisfy a mortgage;

13 (xi) a conveyance to the Federal Housing Administration or the  
14 United States Department of Veterans Affairs by an authorized mortgagee made  
15 under a contract of insurance or guaranty with the Federal Housing Administration  
16 or the United States Department of Veterans Affairs;

17 (xii) a transfer in compliance with the terms of a lease or contract  
18 upon which the tax as imposed by this chapter has been paid or where the lease  
19 or contract was entered into before January 1, 1993;

20 (xiii) the sale of a grave or lot in an established cemetery;

21 (xiv) a sale by or to the United States, the state, or a municipality;

22 (xv) a conveyance of land or an interest in land by a Native  
23 corporation, as that term is defined in 43 U.S.C. 1602, to the United States if the  
24 conveyance of the land or the interest by the Native corporation is made for cash  
25 or credit;

26 (2) "real property" means an estate in land, and includes mobile homes;

27 (3) "selling price"

28 (A) means the consideration, including money or anything of value, paid  
29 or delivered or contracted to be paid or delivered in return for the conveyance of the real  
30 property or an estate or interest in real property;

31 (B) includes the amount of a lien, mortgage, contract indebtedness, or

1 other encumbrance, either given to secure the purchase price or as a part of the purchase  
2 price, or remaining unpaid at the time of conveyance of the real property or an estate or  
3 interest in real property;

4 (C) does not include the amount of an outstanding lien or encumbrance  
5 in favor of the United States, the state, or a municipality for taxes or special assessments;

6 (4) "tax" means the real estate conveyance tax imposed by AS 43.33.010.

7 \* Sec. 2. AS 29.10.200 is amended by adding a new paragraph to read:

8 (51) AS 29.45.750 (real estate conveyance tax)

9 \* Sec. 3. AS 29.45 is amended by adding a new section to read:

10 ARTICLE 6. REAL ESTATE CONVEYANCE TAX.

11 Sec. 29.45.750. REAL ESTATE CONVEYANCE TAX AUTHORIZED. (a) A unified  
12 municipality and a first or second class borough may impose an excise tax upon each conveyance  
13 of real property within the municipality. If the unified municipality imposes a tax, the rate of  
14 the tax may not exceed one percent of the selling price of the real property.

15 (b) The tax levied by a unified municipality or first or second class borough under (a)  
16 of this section shall be paid to and collected by the recorder of the recording district in which  
17 the real property that was conveyed is located. The recorder shall affix a stamp evidencing  
18 satisfaction of the lien to the instrument of conveyance before its recording. A receipt issued by  
19 the recorder for the payment of the tax imposed under this chapter is evidence of the satisfaction  
20 of the lien of the tax and may be recorded in the manner prescribed for recording satisfactions  
21 of mortgages.

22 (c) The recorder shall remit payment of the tax imposed by a unified municipality or a  
23 first or second class borough under (a) of this section to the municipality in which the real  
24 property that was conveyed is located.

25 (d) An instrument evidencing a conveyance subject to the tax may not be accepted by  
26 the recorder for recording under AS 40.17 until the tax has been paid and the stamp affixed. In  
27 a case in which the tax is not due on the transfer, the instrument may not be accepted for  
28 recording until suitable notation of the exception has been made on the instrument by the  
29 recorder.

30 (e) In this section,

31 (1) "conveyance" has the meaning given in AS 43.33.100;

- 1 (2) "selling price" has the meaning given in AS 43.33.100;  
2 (3) "tax" means the real estate conveyance tax authorized by (a) of this section.

3 (f) This section

- 4 (1) applies to home rule boroughs and general law boroughs;  
5 (2) does not apply to third class boroughs, whether home rule or general law.

6 \* Sec. 4. AS 40.17.030(a) is amended to read:

7 (a) To be eligible for recording, a document must be

8 (1) legible or capable of being converted into legible form by a machine or device  
9 used in the recording office;

10 (2) capable of being copied by the method used in the recording office;

11 (3) accompanied by the proper fee for recording and include or be accompanied  
12 by information, stamps, certificates, taxes, or fees that under AS 29.45.750, AS 43.33, and other  
13 laws are necessary to qualify the document for recording;

14 (4) accompanied by or include the information needed to index the document  
15 under regulations of the department;

16 (5) accompanied by or include the name and address of the person to whom the  
17 document is to be returned after recording; and

18 (6) accompanied by or include the mailing addresses of all persons named in the  
19 document who grant or acquire an interest under the document if it is a conveyance; this  
20 paragraph does not apply to a release of a security interest.

21 \* Sec. 5. AS 40.17.070 is amended by adding a new subsection to read:

22 (j) After recording, the recorder shall report to the assessor of a municipality in which  
23 property subject to the tax imposed by AS 43.33 is located the gross sales price, as stated in the  
24 tax affidavit prescribed under AS 43.33.050, of each parcel of property that is conveyed within  
25 the municipality and that is subject to that tax.

26 \* Sec. 6. This Act takes effect January 1, 1993.

(Attachment #1)

**DIVISION OF LEGAL SERVICES**  
**LEGISLATIVE AFFAIRS AGENCY**  
**STATE OF ALASKA**

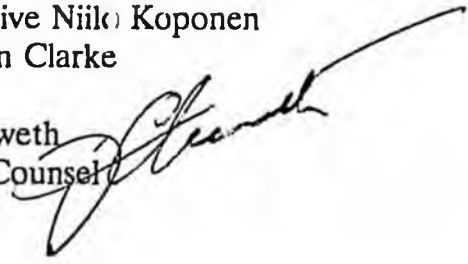
(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

MEMORANDUM

April 7, 1992

**SUBJECT:** Draft CS#B 522 ( ) (Work Order No. 7-LS2077J)  
**TO:** Representative Niilo Koponen  
ATTN: Ron Clarke  
**FROM:** Jack Chenoweth  
Legislative Counsel



Since I've not heard from the House Community and Regional Affairs Committee staff, I am sending the draft to you. You may offer it to the Community and Regional Affairs Committee.

While there is a sound argument to be offered in support of removal of sections 2 and 3 of the bill, caution suggests that explicit municipal authority to levy and collect this tax remain. Under AS 29.35.010(6), all municipalities have the right to "levy a tax or special assessment . . . ." The breadth of the grant is consistent with article X, section 1's directive that "[a] liberal construction shall be given to the powers of local government units." Liberati v. Bristol Bay Borough, 584 P.2d 1115, 1120 (Alaska 1978) (municipal levy of raw fish tax upheld). There are no prohibitions in AS 29 as to a municipality's levying and collecting a real estate conveyance tax. Those who argue that state law need not explicitly authorize the levy and collection of this kind of tax by municipalities have the weight of that argument in their favor.

However, the subject matter does involve a tax and, at least in other jurisdictions, historically courts have usually tended to construe the authority to levy and collect taxes narrowly. While there is every good reason to believe that the courts would follow the constitutional directive and the general statutory grant to uphold a municipality's levy and collection of a conveyance tax without the enactment of these two sections, that conclusion is not certain. Moreover, by implication, the provisions in this bill would preclude cities from the levy and collection of the tax.

So, in my view, the provision probably should remain. It must remain if, as you have sought, only certain unified municipalities and boroughs are to levy the tax (leaving third class boroughs and all cities without the ability to levy). But even if you were

Representative M. Koponen  
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to allow all municipalities to levy and collect the conveyance tax, putting the authority into the statutes probably forecloses litigation as to whether these municipalities may do so. Out of an abundance of caution, I would retain the provisions but, based on the justification set out above, their removal would not necessarily preclude municipalities from enacting an ordinance to impose the levy at the local level.


JBC:pl  
92-246.plm



April 7, 1992

MEMORANDUM

TO: Representative Jerry Mackie, Chair,  
and  
Members, House Committee on Community and Regional Affairs

FROM: Scott A. Burgess, Executive Director 

RE: HB 522 - Imposing a real estate conveyance tax; providing for sharing with municipalities; authorizing certain municipalities to levy and collect a real estate conveyance tax; amending the requisites of recording a conveyance

Following my testimony before the Committee on March 31, 1992, I want to clarify the position of the Alaska Municipal League on HB 522. The Alaska Municipal League supports HB 522, which would authorize the imposition of a state-collected real estate conveyance tax, to the degree that 1) half of which would be shared with municipalities and 2) it could provide a mechanism to make data on real estate selling prices available to municipal tax assessors. The AML believes all municipalities have the ability to impose such a tax locally and, therefore, believes the references in the bill are at best unnecessary and, worse, could be restrictive. The AML does not have a position, positive or negative, on whether the state should impose a real estate conveyance tax.

The *1992 Alaska Municipal League Policy Statement* includes the following statement: "The League urges the Alaska Legislature to enact legislation requiring that real property transaction values be reported and these reports be shared with the appropriate municipalities" (Part I, D.7). Alaska is one of only fourteen states in the nation that do not require recording of real property transaction values. Lack of market data has been linked to failures of financial institutions nationwide, and many feel Alaska should require recording for the benefit of municipalities and the banking and real estate communities. Since municipalities are required to base local property taxes on full and true value, it is equally important that any data collected on real estate transactions be made available to municipalities if uniformity and equity in assessment are to be maintained. An amendment to HB 522 to require that sales price data be made available to municipalities is requested.

Under the provisions of HB 522, one-half of the revenue received by the state from the real estate conveyance tax (net of the costs of collecting it) would be paid to municipalities, thus providing an additional source of revenue to support governmental services. The bill also provides that a unified municipality or a first or second class borough could impose an additional real estate conveyance tax. Unified municipalities would be limited to a tax of not more than 1 percent of the selling price. However, by limiting the authority to impose a real estate conveyance tax to unified municipalities and first and second class boroughs and by imposing a maximum tax of 1 percent, the bill limits the taxation power and

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authority of municipalities. The League is concerned about "clarifying" existing powers of municipalities and how that might affect the courts' interpretation of Alaska's broad grant of powers to municipal governments. We believe this language can and should be deleted.

The League supports HB 522 to the degree it could provide a mechanism to provide useful information to local governments. If the Committee approves of legislation to enable the state to impose a real estate conveyance tax as a mechanism to finance public services in light of declining oil revenues, the AML would support sharing that revenue with municipalities. The League requests amendments to 1) specifically require reporting of real property transaction values to the municipality in which the property is located and 2) to delete the language "clarifying" a municipality's power to impose a similar tax as unnecessary. Thank you.

cc: Representative Niilo Koponen

C92test:HB522mem.407