

HB

391

HOUSE BILL NO. 391

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE IVAN

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to succession to assets and liabilities of dissolved municipalities."

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

3 * Section 1. AS 29.06.520 is amended to read:

4 Sec. 29.06.520. SUCCESSION. (a) When a municipality dissolves, the
5 Local Boundary Commission shall arrange for the assumption of the liabilities
6 and, except as provided in AS 44.47.150(f), the assets of the dissolved municipality
7 by one or more successors. Assets or liabilities may not be transferred to a
8 successor except upon terms approved in writing by the Department of Law. A
9 successor may be

10 (1) the state;

11 (2) a municipality;

12 (3) a Native council organized under federal law that is operating
13 within the entire area of the dissolved municipality; or

14 (4) a nonprofit corporation that is qualified for an entitlement
15 under AS 29.60.140 and that is operating within the entire area of the dissolved

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municipality.

(b) If the state or a [A] municipality succeeds [SUCCEEDING] to assets or liabilities of a dissolved municipality, the state or successor municipality succeeds to all rights, powers, and duties [, ASSETS, AND LIABILITIES] of the dissolved municipality necessary for the management of the assets or liabilities [. OTHERWISE, THE STATE SUCCEEDS TO THOSE RIGHTS, POWERS, DUTIES, ASSETS, AND LIABILITIES]. If the state succeeds to assets or liabilities of a dissolved municipality, the state may enter into a contract for the performance of duties or powers in the area of the dissolved municipality.

(c) Transfer of assets or liabilities of a dissolved municipality to an organization under (a)(3) or (4) of this section or [HOWEVER.] a contract with an organization for the performance of duties or powers entered into under (b) of this section does not constitute recognition by the state of governmental powers of that organization.

* Sec. 2. AS 44.47.150(a) is amended to read:

(a) The commissioner

(1) shall accept, administer, and dispose of land conveyed to the state in trust by village corporations under 43 U.S.C. 1613(c)(3) (Sec. 14(c)(3) of the Alaska Native Claims Settlement Act) for the purposes specified in that section;

(2) may, with the concurrence of an appropriate village entity recognized by the commissioner under (b) of this section or, in the absence of an appropriate village entity, under procedures prescribed by regulations of the commissioner, accept, administer, and dispose of land conveyed in trust by a state or federal agency [AND BY THE DISSOLUTION OF A MUNICIPALITY UNDER AS 29.06.450 - 29.06.530].

HOUSE BILL NO. 392

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE IVAN

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the affirmative vote necessary to amend the articles of
2 incorporation of Native village corporations to authorize the classification of
3 directors."

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

5 * Section 1. Section 10, ch. 166, SLA 1988, as amended by sec. 57, ch. 50, SLA 1989,
6 is amended by adding a new subsection to read:

7 (d) Notwithstanding (a) of this section and AS 10.06.455(b), an amendment to
8 the articles of incorporation of a village corporation organized under 43 U.S.C. 1601 -
9 1629e (Alaska Native Claims Settlement Act) and incorporated under former
10 AS 10.05.005 to add a provision authorizing the classification of directors under
11 AS 10.06.455 may be adopted by the affirmative vote of a majority of the shares
12 represented at a regular or special meeting at which a quorum is present in person or by
13 proxy.

9-LS1371\IC
Cook
1/31/96

CS FOR HOUSE BILL NO. 391()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE IVAN

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to succession to assets and liabilities of dissolved municipalities,
2 and to the administration and disposal of certain land of dissolved municipalities."

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

4 * Section 1. AS 29.06.520 is amended to read:

5 Sec. 29.06.520. SUCCESSION. (a) When a municipality dissolves, the
6 Local Boundary Commission shall, after consulting with the Department of
7 Natural Resources and except as provided in AS 38.05.825(d) and AS 44.47.150(f),
8 arrange for the assumption of the liabilities and assets of the dissolved
9 municipality by one or more successors. Assets or liabilities may not be
10 transferred to a successor except upon terms approved in writing by the
11 Department of Law. A successor to assets or liabilities of a dissolved municipality
12 may only be

13 (1) a municipality;

14 (2) a council formed under 25 U.S.C. 473a;

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(3) a council that provides services under federal law to residents of the area of the dissolved municipality;

(4) a nonprofit corporation that is qualified for an entitlement under AS 29.60.140; or

(5) subject to (b) of this section, the state.

(b) In arranging for the assumption of assets and liabilities of a dissolved municipality by one or more successors, the Local Boundary Commission shall give preference to entities listed in (a)(1) - (4) of this section. If the Local Boundary Commission determines that it is not practicable for an entity listed in (a)(1) - (4) of this section to be the successor to an asset or liability of a dissolved municipality, the state may succeed to that asset or liability.

(c) If the state or a [A] municipality succeeds [SUCCEEDING] to assets or liabilities of a dissolved municipality, the state or successor municipality succeeds to all rights, powers, and duties [, ASSETS, AND LIABILITIES] of the dissolved municipality necessary for the management of the assets or liabilities. The [. OTHERWISE, THE STATE SUCCEEDS TO THOSE RIGHTS, POWERS, DUTIES, ASSETS, AND LIABILITIES. IF THE STATE SUCCEEDS TO A DISSOLVED MUNICIPALITY, THE] state may enter into a contract for the performance of duties or powers in the area of the dissolved municipality.

(d) Transfer of assets or liabilities of a dissolved municipality to an organization under (a)(2) or (3) of this section or [HOWEVER,] a contract with an organization for the performance of duties or powers entered into by the state under (c) of this section does not constitute recognition by the state of any governmental powers of that successor or organization.

* Sec. 2. AS 44.47.150(a) is amended to read:

(a) The commissioner

(1) shall accept, administer, and dispose of land conveyed to the state in trust by village corporations under 43 U.S.C. 1613(c)(3) (Sec. 14(c)(3) of the Alaska Native Claims Settlement Act) for the purposes specified in that section;

(2) may, with the concurrence of an appropriate village entity recognized by the commissioner under (b) of this section or, in the absence of an

1 appropriate village entity, under procedures prescribed by regulations of the
2 commissioner, accept, administer, and dispose of land conveyed in trust by a state or
3 federal agency;

4 (3) may, with the concurrence of the Local Boundary Commission,
5 accept, administer, and dispose of land conveyed to the state under AS 29.06.520
6 as a result of the dissolution of a municipality [AND BY THE DISSOLUTION OF
7 A MUNICIPALITY UNDER AS 29.06.450 - 29.06.530].

8 * Sec. 3. AS 44.47.150(b) is amended to read:

9 (b) Transfer of land acquired under (a)(1) or (2) of this section by sale, lease,
10 right-of-way, easement, or permit, including transfer of surface resources, may be made
11 by the commissioner only after approval of an appropriate village entity such as the
12 traditional council, a village meeting, or a village referendum. This approval shall be by
13 resolution filed with the department.

14 * Sec. 4. AS 44.47.150(c) is amended to read:

15 (c) Within one complete state fiscal year after the incorporation of a municipality
16 in the village or of a municipality that [WHICH] includes all or part of the village, land
17 acquired under (a)(1) or (2) of this section shall be conveyed without cost to the
18 municipality, and the municipality succeeds [SHALL SUCCEED] to all the entrusted
19 interest in the land. Within one complete state fiscal year after incorporation of a
20 municipality that includes all or part of the area of a dissolved municipality, land
21 or an interest in land acquired under (a)(3) of this section and retained by the state
22 shall be conveyed without cost to the newly incorporated municipality.

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House District 39

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Representative Ivan M. Ivan

CHANGES IN COMMITTEE SUBSTITUTE FOR HB 391

The changes that are made in the committee substitute for House Bill 391 (Draft 9-LS1371\C) were recommended by the Department of Community and Regional Affairs, the Department of Law and the Department of Natural Resources.

Changes are as follows:

- (1) **Title.** Adds "and to the administration and disposal of certain land of dissolved municipalities." This reflects the various changes made throughout the bill.
- (2) **Section 1, Line 6.** At the suggestion of the Department of Natural Resources, before the Local Boundary Commission and the Department of Law decide where a dissolved municipalities former state land assets will be transferred, DNR be consulted.
- (3) **Section 1, Line 7.** Reference is made to AS 38.05.825(d), suggested by DNR. This statute requires that tide and submerged land conveyed revert to the state upon dissolution of the municipality. The reason for this, as stated by DNR, is to protect the public interest as established through the public trust doctrine.
- (4) **Section 1, Line 13.** Moved the state as a successor from the first option to the last option as noted in subsection (b), found on page two, line 6 of the committee substitute. This addresses the Department of Law's concern that the state succeed to the dissolved municipality's assets or liabilities only if there is no other successor, as another municipality, under current law. This lessens the liability for the state in the succession process.
- (5) **Section 1, Line 14.** Reference is changed from "a Native council organized under federal law" to "a council formed under 25 U.S.C. 473(a)." This change was recommended by the Department of Law. According to the department, a Native council organized under federal law is generally considered to be a federal IRA council. This conflicts with current regulations and practice which allow traditional

councils, as well as IRA's and nonprofit corporations to be deeded certain real properties from dissolved municipalities. Also, in the original bill, reference was made to "within the entire area of the dissolved municipality" which may have caused problems since Indian country is not recognized in Alaska, except in Metlakatla, and it could be that the area where a Native council operates may be different from what were the boundaries of the former municipality.

(6) Section 1, Page 2, Line 18. The change in subsection (c) (Lines 18-19) is a change in drafting and technical in nature. This change was recommended by the Department of Community and Regional Affairs.

(7) Section 2, Page 3, Line 4. The original bill would have deleted authority of the commissioner of DC&RA to dispose of relevant trust lands to an appropriate village entity if a municipality dissolves. Current regulations allow the commissioner of DC&RA to transfer the lands of a dissolved municipality to an appropriate village entity. Deletion of this authority would make current regulations inapplicable to land asset distribution in the event of a municipal dissolution. Therefore, the Department of Law recommended reinstating this authority.

(8) Section 3. Recommendation by the Department of Law that requires that the transfer of land by sale, lease, right of way, easement or permit, may be made by the commissioner only after the approval of the appropriate village entity by resolution filed with the department.

(9) Section 4. Language added to AS 44.47.150 (c) which states that after one complete fiscal year after incorporation of a municipality that includes all or part of the area of a dissolved municipality, land or interest in land acquired under (a) (3) of this section and retained by the state will be conveyed without cost to the newly incorporated municipality.

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: HB 391

Revision Date: 1/11/96
Title: Relating to succession to assets and liabilities
of dissolved municipalities
Sponsor: Rep. Ivan
Requestor: Rep. Ivan

Dept. Affected: Community & Regional Affairs
BRU: Local Government Assistance
Component: Local Boundary Commission
COMPONENT SERIAL NO. 674

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

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES () Revenue Code						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY 95) impact: \$ none

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Henderson, Director *Remond Henderson* Phone: 465-4708
Division: Administrative Services Date: 1/11/96
Approved by Commissioner: Mike Irwin *Mike Irwin* Date: 1/11/96
Agency: Mike Irwin, Dept. of Community & Reg. Affairs

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 391

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to assets and liabilities of BRU: Civil Division
dissolved municipalities." Component: General Legal Services
 Sponsor: Representative Ivan
 Requester: House C&RA Committee COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 29.06.520 and AS 44.47.150 relating to the succession of assets and liabilities of dissolved municipalities. The bill, in part, requires that assets or liabilities of a dissolved municipality may not be transferred except upon terms approved in writing by the Department of Law. This requirement is already being followed in practice and therefore its codification will not have a fiscal impact for the Department of Law.

Other parts of the bill are of concern, however, because they appear unclear or appear inconsistent with the rest of the bill and with current law and practice. These concerns are noted below:

In Section 1, the bill establishes AS 29.06.520(a)(3), which allows a successor of assets and liabilities of a dissolved municipality to include: (3) a Native council organized under federal law that is operating within the entire area of the dissolved municipality.

Prepared by: Richard I. Peques, Director
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: 1/15/96
 Date: 1/15/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 391

ANALYSIS CONTINUATION:

This raises several issues. First, a "Native council organized under federal law" is generally considered to be a federal IRA council. This would not include a traditional village council. This conflicts with current practice and regulations, 19 AAC 94 which allows traditional councils, as well as IRA's and nonprofit corporations, to be deeded certain real properties from dissolved municipalities.

Second, the meaning of "is operating" as that terminology relates to a Native council, is unclear.

Third, "within the entire area of the dissolved municipality," is not particularly clear in this instance and may be geographically problematic because, except for Metlakatla, Indian country is not recognized in Alaska and it could be that the area where a Native council "operates" may be different from what were the boundaries of the former municipality.

Section 1 also provides for the rewrite of AS 29.06.520(b), which appears to create more liability for the state in the succession process. Under current law, the preference is that a dissolved municipality's assets succeed to another municipality (i.e., when a city dissolves within a borough the assets, etc., go to the borough; when a city dissolves simultaneously with its annexation to another city, the assets, etc., go to the city). If no municipality is available for the succession, then, under current law, the state succeeds to the dissolved municipality's assets, liabilities, etc., by operation of law. The amendment no longer provides for the preference for the municipality to be the successor before the state succeeds by operation of law. In sum, the intent or goal of the proposed amendment to AS 29.06.580(b) is not readily clear.

Section 2. AS 44.47.150(a)(2). The amendment to this subsection deletes the authority for the commissioner of Community and Regional Affairs (C&RA) to dispose of the relevant trust lands to an appropriate village entity if a municipality dissolves. The current regulations adopted pursuant to the authority of existing AS 44.47.150(a)(2), allow the commissioner of C&RA to transfer the lands of a dissolved municipality to an appropriate village entity (which includes IRA or traditional councils). Deletion of this authority would make the current regulations inapplicable to land asset distribution in the event of a municipal dissolution and, only the Department of Natural Resources would then have authority to transfer such lands in the event of a municipal dissolution. The proposed amendment to AS 44.47.150(a)(2) appears inconsistent with the rest of the bill and with current law and practice. Department of Law staff is available to resolve or clarify these concerns.

Sec. 29.06.520. SUCCESSION.

A municipality succeeding to a dissolved municipality succeeds to all rights, powers, duties, assets, and liabilities of the dissolved municipality. Otherwise, the state succeeds to those rights, powers, duties, assets, and liabilities. If the state succeeds to a dissolved municipality, the state may enter into a contract for the performance of duties or powers in the area of the dissolved municipality. However, a contract with an organization for the performance of duties or powers entered into under this section does not constitute recognition by the state of governmental powers of that organization.

History -

(sec. 5 ch 74 SLA 1985; am sec. 5 ch 35 SLA 1988; am sec. 22 ch 58 SLA 1994)

Amendment Notes -

The 1988 amendment added the last three sentences and rewrote the first sentence, which read "The government succeeding to a dissolved municipality succeeds to all its rights, powers, duties, assets, and liabilities."

The 1994 amendment, effective August 22, 1994, inserted "rights, powers, duties" in the first and second sentences and made related stylistic changes.

Sec. 44.47.150. LAND CONVEYED IN TRUST.

(a) The commissioner

(1) shall accept, administer, and dispose of land conveyed to the state in trust by village corporations under 43 U.S.C. 1613(c)(3) (Sec. 14(c)(3) of the Alaska Native Claims Settlement Act) for the purposes specified in that section;

(2) may, with the concurrence of an appropriate village entity recognized by the commissioner under (b) of this section or, in the absence of an appropriate village entity, under procedures prescribed by regulations of the commissioner, accept, administer, and dispose of land conveyed in trust by a state or federal agency and by the dissolution of a municipality under AS 29.06.450 - 29.06.530.

(b) Transfer of land by sale, lease, right-of-way, easement, or permit, including transfer of surface resources, may be made by the commissioner only after approval of an appropriate village entity such as the traditional council, a village meeting, or a village referendum. This approval shall be by resolution filed with the department.

(c) Within one complete state fiscal year after the incorporation of a municipality in the village or of a municipality which includes all or part of the village, land acquired under this section shall be conveyed without cost to the municipality, and the municipality shall succeed to all the entrusted interest in the land.

(d) Separate accounts shall be maintained in the name of each village for the land, including the revenues from the land, acquired from each village corporation under this section, and every two years within 90 days of the close of the second state fiscal year a statement of the account for each municipality shall be prepared by the commissioner and be made available to the village and to the public upon request.

(e) Upon the conveyance of land to a municipality under this section, the commissioner shall account to the municipality for all profits including interest generated from the land. The municipality may then request the governor to submit a request to the legislature for an appropriation for the amount due the municipality.

(f) Title to or an interest in land acquired by the department under this section may not be acquired by adverse possession or prescription. Notwithstanding (a) - (e) of this section, on the dissolution of a municipality under AS 29.06.450 - 29.06.530, unimproved land that was owned by the municipality on the date of its dissolution and received by the municipality from the state under a municipal land grant entitlement program is transferred to the commissioner of natural resources.

(g) For the purposes of this section, "municipality" includes only first and second class cities incorporated under the laws of the state.

History -

(sec. 1 ch 119 SLA 1975; am sec. 47 ch 94 SLA 1980; am sec. 1 - 5 ch 84 SLA 1989; am sec. 12 ch 134 SLA 1990)

Amendment Notes -

The 1989 amendment, effective June 2, 1989, in subsection (a), added the paragraph (1) designation, substituting therein "shall" for "is designated to" at the beginning and inserting "(sec. 14(c)(3))," and added paragraph (2); deleted "from each village corporation" following "acquired" and substituted "village" for "municipality" and made stylistic changes in subsection (d); divided subsection (e) into two sentences; inserted "generated" before "from the land" in subsection (d) and in the present first sentence of subsection (e); made stylistic changes in the present second sentence of subsection (e) and in the first sentence of subsection (f); added the second sentence of

subsection (f); and substituted "municipality" for "the term municipality" in subsection (g).

The 1990 amendment inserted "every two years" and substituted "the second state fiscal year" for "each state fiscal year" in subsection (d).

Testimony Before the House C&RA Committee
February 8, 1996

by
*Patrick K. Poland, Director
Municipal & Regional Assistance Division
Department of Community & Regional Affairs*

Regarding Committee Substitute for House Bill No. 391
"An Act relating to succession to assets and liabilities of dissolved
municipalities."

The Department of Community and Regional Affairs strongly supports CSHB 391. Simply put, the bill allows the State to take itself out of the role of successor to the powers, rights, duties, assets and liabilities of dissolved municipalities.

Under existing law, the State automatically becomes the successor to a dissolved municipality, unless another municipal government assumes such responsibility. While the existing law provides a preference for another municipality to be the successor -- in reality, the State has invariably taken on that role by default.

Since the mid-1980s, seven proposals have been filed to dissolve municipalities in Alaska. All were cities in the unorganized borough. As such, in every case, dissolution would saddle the State with potentially significant responsibilities and liabilities associated with properties such as solid waste facilities, bulk fuel storage facilities, electrical utilities, fire halls, community meeting halls, sewage systems, water utilities and the like.

Even if a city within an organized borough dissolves, the State may find itself as the successor. There is nothing in the current law that requires an organized borough to become the successor to a dissolved city within its boundaries.

The Local Boundary Commission now stipulates as a condition of dissolution, that some local group must accept a reconveyance from the State of all properties and obligations of the former municipality. While this substantially reduces the State's responsibilities and liabilities with respect to the local properties, it does not eliminate them since the State-- by law -- is in the "chain of title" for all properties of the dissolved municipalities.

CSHB 391 allows the Local Boundary Commission, after consulting with the Department of Natural Resources, to designate a local group to be the direct successor to a dissolving municipality. The group may be a Native council, non profit corporation or even another municipality if one is available and willing to serve as the successor. The transfer of assets and liabilities can take place only upon terms approved by the Department of Law.

Presently, when the State receives assets from a dissolved municipality and subsequently transfers them to a local successor, it does so through a formal agreement prepared by the Department of Law. DCRA has worked closely with the Local Boundary Commission and the Department of Law to develop a standard set of conditions for inclusion in those agreements.

They include:

- covenants that the properties will be used only for public purposes and will be available to the public without restrictions as to race, color, national origin or sex;
- a formal waiver of sovereign immunity whenever the successor is a Native village council, in order to ensure that the agreement is enforceable;
- covenants that lands transferred to a Native Village council as a successor do not constitute "Indian Country";
- provisions that the local successor must transfer all properties, without consideration or other conditions, upon request to a future city or organized borough encompassing the community in question.

In conclusion, it is my strong belief that CSHB 391 is good public policy in that it removes the State from unnecessary exposure to liabilities associated with the dissolution of municipalities.

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House District 39

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Representative Ivan M. Ivan

SFONSOR STATEMENT - HOUSE BILL 391

This bill was introduced by request of the Department of Community and Regional Affairs and the Local Boundary Commission. Currently, the state automatically becomes the successor to a dissolved municipality unless another municipal government assumes such responsibility. In most cases, the state becomes the successor by default. This means the state takes over the responsibility and liability of owning properties such as solid waste facilities, bulk fuel storage facilities, power utilities, sewer systems and other facilities previously owned by the municipality.

House Bill 391 allows the Local Boundary Commission to designate a Native council or non profit corporation to be a direct successor to a dissolved municipality. The terms of the transfer of assets and liabilities of the dissolved municipality must be approved by the Department of Law. The bill also specifies that any transfer of assets or liabilities does not constitute recognition by the state of that organization.

Prepared Testimony Before the House C&RA Committee
January 25, 1996

by
Lamar Cotten, Deputy Commissioner
Department of Community & Regional Affairs

Regarding House Bill No. 391
"An Act relating to succession to assets and liabilities of dissolved
municipalities."

The Department of Community and Regional Affairs strongly supports the concept embodied by House Bill No. 391. Simply put, the bill allows the State to take itself out of the role as successor to the powers, rights, duties, assets and liabilities of dissolved municipalities. Further, the bill allows such responsibilities to be placed directly on the local community where they rightfully belong.

Under existing law, the State automatically becomes the successor to a dissolved municipality unless another municipal government assumes such responsibility. Although the existing law provides a preference for a municipal successor, the State typically becomes the successor by default. Since the mid-1980s, proposals have been filed to dissolve seven municipalities in Alaska. All of them have been cities in the unorganized borough. Therefore, in every case the State faced the certainty that if the city dissolved it would be saddled with the significant responsibility and liability of owning properties such as community solid waste facilities, bulk fuel storage facilities, electrical utilities, fire halls, community meeting halls, sewer systems, water utilities and the like.

Even if a city within an organized borough dissolves, the State may find itself as the successor. There is nothing in the current law that requires an organized borough to become the successor to a dissolved city within its boundaries.

With respect to recent dissolutions, the Local Boundary Commission has stipulated, as a condition for approval of dissolution proposals, that a local successor must assume responsibility for the assets and liabilities of a dissolved city. While this reduces the responsibility and liability of the State, it certainly does not eliminate it since the State-- by law -- is in the chain of title for all properties of the dissolved municipalities.

House Bill No. 391 allows the Local Boundary Commission to designate a Native council or non profit corporation to be the direct successor to a dissolved municipality. Further, the transfer of assets and liabilities can take place only upon terms approved by the Department of Law.

Testimony Regarding HB 391
January 25, 1996
Page Two

When the State receives assets from a dissolved municipality and transfers them to a local successor under existing law, it is done through a formal agreement. DCRA has worked closely with the Local Boundary Commission and the Department of Law to develop a standard set of conditions to apply to the transfer of all such assets and liabilities. When the successor is a Native village council, the standard conditions include an express waiver of sovereign immunity. Where land is involved, the agreement also includes a specific acknowledgment that the lands do not constitute Indian Country.

Further, House Bill 391 specifically provides that the transfer of assets or liabilities to a local successor do not constitute recognition by the State of governmental powers of that organization.

I am aware that the Sponsor of the bill may be considering some technical amendments to the legislation. DCRA is available to lend its assistance and cooperation in that regard.

STATE OF ALASKA

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

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June 22, 1995

The Honorable Ivan Ivan
Co-Chairman
House Committee on Community and Regional Affairs
Alaska House of Representatives
716 W. 4th Ave; Suite 380
Anchorage, AK 99501-2133

Dear Representative Ivan:

This is to bring you up-to-date on our efforts to resolve one of the few remaining procedural impediments concerning dissolution of municipal governments.

AS 29.06.520 provides that if another municipal government does not succeed to the assets and liabilities of a dissolved municipal government, the State must do so. Such would be the case for each of the six pending city dissolutions (Akiak, Atmoutluak, Kasigluk, Newtok, Tuluksak and Tununak). Neither this agency nor any of those six communities want the State to succeed to the assets and liabilities of the cities pending dissolution.

In order to establish procedures under which the assets of dissolved cities may be returned to a local successor, I intend to propose regulations under AS 44.47.150(a)(2) to allow the Department to accept, administer and dispose of real property obtained from a dissolved municipality. The proposed regulations and public notice relating to the matter have been drafted and are currently being reviewed by the Department of Law.

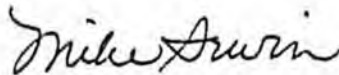
If adopted, the regulations will enable us to convey former municipal lands to anIRA council or traditional council. While this is the best we can do under our regulatory authority, I believe that a better long-term approach is warranted. I

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would prefer that AS 20.06.520 be amended to allow, upon approval by the Local Boundary Commission, that assets and liabilities of a dissolved city to be transferred directly to the local successor (bypassing the State). I would appreciate your support in making such a change to the statutes.

I will continue to keep you informed of matters relating to the proposed regulations and the pending dissolution of the six cities in question.

Cordially,



Mike Irwin
Commissioner

cc: Patrick K. Poland, Director, Municipal & Regional Assistance Division