

HB

391

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 28, 1996

The Honorable Brian Porter
Chair, House Judiciary Committee
Alaska State Legislature
State Capitol, Room 118
Juneau, Alaska 99811

Re: Response to comments from ARECA on
CSHB 391

Dear Representative Porter:

At the House Judiciary Committee hearing on CSHB 391 held Monday, February 26, 1996, this office was asked to review a letter from Rebecca Pauli, Esq., counsel for the Alaska Rural Electric Cooperative Association, Inc. (ARECA), in which she suggests several amendments to CSHB 391. We thank you for the opportunity to comment on Ms. Pauli's letter.

With respect to the suggestion to change the word "may" to "shall" in the last sentence of proposed AS 29.06.520(b), ". . . the state *shall* succeed to that asset or liability," neither the Department of Community & Regional Affairs nor this office opposes this change.

Ms. Pauli also suggests that language be added to AS 29.06.520(a) so that a transfer of the assets or liabilities would not occur unless it was "upon terms which do not alter, amend, or modify any rights, powers, and duties owed by the dissolved municipality to a person and which are approved in writing by the Department of Law." This office opposes this suggested change. We believe it unnecessarily complicates the dissolution process and may pose a restriction whereby a single contractor could effectively stifle a dissolution that would be in the best interests of the state. Any contractor who has a current contract with a municipality going through dissolution, has the opportunity to submit a brief and provide oral and written testimony to the Local Boundary Commission regarding the dissolution. The contractor may, at that time, point out conditions of a contract that it would like the LBC to consider, or possibly make a condition to, in the terms of dissolution. We believe that to require in statute that contracts between parties may not be altered or amended, or modified during the dissolution process is bad public policy and may impair the successor's ability to successfully negotiate an assumption of current contracts. Furthermore, the Department of Law is already required to approve the transfers in writing, which we believe would adequately protect all parties.

TONY KNOWLES, GOVERNOR

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Finally, we also oppose Ms. Pauli's suggestion to amend proposed AS 29.06.520 by adding a new subsection (c), which it states will place an entity succeeding to a dissolved municipality so that it "stands in the shoes of" and become that dissolved municipality. We disagree that this is the intent of the dissolution process or the intent of this legislation. If a municipality dissolves, that entity is gone. To have a successor to the assets and liabilities is necessary to protect the public interest. It is not intended to place the state or a successor "in the shoes of" or have it become that dissolved municipality. We therefore oppose this suggested change.

If you or members of the committee have questions regarding our comments, we are available to address them at today's committee hearing.

Sincerely

Bruce M. Botelho
Attorney General



By: Marjorie L. Vandor
Assistant Attorney General

MLV:jn

cc: Members of the House Judiciary Committee

Chrystal Smith

Rebecca Pauli, Esq.

Pat Poland, Director
Division of Municipal & Regional Assistance

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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 8, 1996

Honorable Ivan M. Ivan
Co-Chair, House C&RA Committee
Alaska State Legislature
Room 503, State Capitol
Juneau, Alaska 99801-1182

Re: Effect of HB 391 on
subsurface rights

Dear Representative Ivan:

You have requested advice on the extent to which House Bill 391, authorizing the transfer of land of dissolved municipalities to certain entities including village councils, could result in the conveyance of subsurface rights to the entity receiving the land. As discussed below, conveyances authorized by HB 391 are likely to affect subsurface rights in land subject to the legislation only in rare cases. While there are limited circumstances in which the grantee of land of a dissolved municipality might gain subsurface rights in such land, in most cases conveyances authorized by the bill would include no mineral rights.

Section 1 of House Bill 391 would amend AS 29.06.520 to authorize the direct transfer of assets or liabilities of a dissolved municipality to entities including a successor municipality, a nonprofit corporation, or a village council formed under 25 U.S.C. 473a.¹ Section 1 would also condition the transfer of such assets or liabilities upon written approval by the Department of Law. Under current law, the State is authorized to transfer the assets of a dissolved municipality, and to dispose of land held by the state in trust for a future municipality under 43

¹ Act of May 1, 1936, 49 Stat. 1250. The Act applied the provisions of the Indian Reorganization Act to Alaska, and has been commonly referred to as "the Alaska IRA." Thus, the reference in HB 391 to councils "formed under 25 U.S.C. 473a" indicates village IRA councils.

Honorable Ivan M. Ivan
Re: Effect of HB 391 on subsurface rights

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U.S.C. 1613(C)(3).² AS 29.06.520; AS 44.47.150(a). However, there may not be authority under existing law for a direct transfer of the assets of a dissolved municipality without the State first succeeding to those assets; HB 391 is apparently designed to provide clear authority for such a transfer.³ In addition, Section 2 of the bill would make the State's disposal of the land of a dissolved municipality to which it has succeeded subject to the concurrence of the Local Boundary Commission.

The extent to which a direct transfer of land of a dissolved municipality might implicate subsurface rights in the land is necessarily limited by the scope of the dissolved municipality's rights in the land, and by certain restrictions to which all municipalities, as political subdivisions of the State, are subject. Municipalities in Alaska receive land from two primary sources: (1) general grant or other entitlements conveyed by the State under AS 29.65; and (2) conveyances from village corporations under Section 14(c)(3) of ANCSA. A municipality receiving land from either of these sources does not receive the subsurface estate.

Under Section 6(i) of the Alaska Statehood Act⁴ the State is required to reserve the mineral estate from all "sales, deeds, or patents" for the disposal of State land received under the Statehood Act.⁵ By ratifying article VIII, section 9, and article XII, section 13 of the Alaska Constitution, and by

² Section 14(c)(3) of the Alaska Native Claims Settlement Act of December 18, 1971 ("ANCSA"). That provision requires ANCSA village corporations to convey to any municipality in the Native village, or to the State in trust for any municipality which might be established in the village in the future, so much land as is necessary for community expansion and foreseeable community needs.

³ AS 29.06.520 currently provides that a successor municipality succeeds to all assets and liabilities of a dissolved municipality. However, the statute is silent as to the extent of the successor municipality's power to then transfer those assets.

⁴ Act of July 7, 1958, 72 Stat. 339.

⁵ Indeed, Section 6(i) of the Alaska Statehood Act provides that "any lands or minerals disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings" which the United States would be compelled to bring in federal court.

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Re: Effect of HB 391 on subsurface rights

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separately approving Section 8(b) the Statehood Act, Alaska made the restriction on alienation of the mineral estate of these State lands part of the federal-state compact. State v. Lewis, 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S.Ct. 2943 (1977).⁶ Therefore, a direct transfer of land of a dissolved municipality, where the land was originally selected by the State under the Statehood Act and later conveyed to the municipality under Title 29, cannot alienate the mineral estate, since the municipality is barred by law from receiving the mineral estate from the State. Further, even if a municipality were able to receive the mineral estate to land originally granted under the Statehood Act, it would be bound, as a political subdivision of the State, by the restrictions of Section 6(i) of the Statehood Act.

Similarly, a conveyance of land from an ANCSA village corporation to a municipality, or to the State in trust, does not include the mineral estate of the conveyed land, because village corporations never receive the subsurface estate in the first instance under ANCSA. See 43 U.S.C. 1612(a)(1); 43 U.S.C. 1613 (a), (b). As a matter of law, a village corporation can only convey the surface estate in any conveyance made under Section 14(c)(3) of ANCSA. 43 U.S.C. 1613(c)(3). A dissolving municipality, therefore, cannot transfer the mineral estate of land which it received under Section 14(c)(3) of ANCSA, since it could not have received mineral rights from the village corporation.

It is possible, of course, for municipalities to receive land from sources other than the State or village corporations. For example, a municipality might acquire full fee title to a former federal homestead, townsite, or patented mining claim. In such a case, the municipality would receive the mineral estate to the extent that interest was held by the municipality's predecessor-in-interest. If the municipality were to later dissolve subject to the provisions of HB 391, the subsurface estate would be transferred as an asset to the municipality's designated successor. If the legislature wished to prevent this result, it could do so by amending HB 391 to expressly reserve the mineral

⁶ Article VIII, section 9 of the Alaska Constitution provides in relevant part that "all sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State" This clause ratifies Section 6(i) of the Statehood Act, while also authorizing the legislature to require the reservation of mineral resources from the conveyance of State land acquired by means other than the Statehood Act. Currently, there appears to be no general statutory proscription on alienation of the mineral estate of non-Statehood Act land.

Honorable Ivan M. Ivan
Re: Effect of HB 391 on subsurface rights

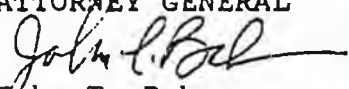
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Page 4

estate from the transfer to the successor of the dissolved municipality.⁷ In that event, while the reservation of the mineral estate to the State would not be a condition of the municipality's dissolution, the subsequent transfer of the former municipality's assets would be subject to the mineral reservation.

In summary, transfers of land authorized by HB 391 to successors of dissolved municipalities will rarely convey mineral rights, since in most cases the dissolving municipality will have no mineral rights to convey. While the mineral estate could be conveyed under relatively rare circumstances, as discussed above, the legislature could prevent this result by making a reservation of the mineral estate an express condition of the transfer of assets authorized by the bill. If you have further questions regarding this issue, please don't hesitate to contact this office.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL


By: John T. Baker
Assistant Attorney General

cc: Marjorie L. Vandor
Assistant Attorney General

Rick Elliott
Dept. of Community and Regional Affairs

i:\bakerj\hb391.opp

⁷ In addition, as alluded to earlier, the legislature could restrict the State's ability to alienate the subsurface estate of former municipal land which was not originally selected under the Statehood Act.

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 9, 1996

FURTHER REFERRALS:

Finan

Date of Committee Action: 2/28/96

The JUDICIARY Committee considered:

HB 31

HOUSE BILL NO. 391

DISSOLVED MUNICIPALITIES/SUCCESSIO

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

recommends it be replaced with the following committee substitute CSHB 391 (RES) [4 the same title] [] a new title

[] additional referral to _____ Committee
[] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date)

[] fiscal note(s) _____ [] fiscal note(s) _____

[] zero fiscal note(s) _____ [✓ zero fiscal note(s) DCRA, Law, DNR
(2-9-96)

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<u>Brian D. Porter</u>			<u>✓</u>	
<u>[Signature]</u>			<u>✓</u>	
<u>[Signature]</u>			<u>✓</u>	
<u>[Signature]</u>			<u>✓</u>	
<u>[Signature]</u>			<u>✓</u>	

CHAIR'S SIGNATURE Brian D. Porter

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 28, 1996

The Honorable Brian Porter
Chair, House Judiciary Committee
Alaska State Legislature
State Capitol, Room 118
Juneau, Alaska 99811

Re: Response to comments from ARECA on
CSHB 391

Dear Representative Porter:

At the House Judiciary Committee hearing on CSHB 391 held Monday, February 26, 1996, this office was asked to review a letter from Rebecca Pauli, Esq., counsel for the Alaska Rural Electric Cooperative Association, Inc. (ARECA), in which she suggests several amendments to CSHB 391. We thank you for the opportunity to comment on Ms. Pauli's letter.

With respect to the suggestion to change the word "may" to "shall" in the last sentence of proposed AS 29.06.520(b), ". . . the state *shall* succeed to that asset or liability," neither the Department of Community & Regional Affairs nor this office opposes this change.

Ms. Pauli also suggests that language be added to AS 29.06.520(a) so that a transfer of the assets or liabilities would not occur unless it was "upon terms which do not alter, amend, or modify any rights, powers, and duties owed by the dissolved municipality to a person and which are approved in writing by the Department of Law." This office opposes this suggested change. We believe it unnecessarily complicates the dissolution process and may pose a restriction whereby a single contractor could effectively stifle a dissolution that would be in the best interests of the state. Any contractor who has a current contract with a municipality going through dissolution, has the opportunity to submit a brief and provide oral and written testimony to the Local Boundary Commission regarding the dissolution. The contractor may, at that time, point out conditions of a contract that it would like the LBC to consider, or possibly make a condition to, in the terms of dissolution. We believe that to require in statute that contracts between parties may not be altered or amended, or modified during the dissolution process is bad public policy and may impair the successor's ability to successfully negotiate an assumption of current contracts. Furthermore, the Department of Law is already required to approve the transfers in writing, which we believe would adequately protect all parties.

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Finally, we also oppose Ms. Pauli's suggestion to amend proposed AS 29.06.520 by adding a new subsection (c), which it states will place an entity succeeding to a dissolved municipality so that it "stands in the shoes of" and become that dissolved municipality. We disagree that this is the intent of the dissolution process or the intent of this legislation. If a municipality dissolves, that entity is gone. To have a successor to the assets and liabilities is necessary to protect the public interest. It is not intended to place the state or a successor "in the shoes of" or have it become that dissolved municipality. We therefore oppose this suggested change.

If you or members of the committee have questions regarding our comments, we are available to address them at today's committee hearing.

Sincerely,

Bruce M. Botelho
Attorney General



By: Marjorie L. Vandor
Assistant Attorney General

MLV:jn

cc: Members of the House Judiciary Committee

Chrystal Smith

Rebecca Pauli, Esq.

Pat Poland, Director
Division of Municipal & Regional Assistance

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REBECCA C. PAULI

February 16, 1996

Brian Porter, Chairperson
House Judiciary Committee
Alaska Legislature
State Capital
Juneau, Alaska 99801-1182

Re: Committee Substitute for House Bill No. 391 ("CSHB 391")

Dear Mr. Porter:

This firm represents Alaska Rural Electric Cooperative Association, Inc. ("ARECA"), an association of rural electric cooperatives throughout the state of Alaska. Soon to be before your committee is committee substitute for House Bill No. 391, An Act Relating to Succession to Assets and Liabilities of Dissolved Municipalities and to the Administration and Disposal of Certain Land of Dissolved Municipalities, sponsored by Representative Ivan (Draft 9-LS1371\C). ARECA has no objection to CSHB 391 provided that the successor fully assumes the assets and liabilities of the dissolved municipality. ARECA is concerned that the proposed legislation would leave parties doing business with a municipality in a lesser position upon dissolution and that there may be orphaned assets and liabilities. ARECA has the following comments on CSHB 391:

AS 29.06.520 currently provides:

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.

The current AS 29.06.520 provides that only the State or a municipality may succeed to a dissolved municipality. House Bill No. 391 would allow other entities (a council formed under 25 U.S.C. § 473a, a council providing services under federal law, and a non-profit corporation qualified for an entitlement under AS 29.60.140) to succeed to a dissolved municipality. CSHB 391, in addition to broadening the class of entities which may succeed to a dissolved municipality, also creates the potential that, upon dissolution, a party who has contracted with a dissolved municipality may find itself in a lesser position than it would be under the current law. To ensure that any person who had a relationship with the dissolved municipality prior to dissolution will not find itself in a changed or lesser position because of the dissolution, ARECA

Brian Porter, Chairperson
February 16, 1996
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proposes adding the following underlined language to CSHB 391 at Section 1, line 10, of Draft 9-LS1371\C such that it would now read:

Assets or liabilities may not be transferred to a successor except upon terms which do not alter, amend, or modify any rights, powers, and duties owed by the dissolved municipality to a person and which are approved in writing by the Department of Law.

Next, CSHB 391 (Draft 9-LS1371\C) at Section 1, page 2, lines 8 through 11, states:

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. [Emphasis added.]

"May" is permissive. As written, the State is not required to, but rather the State "may," succeed to an asset or liability. If the State chose not to succeed, the asset or liability would be orphaned, i.e., the asset would not be assumed by another successor and would remain in limbo. The State will not allow a corporation to dissolve without proof that all assets and liabilities of the corporation have been fully assumed or provided for. AS 10.06.620, .655, and.668.

Similarly, the State should not allow a municipality to dissolve without proof that all assets and liabilities have been fully assumed or provided for. CSHB 391 would allow dissolution of a municipality without proof that all assets and liabilities of the municipality have been fully assumed or provided for. To cure this oversight, ARECA proposes changing the permissive "may" to the mandatory "shall" such that CSHB No. 391 would read:

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 *shall* succeed to that asset or liability.

This change is necessary to ensure that an asset or liability of a dissolved municipality will not be orphaned.

Finally, CSHB 391 (Draft 9-LS1371\C) proposes at Section 1, page 2, lines 12 through 19, a subsection (c) which would read:

If the state or a municipality succeeds to assets or liabilities of a dissolved municipality, the state or successor municipality succeeds to all rights, powers, and duties of the dissolved municipality *necessary for the management of the assets or liabilities*. The state may enter into a contract for the performance of duties or powers in the area of the dissolved municipality. [Emphasis added.]

Brian Porter, Chairperson
February 16, 1996
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ARECA proposes a subsection (c) which would read:

A successor to assets or liabilities of a dissolved municipality succeeds to all rights, powers, and duties of the dissolved municipality. If the state succeeds to an asset or liability 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.

ARECA's proposed paragraph (c) is in keeping with the spirit and intent of the current AS 29.06.520, which provides that when an entity succeeds to a dissolved municipality, it "stands in the shoes of" and becomes that dissolved municipality. CSHB No. 391 creates a special exception for the State or a successor municipality by providing that if the State or a municipality succeeds to the assets or liabilities of a dissolved municipality, the State or successor succeeds only to the extent "necessary for the management of the assets or liabilities." As written, this language could be interpreted such that the State or a municipality succeeding to the liabilities of a dissolved municipality would not truly "stand in the shoes" and would not fully assume the assets and liabilities of the dissolved municipality. CSHB No. 391, Section 1, page 2, lines 12 through 19, appears to limit the role of the State or a municipal successor. ARECA's proposed language treats all successors equally and ensures that the successor truly stands in the shoes of the dissolved municipality as is contemplated in current AS 29.06.520.

Thank you for your time and consideration of our concerns.

Sincerely yours,

KEMPEL, HUFFMAN AND GINDER, P.C.


Rebecca C. Pauli

:lbf

cc: David Hutchens, Executive Director
Alaska Rural Electric Cooperative Association, Inc.

Roger R. Kemppel, Esq.

Alaska State House of Representatives
House District 39

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Representative Ivan M. Ivan

SPONSOR STATEMENT - COMMITTEE SUBSTITUTE HOUSE BILL 391 (CRA)

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.

Cs for House Bill 391 (CRA) allows the Local Boundary Commission to designate an Indian Reorganization Act council, a council that provides services under federal law, another municipality, non profit corporation or the state 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.

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Representative Ivan M. Ivan

CHANGES IN COMMITTEE SUBSTITUTE FOR HB 391 (CRA)

The changes that were made in the Committee Substitute for House Bill 391 (CRA) 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.

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House District 39



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Representative Ivan M. Ivan

SECTIONAL ANALYSIS - CS for HOUSE BILL 391 (CRA)

Section 1: Amends AS 29.06.520. Succession. Upon dissolution by a municipality, the Local Boundary Commission, after consulting with the Department of Natural Resources, shall arrange for the assumption of assets or liabilities of the dissolved municipality by one or more successors. These successors may be a municipality, a council formed under 25 U.S.C. 473a (Indian Reorganization Act), a council that provides services under federal law to residents of the area of the dissolved municipality, a nonprofit corporation that is qualified for an entitlement under AS 29.60.140 (State Aid to Unincorporated Communities), or to the state. In this section, reference is made to AS 38.05.825(d). 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. This section also states the Local Boundary Commission give preference to the above mentioned entities prior to turning over assets or liabilities to the state. A contract is to be signed prior to the transfer of assets or liabilities to an IRA Council or a council that provides services under federal law. This contract does not constitute recognition by the state of any governmental powers of that successor.

Section 2: Amends AS 44.47.150(a), Land Conveyed in Trust. A new subsection is added to existing language stating that with the concurrence of the Local Boundary Commission, the Commissioner of the Department of Community and Regional Affairs may accept, administer and dispose of land conveyed to the state, under the authority established under Section 1 of this bill, as a result of a dissolution of a municipality.

Section 3: Amends AS 44.47.150(b), Land Conveyed in Trust. This section requires that the transfer of land by sale, lease, right of way, easement or permit, may be made by the commissioner of the Department of Community and Regional Affairs only after the approval of the appropriate village entity by resolution filed with the department.

Page Two
Sectional Analysis
CSHB 391 (CRA)

Section 4: Amends AS 44.47.150(c), Land Conveyed in Trust. The new language added to this subsection 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.

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.

STATE OF ALASKA

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

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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, Atmaultuak, 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.

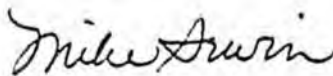
If adopted, the regulations will enable us to convey former municipal lands to an IRA council or traditional council. While this is the best we can do under our regulatory authority, I believe that a better long-term approach is warranted. I

The Honorable Ivan Ivan
June 22, 1995
Page Two

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,

A handwritten signature in cursive script that reads "Mike Irwin".

Mike Irwin
Commissioner

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

CS FOR HOUSE BILL NO. 391(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

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;

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

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

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

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

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

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

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

26 (a) The commissioner

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

30 (2) may, with the concurrence of an appropriate village entity
31 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.

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

1 municipality.

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

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

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

16 (a) The commissioner

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

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

STATE OF ALASKA
1986 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
CHANGE IN REVENUES () Revenue Code						

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						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

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 Phone: 465-3672
 Division: Administrative Services Division Date: 1/15/96
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 1/15/96
 Agency: Department of Law

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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 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.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 391 (C&RA)

Revision Date: 2/9/98 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 ()						
------------------------	--	--	--	--	--	--

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)

The House C&RA Committee Substitute for HB 391 revises the state laws relating to the succession of assets and liabilities of dissolved municipalities in AS 29.06.520 and AS 44.47.150. The CS resolves all of the concerns raised earlier in the Department of Law's fiscal note dated 1/15/96. The bill will not have a fiscal impact.

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

Phone: 465-3672
 Date: 2/9/96
 Date: 2/9/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB391(CRA)

Revision Date: 9-Feb-96 Dept Affected Natural Resources
 Title: An Act relating to succession to assets and BRU: Resource Development
liabilities of dissolved municipalities. Component: Land Development
 Sponsor: Representative Ivan
 Requestor: House Judiciary Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY96) cost: \$ none

POSITIONS	FY97	FY98	FY99	FY00	FY01	FY02
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

* If a decision is made to have the state (DNR) manage former municipal land, there will be a financial impact. This cannot be quantified at this time because it is unknown how much land, or what kind of land, is contemplated for transfer.

Prepared by: Jane Angvik, Director DM Phone: 289-8503
 Division: Land Date: 9-Feb-96
 Approved by Commissioner: [Signature] Date: 9-Feb-96
 Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

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).