

HEB

386

Alaska State Legislature

REPRESENTATIVE
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SITKA, ALASKA 99836
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FINANCE COMMITTEE

DISTRICT 2
KUPREANOF
PETERSBURG
SITKA
WRANGELL



WHILE IN JUNEAU
STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-3824

House of Representatives

MEMO

TO: House Resources Committee Members

FROM: Representative ~~Grussendorf~~ Grussendorf

DATE: February 13, 1995

RE: Proposed CSHB 386 "An Act relating to cruelty to animals and to the power of first and second class boroughs to prohibit cruelty to animals."

Please find in this packet additional information for your consideration of the proposed committee substitute for HB 386. If you have any questions please do not hesitate to contact my office.

Sec. 11.61.140. Cruelty to animals. (a) A person commits the crime of cruelty to animals if the person

(1) intentionally inflicts severe and prolonged physical pain or suffering on an animal;

(2) recklessly neglects an animal and, as a result of that neglect, causes the death of the animal or causes severe pain or suffering to the animal; or

(3) kills an animal by the use of a decompression chamber.

(b) It is a defense to a prosecution under (a)(1) or (2) of this section that the conduct of the defendant

(1) conformed to accepted veterinary practice;

(2) was part of scientific research governed by accepted standards; or

(3) was necessarily incident to lawful hunting or trapping activities.

(c) In this section, "animal" means a vertebrate living creature not a human being, but does not include fish.

(d) Cruelty to animals is a class A misdemeanor. (§ 7 ch 166 SLA 1978; am § 1 ch 78 SLA 1980; am § 20 ch 59 SLA 1982)

Editor's notes. — The provisions of paragraphs (2) and (3) of subsection (a) as it existed prior to the 1980 amendment may now be found in AS 11.61.145.

Collateral references. — 4 Am. Jur. 2d, Animals, §§ 27-30.

3A C.J.S., Animals, §§ 99-112.

Cruelty in trapping animals, 79 ALR 1308.

What constitutes statutory offense of cruelty, 82 ALR2d 794.

Sec. 11.81.620. Effect of ignorance or mistake upon liability.

NOTES TO DECISIONS

Applied in *Russell v. State*, 793 P.2d 1085 (Alaska Ct. App. 1990).

Quoted in *De Nardo v. State*, 819 P.2d 903 (Alaska Ct. App. 1991).

Sec. 11.81.640. Application of AS 11.81.600 — 11.81.630.

NOTES TO DECISIONS

Cited in *Cole v. State*, 828 P.2d 175 (Alaska Ct. App. 1992).

Article 6. Definitions.

Section
900. Definitions

Sec. 11.81.900. Definitions. (a) For purposes of this title, unless the context requires otherwise,

(1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

(4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

Article 3. Additional Powers.

Section

200. First class borough powers

210. Second class borough powers

Sec. 29.35.200. First class borough powers. (a) A first class borough may exercise by ordinance on a nonareawide basis any power not otherwise prohibited by law.

(b) A first class borough may by ordinance exercise the following powers on an areawide basis:

- (1) provide transportation systems;
- (2) provide water pollution control;
- (3) provide air pollution control in accordance with AS 46.14.400;
- (4) license day care facilities;
- (5) license, impound, and dispose of animals.

(c) In addition to powers conferred by (b) of this section, a first class borough may, on an areawide basis, exercise a power not otherwise prohibited by law if the power has been acquired in accordance with AS 29.35.300.

(d) A first class borough that exercises power necessary to contain, clean up, or prevent a release or threatened release of oil or a hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08, or AS 46.09 shall exercise its authority in a manner that is consistent with a regional master plan prepared by the Department of Environmental Conservation under AS 46.04.210. (§ 10 ch 74 SLA 1985; am § 4 ch 83 SLA 1991; am § 7 ch 74 SLA 1993)

Effect of amendments. — The 1993 amendment made a section reference substitution in paragraph (b)(3), effective June 26, 1993.

NOTES TO DECISIONS

Cited in *Keane v. Local Boundary Comm'n*, 893 P.2d 1239 (Alaska 1995).

Sec. 29.35.210. Second class borough powers. (a) A second class borough may by ordinance exercise the following powers on a nonareawide basis:

- (1) provide transportation systems;
- (2) regulate the offering for sale, exposure for sale, sale, use, or explosion of fireworks;
- (3) license, impound, and dispose of animals;
- (4) subject to AS 29.35.050, provide garbage, solid waste, and septic waste collection and disposal;
- (5) provide air pollution control under AS 46.14.400;
- (6) provide water pollution control;
- (7) participate in federal or state loan programs for housing rehabilitation and improvement for energy conservation;
- (8) provide for economic development;
- (9) provide for the acquisition and construction of local service roads and trails under AS 19.30.111 — 19.30.251;

--continued

(10) establish an emergency services communication center under AS 29.35.130;

(11) subject to AS 28.01.010, regulate the licensing and operation of motor vehicles and operators;

(12) engage in activities authorized under AS 29.47.460;

(13) contain, clean up, or prevent a release or threatened release of oil or a hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08, or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that is consistent with a regional master plan prepared by the Department of Environmental Conservation under AS 46.04.210.

(b) A second class borough may by ordinance exercise the following powers on an areawide basis:

(1) provide transportation systems;

(2) license, impound, and dispose of animals;

(3) provide air pollution control under AS 46.14.400;

(4) provide water pollution control;

(5) license day care facilities.

(c) In addition to powers conferred by (a) of this section, a second class borough may, on a nonareawide basis, exercise a power not otherwise prohibited by law if the exercise of the power has been approved at an election by a majority of voters living in the borough but outside all cities in the borough.

(d) In addition to powers conferred by (b) of this section, a second class borough may, on an areawide basis, exercise a power not otherwise prohibited by law if the power has been acquired in accordance with AS 29.35.300. (§ 10 ch 74 SLA 1985; am § 1 ch 118 SLA 1988; am § 39 ch 21 SLA 1991; am § 5 ch 83 SLA 1991; am §§ 8, 9 ch 74 SLA 1993)

Effect of amendments. — The 1993 amendment, effective June 26, 1993, made section reference substitutions in paragraphs (a)(5) and (b)(3).

NOTES TO DECISIONS

Cited in *Keane v. Local Boundary Comm'n*, 893 P.2d 1239 (Alaska 1995).

Article 3. Classification of Offenses.

Section

250. Classification of offenses

Collateral references. — What constitutes lesser offenses "necessarily included" in offense charged, under Rule 31(c) of Federal Rules of Criminal Procedure, 11 ALR Fed. 173.

Sec. 11.81.250. Classification of offenses. (a) For purposes of sentencing under AS 12.55, all offenses defined in this title, except murder in the first and second degree, attempted murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, are classified on the basis of their seriousness, according to the type of injury characteristically caused or risked by commission of the offense and the culpability of the offender. Except for murder in the first and second degree, attempted murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, the offenses in this title are classified into the following categories:

(1) class A felonies, which characteristically involve conduct resulting in serious physical injury or a substantial risk of serious physical injury to a person;

(2) class B felonies, which characteristically involve conduct resulting in less severe violence against a person than class A felonies, aggravated offenses against property interests, or aggravated offenses against public administration or order;

(3) class C felonies, which characteristically involve conduct serious enough to deserve felony classification but not serious enough to be classified as A or B felonies;

(4) class A misdemeanors, which characteristically involve less severe violence against a person, less serious offenses against property interests, less serious offenses against public administration or order, or less serious offenses against public health and decency than felonies;

(5) class B misdemeanors, which characteristically involve a minor risk or physical injury to a person, minor offenses against property interests, minor offenses against public administration or order, or minor offenses against public health and decency;

(6) violations, which characteristically involve conduct inappropriate to an orderly society but which do not denote criminality in their commission.

(b) The classification of each felony defined in this title, except murder in the first and second degree, attempted murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, is designated in the section defining it. A felony under Alaska law defined outside this title for which no penalty is specifically provided is a class C felony.

(c) The classification of each misdemeanor defined in this title is designated in the section defining it. A misdemeanor under Alaska law defined outside this title for which no penalty is provided is a class A misdemeanor. (§ 10 ch 166 SLA 1978; am §§ 9, 10 ch 143 SLA 1982; am §§ 17, 18 ch 37 SLA 1986; am §§ 2, 3 ch 59 SLA 1988)

ORGANIZED BOROUGHS - UNIFIED MUNICIPALITIES

	<u>Classification</u>
Aleutians East Borough	Second Class
Municipality of Anchorage	Unified Home Rule
Bristol Bay Borough	Second Class
Denali Borough	Home Rule
Fairbanks North Star Borough	Second Class
Haines Borough	Third Class
City and Borough of Juneau	Unified Home Rule
Kenai Peninsula Borough	Second Class
Ketchikan Gateway Borough	Second Class
Kodiak Island Borough	Second Class
Lake and Peninsula Borough	Home Rule
Matanuska-Susitna Borough	Second Class
North Slope Borough	Home Rule
Northwest Arctic Borough	Home Rule
City and Borough of Sitka	Unified Home Rule
City and Borough of Yakutat	Home Rule

Borough of Yakutat. Each of the other home rule boroughs have cities within their boundaries.

First class boroughs gain their powers from State laws; they have no charters. Alaska has no first class boroughs. That may be largely due to voter preferences with respect to the substantial authority of the assembly of a first class borough to assume nonareawide powers and service area powers.

State law permits a first class borough to exercise by ordinance on a nonareawide basis any power not otherwise prohibited by law. [AS 29.35.200] Further, the assembly of a first class borough may by ordinance establish, operate, alter or abolish a service area to exercise any power granted a first class city or any power that a first class borough can exercise on a nonareawide basis. [AS 29.35.480] As is the case for first class cities, most of the laws governing first class boroughs are codified in Title 29 of the Alaska Statutes.

Second class boroughs are distinguished from first class boroughs principally in that voter approval is required to assume many nonareawide powers. Voter approval is also required for a second class borough to assume any power on a service area basis, except if the service area is uninhabited. In that case, all real property owners must consent to the assumption of the service area power.

Seven of Alaska's 16 organized boroughs are second class boroughs. They include the Bristol Bay Borough, which was incorporated in 1962 as Alaska's first organized borough. The Bristol Bay Bor-

ough, like the City and Borough of Yakutat, has no cities within its boundaries. However, it is technically possible for one of the three communities within the Bristol Bay Borough to form a city.

Five of the seven second class boroughs were formed directly or indirectly under the 1963 Mandatory Borough Act. Those five are: the Matanuska-Susitna Borough, Kodiak Island Borough, Ketchikan Gateway Borough, Kenai Peninsula Borough and Fairbanks North Star Borough.⁵

The Aleutians East Borough is the other second class borough. It was formed in 1987.

Third class boroughs are distinguished from other organized boroughs in a number of ways. First, State law limits the areawide powers of a third class borough to education, and assessment and collection of

taxes. [AS 29.35.220] While planning, platting and land use regulation are required areawide functions for all other organized boroughs, they are not required (or even permitted on an areawide basis) for a third class borough.



Haines Borough, Alaska's only third class borough

⁵ Three other boroughs were formed under the Mandatory Borough Act. These were the Greater Anchorage Area Borough, the Greater Sitka Borough and the Greater Juneau Borough.

**Fairbanks North Star Borough
Division of Animal Control**

2408 Davls Road
P.O. Box 71267
Fairbanks, AK 99707

Fax Cover Sheet

DATE: January 8, 1996 TIME: ~~11:00 AM~~ 4:29 PM
TO: Rep. Grussendorf PHONE: (907) 465-3824
attn: Terri FAX: (907) 465-2278
FROM: Laura Hood, Manager *LH* PHONE: (907) 459-1451
FAX: (907) 459-1120
RE: State Statute 29.35.210, Cruelty to Animals

Number of pages including cover sheet: 4

Message

The Fairbanks North Star Borough employs a Division of Animal Control responsible for enforcing borough code with regard to domestic animals. We have a complete ordinance, giving us the authority to impound animals, control rabies, regulate animals which bite, and up until recently to prosecute persons who committed the crime of cruelty to animals. In June, 1995, District Court Judge Pengilly ruled that we did not have the authority to prosecute anyone for the crime of cruelty to any animal other than a dog.

Although, there is a state statute prohibiting cruelty, it has been problematic for the troopers to enforce. While we have the expertise, the tools, the budget and the reputation for taking care of these animals, the troopers do not. Nor do they have the time to take on starving turkey cases when they can barely handle burglaries.

The fix to this problem for us would be to amend the state statute which imparts the authorities to second class boroughs. Sections 29.35.210 (a) (3) and (b) (2) state that second class boroughs may exercise by ordinance the power to license, impound, and dispose of animals. If these sections could be amended to include "prohibit cruelty to animals" it would solve our problem, and take the burden off the state troopers.

This problem has been recognized in our community to the extent that petitions have been circulated and the Fairbanks North Star Borough Assembly passed a resolution urging the legislature to take some action to rectify this problem and provide protection for domestic animals other than dogs. I am sending along a copy of this resolution.

We would appreciate any assistance you can give us. I will be happy to help in any way I can. Thank you.



Fairbanks North Star Borough

100 Pioneer Road

P.O. Box 71267

Fairbanks, Alaska 99707-1267

Assembly

907 459-1000

Fax 907 459-1224

February 13, 1996

The Honorable Ben Grussendorf
Alaska State House Of Representatives

Dear Representative Grussendorf,

This letter concerns the proposed committee substitute for House Bill 386, relating to "Cruelty to Animals" which you pre-filed for the Second Session of the Nineteenth Legislature.

On October 12, 1995, the Fairbanks North Star Borough Assembly adopted Resolution 95-052; "A Resolution Relating To Cruelty To Animals." The resolution requests a member (s) of the Legislature to "introduce legislation which would allow municipalities, by ordinance, to exercise the power of preventing cruelty to animals and to be able to prosecute those guilty of animal cruelty." Your legislation satisfies that request and I sincerely appreciate the introduction of the bill.

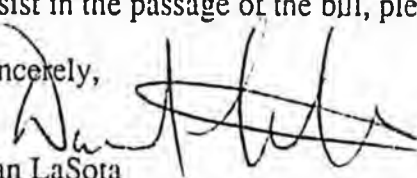
I'm sure you are aware of the resistance by municipalities throughout the state to have mandated responsibilities without state monetary assistance. I know that I normally would not be in favor of such legislation. This matter is different! A municipality does not have to accept this responsibility except by ordinance. Other provisions in the bill help clarify the definition of animal cruelty.

The prevention of cruelty to animals is important to the Fairbanks North Star Borough. It had been enforcing animal cruelty prevention powers and punishment for violations until the summer of 1995 when the court determined that the borough only had the power to practice the prevention of canine cruelty. The borough has trained staff and equipment in place which would allow it to exercise the broader animal cruelty prevention powers at little or no additional cost to our taxpayers.

The extent of legal animal control powers that the Fairbanks North Star Borough has exercised in recent years is varied. Attached, you will find a memo from the borough's legal department detailing the changes over the years.

In closing, I applaud your introduction of HB 386 and I believe it is the best vehicle to fulfill the Fairbanks North Star Borough's needs in this area. If there is any way I can assist in the passage of the bill, please let me know.

Sincerely,



Dan LaSota

Fairbanks North Star Borough Assembly Member



THE ALASKA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, INC.

SPCA State Headquarters and Spay Clinic • 549 W. International Airport Road • Anchorage, Alaska 99518
Phone: 562-2999

Representative Grussendorf:

The Alaska SPCA (Society For the Prevention of Cruelty to Animals) is in strong support of CSAB 386, enacting stronger legislation for cases of animal cruelty and abuse.

During the past years a very evident need for clarified statutes was and is obvious. There have been cases in the past that took as long as one and one-half (1 1/2) years to prosecute because the District Attorneys did not have laws to base their obvious abuse cases upon. This type of legislation is the tool needed to help stop cruelty.

Statistics have shown a strong link between animal abuse and child/spousal abuse. Perhaps this bill can work twofold in ending cruelty with in the home.

Again, we strongly urge the committee to look very seriously at signing the very important piece of legislation.

Sincerely,

Diane Zurfoss, SPCA

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: HB 386

Revision Date: 2/13/96 Dept. Affected: Community & Regional Affairs
 Title: An Act relating to cruelty to animals and the BRU: none
provision of food and water to confined... Component: none
 Sponsor: Rep. Grussendorf
 Requestor: Rep. Grussendorf COMPONENT SERIAL NO. _____

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

(OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	00	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES	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

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.)

This legislation would have no fiscal impact on the department

Prepared By: Remond Henderson *Remond Henderson* Phone: 465-4708
 Division: Director, Administrative Services Date: 2/13/96
 Approved by Commissioner: Mike Irwin *Mike Irwin* Date: 2/13/96
 Agency: Mike Irwin, Dept. of Community & Reg. Affairs

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MATANUSKA-SUSITNA BOROUGH

350 EAST DAHLIA AVENUE, PALMER, ALASKA 99645-6488

BOROUGH ATTORNEY'S OFFICE

MICHAEL GATTI
BOROUGH ATTORNEY

PHONE (907) 465-9600

February 13, 1996

Rep. Ben Grussendorf
Room 415 State Capitol
Juneau, AK 99801-1182
Transmitted by Fax:
1-907-465-2278

Rep. Scot Ogan
Room 409 State Capitol
Juneau, AK 99801-1182
Transmitted by Fax:
1-907-465-3265

Re: CSHB 386 (Work Draft)

Gentlemen:

In reviewing the work draft for committee substitute for House Bill 386, an act pertaining to cruelty to animals and the power of the first and second class boroughs to prohibit cruelty to animals, I have some suggestions for language you may wish to consider in your deliberations on the bill. In section 2, amending AS 29.35.200(b)(5), 29.35.210(a)(3) and 29.35.210(b), the phrase "prohibit cruelty to" is inserted in the draft in each of the relevant sections. In reviewing this language, in my opinion, it is unduly restrictive of a municipality's ability to regulate animal control matters. My rationale for this conclusion is found in Article 10 §1 and AS 29.35.400-420, which expressly provide that the powers of municipalities are liberally construed. *See Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978). A liberal construction of municipal powers means not only that which is expressly mentioned, but that which is necessarily implied or fairly incident to the purpose or exercise of the power is permissible. By including a specific phrase related to a specific type of conduct, the constitutional requirement that municipal powers be liberally construed could be undermined. As you know, there is always an argument when interpreting legislation that, if something is not specifically mentioned, it is intended to be excluded from the requirements of the statute. The phrase "prohibit cruelty to" raises this concern.

The borough's suggestion is to delete the phrase "prohibit cruelty to" and substitute the word "regulate" in all relevant sections. Inserting the word "regulate"

February 13, 1996

Page 2

in the statute in all relevant places will allow municipalities to broadly exercise their animal control powers and to engage in those activities they believe, in their discretion, are appropriate for their respective jurisdictions. Such flexibility is, of course, required because of the constitutional and statutory directive to liberally construe municipal powers and because animal control in the rural areas may be handled differently from animal control in suburban or urban areas. I believe the borough's proposed language accomplishes this objective.

CSHB 386 also amends AS 29.35.200 and 210 by adding new subsections (e) containing language that prohibits a municipality from enacting an ordinance which is inconsistent with state laws prohibiting cruelty to animals.

A municipal ordinance is not necessarily invalid in Alaska because it is inconsistent or in conflict with the state statute. The question rests on whether the exercise of authority has been prohibited to municipalities. The prohibition must be either by express terms or by implication, such as where the statute and ordinance are substantially irreconcilable that one can not be given its substantive effect if the other is to be accorded the weight of law. *Gilman v. Martin*, 662 P.2d 120, 124 (Alaska 1983); *Jefferson v. State*, 527 P.2d 37 (Alaska 1974).

The above rule, of course, states that municipal ordinances are not necessarily inconsistent with state statute unless the legislature says so. This principle is to allow municipalities broad flexibility in the implementation of rules protecting the public's health, safety, and welfare. In this case, the proposed additional subsections (e) to AS 29.35.200 and 210 do not promote this principle.

A municipality may wish to adopt an offense for cruelty that is not a misdemeanor criminal penalty. In fact, the Matanuska-Susitna Borough treats cruelty as an infraction rather than a misdemeanor. See MSB 24.40.050(A).

Another question is whether municipalities would be required to amend existing animal control codes to conform to state law. Municipalities literally applying the language of the bill would only be authorized to prohibit cruelty to animals if their ordinances were consistent with state law.

Municipalities already have limitations on their authority to prescribe penalties for violations of an ordinance. AS 29.25.070 establishes a maximum penalty for ordinance violation at \$1,000 or 90 days in jail. A municipality may, of course, adopt lesser penalties.

In summary, the borough requests the committee to delete the phrase "prohibit cruelty to" in all places it is proposed and insert the word "regulate" in its

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Page 3

place. The borough also recommends the deletion of AS 29.35.200(e) and 210(e), because they are unduly restrictive of municipal authority and do not promote the principles of the Alaska Constitution and the associated statutes pertaining to the liberal construction of municipal powers.

I will be available at the teleconference scheduled for February 14, 1996, at 8:00 a.m. should you have any questions on the borough's comments.

Very truly yours,

MATANUSKA-SUSITNA BOROUGH
Michael Gatti, Borough Attorney

Michael Gatti

MG:drm

cc: Donald Moore, Borough Manager
Kevin Koechlein, Public Safety Director

Originals to follow by U.S. Mail

W:\DOCS\DEBRAM\PUBSAFE\REPS.LTR

By: Dan LaSota
Valerie Therrien
Introduced: 09/28/95
Referred to Unfinished
Business: 09/28/95
Amended: 10/12/95
Adopted: 10/12/95

RESOLUTION NO. 95-062

A RESOLUTION RELATING TO CRUELTY TO ANIMALS

WHEREAS, in the 1960's, borough voters approved the exercise of "dog control" powers and the Legislature subsequently authorized boroughs the power to "license, impound and dispose of" animals by ordinance; and

WHEREAS, under a Fairbanks North Star Borough voter approved power, the borough has the power to prohibit cruelty to dogs but not to other animals and the legislative act only allows a borough the power to license, impound, and dispose of animals by ordinance; and

WHEREAS, the Fairbanks North Star Borough desires and should have the ability to prohibit cruelty to any animal and to prosecute those who are cruel to animals; and

WHEREAS, agriculture is an important part of the Fairbanks economy and there are numerous farms and farmers in the Fairbanks North Star Borough; and

WHEREAS, the Fairbanks North Star Borough Assembly does not consider the animal care and handling that normally occurs at a farm to be animal cruelty; and

WHEREAS, a second class borough can exercise powers that are approved by the voters or authorized by the legislature.

NOW, THEREFORE, BE IT RESOLVED that the Fairbanks North Star Borough respectfully requests the Interior Delegation to introduce legislation which would allow boroughs, by ordinance, to exercise the power of prevention of cruelty to all animals and to prosecute those guilty of animal cruelty.

BE IT FURTHER RESOLVED that the Fairbanks North Star Borough respectfully requests the full legislature to approve the prevention of cruelty to animals legislation.

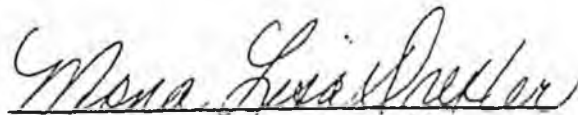
BE IT FURTHER RESOLVED that copies of this resolution shall be sent to the Honorable Tony Knowles, Governor, State of Alaska, the Honorable Drue Pearce, President of the Senate, the Honorable Gail Phillips, Speaker of the House, and all members of the Interior Delegation.

PASSED AND APPROVED THIS 12TH DAY OF OCTOBER, 1995.



Hank Bartos
Presiding Officer

ATTEST:



Mona Lisa Drexler, CMC/AAE
Municipal Borough Clerk

Ayes: Hove, Therrien, LaSota, St. John, Parr, Kilgore and Bartos
Noes: Hackenmiller, Logan and Gillam

PLEASE send TO sites
BU FOR TC # 60339

9-LS1203\c
Luckhaupt
2/1/96

CS FOR HOUSE BILL NO. 386()

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES GRUSSENDORF, Finkelstein, B.Davis

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to cruelty to animals and to the power of first and second
2 class boroughs to prohibit cruelty to animals."

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

4 * Section 1. AS 11.61.140(a) is amended to read:

5 (a) A person commits the crime of cruelty to animals if the person

6 (1) knowingly [INTENTIONALLY] inflicts severe [AND
7 PROLONGED] physical pain or prolonged suffering on an animal;

8 (2) with criminal negligence, [RECKLESSLY] neglects an animal and,
9 as a result of that neglect, causes the death of the animal or causes severe physical
10 pain or prolonged suffering to the animal; or

11 (3) kills an animal by the use of a decompression chamber.

12 * Sec. 2. AS 29.35.200(b) is amended to read:

13 (b) A first class borough may by ordinance exercise the following powers on an
14 areawide basis:

- 1 (1) provide transportation systems;
2 (2) provide water pollution control;
3 (3) provide air pollution control in accordance with AS 46.14.400;
4 (4) license day care facilities;
5 (5) license, impound, prohibit cruelty to, and dispose of animals.

6 * Sec. 3. AS 29.35.200 is amended by adding a new subsection to read:

7 (e) Notwithstanding (b)(5) of this section, a first class borough may not enact
8 an ordinance prohibiting cruelty to animals that is inconsistent with state laws prohibiting
9 cruelty to animals.

10 * Sec. 4. AS 29.35.210(a)(3) is amended to read:

11 (3) license, impound, prohibit cruelty to, and dispose of animals;

12 * Sec. 5. AS 29.35.210(b) is amended to read:

13 (b) A second class borough may by ordinance exercise the following powers on
14 an areawide basis:

- 15 (1) provide transportation systems;
16 (2) license, impound, prohibit cruelty to, and dispose of animals;
17 (3) provide air pollution control under AS 46.14.400;
18 (4) provide water pollution control;
19 (5) license day care facilities.

20 * Sec. 6. AS 29.35.210 is amended by adding a new subsection to read:

21 (e) Notwithstanding (a)(3) and (b)(2) of this section, a second class borough may
22 not enact an ordinance prohibiting cruelty to animals that is inconsistent with state laws
23 prohibiting cruelty to animals.

Bu For 60339

9-LS1203VC.1 ✓
Luckhaupt
2/13/96

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUSSENDORF

TO: CSHB 386(), "C" version, draft dated 2/1/96

- 1 Page 2, line 8:
- 2 Delete "inconsistent with"
- 3 Insert "more stringent than"

- 4 Page 2, line 22:
- 5 Delete "inconsistent with"
- 6 Insert "more stringent than"

Alaska State Legislature

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FINANCE COMMITTEE

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SITKA
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House of Representatives

MEMORANDUM

TO: Representative Bill Williams
Co-Chairman, House Resources Committee

Representative Joe Green
Co-Chairman, House Resources Committee

FROM: Representative Ben Grussendorf

DATE: February 5, 1996

RE: House Bill 386, "An act relating to cruelty to animals and to the power of first and second class boroughs to prohibit cruelty to animals."

I would appreciate your consideration in scheduling a hearing for House Bill 386 in your committee. I am submitting for your consideration a work draft of a committee substitute for House Bill 386. After the original version was introduced, our office received numerous responses which addressed several points in the original bill. This proposed committee substitute offers changes which address these concerns:

The original bill would have allowed a person to enter a place where an animal is confined and supply the animal with necessary food and water. I received many responses from animal control officers, state troopers, and district attorneys who stated that allowing private citizens to enter another's property could result in serious problems with constitutionality, liability, potential for bodily conflict, and misuse of the provision for, say, burglars, intruders, etc. Based on the concerns of these professionals it is my recommendation that the committee eliminate Section 1 of the original bill.

I would also like to provide for the committee's consideration the following changes, also based on responses to the original bill.

Section 1.

Regarding the criminal intent language, change "intentionally" to "knowingly." This lowers the standard of mental intent by which an

accused can be charged. Prosecutors have stated that the language as it exists in statute makes it very difficult to bring about a conviction.

Regarding the definition of cruelty, change "inflicts severe and prolonged physical pain or suffering on an animal" to "inflicts severe physical pain or prolonged suffering on an animal." This change was suggested to me by prosecutors who believe the language as it exists now makes the act of cruelty "unprosecutable." The change offers prosecutors more options under which to prosecute and lessens the difficult standard which currently exists under statute.

Regarding the criminal intent language, change "recklessly" to "with criminal negligence." This change lowers the criminal standard to a level which, again, makes it easier to prosecute. Recklessness is indicated by an awareness and conscious disregard, whereas criminal negligence is indicated by a failure to perceive. In most animal neglect and abuse cases, the latter is usually the intent, according to officials who deal with animal control issues. Yet abusers are rarely brought to conviction because the law requires a higher standard.

Sections 2, 3, 4, 5, 6.

Regarding the change to statute adding to the powers of 1st and 2nd boroughs. Many of the responses my office received addressed the need for boroughs to have the option to adopt ordinances to prohibit cruelty to animals. Without this authority, boroughs must turn over these cases to state troopers who consider them a low priority. Most cities and boroughs in the state already have animal control systems which deal with impounding, licensing, and disposing of animals. This provision simply adds to the borough's options the ability to prohibit cruelty if they choose.

I appreciate your consideration in scheduling a hearing for this bill at your earliest convenience.

Alaska State Legislature

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House of Representatives

SPONSOR STATEMENT CSHB 386

"An act relating to cruelty to animals and to the power of first and second class boroughs to prohibit cruelty to animals."

This bill was introduced in response to concerns expressed by constituents regarding the difficulty of prosecuting cases which involve cruelty to animals. The bill also addresses the difficulty some boroughs are facing regarding their ability to enact ordinances to prohibit cruelty to animals.

There have been many acts of obvious neglect and cruelty across the state which courts have been unable to prosecute because the language in the statute is too difficult to prove. One district attorney has testified that the current language which reads "intentionally inflicts severe and prolonged physical pain or suffering on an animal," is "unprosecutable." He said, "a dead animal is your only evidence."

The proposed changes in CSHB 386 offer prosecutors a more workable statute. Changing "intentionally" to "knowingly" lowers the state of mind the state must prove in prosecuting a case. Changing the wording which describes the animal's level of suffering offers more options under which to prosecute and lowers the difficult standard which exists.

In order to prove cruelty through neglect, current law requires that the accused acted "recklessly" which means "a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur..." Criminal negligence is defined in our law to mean:

"a person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation for the standard of care that a reasonable person would observe in the situation."

Criminal negligence is a lower state of mind than recklessness.

→

CSHB 386 (continued)

CS House Bill 386 also gives first and second class boroughs the option to adopt an ordinance to prohibit cruelty to animals. As state law reads now, these entities may only license, impound, and dispose of animals. Without the authority to deal with neglect or abuse issues, borough cases are often turned over to state troopers who consider them a low priority. One animal control officer said, "unless the animal is dead or unable to get up, troopers won't even investigate."

Without this legislation, boroughs need an expensive vote of the people to enact an ordinance to prohibit cruelty to animals. The proposed changes do not mandate boroughs to enact animal cruelty ordinances, but merely gives them the option if they choose to do so.

Existing law designates that cruelty to animals is a class A misdemeanor. This remains unchanged.

FISCAL NOTE

Work Draft
2/1/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 386 ()

Revision Date: _____	Dept. Affected: <u>Department of Law</u>	_____
Title: <u>"...cruelty to animals and the provision of food and water to confined or impounded animals."</u>	BRU: <u>Criminal Division</u>	_____
Sponsor: <u>Representative Grussendorf</u>	Component: <u>Criminal Division</u>	_____
Requester: <u>Representative Grussendorf</u>	COMPONENT SERIAL NO. <u>2085</u>	_____

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)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
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

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
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 Alaska laws relating to cruelty to animals in two ways. First, the bill amends AS 11.61.140 to lower the legal standard of conduct from one who acts intentionally to one who acts knowingly and inflicts severe physical pain or prolonged suffering on an animal. Similarly, the bill lowers the legal standard of conduct from one who acts recklessly to one who acts with criminal negligence and neglects an animal and, as a result of that neglect, causes the death of the animal or causes severe physical pain or prolonged suffering of the animal. These changes have the effect of making cruelty to animal cases easier to prove and, consequently, they will not have a fiscal impact.

Second, the bill amends AS 29.35 to authorize first and second class boroughs to enact ordinances prohibiting cruelty to animals. Providing this authority will allow local governments to deal with a problem that is primarily one of local concern.

Richard I. Peques

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: 2/7/96
 Date: 2/7/96

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907/459-1000

MEMORANDUM

TO: Dan LaSota, Assemblymember
FROM: Ardith Lynch, Borough Attorney *Ardith Lynch*
DATE: September 7, 1995
SUBJECT: Authority to Prosecute Cruelty To Animals

This memo is in response to your request regarding the borough's animal control powers and ordinance. A second-class borough can exercise powers that are approved by the voters or authorized by the legislature. Following is a chronology of the borough's animal control powers:

Year	Method	Power
1965	Voter approval	dog control
1966	AS 07.15.360	dog control (by ordinance, without voter approval)
1972	AS 29.48.035(a)(5)	to regulate licensing, impounding and disposition of animals (by ordinance, without voter approval)
1978	BOROUGH ORDINANCE ENACTED	
1985	AS 29.35.210	to license, impound and dispose of animals by ordinance (without voter approval)

In 1978, the borough enacted FNSB 6.24.040, which classifies as a misdemeanor the failure to provide adequate food, water, shelter or veterinary care to prevent suffering of an animal. The court ruled that the borough has the power to prohibit cruelty to dogs only; the borough's powers with respect to other animals are limited to "licensing, impounding, and disposing." In order to cure the problem with the Borough's animal cruelty ordinance, the voters or the legislature would need to authorize additional animal control powers

If you need any additional information, do not hesitate to contact me.

