HB

22

1-LS0191\G
Cook
2/3/99

CS FOR HOUSE BILL NO. 22(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE OGAN

A BILL

FOR AN ACT ENTITLED

"An Act relating to investigations of property by a municipal assessor or the assessor's agent; and providing for an effective date."

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

* Section 1. AS 29.45.130(b) is amended to read:

(b) For investigation, the assessor or the assessor's agent may enter <u>real property</u> [A PREMISE] during reasonable hours <u>to</u> [AND MAY] examine <u>visible personal</u> property <u>and the exterior of a dwelling or other structure</u> on the <u>real property. The assessor or the assessor's agent may enter and examine the interior of a dwelling or other structure or the personal property in it only (1) if the structure is under construction and not yet occupied; (2) with the permission of a person in actual possession of the structure; or (3) in accordance with a court order to compel the entry and inspection</u> [PREMISE]. The assessor or the assessor's agent may examine all property records involved. A person shall, on request, furnish to the assessor or the assessor's agent [EVERY FACILITY AND] assistance for the

investigation **and permit the assessor or the assessor's agent to enter a dwelling or other structure to examine the structure or personal property in it during reasonable hours**. The assessor may seek a court order to compel entry and production of records needed for assessment purposes.

* **Sec. 2.** This Act takes effect immediately under AS 01.10.070(c).

Preamble

We the people of Alaska, grateful to God and to those who founded our nation and pioneered this great land, in order to secure and transmit to succeeding generations our heritage of political, civil, and religious liberty within the Union of States, do ordain and establish this constitution for the State of Alaska.

Ed Martin Cooper Landis

1-

The Constitution of the State of Alaska

ARTICLE I. DECLARATION OF RIGHTS

SECTION 1. INHERENT RIGHTS. This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

SECTION 2. SOURCE OF GOVERNMENT. All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole.

SECTION 3. CIVIL RIGHTS. No person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex, or national origin. The legislature shall implement this section.

SECTION 4. FREEDOM OF RELIGION. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof.

SECTION 5. FREEDOM OF SPEECH. Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right.

SECTION 6. ASSEMBLY; PETITION. The right of the people peaceably to assemble, and to petition the government shall never be abridged.

SECTION 7. DUE PROCESS. No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.

SECTION 8. GRAND JURY. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the armed forces in time of war or public danger. Indictment may be waived by the accused. In that case the prosecution shall be by information. The grand jury shall consist of at least twelve citizens, a majority of whom concurring may return an indictment. The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended.

SECTION 9. JEOPARDY AND SELF-INCRIMINATION. No person shall be put in jeopardy twice for the same offense. No person shall be compelled in any criminal proceeding to be a witness against himself.

SECTION 10. TREASON. Treason against the State consists only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of

treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

SECTION 11. RIGHTS OF ACCUSED. In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury of twelve, except that the legislature may provide for a jury of not more than twelve nor less than six in courts not of record. The accused is entitled to be informed of the nature and cause of the accusation; to be released on bail, except for capital offenses when the proof is evident or the presumption great; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

SECTION 12. CRIMINAL ADMINISTRATION. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Criminal administration shall be based upon the following: the need for protecting the public, community condemnation of the offender, the rights of victims of crimes, restitution from the offender, and the principle of reformation.

SECTION 13. HABEAS CORPUS. The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or actual or imminent invasion, the public safety requires it.

SECTION 14. SEARCHES AND SEIZURES. The right of the people to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated. No warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

SECTION 15. PROHIBITED STATE ACTION. No bill of attainder or ex post facto law shall be passed. No law impairing the obligation of contracts, and no law making any irrevocable grant of special privileges or immunities shall be passed. No conviction shall work corruption of blood or forfeiture of estate.

SECTION 16. CIVIL SUITS; TRIAL BY JURY. In civil cases where the amount in controversy exceeds two hundred fifty dollars, the right of trial by a jury of twelve is preserved to the same extent as it existed at common law. The legislature may make provision for a verdict by not less than three–fourths of the jury and, in courts not of record, may provide for a jury of not less than six or more than twelve.

SECTION 17. IMPRISONMENT FOR DEBT. There shall be no imprisonment for debt. This section does not prohibit civil arrest of absconding debtors.

SECTION 18. EMINENT DOMAIN. Private property shall not be taken or damaged for public use without just compensation.

SECTION 19. RIGHT TO KEEP AND BEAR ARMS. A well– regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. The individual right to keep and bear arms shall not be denied or infringed by the State or a political subdivision of the State.

SECTION 20. QUARTERING SOLDIERS. No member of the armed forces shall in time of peace be quartered in any house without the consent of the owner or occupant, or in time of war except as prescribed by law. The military shall be in strict subordination to the civil power.

SECTION 21. CONSTRUCTION. The enumeration of rights in this constitution shall not impair or deny others retained by the people.

SECTION 22. RIGHT OF PRIVACY. The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

...omputing reconstruction cost and depreciation of dissimilar buildings. — Where two buildings are dissimilar in size, age, and basic construction, ...uld be entirely reasonable for the assessor to use ...ent factors in computing reconstruction cost and ...eciation, and thus achieve substantial equality ...fair equivalence. Hoblit v. Greater Anchorage ...Borough, 473 P.2d 630 (Alaska 1970).

**...fferences in construction materials between given ...ctures are obvious distinctions sufficient to war...t the difference in treatment accorded by the ...sor, and to nullify the charge that his actions ...e arbitrary and resulted in a lack of uniformity. ...hlit v. Greater Anchorage Area Borough, 473 P.2d ...(Alaska 1970).

...essor is empowered to reduce assessments ...after years where the results of disasters have ...ced market value. Hoblit v. Greater Anchorage ...Borough, 473 P.2d 630 (Alaska 1970).

...he borough assessor had the power to grant ...rthquake decrements. Hoblit v Greater Anchor...Area Borough, 473 P.2d 630 (Alaska 1970).

...pperty was not entitled to an earthquake ...rement for tax assessment purposes where ...re was an absence of evidence indicating that its ...rket value was reduced. Hoblit v. Greater Anchor...Area Borough, 473 P.2d 630 (Alaska 1970).

Appraiser erroneously failed to consider ...DIC auction purchase prices paid for the proper...s in question by the property owners. Thorough ...alysis of the subject sales might have indicated that ...auction prices paid did not represent true market ...alue, but the appraiser's total failure even to consider the subject properties' prior sales was arbitrary. CH Kelly Trust v. Municipality of Anchorage, Bd. of Equalization, 909 P.2d 1381 (Alaska 1996).

Statutory deadlines are directory. — Statutory deadlines for assessment of taxes, setting of mill levy, and mailing of tax statements should be construed as directory; and a city's failure to meet such statutory deadlines does not automatically invalidate its decisions. City of Yakutat v. Ryman, 654 P.2d 785 (Alaska 1982).

Burden of proof. — When a taxpayer establishes a violation of "directory" procedures regarding assessment of taxes, setting of mill levy, and mailing of tax statements, the burden should be on the taxing authority to demonstrate substantial compliance with requirements and purposes of the statute; but once a showing of substantial compliance has been made, the taxing authority's action will be upheld unless the taxpayer is able to demonstrate that the noncompliance resulted in substantial prejudice to his interests. City of Yakutat v. Ryman, 654 P.2d 785 (Alaska 1982).

Where in 1974 city made no attempt to comply with statutory requirements regarding assessment of taxes, setting of mill levy, and mailing of tax statements, in that assessment notices and tax statements were not provided and there were no equalization hearings, and where the city did not set the 1974 levy until September 1975, and tax statements were not mailed until October 1975, 15 months after the statutory deadline, there was no substantial compliance with such requirements, and the 1974 tax was invalid. City of Yakutat v. Ryman, 654 P.2d 785 (Alaska 1982).

Sec. 29.45.120. Returns. (a) The municipality may require each person having ownership or control of or an interest in property to submit a return in the form prescribed by the assessor, based on property values of property subject to an ad valorem tax existing on January 1, except as otherwise provided in this chapter.

(b) The assessor may, by written notice, require a person to provide additional information within 30 days. (§ 12 ch 74 SLA 1985; am § 4 ch 40 SLA 1995)

Effect of amendments. — The 1995 amendment, effective August 23, 1995, inserted "of property subject to an ad valorem tax" in subsection (a).

NOTES TO DECISIONS

Date of accrual. — Pursuant to this section, AS 29.45.110, and AS 29.45.300, the tax "accrues" in full each year on January 1; thus, a vessel's tax status became fixed for the full tax year on the date of its assessment, and no adjustment was required for post-assessment changes in its value, situs, and ownership. Kenai Peninsula Borough v. Arndt, 958 P.2d 1101 (Alaska 1998).

Collateral references. — 71 Am. Jur. 2d, State and Local Taxation, §§ 725 — 730.

64 C.J.S., Municipal Corporations, §§ 2045 — 2050; 84 C.J.S., Taxation, § 390 et seq.

Sec. 29.45.130. Independent investigation. (a) The assessor is not bound to accept a return as correct. The assessor may make an independent investigation of property returned or of taxable property on which no return has been filed. In either case, the assessor may make the assessor's own valuation of the property subject to an ad valorem tax and this valuation is prima facie evidence of the value of the property.

(b) For investigation, the assessor or the assessor's agent may enter a premise during reasonable hours and may examine property on the premise. The assessor or the assessor's agent may examine all property records involved. A person shall, on request,

furnish to the assessor or the assessor's agent every facility and assistance for th investigation. The assessor may seek a court order to compel entry and production c records needed for assessment purposes.

(c) An assessor may examine a person on oath. On request, the person shall submit t examination at a reasonable time and place selected by the assessor. (§ 12 ch 74 SL 1985; am § 5 ch 40 SLA 1995)

Effect of amendments. — The 1995 amendment, effective August 23, 1995, substituted "property subject to an ad valorem tax" for "taxable property" i subsection (a).

NOTES TO DECISIONS

Tax assessments as evidence in condemnation proceedings. — A former, similar provision did not furnish the basis for the admissibility of tax assessments as evidence in condemnation proceedings. Given the limited purpose of the act, there was no indication that the legislature intended to make ta assessments prima facie evidence of value in condem nation proceedings. State v. 45,621 Square Feet Land, 475 P.2d 553 (Alaska 1970).

Sec. 29.45.140. Violations; authorization to prescribe penalties by ordinance. For knowingly failing to file a tax statement required by ordinance or knowingly makin a false affidavit to a statement required by a tax ordinance relative to the amount location, kind, or value of property subject to taxation with intent to evade the taxation a municipality may by ordinance prescribe a penalty not to exceed a fine of $1,000 o imprisonment for 90 days. (§ 12 ch 74 SLA 1985)

Sec. 29.45.150. Reevaluation. A systematic reevaluation of taxable real and per sonal property undertaken by the assessor, whether of specific areas in which rea property is located or of specific classes of real or personal property to be assessed, shal be made only in accordance with a resolution or other act of the municipality directing systematic reevaluation of all taxable property in the municipality over the shorte period of time practicable, as fixed in the resolution or act. (§ 12 ch 74 SLA 1985)

Sec. 29.45.160. Assessment roll. (a) The assessor shall prepare an annual assess ment roll. The roll must contain

(1) a description of all property subject to an ad valorem tax;

(2) the assessed value of all property subject to an ad valorem tax;

(3) the names and addresses of persons with property subject to an ad valorem tax

(b) The assessor may list real property by any description that may be made certain Real property is assessed to the record owner. The district recorder shall at least month provide the assessor a copy of each recorded change of ownership showing the name a mailing address of the owner and the name and mailing address of the person recordi the change of ownership. Other persons having an interest in the property may be list on the assessment records with the owner. The person in whose name property is lis as owner is conclusively presumed to be the legal record owner. If the property owne unknown, the property may be assessed to "unknown owner". An assessment is n invalidated by a mistake, omission, or error in the name of the owner, if the property correctly described. (§ 12 ch 74 SLA 1985; am § 6 ch 40 SLA 1995)

Effect of amendments. — The 1995 amendment, effective August 23, 1995, in subsection (a), substituted "property subject to an ad valorem tax" for "taxable property" in paragraphs (1) and (2) and "property subject to assessment and taxation" in para graph (3).

REPRESENTATIVE SCOTT OGAN Alaska State Legislature

House District 27 • Palmer • Greater Palmer • Sutton • Chickaloon • Sheep Mountain

SPONSOR STATEMENT HB –22

Permission to enter private property

I have introduced HB-22 because of an incident in my district involving a tax assessor entering a private dwelling before gaining clear permission from the owner.

In this particular case there is a difference of opinion on the exact circumstances, but it is clear our statutes could be strengthened to protect due process and our constitutional rights to privacy. HB-22 is intended to accomplish this by requiring an assessor to gain permission before entering private property.

Even under this change, if permission, for some reason, can not be obtained, a court order will still allow entry.

This bill does not prevent public officials from doing their duties. What it does do is to require that a tax assessor respect the private property rights set out in Article I, of our State Constitution.

Interim: 600 E. Railroad Ave. #1, Wasilla, AK 99654 • **Session:** State Capitol, Juneau, AK 99801 465-3878
(907) 376-4866 Fax (907) 373-4724 1 (800) 862-3878 Fax (907) 465-3265

Questions regarding HB 22

- The new language appears to recognize the assessor's right to go onto real property and do a visual inspection and assessment, and separates that act from his entry into the buildings on the property. While the assessor would not have to obtain the property owner's permission to walk or drive onto the property for an outside inspection, he would have to do so before entering a dwelling. Is that a correct understanding of the basic intent of this bill?

- Are mobile homes covered in the reference to personal property?

- Should we consider a conceptual amendment to require assessors or their agents to display a photo id badge, similar to those airport workers wear, anytime they are on a taxpayer's private property?

HOUSE BILL NO. 22

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE OGAN

Introduced: 1/19/99
Referred: Community and Regional Affairs

A BILL

FOR AN ACT ENTITLED

"An Act relating to investigations of property by a municipal assessor or the assessor's agent; and providing for an effective date."

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

*** Section 1.** AS 29.45.130(b) is amended to read:

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New Text Underlined [DELETED TEXT BRACKETED]

other structure to examine the structure or personal property in it during reasonable hours. The assessor may seek a court order to compel entry and production of records needed for assessment purposes.

* **Sec. 2.** This Act takes effect immediately under AS 01.10.070(c).

PAGE 3 OF 3

MIDWEEK
Volume 51, Number 20 November 3, 1998
1 section, 18 pages

LETTERS TO THE EDITOR

Borough appraiser gives owner a start

Editor:

Recently, while I was home alone, a voice from inside my house said, "Hello." I looked downstairs and was startled to see a stranger had opened the door and let himself in. His T-shirt had a triathlon logo on it. I wondered what I should do.

He came toward me and said, "I'm an appraiser for the Mat-Su Borough."

He yielded a small parcel map. I asked his name. "Gary Hessmer," he replied. He looked throughout and politely talked of putting a tax value on my new home.

The next day, feeling violated, I went to Mat-Su Borough and spoke with him again. I asked if walking into someone's house is acceptable conduct for tax appraisers.

He claimed he is in new homes often and said no trespassing signs mean nothing to Mat-Su Borough assessors.

As a taxpayer, I think identification badges or uniforms should be worn by these intruders for their own safety. Privacy is no longer respected by the Mat-Su Borough.

Are we to assume that all intruders are government officials?

David Skalisky
Palmer

THIS ARTICLE APPEARED IN THE FRONTIERSMAN ON 11/3/98

THE APPRAISER ENTERED MY HOME ON SEPT 29TH 1998

WE WENT TO MSB BUILDING ON SEPT 30TH 1998

I WROTE THIS "LETTER TO EDITOR" AND DELIVERED IT TO THE FRONTIERSMAN ON OCT 2ND 1998

Alaska State Legislature

Please enter into the record my testimony to the COMMUNITY AND REGIONAL AFFAIRS committee name

committee on HOUSE BILL 22 bill/subject, dated FEB, 2 1999.

I BELIEVE H.B. 22 IS VERY IMPORTANT AND SHOULD BE PASSED. REPRESENTATIVE SCOTT OGAN HAS WORDED THE AMENDMENT POLITELY AND THESE CHANGES WILL NOT HINDER THE ASSESSORS ABILITY TO ACCURATELY DETERMINE REAL PROPERTY VALUES. THE BILL WILL CREATE A SAFER WORK ENVIRONMENT FOR ASSESSORS. IT AMAZES ME THAT ASSESSORS ARE BRAVE ENOUGH TO OPEN DOORS, NOT KNOWING WHO OR WHAT COULD BE INSIDE, AND ENTER PRIVATE RESIDENCES WITHOUT INVITATION. I, MYSELF WOULD NEVER BE SO BRAVE.

ON SEPT 29 1998 A MAT-SU ASSESSOR ENTERED MY HOME UNINVITED AND UNEXPECTED. HE WAS WELL INSIDE BEFORE I REALIZED SOMEONE WAS IN MY HOUSE. WHEN I MADE EYE CONTACT WITH HIM, HE HAD ALREADY CLOSED THE DOOR BEHIND HIMSELF AND WAS APPROXIMATELY 10-15 FEET INSIDE. IT WAS SHOCKING TO SEE AN UNIDENTIFIED STRANGER INSIDE. MY ADRENALINE STARTED TO RUSH AND FOR A SPLIT SECOND I HAD QUICK THOUGHTS OF HOW TO DEFEND MYSELF PHYSICALLY. HE THEN SPOKE AND SAID "I AM AN APPRAISER FOR THE MAT-SU BOROUGH". I MUST ADMIT, I WAS RELIEVED TO KNOW I WOULDN'T HAVE TO DEFEND MYSELF AND THE ADRENALINE RUSH WENT AWAY. HE BEGAN TALKING OF MY HOMES VALUE AND MEASURED ROOMS ETC. HE HAD NO I.D. AND WHEN I ASKED HIM FOR A CARD HE SAID "I HAVE ONE OUT IN MY TRUCK". HE DID GIVE ME A PARTLY MUTILATED BUSSINESS CARD AFTER I WALKED TO HIS TRUCK WITH HIM.

IT WAS THE NEXT DAY WHEN I REALLY BEGAN FEELING UNSURE.

(PLEASE SEE PAGE 2 TO CONTINUE)

Signed: DAVID SKALISKY Dal Ly
Testifier

Representing (Optional)

P.O. BOX 3134 PALMER AK 99645
Address

(907) 746-6100
Phone No.

TESTIMONY CONTINUED FROM PAGE 1

I THOUGHT, WHAT IF THIS WASN'T AN APPRAISER AT ALL? MY WIFE AND I DROVE TO THE MAT-SU BOROUGH BLDG TO BE SURE. I WAS ACTUALLY RELIEVED TO SEE HIM BEHIND THE COUNTER IN THE ASSESSORS OFFICE. I THEN ASKED HIM IF IT IS ACCEPTABLE TO ENTER HOMES UNINVITED AND ASKED HOW HE WOULD HAVE FELT IF MY WIFE HAD JUST GOT OUT OF THE BATH, UNDRESSED, WHEN HE ENTERED OUR HOME. HE BLUSHED AND DEFENSIVELY SAID — "I'VE BEEN DOING THIS FOR 25 YEARS, I KNOW WHAT I'M DOING". HE SHOWED ME THE FILE ON MY PROPERTY AND WE DISCUSSED TAX VALUES, ETC. HE TOLD PRIVATE PROPERTY SIGNS MEAN NOTHING TO ASSESSORS.

IT WAS THE FEELING OF BEING VIOLATED THAT PROMPTED ME TO WRITE THE EDITOR OF "THE FRONTIERSMAN". WE LOCK OUR DOORS NOW, EVEN WHEN WERE HOME, AND ESPECIALLY WHEN WERE GONE.

I THINK H.B. 22 WILL HELP MY FRIENDS AND NEIGHBORS SLEEP BETTER KNOWING THIS WON'T HAPPEN TO THEM. I WOULD ALSO LIKE TO SEE UNIFORMS OR I.D. WORN BY ASSESSORS.

REPRESENTATIVE OGAN'S H.B. 22 IS BY ALL MEANS FAIR TO HOMEOWNERS AND ASSESSORS ALIKE, AND SHOULD BECOME LAW.

SINCERELY,

DAVID SKALISKY

STATE OF ALASKA
1999 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO: HB 22

Revision Date: _____ Dept. Affected: Community & Regional Affairs

Title: An Act relating to investigations of property by a municipal assessor ... BRU: none

Component: none

Sponsor: Rep. OGAN

Requestor: House C&RA Committee COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
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	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE FUND SOURCE:						

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

POSITIONS:

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

Estimate of current (FY99) impact $ none

ANALYSIS: (Attach a separate page if necessary)

This legislation would have no fiscal impact on the department.

Prepared by: Remond Henderson, Director Remond Henderson Phone: 465-4708

Division: Division of Administrative Services Date: 1/26/99

Approved by Commissioner: Mike Dunleavy Date: 1/26/99

Agency: Community & Regional Affairs

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