

HB

43

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 2/3/00

FURTHER:

REPORTED OUT OF
SFC 4/6/00

DATE TURNED
IN TO OFFICE: 16 April 00

Finance Committee considered

HOUSE BILL NO. 43

"An Act relating to police training surcharges imposed for violations of municipal ordinances."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:

same title
 new title

House Bill:

same title
 technical title
 new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<u>ROD E. JEFF</u>	✓	<u>Lyde Green</u>	✓		
		<u>Al Caproni</u>	✓		
		<u>Pete Kelly</u>	✓		
		<u>Ray White</u>	✓		
		<u>Loren S. Linn</u>	✓		
		<u>Dave Woles</u>	✓		
Co-Chair: <u>Norm</u>	✓	Co-Chair:			
Co-Chair: <u>Alan Powell</u>	✓	Co-Chair:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Public Safety	1/28/00	✓	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

HOUSE BILL NO. 43

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES DAVIS, Croft

Introduced: 1/19/99

Referred: Community and Regional Affairs, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to police training surcharges imposed for violations of municipal
2 ordinances."

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

4 * Section 1. AS 12.55.039(a) is amended to read:

5 (a) In addition to any fine or other penalty prescribed by law, a defendant who
6 pleads guilty or nolo contendere to, forfeits bail for, or is convicted of a

7 (1) felony shall be assessed a surcharge of \$100;

8 (2) violation of a misdemeanor offense under AS 28.33.030, 28.33.031,
9 AS 28.35.030, or 28.35.032, or a violation of a municipal ordinance comparable to a
10 misdemeanor offense under AS 28.33.030, 28.33.031, AS 28.35.030, or 28.35.032 and
11 adopted under AS 28.01.010, shall be assessed a surcharge of \$75;

12 (3) misdemeanor or a violation of a municipal ordinance if a sentence
13 of incarceration may be imposed for the misdemeanor or ordinance violation, other
14 than a provision identified in (2) of this subsection, shall be assessed a surcharge of

1 \$50;

2 (4) misdemeanor for which a sentence of incarceration may not be
3 imposed. a violation or an infraction under state law, or [A MISDEMEANOR OR] a
4 violation of a municipal ordinance imposing a penalty authorized by
5 AS 29.25.070(a) if a sentence of incarceration may not be imposed for the
6 [MISDEMEANOR OR] ordinance violation, shall be assessed a surcharge of \$10 if the
7 fine or bail forfeiture amount for the offense is \$30 or more.

8 * Sec. 2. AS 29.25.074(a) is amended to read:

9 (a) A municipality may not enforce a penalty for violation of an ordinance
10 for which a surcharge is required to be imposed under AS 12.55.039 [FINE OF \$30
11 OR MORE OR IMPRISONMENT IS PRESCRIBED AS A PENALTY] unless the
12 municipality authorizes the imposition of and provides for the collection of the
13 surcharge [REQUIRED TO BE IMPOSED UNDER AS 12.55.039]. The surcharge
14 shall be deposited into the general fund of the state and accounted for under
15 AS 37.05.142. Subject to appropriation, the legislature may reimburse a municipality
16 that collects a surcharge required to be imposed under AS 12.55.039 for the cost to the
17 municipality in collecting the surcharge and transmitting the surcharge to the state.
18 The reimbursement may not exceed 10 percent of the surcharge collected and
19 transmitted to the state.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

No. 3
Bill Version: HB 43
(S) Publish Date: 2-3-00

Revision Date 1/28/00 Dept. Affected Public Safety
Title An Act... relating to police training surcharges BRU APSC
Component: APSC
Sponsor Representative Cavis
Requester S. JUD Component No. 519

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
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
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						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

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)

The purpose of HB 43 is to amend (section 1) AS 12.55.039 for clarification of surcharges that are imposed on violations of a municipal ordinance if that ordinance imposes a criminal penalty for its violation; (section 2) AS 29.25.074, to specify that a municipality cannot enforce a penalty for the violation of an ordinance unless it has authorized the imposition of the surcharge set out in AS 12.55.039.

Prepared by: Royce Weller, Special Assistant Phone 465-4322
Division Office of the Commissioner Date/Time 1/28/00 12:00 PM
Approved by: [Signature] Date 1-31-00
Agency Commissioner Ronald L. Otte, Dept. of Public Safety

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SFC 4/6/00

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

No. 3
Bill Version: HB 43
(S) Publish Date: 2-3-00

Revision Date 1/28/00 Dept. Affected Public Safety
Title An Act... relating to police training surcharges BRU APSC
Component: APSC
Sponsor Representative Davis
Requester S. JUD Component No. 519

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
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
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
1002 Federal Receipts						
1003 GF Match						
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1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

POSITIONS	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
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)

The purpose of HB 43 is to amend (section 1) AS 12.55.039 for clarification of surcharges that are imposed on violations of a municipal ordinance if that ordinance imposes a criminal penalty for its violation; (section 2) AS 29.25.074, to specify that a municipality cannot enforce a penalty for the violation of an ordinance unless it has authorized the imposition of the surcharge set out in AS 12.55.039.

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Division Office of the Commissioner Date/Time 1/28/00 12:00 PM
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Agency Commissioner Ronald L. Otte, Dept. of Public Safety

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ALASKA STATE LEGISLATURE

REPRESENTATIVE GARY DAVIS

HOUSE BILL 43 SPONSOR STATEMENT

An act relating to police training surcharges imposed for violations of municipal ordinances

House Bill 43 is a housecleaning measure that addresses concerns expressed by municipal attorneys about legislation passed in 1998. Attorneys were concerned that the 1998 legislation did not exclude civil offenses from the surcharge. Additionally, there was concern that municipal ordinances could not be enforced if a municipality did not authorize the collection of surcharges.

The first section of House Bill 43 rephrases AS 12.55.039(a)(4) within the Sentencing and Probation section of the Code of Criminal Procedures. The statute is amended to state that a surcharge is imposed on violations of municipal ordinances having a penalty authorized by **AS 29.25.070(a)**, the statute that authorizes municipalities to impose **criminal** penalties. This change further clarifies that the surcharge only applies to criminal or quasi-criminal offenses.

The second section of House Bill 43 states that if a municipality has not authorized the imposition of the surcharge, it may not enforce penalties on criminal violations of municipal ordinances. This allows the other aspects of the ordinances to go into effect. By authorizing the collection of surcharges, a municipality may amend its municipal code without further concern.

Background

The Alaska Police Training Fund was created in 1994 to "provide a stable funding source for law enforcement and corrections officer training...." To provide funding, a surcharge was imposed on motor vehicle violations at both the municipal and state levels. The intent of the surcharges was to have the cost of training law enforcement personnel shared with those who cause the need.

The Police Training Fund provides training to the state's law enforcement and corrections community. In 1998, the amount of the surcharge was increased and the list of surcharge crimes was expanded to include all criminal and quasi-criminal violations.

The types of crimes for which surcharges are imposed were expanded beyond motor vehicle offenses so that more offenders are required to contribute. This change allowed all communities to contribute to the police training fund rather than only those on the road system. Every community receives some benefit from the Police Training Fund—those that provide their own law enforcement personnel and that those depend on state troopers to enforce the laws within their boundaries.

HB43ss022100



ALASKA STATE LEGISLATURE

REPRESENTATIVE GARY DAVIS

HOUSE BILL 43

SECTIONAL ANALYSIS

An act relating to police training surcharges imposed for violations of municipal ordinances

- Section 1: Amends AS 12.55.039, Surcharges, subsection (a)(4) to clarify that surcharges are imposed on violations of a municipal ordinance if that ordinance imposes a criminal penalty for its violation.
- Section 2: Amends AS 29.25.074, Surcharges, subsection (a) to specify that a municipality cannot enforce a penalty for the violation of an ordinance unless it has authorized the imposition of the surcharge set out in AS 12.55.039.

HB43/sa/020199

Session: State Capitol, Juneau, AK 99801 • Phone 907/465-2693 or 800/463-2693 • Fax 907/465-3835
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Email: Representative_Gary_Davis@legis.state.ak.us

- (2) make written findings of the facts considered in
 - (A) finding the existence of aggravating or mitigating factors and in assigning a value to those factors; and
 - (B) determining the defendant's gross and daily net incomes.
- (d) When imposing a sentence of a day fine, the court may permit the payment of the day fine in specified installments or within a certain period of time, provided the entire day fine is paid within 180 days of imposition.
- (e) A sentence imposing a day fine shall be considered a civil judgment for the day fine. The Department of Law shall enforce the judgment and may utilize any procedure available for the enforcement of civil judgments. If the Department of Law uses the civil process of the court to enforce or collect a day fine, the department shall be awarded costs and attorney fees.

(f) The Alaska Court System shall evaluate and prepare a report every two years not later than February 1 on the use of day fines and their effectiveness. The court system shall notify the legislature that the report is available. The report must include

- (1) a comparison of the number of defendants receiving a day fine as a sentence with the number of other defendants, eligible to receive a day fine, who receive another sentence;
- (2) a comparison of the recidivism rates between defendants receiving a day fine with other defendants,
 - (A) eligible for a day fine, who receive another sentence; and
 - (B) not eligible for a day fine, who receive another sentence;
- (3) the potential savings to the state from the number of defendants who are eligible to receive a sentence of imprisonment, and who receive a day fine, assuming those defendants would have been sentenced to a term of imprisonment;
- (4) the amount of day fines collected, the success rate of collections, and the number of cases requiring civil process to collect the day fine; and
- (5) recommendations concerning expansion or restriction of the use of day fines, including proposals for legislation.

(g) Money collected under this section shall be deposited into the general fund and separately accounted for under AS 37.05.142. The annual estimated balance in the account maintained under AS 37.05.142 for day fines collected under this section may be appropriated by the legislature as follows: (1) 25 percent of the annual estimated balance for grants and claims paid by the Council on Domestic Violence and Sexual Assault; (2) 25 percent of the annual estimated balance for grants and claims paid by the Violent Crimes Compensation Board; and (3) the balance for any lawful purpose. Nothing in this subsection creates a dedicated fund. (§ 5 ch 79 SLA 1994; am § 6 ch 21 SLA 1995)

Postponed repeal of subsection (f). — Section 7, ch. 79, SLA 1994 repeals (f) of this section, effective February 2, 2004.

Cross references. — For effect of enactment of this section on Alaska Rule of Criminal Procedure 32, see § 6, ch. 79, SLA 1994 in the Temporary and Special Acts.

Effect of amendments. — The 1995 amendment, effective August 8, 1995, in the first sentence of the

introductory language of subsection (f), substituted "prepare a report every two years" for "report every two years to the legislature" and added the second sentence.

Legislative history reports. — For House letter of intent relating to CSHB 119(JUD) am, from which ch. 79, SLA 1994, which enacted this section derived, see 1993 House Journal 1413.

Sec. 12.55.039. Surcharge. (a) In addition to any fine or other penalty prescribed by law, a defendant who pleads guilty or nolo contendere to, forfeits bail for, or is convicted of a

- (1) felony shall be assessed a surcharge of \$100;
- (2) violation of a misdemeanor offense under AS 28.33.030, 28.33.031, AS 28.35.030, or 28.35.032, or a violation of a municipal ordinance comparable to a misdemeanor offense under AS 28.33.030, 28.33.031, AS 28.35.030, or 28.35.032 and adopted under AS 28.01.010, shall be assessed a surcharge of \$75;

(3) misdemeanor or a violation of a municipal ordinance if a sentence of incarceration may be imposed for the misdemeanor or ordinance violation, other than a provision identified in (2) of this subsection, shall be assessed a surcharge of \$50;

(4) violation or an infraction under state law or a misdemeanor or a violation of a municipal ordinance if a sentence of incarceration may not be imposed for the misdemeanor or ordinance violation shall be assessed a surcharge of \$10 if the fine or bail forfeiture amount for the offense is \$30 or more.

(b) A court may not fail to impose the surcharge required under this section. The surcharge may not be waived, deferred, or suspended. A court may allow a defendant who is unable to pay the surcharge required to be imposed under this section to perform community work under AS 12.55.055(c) in lieu of the surcharge.

(c) The surcharge shall be paid within 10 days of imposition or such shorter period of time as ordered by the court. Failure to pay the surcharge is punishable as contempt of court. Proceedings to collect the surcharge may be instituted by the state, the municipality, or by the court on its own motion.

(d) Money collected under this section shall be deposited into the general fund and accounted for under AS 37.05.142. (§ 2 ch 119 SLA 1994; am § 4 ch 56 SLA 1998)

Cross references. — For legislative findings and purpose in connection with the enactment of this section, see § 1, ch. 119, SLA 1994 in the Temporary and Special Acts.

Effect of amendments. — The 1998 amendment, effective August 27, 1998, rewrote subsection (a).

Effective dates. — Section 7, ch. 119, SLA 1994 makes this section effective January 1, 1996.

Editor's notes. — With respect to subsection (d), § 10, ch. 56, SLA 1998 provides the following: "Notwithstanding the requirements of AS 12.55.039(d) and AS 37.05.142 that surcharges collected under AS 12.55.039 be accounted for separately, the Alaska Court System shall deposit money collected under AS 12.55.039 in the general fund and shall, by February

1 of each year, provide to the Department of Administration, to the Legislative Budget and Audit Committee, and to each house of the legislature an estimate of the money collected under AS 12.55.039 for that fiscal year."

Section 11, ch. 56, SLA 1998 provides a repeal date for § 10, ch. 56, SLA 1998 as follows: "Section 10 of this Act is repealed on the earlier of (1) the date that the Alaska Court System has the capability to separately track and account electronically for money collected under AS 12.55.039, or (2) June 30, 2002. The executive director of the Alaska Court System shall notify the lieutenant governor and the revisor of statutes when the electronic capability described in this section has been obtained."

Sec. 12.55.040. Increased punishment for habitual criminal after conviction of petty larceny or misdemeanor involving fraud. [Repealed, § 21 ch 166 SLA 1978.]

Sec. 12.55.045. Restitution. (a) The court may order a defendant convicted of an offense to make restitution as provided in this section, including restitution to the victim or other person injured by the offense, to a public, private, or private nonprofit organization that has provided or is or will be providing counseling, medical, or shelter services to the victim or other person injured by the offense, or as otherwise authorized by law. In determining the amount and method of payment of restitution, the court shall take into account the

(1) public policy that favors requiring criminals to compensate for damages and injury to their victims; and

(2) financial burden placed on the victim and those who provide services to the victim and other persons injured by the offense as a result of the criminal conduct of the defendant.

(b) An order of restitution under this section does not limit any civil liability of the defendant arising from the defendant's conduct.

(c) If a defendant is sentenced to pay restitution, the court may grant permission for the payment to be made within a specified period of time or in specified installments.

(d) In any case, including a case in which the defendant is convicted of a violation of AS 11.46.120 — 11.46.150 and the property is commercial fishing gear as defined in AS 16.43.990, the court shall consider the victim's loss and may order restitution that may include compensation for loss of income.

enactments regulating lobbying. 42 ALR3d 1046.

Validity of statute or ordinance forbidding pharmacist to advertise prices of drugs or medicines. 44 ALR3d 1301.

Validity and construction of statute or ordinance respecting employment of women in places where intoxicating liquors are sold. 46 ALR3d 369.

Validity and construction of statute or ordinance regulating or prohibiting self-service gasoline filling stations. 46 ALR3d 1393.

Operation of nude-model photographic studio as offense. 48 ALR3d 1313.

Validity and construction of statute or ordinance forbidding treatment in health clubs or massage salons by persons of the opposite sex. 51 ALR3d 936.

Validity of municipal regulation more restrictive than state regulation as to time for selling or serving intoxicating liquor. 51 ALR3d 1061.

Validity and construction of regulations dealing with misrepresentation in the sale of Kosher food. 52 ALR3d 959.

Validity of municipal ordinances regulating time during which restaurant business may be conducted. 53 ALR3d 942.

Modern status of the law as to validity of statutes or ordinances requiring notice of tort claim against local governmental entity. 59 ALR3d 93.

Validity and construction of curfew statute, ordinance, or proclamation. 59 ALR3d 321; 83 ALR4th 1056.

Validity and construction of statute or ordinance prohibiting commercial exhibition of malformed or disfigured persons. 62 ALR3d 1237.

Application of city ordinance requiring license for laundry, to supplier of coin-operated laundry machines intended for use in apartment building. 65 ALR3d 1296.

Application of statute or regulation dealing with registration or carrying of weapons to transient non-resident. 68 ALR3d 1253.

Larceny as within disorderly conduct statute or ordinance. 71 ALR3d 1156.

Validity and construction of ordinance prohibiting roof signs. 76 ALR3d 1162.

Validity and construction of statute or ordinance proscribing solicitation for purposes of prostitution, lewdness, or assignation — modern cases. 77 ALR3d 519.

Validity of statutes, ordinances, and regulation requiring the installation or maintenance of various bathroom facilities in dwelling units. 79 ALR3d 716.

Validity and construction of statute or ordinance restricting outdoor rate advertising by motels, motor courts, and the like. 80 ALR3d 740.

Validity of state or local regulation dealing with resale of tickets to theatrical or sporting events. 81 ALR3d 655.

What constitutes "sale" of liquor in violation of statute or ordinance. 89 ALR3d 551.

Validity and construction of statute or ordinance prohibiting desecration of church. 90 ALR3d 1128.

Validity and construction of statute or ordinance specifically criminalizing passenger misconduct on public transportation. 78 ALR4th 1127.

Validity and construction of statute, ordinance, or regulation applying to specific dog breeds, such as "pit bulls" or "bull terriers." 80 ALR4th 70.

Validity, construction, and effect of juvenile curfew regulations. 83 ALR4th 1056.

Laws regulating begging, panhandling, or similar activity by poor or homeless persons. 7 ALR5th 455.

Validity and construction of statutes or ordinances imposing civil or criminal penalties on alarm system users, installers, or servicers for false alarms. 17 ALR5th 825.

Governmental regulation of place of amusement, entertainment, or recreation as violating rights of owner or operator under equal protection clause of Federal Constitution's Fourteenth Amendment — Supreme Court cases. 104 L Ed 2d 1078.

Sec. 29.25.010. Acts required to be by ordinance. (a) In addition to other actions that this title requires to be by ordinance, the governing body of a municipality shall use ordinances to

- (1) establish, alter, or abolish municipal departments;
- (2) provide for a fine or other penalty, or establish rules or regulations for violation of which a fine or other penalty is imposed;
- (3) provide for the levying of taxes;
- (4) make appropriations, including supplemental appropriations or transfer of appropriations.
- (5) grant, renew, or extend a franchise;
- (6) adopt, modify, or repeal the comprehensive plan, land use and subdivision regulations, building and housing codes, and the official map;
- (7) approve the transfer of a power to a first or second class borough from a city;
- (8) designate the borough seat;
- (9) provide for the retention or sale of tax-foreclosed property;
- (10) exempt contractors from compliance with general requirements relating to payment and performance bonds in the construction or repair of municipal public works projects within the limitations set out in AS 36.25.025; this paragraph applies to home rule and general law municipalities.

(b) This section does not grant authority, but requires the governing body to use ordinances in exercising certain of its powers. (§ 8 ch 74 SLA 1985)

Sec. 29.25.060. Resolutions. (a) The governing body shall provide for the maintenance of a permanent file of resolutions that have been adopted.

(b) This section applies to home rule and general law municipalities. (§ 8 ch 74 SLA 1985)

NOTES TO DECISIONS

Cited in Lazy Mt. Land Club v. Matanuska-Susitna Borough Bd. of Adjustment & Appeals, 904 P.2d 373 (Alaska 1995).

Sec. 29.25.070. Penalties. (a) For the violation of an ordinance, a municipality may by ordinance prescribe a penalty not to exceed a fine of \$1,000 and imprisonment for 90 days. For a violation that cannot result in incarceration or the loss of a valuable license, a municipality may allow disposition of the violation without court appearance and establish a schedule of fine amounts for each offense.

(j) The municipality or an aggrieved person may institute a civil action against a person, including a minor as provided in AS 29.25.072, who violates an ordinance. In addition to injunctive and compensatory relief, a civil penalty not to exceed \$1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. On application for injunctive relief and a finding of a violation or a threatened violation, the superior court shall grant the injunction. Each day that a violation of an ordinance continues constitutes a separate violation.

(c) The penalties authorized under this section may be imposed only if copies of the ordinance are made available for distribution to the public at no more than cost.

(d) This section does not apply to an ordinance adopted under AS 04.11.501(c).

(e) The municipality shall provide written notice to the commissioner of health and social services or to the commissioner's designee of the commencement of a civil enforcement action for the violation of an ordinance under (b) of this section against a minor. Unless the commissioner and the municipality have negotiated an agreement making other arrangements for the municipality to provide the notice required by this subsection, the municipality shall provide the notice by mailing a copy of the citation or other document setting out the notice of the commencement of the civil enforcement action. This subsection applies to home rule and general law municipalities.

(f) In this section, "minor" means a person under 13 years of age. (§ 8 ch 74 SLA 1985; am § 16 ch 80 SLA 1986; am § 11 ch 76 SLA 1987; am § 65 ch 101 SLA 1995; am §§ 2, 3 ch 107 SLA 1998)

Effect of amendments. — The 1995 amendment, effective July 1, 1995, made a section reference substitution in subsection (d).

The 1998 amendment, effective July 1, 1998, in-

serted ", including a minor as provided in AS 29.25.072," in the first sentence in subsection (b) and added subsections (e) and (f).

NOTES TO DECISIONS

Punishment for failure to list taxable property authorized. — A city had the power to enact an ordinance requiring a taxpayer to file a statement under oath listing all personal property at its just and fair value, and a former, similar provision provided the authority to prescribe its punishment, including fine and imprisonment. *City of Anchorage v. Campbell*, 105 F. Supp. 607 (D. Alaska 1952).

An act may be made a penal offense under both state statute and municipal ordinance. *Guidoni v. Wheeler*, 230 F. 93 (9th Cir. 1916), decided under former, similar law.

Ordinance may impose penalties on class of persons. — While an ordinance which made an act done by one penal and imposed upon another no penalty for a like act done under like circumstances could not receive judicial sanction for the reason that it was unjust and unreasonable, the same could not be said of discrimination by municipal authority against a whole class of persons who were lawfully regarded as proper subjects for police regulation, such as persons without occupation or visible means of support. *Guidoni v. Wheeler*, 230 F. 93 (9th Cir. 1916), decided under former, similar law.

Sec. 29.25.072. Civil penalties for violation of municipal ordinances by minors. (a) Except as otherwise provided in this section, the enforcement under AS 29.25.070(b) of a civil penalty against a minor for violation of a municipal ordinance shall be heard in the district court in the same manner as for similar allegations brought against an adult, except that the minor's parent, guardian, or legal custodian shall be present at all proceedings unless the court excuses the parent, guardian, or legal custodian from attendance for good cause.

(b) If provision is made by ordinance for use of a hearing officer to decide enforcement of a civil penalty under AS 29.25.070(b), allegations against a minor for a civil penalty under a municipal ordinance may be assigned to a hearing officer for the municipality for decision.

(c) An action for a civil penalty filed against a minor under this section does not give rise to the right to a trial by jury or to counsel appointed at public expense. (§ 4 ch 107 SLA 1998)

Effective dates. — Section 59, ch. 107, SLA 1998 provides that this section applies to all offenses committed on or after July 1, 1998.

Editor's notes. — Section 57, ch. 107, SLA 1998

Sec. 29.25.074. Surcharge. (a) A municipality may not enforce an ordinance for which a fine of \$30 or more or imprisonment is prescribed as a penalty unless the municipality authorizes the imposition of and provides for the collection of the surcharge required to be imposed under AS 12.55.039. The surcharge shall be deposited into the general fund of the state and accounted for under AS 37.05.142. Subject to appropriation, the legislature may reimburse a municipality that collects a surcharge required to be imposed under AS 12.55.039 for the cost to the municipality in collecting the surcharge and transmitting the surcharge to the state. The reimbursement may not exceed 10 percent of the surcharge collected and transmitted to the state.

(b) This section applies to home rule and general law municipalities. (§ 8 ch 56 SLA 1998)

Revisor's notes. — This section was enacted as AS 29.25.072. Renumbered in 1998. which enacted this section, took effect on August 27, 1998.

Effective dates. — Section 8, ch. 56, SLA 1998,

Sec. 29.25.075. Collection of penalties. The court may collect for a municipality any monetary penalty or surcharge or item to be forfeited as a result of the violation of an ordinance. The supreme court may prescribe by rule the fees to be charged by all courts to municipalities for providing collection services under this section. (§ 47 ch 36 SLA 1990; am § 9 ch 56 SLA 1998)

Effect of amendments. — The 1998 amendment, effective August 27, 1998, inserted "surcharge or" in the first sentence.

Sec. 29.25.080. Breast-feeding. A municipality may not enact an ordinance that prohibits or restricts a woman breast-feeding a child in a public or private location where the woman and child are otherwise authorized to be. In a municipal ordinance, "lewd conduct," "lewd touching," "immoral conduct," "indecent conduct," and similar terms do not include the act of a woman breast-feeding a child in a public or private location where the woman and child are otherwise authorized to be. Nothing in this section may be construed to authorize an act that is an offense under a municipal ordinance that establishes an offense with elements substantially equivalent to the elements of an offense under AS 11.61.123. This section is applicable to home rule and general law municipalities. (§ 4 ch 78 SLA 1998)

Municipal Attorneys Contacted Regarding HB 43

Names in italics responded

Ms. Mary Hughes
Borough Attorney
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City Attorney
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Mr. Scott Brandt-Erichsen
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Kodiak, AK 99615

Mr. Michael Gattie
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Palmer, AK 99645

Mayor Margy Johnson
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Cordova, AK 99574

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St. Mary's, Sand Point

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Mr. Eric Wohlforth
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Soldotna, Unalaska

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Mr. Lee Sharp
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Togiak, Whittier

Ms. Collette Thompson
Borough Attorney
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Soldotna, AK 99669



ALASKA STATE LEGISLATURE

REPRESENTATIVE GARY DAVIS

Discussion of Municipal Attorneys' Concerns re: HB 43

§1: AS 12.55.039(a)

- Insert the word "criminal" before penalty on page 1 line 5 to clarify that civil penalties are not affected. (*Brooks Chandler of Hicks Boyd Chandler & Falconer, representing Dillingham, Galena, Kotlik, Soldotna and Unalaska*)

This is not necessary because it is only in criminal or quasi-criminal proceedings that a defendant pleads guilty or nolo contendere, forfeits bail, or is convicted. Additionally, Subsection (4) on page 2 is amended to specify a "penalty authorized by AS 29.25.010(a)." This statute specifically addresses a municipality's authority to impose criminal penalties. AS 29.25.010(b) addresses their authority regarding civil penalties.

- Imposition of \$50 surcharge on misdemeanors with possibility of incarceration could apply to all municipal violations because of the catch-all or blanket penalty sections allowing fines and/or incarceration for any violation. Reference was made to animal control tickets and fire cracker violations which can carry a fine of \$50. (*Michael Gatti, Mat-Su Borough Attorney; Scott Brand-Erichsen, Ketchikan Borough Attorney.*)

Because of the lack of uniformity in fines and incarceration periods across the state, it was decided that the differentiation between whether an offense was punishable by incarceration or not was the best place to draw the line. For boroughs with offenses for which they want the lower surcharge, it might be better to amend the ordinances to omit incarceration, rather than changing the standard for the entire state.

- Exempt municipalities such as the Fairbanks North Star Borough from the surcharge requirement because since they have no law enforcement powers, they have no police training program, and thus do not benefit from the Police Training Fund. Animal control tickets and fire cracker violations were again mentioned. (*Mayor Hank Hovø, Fairbanks North Star Borough*)

Even though the borough may not have its own police training program or law enforcement powers, the borough still benefits from the fund because of the training received by the state troopers who enforce the laws within its boundaries. There is a benefit even though the boroughs do not receive direct payments.

§2: AS 29.25.074(a)

- Repeal the section in its entirety because a municipality is mandated to collect the surcharge because of the phrasing "shall". This word is sufficient to compel the collection of the surcharge (*Michael Gatti, Mat-Su Borough Attorney; Gordon Tans of Perkins COIE, LLP representing Chignik, Homer, King Cove, St. Mary's and Sand Point*)

This section was adopted in 1998 in response to a question raised in a letter from the Court System about whether the legislature had the ability to require the imposition of surcharges on municipal ordinance violations without such a provision.



MATANUSKA-SUSITNA BOROUGH

350 EAST DAHLIA AVENUE, PALMER, ALASKA 99645-6488

BOROUGH ATTORNEY'S OFFICE

MICHAEL GATTI
BOROUGH ATTORNEY

PHONE (907) 745-9677

February 24, 2000

Deb Davidson
Legislative Aide to Representative Gary Davis
State Capitol
Juneau, AK 99801

Re: House Bill 43: An Act Relating to Police Training Surcharges Imposed
for Violation of Municipal Ordinances

Dear Ms. Davidson:

Thank you for your correspondence of February 17, 2000. The borough's position with regard to this legislation is contained in my correspondence of February 25, 1999. However, I understand the concerns that have been expressed by the court system, as well as the need for certainty with regard to its authority to collect the surcharge. Accordingly, it does not appear that any suggested amendments to HB 43 will be forthcoming.

However, I have conferred with Public Safety Director Kevin Koechlein who advises that the borough, since it does not have a police force, would not receive a direct benefit from any surcharges paid by it to the police training fund. He suggests that it would be helpful if the fund were structured so that money for courses pertaining to code compliance and animal control enforcement matters could be presented.

Alternatively, when training seminars are presented in our area it might be helpful to Mr. Koechlein's department to have sections added that are pertinent to his activities, such as information on conducting an investigation, drafting a complaint, administrative searches and seizures, and perhaps other items that would be of interest to borough code enforcement officials. If it is possible to provide the borough with grants from the fund or to conduct seminars that relate to training issues pertinent to borough operations, the borough's law enforcement

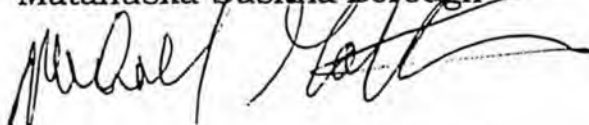
February 24, 2000

Page 2

officials and the public will be well served.

Please call if you have any questions or if I can be of further assistance with regard to questions you or others may have on HB 43.

Sincerely,
Matanuska-Susitna Borough

A handwritten signature in black ink, appearing to read "Michael Gatti", written over a horizontal line.

Michael Gatti, Borough Attorney

MG:kl

cc: Kevin Koechlein, Public Safety Director

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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) 745-9677

February 25, 1999

Representative Gary Davis
Alaska House of Representatives
State Capitol
Room 513
Juneau, AK 99801-1182

Re: HB 43

Dear Representative Davis:

I am writing in response to Legislative Aide Deborah L. Davidson's January 22, 1999, correspondence seeking comments on HB 43, which was introduced to address the concerns of municipalities that the mandatory surcharge requirement in the legislation swept with a broader brush than intended and could potentially impact municipal enforcement if the surcharge were not adopted. In accordance with HB 43, the Matanuska-Susitna Borough adopted Ordinance Serial No. 98-134, amending its penalties and violations section of the code to require the imposition of the surcharge to be collected by the borough for the police training fund. A copy of the borough's adopted code section is attached for your information.

After the passage of HB 43, the borough was concerned about the language of the bill, which apparently prohibited the enforcement of an ordinance for which a surcharge is required, if the surcharge was not imposed pursuant to HB 43. The borough felt it was somewhat ironic that a municipality could not enforce an ordinance unless it collected a surcharge for police training. While the borough certainly supports the benefits of trained law enforcement officers, it believes that any language that would prohibit the enforcement of a municipal ordinance for the failure to collect the surcharge is not well considered.

Municipalities adopt ordinances to address concerns affecting the public's health, safety, and welfare that may be enforced in their discretion to protect that interest. Any legislation that would somehow eliminate or reduce a municipality's discretion to

February 25, 1999

Page 2

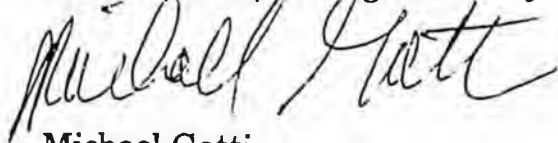
enforce its ordinances is a direct imposition on a municipality's broad powers delegated to it by statute. The existing language of AS 29.25.074 prohibiting ordinance enforcement should be repealed and the proposed language of HB 43 Sec. 2 should not be adopted. Instead, collection of the surcharge should be based upon the mandatory legislative direction to the municipality to collect the surcharge (by the use of the word "shall) which in the borough's opinion should be sufficient to compel the collection of the surcharge. The limitation of a municipalities enforcement options is thus eliminated and the surcharge should be collected based on the affirmative duty to do so.

I must also concur with the comments presented by Ketchikan Gateway Borough Attorney, Scott Brandt-Erickson, in his January 29, 1999 correspondence. A misdemeanor is specifically defined in AS 11.81.900 and means a crime for which a sentence of imprisonment for a term of more than one year may not be imposed. Like the Ketchikan Gateway Borough, the Matanuska-Susitna Borough has a system of citations that imposes fines but not imprisonment for a violation and are considered by the borough to be infractions. Under the proposed language on line 12 of page 1 and line 2 of page 2, confusion with regard to this term could arise.

In summary, it appears that the bill requires some additional consideration in order to remediate earlier interpretations of HB 43. Please call if you have any questions.

Very truly yours,

MATANUSKA-SUSITNA BOROUGH
Michael Gatti, Borough Attorney



Michael Gatti

MG:drm

Atts.

cc: Scott Brand-Erickson,
Ketchikan Gateway Borough
Kevin Ritchie,
Alaska Municipal League

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CODE ORDINANCE

By: M. Scott
Introduced: 9/18/98
Public Hearing: 9/29/98
Adopted: 9/29/98

**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 98-134**

AN ORDINANCE AMENDING MATANUSKA-SUSITNA BOROUGH 1.45 VIOLATIONS,
ENFORCEMENTS, AND PENALTIES BY ADDING SECTION 1.45.045 AUTHORIZING
THE IMPOSITION OF A STATE-IMPOSED SURCHARGE ON CERTAIN PENALTIES.

BE IT ENACTED:

* Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the borough code.

* Section 2. Amendment of chapter. MSB 1.45 is hereby amended by adding a new section to read as follows:


1.45.045 PENALTY SURCHARGE AUTHORIZATION AND COLLECTION.

The surcharge required to be imposed pursuant to AS 12.55.039 is authorized and shall be imposed as a surcharge on penalties imposed for the violation of an ordinance, code provision, or regulation of the Matanuska-Susitna Borough brought under a citation or criminal complaint that would require a proceeding in the Alaska court system if the defendant were to enter a plea of not guilty. The court may impose and collect the surcharge on all penalties imposed by the court or fines and bail forfeitures that are paid to the court.

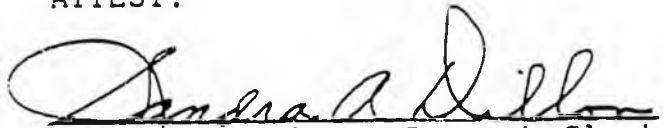
Section 3. Effective date. Ordinance Serial No. 98-

134 shall take effect upon adoption by the borough assembly.

ADOPTED by the Matanuska-Susitna Borough Assembly this 29th
day of September, 1998.


DARCIE K. SALMON, Borough Mayor

ATTEST:


SANDRA A. DILLON, Borough Clerk

(SEAL)

PERKINS COIE LLP

1029 WEST THIRD AVENUE, SUITE 300 • ANCHORAGE, ALASKA 99501-1970
TELEPHONE: 907 279-6561 • FACSIMILE: 907 276-3108

February 25, 2000

VIA FACSIMILE - (907) 465-3835

Deb Davidson
Legislative Aide
State Capitol
Juneau, AK 99801

Re: House Bill 43 "An act relating to police training surcharges imposed for violations of municipal ordinances"

Dear Ms. Davidson:

Thank you for your letter of February 17, 2000, inviting me to comment on House Bill 43.

I still believe that AS 29.25.074 is completely unnecessary, and should be repealed in its entirety. You referred to court system personnel reservations about whether the Legislature has the ability to require imposition of surcharges on municipal ordinance violations without such a provision. Such concerns seem baseless. Whatever is required in AS 29.25.074(a) could just as well be required in AS 12.55.039, and, I submit, it already is. This statute creates a surcharge imposed by the State for the benefit of the State for services rendered by the State. It seems silly that the legislation requires the cities' "authorization" to collect a surcharge when they have no power to refuse. AS 12.55.039 is clear that the surcharge must be collected. The cities' so-called authorization is mere charade.

However, because you indicate that AS 29.25.074 will be retained, I do have a suggestion to improve the provision that will allow the cities to avoid unnecessary entanglement in the collection of and accounting for the state surcharge. I suggest that AS 29.25.074(a) be amended to read as follows:

(a) In addition to any fine or other penalty, a defendant who pleads guilty or nolo contendere to, forfeits bail for, or is convicted of a violation of a municipal ordinance for which a surcharge is required to be imposed under AS 12.55.039 shall

{09901-4001/AA003671.386}

February 25, 2000

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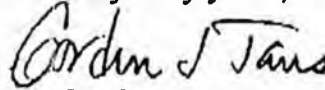
be assessed the applicable surcharge. The surcharge shall be collected and deposited into the general fund of the state under AS 12.55.039 and accounted for under AS 37.05.142.

As you can see, this proposal eliminates transferring money from the state court system to the municipalities and then back to the state. It also eliminates the need for the Legislature to appropriate a ten percent reimbursement to the municipalities.

I think this approach makes a lot more sense and will turn out to be a much more efficient way of getting a state tax into the state coffers.

Thank you again for asking for my comments on HB 43.

Very truly yours,



Gordon J Tans

GJT:sc

cc: Walton Smith

PERKINS COIE LLP

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TELEPHONE: 907 279-8561 • FACSIMILE: 907 276-3108

GORDON J TANB
TANB@PERKINSCOIE.COM

February 4, 1999

Via Facsimile

Representative Gary Davis
State Capitol
Juneau, AK 99801

Re: House Bill 43

Dear Representative Davis:

I want to thank you and your staff for inviting me to comment on House Bill 43, which relates to Chapter 56 SLA 1998. This bill addresses the police training surcharges imposed for violation of municipal ordinances.

As a city attorney for seven Alaska cities, I see big problems with AS 29.25.074, which provides:

(a) A municipality may not enforce an ordinance for which a fine of \$30 or more or imprisonment is prescribed as a penalty unless the municipality authorizes the imprisonment of and provides for the collection of the surcharge required to be imposed under AS 12.55.039. The surcharge shall be deposited into the general fund of the state and accounted for under AS 37.05.142. Subject to appropriation, the legislature may reimburse a municipality that collects a surcharge required to be imposed under AS 12.55.039 for the cost to the municipality in collecting the surcharge and transmitting the surcharge to the state. The reimbursement may not exceed 10 percent of the surcharge collected and transmitted to the state.

(b) This section applies to home rule and general law municipalities. (§ 8 oh 56 SLA 1998)

[09901-0001/AA990330.019]

Representative Davis
February 4, 1999
Page 2

As I look at these statutes, I see no purpose whatsoever for AS 29.25.074, and I especially see no reason why the legislature should choose to render a municipal ordinance unenforceable in these circumstances. AS 12.55.039, which imposes the surcharge, is completely self-sufficient. It effectively imposes the surcharge, and a city or other municipality does not need to do any more to have the state collect the surcharge. AS 29.25.074(a) is simply superfluous.

Furthermore, something needs to be done to effect proper implementation of this law. One of the cities I represent was told by the local magistrate that the court system (a state agency) would collect the surcharge and pay it over to the city. Why doesn't the court system pay the money directly to the state general fund, where it must go according to statute? When the state pays it to the city, then the city must receive, account for, and then pay it right back to the state, all at an administrative expense that is not sufficiently covered by the 10 percent reimbursement clause. What is the point to this circuitous route of money handling? It is causing at least one city manager considerable aggravation.

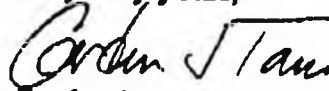
What am I missing here? What is the concern that AS 29.25.074 is supposed to address? Is there a concern that a municipality will itself collect a surcharge pursuant to an ordinance enforcement program that does not include the court system? If that is the issue, then it should be addressed in plain terms by requiring the city to pay over any directly collected surcharges to the state. There is no need to impose the draconian measure of rendering all municipal ordinances unenforceable if the municipality fails to adopt a surcharge that is already effectively imposed by state law. In my view, HB 43 does nothing to improve AS 29.25.074. There is no practical difference between making the ordinance unenforceable or making the penalty unenforceable.

As enacted in 1998, AS 29.25.074 just doesn't make any sense to me. And I am afraid that HB 43, section 2, just doesn't solve the problems I see. I urge the legislature to seriously consider repealing AS 29.25.074 in its entirety. I don't see that anything would be missing -- the surcharge would continue to be collected under the authority of AS 12.55.039, which by its own terms clearly applies to violations of municipal ordinances.

Representative Davis
February 4, 1999
Page 3

Again, thank you for sending me a copy of this bill and giving me a chance to have my say.

Very truly yours,


Gordon J Tans

GJT:go



Fairbanks North Star Borough

Office of the Mayor

809 Pioneer Road

P.O. Box 71267

Fairbanks, Alaska 99707-1267

907/459-1300

Fax 907/459-1100

Email mayor@co.fairbanks.ak.us

March 4, 1999

The Honorable Gary Davis
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Re: HB 43

Dear Representative Davis:

Thank you for your letter of January 22 regarding HB 43. We appreciate your willingness to revisit the police training surcharge on violations of municipal ordinances.

We agree that the addition of the phrase "a penalty for violation of" in AS 29.25.074(a) (HB 43, p.2, line 9) would be helpful. It is possible that a municipality could choose to request an injunction (rather than a fine) to enforce an ordinance, and the failure to impose a surcharge should not cause the entire ordinance to be found invalid.

We would, however, like to request that the legislature exempt from the surcharge municipalities such as the Fairbanks North Star Borough that have no law enforcement powers, and therefore no police training program. The borough does not appear eligible to receive surcharge funds from the Alaska police training fund, since AS 18.65.225 authorizes appropriations to "municipalities that conduct their own police training programs."

The only violations for which the Fairbanks North Star Borough has routinely imposed penalties are on animal control citations. Since September, 1998, this borough has collected \$100 in surcharges, an average of \$20 per month. The cost

Letter to Representative Davis

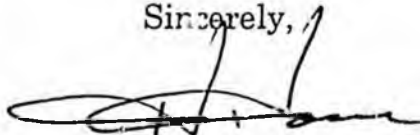
March 4, 1999

Page 2

of accounting, collection, and transmitting this minimal amount is hardly cost-effective for either the borough or the state.

While we appreciate the concept of requiring offenders to contribute toward the cost of police training, the legislation passed last year imposed an additional burden on the borough without any apparent benefit.

Sincerely,

A handwritten signature in black ink, appearing to read "Hank Hove", written over a horizontal line.

Hank Hove
Mayor

HH:rlf

HICKS, BOYD, CHANDLER & FALCONER

ATTORNEYS AT LAW
SUITE 200
825 WEST EIGHTH AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE: (907) 272-8401
TELECOPIER: (907) 274-3698

February 18, 1999

VIA FACSIMILE - (907) 465-3835

Ms. Deborah L. Davidson
Legislative Aide
to Representative Gary Davis
State Capitol
Juneau, AK 99801

RE: Comments to HB 43

Dear Ms. Davidson:

Thank-you for inviting my comments to HB 43 introduced by Representative Davis. Indeed, there is a need to revisit the 1998 amendment to AS 12.55.039. I represent a number of municipalities throughout the State. We learned to our chagrin last year that the surcharge amendment, which we assumed had only been intended to apply to municipal traffic violations, applied to every municipal violation, civil or criminal.

The 1998 revisions have forced municipalities to scurry to revise their codes so that the courts will assess fines imposed under municipal ordinance for zoning, sales tax, animal control and similar violations. For instance, in Nome, Judge Esch would not assess a fine for curfew violations until the City could provide him with a copy of the amending ordinance. In several cases, municipalities have had to pass more than twenty (20) amendments to their respective codes to authorize the collection of the surcharge now required to be imposed by AS 12.55.039.

Here are our comments on the proposed legislation:

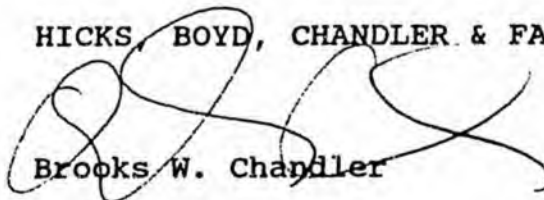
Section 1. I recommend adding the word "criminal" before the word "penalty" to avoid a possible ambiguity.

Ms. Deborah L. Davidson
February 18, 1999
Page 2

Section 2. Thank you for this amendment. Last year's legislation created a possible loophole to enforcement of a zoning ordinance, for instance, only because there was no surcharge to any penalty associated with the zoning ordinance. This amendment solves this unintended result. On behalf of our municipal clients, I appreciate the efforts of Representative Davis.

Very truly yours,

HICKS, BOYD, CHANDLER & FALCONER



Brooks W. Chandler

BWC/lhf
ksa@ourchrg.kr

KETCHIKAN GATEWAY BOROUGH

Office of the Borough Attorney • 344 Front Street • Ketchikan, Alaska 99901

Scott A. Brandt-Erichsen
Borough Attorney

(907) 228-6635
Fax: (907) 247-6625

January 29, 1999

Deborah L. Davidson
Legislative Aide
145 Main Street, Lp., 223
Kenai, Alaska 99611

Dear Ms. Davidson:

Thank you for the copy of the proposed House Bill 43 provided with your letter dated January 22, 1999. Like many other communities, the Ketchikan Gateway Borough found it necessary to adopt a change to its municipal code last fall in order to address the enforcement difficulty created by the new AS 29.25.074.

Your letter indicates that there are two problems that HB 43 seeks to address: 1) application of AS 29.25.074 to civil enforcement actions; and 2) the risk that a municipal ordinance could be declared invalid for failure to impose the statutorily required surcharge.

While I concur that these two issues should be addressed, and while the Ketchikan Gateway Borough has largely avoided the problem for the present by enacting a surcharge provision as required, I am concerned about the civil/criminal penalty distinction.

The Ketchikan Gateway Borough Code, like that in many other communities, contains a catch-all penalty section which states, in essence, that any violation of the code is subject to punishment through "a fine of up to \$500.00, or up to 30 days imprisonment, or both such fine or imprisonment." A copy of Ketchikan Gateway Borough Code section 1.10.030 as it appeared prior to the addition of the surcharge is attached. By comparison, Anchorage Municipal Code section 1.45.010, as of my most recent supplement, had a general penalty of \$300.00 or 30 days imprisonment. My copy of Fairbanks North Star Borough Code section 1.04.010 provides for a \$1000.00 fine, imprisonment of up to 90 days, or both.

Letter to Deborah L. Davidson
January 27, 1999
Page 2

Because each code violation thus carries with it a potential incarceration, unless a specific penalty is provided for which does not include incarceration, the terminology "misdemeanor or a violation of municipal ordinance" on line 12 of the bill will impact more municipal offenses than may be intended. AS 11.81.900 defines a misdemeanor as a crime for which a sentence of imprisonment for a term of more than one year may not be imposed. If misdemeanor is intended to apply to all offenses for which any period of incarceration under a year may be imposed, even if that period is a maximum of thirty to ninety days, then the \$50.00 surcharge would apply to all municipal code violations under the Ketchikan Gateway Borough code, except for those violations which specifically provide for a penalty that does not include incarceration.

I would suggest that the higher \$50.00 surcharge only be applied where the period of incarceration may be greater than 6 months. Otherwise, a \$50.00 fine for firecrackers, for example, would potentially include a \$50.00 surcharge.

If you have questions regarding this letter, please contact me at your convenience.

Sincerely,

KETCHIKAN GATEWAY BOROUGH



Scott A. Brandt-Erichsen
Borough Attorney

Enclosure

cc:

Georgianna Zimmerle, Borough Manager w/o encl.
Sue Bethel, Borough Clerk w/o encl.
Geoffrey Bullock, KGB Lobbyist w/o encl.
Gerald Lee Sharp, Esq., Preston, Gates & Ellis w/o encl.
Michael Gatti, Attorney for Mat-Su Borough w/o encl.
Ardith Lynch, Attorney for Fairbanks North Star Borough w/o encl.
Colette Thompson, Attorney for Kenai Peninsula Borough w/o encl.

Letter to Deborah L. Davidson
January 27, 1999
Page 3

Colette Thompson, Attorney for Kenai Peninsula Borough w/o encl.
John Corso, Attorney for City and Borough of Juneau w/o encl.
Theron Cole, Attorney for City and Borough of Sitka w/o encl.
Joe Levesque, Attorney for North Slope Borough w/o encl.
Mary Hughes, Attorney for the Municipality of Anchorage w/o encl.

ss/1/asl.hb43

of the Code, also includes the causing, securing, aiding or abetting of another person to do said act; and such causing, securing, aiding or abetting of a prohibited act is itself a prohibited act. (Code 1969, § 1.10.030)

State law reference—Accessories and accomplices, AS 12.15.

Sec. 1.10.030. General penalty.

Every act prohibited by the Code, or the omission or failure to perform any act required by the Code, is a misdemeanor and, unless another penalty is elsewhere expressly provided for such act, omission or failure, every person convicted of a violation of any provision of this Code shall be punished by a fine of not more than five hundred dollars (\$500.00) or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense.

The penalty provided by this section shall, unless a penalty is expressly elsewhere provided, apply to the amendment of any section of the Code whether or not such penalty is reenacted in the amendatory ordinance.

(Code 1969, § 1.10.040)

Annotations—Under an ordinance providing that violators shall be punished by a fine or by imprisonment a municipal magistrate clearly exceeded his authority when he imposed a sentence of both fine and imprisonment. *Lapham v. Haines*, 374 P2d 239, 1962.

The requirement for a jury trial on petty offenses is extended to any criminal prosecution in which a direct penalty of incarceration may be included. It also includes offenses that may result in loss of a valuable license, such as a driver's license or a license to pursue a common calling, occupation, or business. The only exclusions are such relatively innocuous offenses as wrongful parking, minor traffic violations, and violations relating to regulation of property, sanitation, building codes, fire codes, and other legal measures that are regulatory rather than criminal. *Baker v. Fairbanks*, 471 P2d 386, 1970.

State law reference—Penalties, AS 29.48.200.

Sec. 1.10.035. Headings.

The catchlines of the several sections of this Code printed in boldface type, titles, headings, chapter heads, section and subsection heads or titles, editor's notes, cross references and state law references, unless set out in the body of the section itself,