

BILLS 1981 - 1982

CSHB 608 cont.

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to municipalities would be also special legislation. And it wouldn't make any difference. If you appropriate to a municipality, that's a special . . . that's one special place that the money's going.

JAY HOGAN - Mr. Chairman, the appropriation to municipalities is an appropriation to a state entity, in fact. A municipality is a created body--created by the state--and it has in many respects the same legal implications as making an appropriation to the Department of Natural Resources or the Department of Education. It has an assumed public purpose; it has an assumed accountable lifestyle, if you will; it is a body that is created entirely at the whim of the state, and can be done away with at the discretion of the state.

SENATOR BILL RAY - That's not essentially correct. The state doesn't make municipalities. They don't make boroughs. They provide the legislation, but the people are the ones that make the final determination as to boroughs or municipalities, the class of the cities, and that other stuff. I think that's a pretty fine line to be drawing here and one that I would think would be suspect if he's going to draw that fine a line with it. ' Course by the time you get it through . . . into the courts and through the rest of it, it would be two or three years anyway.

SENATOR JOHY SACKETT - Senator Hackney.

SENATOR GLEN HACKNEY - Mr. Chairman, I sort of thought that one of the reasons for having this bill was to get away from Mr.

Smith, the state internal auditor, going ahead with this 41 pages of regulations. But there's nothing to prevent him from going ahead with that anyway. I'd like to hear some kind of testimony from Mr. Smith to the effect that he doesn't intend to do that if this legislation passes.

SENATOR JALMAF KERTTULA - Mr. Chairman.

SENATOR JOHN SACKETT - Senator Kerttula.

SENATOR JALMAR KERTTULA - Most of us understand the flow-through to any other public entity . . . the non-profit proliferation and I realize that somebody else's statesmanship might be my pork or vice versa, but we certainly want some accounting techniques and some credibility and some accountability of the public non-profits because they really, really can abuse the system badly. May as well predict that, even though I feel stronger that the legislative group has an obligation/opportunity to see to it that their appropriations get where they're supposed to be, and nobody in the middle starts screwing around with them either. The non-profit accountability must be there. It's just got to be there.

SENATOR JOHN SACKETT - Smith is now Deputy Commissioner of Administration; he's no longer state internal auditor. They don't have one right now.

SENATOR BILL RAY - Mr. Chairman, perhaps on Line 16 if we eliminate the word recipient and put in there non-profit corporation, that might . . . that might eliminate the municipalities from the . . . from the trouble and would just put the burden on the

non-profit corporation itself.

SENATOR JOHN SACKETT (Reading amended bill language) - So, when the department where the appropriation is made receives the agreement executed by the non-profit corporation . . .

SENATOR BILL RAY - By, you probably . . . a non-profit corporation. If that's what the intent is. That would eliminate the municipalities going through the audit division and would eliminate them from the . . . in other words it would put them back into almost the same as the original House measure, and it would be providing a little bit different for the . . . for the non-profit corporations. In fact, they would have to do . . . they would be the ones that would have to do these things and not the municipality itself.

SENATOR JALMAR KERTTULA - That sounds reasonable.

SENATOR JOHN SACKETT - Then still have your wording 'upon completion of the project' under . . .

SENATOR BILL RAY - Yah, I would think that there would be some method, that before the final payment is made, that an audit should be performed of some type to see that these people have done what they have. I can remember in the past, and I don't know if it's gotten any better, but because of the workload on the audit committee, sometimes we would go into audits and the people who would not function, so to speak, were long gone-- three or four years gone. And there were no culprit. The only victim was the state itself. As far as the money was concerned, you could never put a handle on anybody. The individuals themselves, there was no way possible you could get a hold of them.

SENATOR GLEN HACKNEY - Mr. Chairman.

SENATOR JOHN SACKETT - Senator Hackney.

SENATOR GLEN HACKNEY - I certainly don't have any qualms about providing for some kind of audit trail, but I don't want that damn department to come in there and have a fifteen page form that somebody who gets a \$30,000 grant is going to have to fill out in quintuplicate in order to prove how they spent the money.

SENATOR JALMAR KERTTULA - Mr. Chairman, why don't we bring up the Commissioner of Administration, its his responsibility, and tell him just that. Say, we want logic, and we want accountability, but we don't want burdensome bureaucracy. What will you do to respond to this? I think he's the man where the buck's got to stop in this particular case. Bring him up here and tell him that--and ask him.

SENATOR JOHN SACKETT - Mr. Hogan.

JAY HOGAN - Mr. Chairman, part of the thinking behind creating a special account to go through the Department of Administration is somewhat root in history. When the grants used to go through without great difficulty, they were formally appropriated to the Department of Administration--paid by the Commissioner. If they're allowed to go through the various departments, as this committee substitute would propose, then you increase the odds, I think, of having the various departments gets their hooks into the appropriation. You may want to consider funneling all of these items through the Department of Administration, and

then there is only one agency with which the legislature would have to deal if the grants were going out slowly, rather than all eighteen or nineteen agencies.

SENATOR JOHN SACKETT - Do you want the commissioner up here?

SENATOR JALMAR KERTTULA - I'd sure like to see him. I think we could express our interest in this subject to him pretty thoroughly, and he could also probably design a commitment of a minimum of accounting but a necessary minimum. I had the same experience is the reason that I'm both ways on the subject. When you put a small grant in to do a specific thing and four years later it still isn't done and they've got it all tangled up in the bureaucracy, and I can point to them so I know, then all of a sudden you have a holocaust as a result of perhaps not completing the project; you get pretty mad about it.

SENATOR JOHN SACKETT - Okay, for the next two days, if Resources doesn't meet from 1:30 p.m. to 3:00 p.m. do you want to meet here in addition from 8:30 a.m. to 10:00 a.m.?

UNIDENTIFIED SPEAKER - You mean to 3:00 o'clock?

SENATOR JOHN SACKETT - Yah, 1:30 p.m. to 3:00 p.m.

SENATOR BILL RAY - I can't. I have Judiciary tomorrow at 1:30 p.m.

SENATOR JOHN SACKETT - Skip it.

SENATOR RAY - Ha, ha, ha, I'd like to but we're putting on SB 239 tomorrow.

SENATOR JOHN SACKETT - What is it?

SENATOR BILL RAY - The new codification. What are we working on here?

SENATOR JOHN SACKETT - House Bill 60.

SENATOR JALMAR KERTTULA - Why don't we come in a little later tomorrow, like at 2:00 or 2:15 p.m. and maybe Bill could get that first on the Judiciary calendar--accommodate each other.

SENATOR JOHN SACKETT - Yah, we could do it later. But you could make it today though?

SENATOR BILL RAY - Oh, yes.

SENATOR JOHN SACKETT - Yah, we have the permanent fund at 1:30, but I'll try and up it to 1:00 p.m.

SENATOR BILL RAY - Okay.

SENATOR JOHN SACKETT - And then maybe 2:00 or 2:15 tomorrow. Okay, in the meantime, we'll have the commissioner come back on this one.

SENATOR GEORGE HOHMAN - Mr. Chairman.

SENATOR JOHN SACKETT - Senator Hohman.

SENATOR GEORGE HOHMAN - Were there attorney general's opinions on this?

JAY HOGAN - Mr. Chairman, on this bill?

SENATOR GEORGE HOHMAN - Yes, on this subject.

JAY HOGAN - No.

SENATOR JALMAR KERTTULA - He testified on it.

JAY HOGAN - Probably . . .

SENATOR JOHN SACKETT - Yah his letter would be . . .

JAY HOGAN - Yah, his letter of last year is probably the best and closest thing.

SENATOR JOHN SACKETT - Would you get a copy for every member?

JAY HOGAN - I think, Mr. Chairman, that you probably already have these at your desk. It's this pink section--the first pink section--of last year's capital budget and summary.

SENATOR GEORGE HOHMAN - Where are those at?

SENATOR BILL SUMNER - That's probably an opinion only operative for last year.

JAY HOGAN - It begins on page 47, the actual . . . well the letter.

SENATOR GEORGE HOHMAN - I don't have the document.

JAY HOGAN - Oh.

SENATOR JOHN SACKETT - Xerox it off and put it in each one's packet.

JAY HOGAN - All right.

SENATOR GEORGE HOHMAN - It seems to me . . . is there other material that we should have in our file?

GARREY PESKA - Mr. Chairman, we will invite Commissioner of Administration over, and his deputy, Mr. Smith, over without having copies of all of the regulations that have been drafted--the proposed regulations that have been drafted for this year--as well as an opinion from Billy Berrier regarding the lack of the internal auditor's authority to draft those regulations. I'll have that in all your files.

SENATOR GEORGE HOHMAN - Mr. Chairman, some appropriations were never spent. Where does this (inaudible). Would you give us an example.

JAY HOGAN - Mr. Chairman, I can get the list in just a moment. They're not here. I'll go get them.

SENATOR GEORGE HOHMAN - What is the nature of those projects. Why were they not spent? Can you categorize them into certain areas?

JAY HOGAN - Mr. Chairman, there were a variety of reasons.

SENATOR GEORGE HOHMAN - I'll look at those.

JAY HOGAN - Yah, there are several hundred.

SENATOR BILL RAY - He picked them as he wanted them. He allowed some of them and disallowed others.

JAY HOGAN - When I last checked, Mr. Chairman, at the end of January, there were several hundred appropriations from last year's budget from which nothing had been spent.

SENATOR GEORGE HOHMAN - I wonder if we couldn't have that material tomorrow (inaudible).

JAY HOGAN - Fine.

SENATOR JOHN SACKETT - This afternoon? Could you have it this afternoon?

JAY HOGAN - Yes, I have . . . I could get copies right now, if you'd like them.

SENATOR BILL RAY - Copy (inaudible) also Mr. Chairman by putting in there that the Governor does not necessarily have to follow this, but that it doesn't mean that he won't.

SENATOR JOHN SACKETT - I know it.

SENATOR BILL RAY - Remember all that?

SENATOR JOHN SACKETT - Yes. Okay, we'll start that at 1:30 p.m. today.

RECESS

AFTER RECESS 1:45 p.m.

SENATOR JOHN SACKETT - The first item of business we have is continuation of HB 578 am, and we have a couple of different possibilities, including what came over from the House. Okay, we have Mr. Smith and, Rod, why don't both of you come up here. There was a question this morning regarding the administration of grants that had gone out--that had been appropriated to various communities. And the number of regulations that had been proposed on that. In addition to that there is . . . I guess the question of constitutionality which you, Mr. Pegues, had written to us about last year in a letter that was dated June 1, 1979, questioned the validity of some of the appropriations. And in trying to resolve that issue, we've got before us a number of different alternatives or committee substitutes. And first of all, from you Mr. Pegues, we need to know what, based on your opinion in the letter here, what the position is at the present time in the administration.

SENATOR BILL RAY - What are we on now?

SENATOR JOHN SACKETT - House Bill 578. Go ahead.

ROD PEGUES - Mr. Chairman, I've had an opportunity to read over the committee substitute for HB 578 am, by the finance committee in the House, and I would say that, on its face, it is perfectly valid. The other committee working draft I've just had an opportunity to glance through, and I am not really able to comment on it, although the first part, grant to municipalities, appears to be quite permissible, and I don't see anything wrong with it.

There are some . . . the problem with the committee substitute for HB 578 am, would come in the municipality's administration of the grant, and how the grant was made.

SENATOR BILL RAY (in the momentary absence of Chairman Sackett) - While he's gone, can I ask you a question while I'm here?

ROD PEGUES - Surely.

SENATOR BILL RAY - On the grants to non-profit corporations, on the second page, line 9--this is on the audit--is there some way that, just on public non-profit corporations, we could have an audit before the finish of the . . . before the final thing is tuned out--before you make the final sign-off of the whole thing?

SENATOR JALMAR KERTTULA - If you had 10% withheld . . .

DICK SMITH - I'll go ahead and answer that. It's quite permissible. You could made an examination . . .

SENATOR BILL RAY - I think that would satisfy a lot of the people better than this does, because two or three years later, by the time you get around to making an audit or something, everybody's gone, the money is gone, and the people are gone. And you don't have any control over them.

DICK SMITH - Yah , generally you're auditing the procedures.

SENATOR GEORGE HOHMAN (Temporarily acting as Chairman) - Senator Hackney.

SENATOR GLEN HACKNEY - What kind of audit are we talking about?
A CPA?

DICK SMITH - I would assume you would talk about an ex . . .

SENATOR GLEN HACKNEY - No way. Mr. Chairman, if we start calling for CPA audits on every one of these stinking little appropriations that we put out, we're going to queer the whole thing; if that's their intention, they should say so. You get a CPA firm involved in this thing and you're going to have \$5,000 to audit \$10,000 worth of grants. And, by God, we're not going to have that.

DICK SMITH - Sometimes in the past what's occurred, you'd made a distinction on the amount of the grant. And I can think of on . . . for example pupil transportation, if the grant exceeded \$50,000, the school district could provide for an external examination by a certified public accountant. For those that fell less than that, it was subject to examination by the state.

SENATOR GLEN HACKNEY - Mr. Chairman, I'm not concerned about the big grants. I'm not concerned about the school districts because they retain audit firms, and that's really not a problem. The ones I'm concerned about are the small grants that we're continually funding. And it's simple harassment if you're going to make them come in with a big, complicated audit.

DICK SMITH - You're absolutely right. That's an expensive examination.

SENATOR GLEN HACKNEY - Darn right.

DICK SMITH - I might add one other thing. In many instances, depending upon how you contract with a certified public accountant, you may get a fiscal examination, when according to the substitute here you're really talking about an examination that couples

two things: one, fiscal compliance and, another, compliance to the terms of the grant.

SENATOR GEORGE HOHMAN - Senator Ray.

SENATOR BILL RAY - The only problem I have, Glen, is that on a lot of these things, the people get these grants and use the money, and we're left with egg on our face because . . . there are some that are very good, but how about the ones that aren't? That's the whole thing.

SENATOR GLENN HACKNEY - Well, Mr. Chairman, it appears to me that the ones that present us with egg on our faces . . . in one case we're going to have audited egg and in the other case we're going to have unaudited egg, and I don't see that much difference, because we should do some checking before we even bring a project in here, it seems to me.

SENATOR BILL RAY - Yah, well it would seem that way, but I'm talking realities and not never, never land like we always do--those projects that go out of here with grants and you don't know what they are, and I don't know what they are.

SENATOR GEORGE HOHMAN - We're discussing the bill, the committee substitute.

SENATOR BILL SUMNER - Mr. Chairman, I'd be interested in determining what sort of cost would be involved. I tend to agree with Senator Hackney. It looks to me like the way its drafted there on line . . . it can allow . . . on request you can have that option to require or request an audit by the state. You have that option the way it's drafted there now.

DICK SMITH - Unfortunately, I just saw copies. When you use the phrase "on request," whose request is that? Is that . . .

SENATOR BILL SUMNER - It would seem to me it could be either.

DICK SMITH - I would hope so.

SENATOR BILL SUMNER - It could be a request of the Department or the state.

DICK SMITH - Typically we would find that if procedures have gone bad, if there is a question about the propriety of expenditure money, generally you would not make a request for an examination. But the state, of course, would want to request that examination, in fact make an examination.

SENATOR BILL SUMNER - I just hate to get into a position where we having generated a paperwork machine . . . I can understand wanting to guard against somebody running away with the project, but it seems to me that if you audit at the end of the project instead of an ongoing surveillance, that if they're going to run, they're going to run.

DICK SMITH - So long as there is an examination made, I would think at that point although the money and the terms of the grant might have been exhausted, at least you have the responsibility to be able to hold back from other funds that might be due the subdivision.

SENATOR BILL SUMNER - Well, that would be true in the case of municipalities, but not necessarily true in the case of the non-profit. I don't know. It looks to me like we're talking risk. And I don't see that those risks are significantly

diminished as a result of our looking at the end of it, and maybe saving 10%.

ROD PEGUES - Well, if I may point out, back in the 1950's the Eisenhower administration did away with the audit on the paper tax stamp that was placed on cigarette packages, and the losses went up 500%. When they reinstated the audit, the losses declined 500%. So, an audit seems to have a beneficial affect on the conduct of the program out there.

SENATOR BILL SUMNER - But what does it cost for the audit.

ROD PEGUES - Well, if you're doing sampling audits rather than . . . you wouldn't audit everything. If you're doing sampling audits, and a person knows he's liable to be audited, he'll do a better job of keeping track . . .

SENATOR BILL SUMNER - I (inaudible) the authority to audit. I thought you had that the way it's written now.

ROD PEGUES - I think it is.

SENATOR BILL SUMNER - I just don't want to see where there's a mandatory audit on each and every project. I don't think that's necessary. Do you think it's necessary?

SENATOR JALMAR KERTTULA - At least for small amounts.

SENATOR JOHN SACKETT - Like a \$30,000 or \$40,000 grant that we give to somebody--even \$20,000--something like that.

DICK SMITH - I would think in many conditions, possibly even on a small grant, you would want to make an examination. But, if you found that the procedures and the mechanisms were working properly under those conditions, then maybe the next time or the time after that you could rely upon those conditions.

SENATOR JOHN SACKETT - Okay, have we discussed what the procedures are? I think that's one of the key problems.

SENATOR BILL SUMNER - No we have not.

SENATOR JOHN SACKETT - Okay, you know the procedures that you set up by which they're going to first get the grant and then operate with, I think are one of the key elements that we've found from people coming back to us from municipalities saying that they haven't received the grant for a number of reasons-- those being primarily the forms that they have to fill out.

SENATOR BILL RAY - Well, the only problem I have, Mr. Chairman, and I know that it's probably in the minority because most of the grant recipients are capable of going ahead and administering the programs. But, one that I was responsible in getting the money for, I found out it was for alcoholism up in the Anchorage area, and come to find out, the guy who ran it paid his own retirement. He joined the teamsters retirement fund and had his own retirement out of the money and never kept any records-- didn't keep anything at all ever. And this was a pretty good sized grant by the time it was over. I think it was around \$150,000 to \$200,000 and nobody knows anything about it. The money is gone, and he's gone.

SENATOR JOHN SACKETT - Right. There has to be some mechanism by which we make sure things like that don't happen. On the other hand we should make it not so cumbersome, particularly to municipalities. Well (inaudible) the incident how they do with the senior citizens in Anchorage. They didn't have any

complaint over that until after . . .

SENATOR JALMAR KERTTULA - You delivered \$1,500 and cost \$63.5 (inaudible).

SENATOR JOHN SACKETT - Those are the type of things that shouldn't happen. I mean there should be safeguards of that type without being extremely cumbersome for people that are (inaudible). Go ahead, Mr. Smith, how do you respond to something like that?

DICK SMITH - I think one of the ways to respond, Mr. Chairman, members of the committee, is that in many instances the State of Alaska has not exercised uniform grant procedures to show compliance to all the grants, whether they be to a non-profit or to a political subdivision. I think we have been subject to a fair amount of criticism in the past, whether it be in an instance of a court case, or whether it be in instances of appeals to grant procedures. We attempted, not too long ago, to attempt to set up uniform grant procedures to govern all . . . I think so . . . that was aimed to govern everything that's not conditional upon any specific program right now.

SENATOR JOHN SACKETT - What's the wish of the committee?

SENATOR GLEN HACKNEY - Well, Mr. Chairman.

SENATOR JOHN SACKETT - Senator Hackney.

SENATOR GLENN HACKNEY - I want on the tape for record, some kind of assurance from these cats that if we do pass this bill out, we're not going to end up anyway with a bunch of regulations like this, which are going to harass the people

who are getting these grants in addition to what's called for in the bill. I have no objection to audits whatsoever on the larger grants. But, I'll be darned if I'm going to have people run through a whole bunch of hoops just because the administration wants to do it.

SENATOR BILL RAY - Mr. Chairman, maybe we could ask . . .

SENATOR JOHN SACKETT - I wonder if we could get an answer to that.

SENATOR BILL RAY - Subsection (b) on here, on both of these, does this start fresh, and are these regulations implemented now, and how does that work? Does this mean no additional regulations, or what? We've got a whole bunch of regulations that have been adopted already haven't you, Glen?

SENATOR GLEN HACKNEY - Mr. Chairman, I don't believe they're adopted as yet.

SENATOR BILL RAY - Are those adopted?

SENATOR JOHN SACKETT - No, not yet.

SENATOR GLEN HACKNEY - We're safe. We're okay on these. We don't want to see them crop up again.

SENATOR BILL RAY - Well, this says that they can't do anything.

SENATOR JOHN SACKETT - Do you care to respond?

ROD PEGUES - Well, what it, the, I mean you cannot execute a law without applying it all the time. So, what it means is just ad hoc application, but it means there will be no regulations on it. There'll be no written rules set down.

When someone walks through the door, each one will be handled on an ad hoc basis. There isn't much leeway for doing that anyway here. You know grants are contracts. The person who's the grant recipient is a contractor, and he's agreeing to do something for the grantor. So we're into an area of contracts, and it's a very complex area. There are all sorts of things that apply here that the bills don't address: the rules governing municipal contracting, either their own charters, if they're home rule municipalities, or state laws if they're not. I don't know how this coincides with those provisions. I don't know if where we're dealing with a situation, I brought along HB 60, where we give a grant to a city for a specific program--we have one here, \$32,000 to the City and Borough of Sitka for education of handicapped children from birth to age three. Sitka will become the subsequent grantor, and it will make a contract with somebody, the school district or somebody, for this program. Where we name the contractor, we raise all sorts of new questions. I don't know if Sitka or whoever, Bethel, can contract that way, or if they have to ask for bids. If they have to ask for bids and someone else is the low bidder, can they spend the money. I don't know. So, this is creating additional questions and problems. It's not solving everything.

SENATOR JOHN SACKETT - Senator Ray.

SENATOR BILL RAY - Then you get right into the problem that they aren't going to put it under regulations, but they're going to adopt it as administrative policy. And the policy that they adopt

(inaudible).

ROD PEGUES - Well, you know, a guy walks into your office and says, "How come I can't do this when it says in the law I can?" And you look at the law and you say, "Well, it doesn't say that to me." And he says, "Well, it says that to me." I mean, that's what we're talking about. And so what you do in the ordinary case is either rewrite the law, or you write a regulation to say what it means. And then at all times it means what you said. But, if you don't do that, then it's going to mean whatever the next guy who reads it says it means.

SENATOR SUMNER - Mr. Chairman

SENATOR JOHN SACKETT - Senator Sumner.

SENATOR BILL SUMNER - How in the hell is it that regulation writers wind up in a position of (inaudible) and we can't do it in terms of the law. That's what raises hell with me.

ROD PEGUES - Obviously, the legislature has the ultimate authority to do that. It's when nothing is done, what happens is that the law gets written, and then the law has to be applied. And, when you go to apply the law, two different people read it, and they say it means two different things.

SENATOR BILL SUMNER - Same with regulations.

ROD PEGUES - Sure. That's what happens with regulations. Then they have to rewrite the regulation. But, once you start interpreting the law, in order to make sure it's interpreted the same way for everybody, you adopt an interpretive regulation. And that's what the APA does, it requires the administrative

agency to adopt the regulations so you can't interpret it two ways.

SENATOR BILL SUMNER - What if we tell you to make the grant and then you can fight while the grant is going on or you can interpret while the grant is going on. The problem that we don't want, or at least that I don't want, is to set there, and I thought out of your previous conversation that without regulations drafted by you to interpret it the way you wanted it, to draft it, or the department, that you simply say, "Well, we don't know what to do. We just have to look at this on an ad hoc basis and come back the first of next year and maybe we'll get this money out to you."

ROD PEGUES - Know, know, that's not what I meant. I just simply meant that if that won't happen . . . that there will be no written regulation that applies any of this law, it will be applied on an ad hoc basis. But, these particular provisions are so narrow about the only place it will change is the condition explaining the grant for the purposes specified in the appropriation.

SENATOR BILL SUMNER - If someone comes in after he's been given a grant, will you issue the money? With this law?

SENATOR JOHN SACKETT - If we're specific as to who the grant is supposed to go to?

ROD PEGUES - Obviously with the municipalities, yes. There's no problem there, as I said. The grants to non-profit corporations, create a different problem. And, it's a problem of, again, it is

based on contracts. If we make a contract with somebody out there to do something, you know, we're getting him to perform something for the government. If he's performing it for an executive agency, he's doing something for them, they are required by law to come up with . . . to ask for solicitation for proposals or bids, whichever, and then to contract accordingly. If we name the grantee, we short-circuit that requirement; it probably can't be done that way.

SENATOR JOHN SACKETT - Well, can you say notwithstanding that portion of the law?

ROD PEGUES - I'm not sure you can because that brings in a second problem, and that is that when the legislature is contracting with someone, it does it in accordance with its procedures in order to further some legislative function: a contract for study by (inaudible) to do research on something you're going to enact legislation about or consider legislation about. If you're contracting with Meals on Wheels to provide food, that's not carrying on a legislative function. That's providing a welfare program, and that's what the executive is supposed to do. So, these types of grants may not be valid exceptions. I just don't know because we haven't got any case law on it. The closest we've got is a case in which the legislature contracted with an attorney to provide certain services that had nothing to do with their lawmaking function, and the court said that was invalid.

SENATOR JOHN SACKETT - Okay, to what degree then is the legislature restricted in its power of appropriation?

ROD PEGUES - Well, public purpose and whatever the constitutional limitations are. And on this one, this grants, I don't know. You know, if you go through the municipality, and the municipality follows the law or its charter, that on its face looks perfectly valid. If the legislature does it directly to the non-profit, that raises these questions of what function is being performed by the grantee. Is he carrying out a social services program, then perhaps the legislature shouldn't be contracting with him because that's not incidental to the lawmaking function.

SENATOR BILL RAY - Well, Mr. Chairman, that's the argument that I brought up this morning. I think you're drawing a pretty fine line when you're talking about municipalities being different. Why? Who makes municipalities?

ROD PEGUES - Different?

SENATOR BILL RAY - The government doesn't make municipalities. The people make municipalities by their vote.

ROD PEGUES - Well, they're political subdivisions of the State of Alaska, and they're vested with governmental powers and local government powers. And they're governed either by their charters or by the municipal code in their activities. If the legislature makes money available to them for a particular function, the legislature can delegate the functions that way--to local governments. done all over the country.

BILL RAY - Then why can't the legislature delegate moneys -profit corporation that meets the requirements of law.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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SENATOR BILL RAY - Well, Mr. Chairman, that's the argument that I brought up this morning. I think you're drawing a pretty fine line when you're talking about municipalities being different. Why? Who makes municipalities?

ROD PEGUES - Different?

SENATOR BILL RAY - The government doesn't make municipalities. The people make municipalities by their vote.

ROD PEGUES - Well, they're political subdivisions of the State of Alaska, and they're vested with governmental powers and local government powers. And they're governed either by their charters or by the municipal code in their activities. If the legislature makes money available to them for a particular function, the legislature can delegate the functions that way--to local governments. It's done all over the country.

SENATOR BILL RAY - Then why can't the legislature delegate moneys to any non-profit corporation that meets the requirements of law.

ROD PEGUES - Well, it is this contracting to do something . . . In effect, the legislature is the grantor--is the contracting party contracting with the grantee. But, the grantee is not going to be doing something in aid of the legislative function. It's going to be conducting another program for the government. And that's what raises the question. And I can see it. I don't have any big group of cases on this; this is a new area.

SENATOR BILL RAY - Pretty narrow ground there.

ROD PEGUES - This is the problem that was raised last year.

SENATOR BILL SUMNER - Senator Ray brought up this morning though, something that sounds interesting to me, is that we didn't have this raised at the time we were funding non-profit corporations in terms of alcoholism problems, and a whole broad spectrum of similar sort of projects and programs. Where do we draw the line in that regard?

ROD PEGUES- Senator, as I say, this is a developing area. It's new. We're just opening the book on it, and I really don't know. I can just tell you that we do have these problems to consider.

SENATOR BILL SUMNER - All right. Second then, if we continue to grant in this regard, and you strike one of them down, you have to strike them all down. Is that true or not true?

ROD PEGUES - No, I don't know that anyone is going to strike any of this down. I don't think any were actually struck down. We did tell the agencies to follow the law. At this stage of the game we're . . .

SENATOR BILL SUMNER - Selectively (inaudible).

ROD PEGUES - No, no, no, we're fairly well off now because we're dealing with . . . even if you name the grantee, it's a unique institution. There is nothing else like it. No one else could provide the service. So if the agency asks for proposals, it will get a suitable proposal only from that one anyway, so it works out all right. But, of course, since the genius of our country is that once the government or anybody is paying for some goods or services, other people will be prepared to provide them for a lesser cost, we're going to have competitors--they're going to spring up. And that's when the problem will arise, and that's when we'll probably find legal action being brought when someone says, "Hey, I can do that better and cheaper--I'm suing."

SENATOR BILL SUMNER - Okay, but so far as the administration is concerned, which is at least the problem that I'm having in getting some of these grants out--you're treating some differently than others. Can we get any sort of commitment to treat them all alike. Either we don't fund any of them to non-profit or we fund them all alike?

ROD PEGUES - There shouldn't be any different treatment, Senator. If there has been, I don't know why there has been. Everybody is supposed to be following the same general guidelines. They're supposed to go ahead and find a way to carry this out.

SENATOR BILL SUMNER - We were shown several items this morning . . . I don't know if we still have it or not, that were not funded, presumably for some of these . . . for this reason.

ROD PEGUES - The only ones I know of that I heard about was where somebody couldn't be found--the Department of Natural Resources couldn't find a couple of the grantees. I'm really not that familiar with each one, but I recall going through this at the first of the year with the House committee, and there were none that were willfully withheld. Everybody was being taken care of if it was at all possible.

SENATOR BILL SUMNER - Well I think what I'm looking for is some consistent and uniform treatment of the people who get grants. If we're going to say, "Hey, this is an area that we're not going to do anymore," then we need to treat them all alike, and find some way to accommodate them. If we're not, then I'd like to see (inaudible).

ROD PEGUES - Well, we did do . . . as far as I know, it was done on a uniform, consistent basis. And all of the agencies were supposed to have followed those guidelines last year. I just don't know who was doing it differently.

SENATOR JOHN SACKETT - Senator Ray.

SENATOR BILL RAY - Mr. Chairman, lets get back to basics and forget all this nonsense of trying to figure out what is meant by something else. Why don't we just write this just exactly the way we want, and if we want to make grants to non-profit corporations, we only have them do these things:

1. Spend the grant only for the purposes specified in the appropriation.
2. Allow on request of the department an audit by the state of the use of the grant.
3. Assure that.

Now, if that's the way we want to handle these, we're going to have to tighten up (b) here because, whether purposely or otherwise, they've left a loophole here big enough to drive a truck . . . when they say they shall not adopt regulations, which means they have to go through the Administrative Procedures Act, etc. We understand that. But, regulations sometimes can be circumvented, or the use of regulations can be circumvented by just the little words "administrative policy, office administration" . . .

SENATOR BILL SUMNER - Ad hoc.

SENATOR BILL RAY - Yah. So, if these are the only three things that we want contingent upon making a grant, then we'd better put down there that they shall not adopt regulations or administrative policy to implement them. And that means that you've got three things to do. If you're going to do it, do it. And then you don't have anything to worry about, right?

SENATOR JALMAR KERTTULA - I have a question, Mr. Chairman.

SENATOR JOHN SACKETT - Senator Kerttula.

SENATOR BILL RAY - If you don't understand what I'm saying, let's forget it.

SENATOR JALMAR KERTTULA - Doesn't enlighten us except that . . . what happens if you put \$20,000 in a non-profit alcoholism program in some community and the money is completely misused-- nothing that the program presented by the legislature . . . nothing takes place except the money is just misused, maybe a taxi cab is bought with it or something. And it's supposed to haul the

drunks back and forth to what ever facility, or anything.
What do we have now in the mechanism of law that allows us
to prosecute for misuse?

ROD PEGUES - Well, if there was no intent to defraud at the
outset, and you didn't convert it to your own use, the money,
but rather just came up with the program of using the taxi
cab to haul people back and forth, I don't know. What would
happen would depend upon what a court decided the contract was.
The problem of not having, in other words, number one subsection
(1) . . .

SENATOR JALMAR KERTTULA - Would you prosecute a case like that?

ROD PEGUES - Oh, yes. You'd have to have criminal intent, and
you're possibly dealing with people who aren't too bright, but
they didn't intend to steal the money. They thought this would
take care of their problem.

SENATOR BILL RAY - Subsection (3) takes care of that. Section
3 . . . if they don't use it for the purposes.

ROD PEGUES - Well, but it would be.

SENATOR BILL RAY - Don't they have a statute. Don't they have
a statute "misuse of fund's money," don't they have something
like that?

ROD PEGUES - The point is, if under (1) the statement is that
we will spend this grant to solve the problem of getting
drunks off the streets, buying a taxi cab and picking up
drunks and taking them off the streets would solve that
problem. So, they wouldn't be in breach of contract; they

would have done what they were required to do.

SENATOR JALMAR KERTTULA - No, but suppose it was really a sensitive breach of contract, they misused the funds, maybe not through knowledge . . .

ROD PEGUES - That's the point, you have to write a contract, or have a court imply a contract, say "Here's the minimum you were required to do," which of course you don't like to do . . . it'll be very minimum if the court does it. So it would be up to the Department of Administration in one, I mean, they're going to need a couple of new positions to be grants administrators to write these--what you're going to do with the money. Because that's the only way you can really enforce these things. The outright crook you could prosecute.

SENATOR JALMAR KERTTULA - Mr. Chairman, there's one thing that occurs to me and that is the following, and it's been a long time experience of mine that if people you make grants to, and you had the political leadership . . . taken the leadership in making them, and they misuse them, it occurs to your negative satisfaction and, you know you really get blemished by that.

SENATOR BILL RAY - It makes you look like a jackass!

SENATOR JALMAR KERTTULA - Yah, and you're pretty soon watching that sort of thing. You just don't give them to just anybody. You make certain there's some public entity. I've got a case in example: Sutton community hall, which took all summer. Just \$10,000. We had a fire code problem. They have no local tax

base, but they pay a lot of taxes in the borough. Couldn't make anything stick, so we put \$10,000 in. Like a lot of these, those people have been in business for 35 years, since the coal mines, and they're honest as the day is long. Every dime is going to be spent the way it's supposed to be. They're now a legal entity, I guess. They're sort of a non-profit, like a library association or something. We make a good point when you say you don't want them to go through a \$5,000 audit, on the other hand, you'd kind of like to know they did it right. Eventually we used the borough, a second class borough, which probably has no real legal powers either, to pull through the money.

ROD PEGUES - Well you see Sutton was easy because Sutton was building a physical structure. Department of Natural Resources, I think, administered the money.

SENATOR JALMAR KERTTULA - Wasn't easy to get it going.

ROD PEGUES - They had trouble finding a community club to take care of it, but they did find one. It was a mountaineering club or something like that. And, they were willing to take the money and be responsible for building the building. And all you had to do was drive by one day and see the building.

SENATOR JALMAR KERTTULA - Well, yes, but that isn't the specific. The building is there, it just needed some firewalls.

ROD PEGUES - Yah, put in there, do the work. So, that's easy to check. Other things are much more difficult to check.

DICK SMITH - Although I understand what you say, that presumably the regulations that were proposed are not as clear and as simplified as you'd like them, basically, the intent of those was to indicate that a number of problems that have occurred in the past were because rules and regulations did not exist. Now the intent, and maybe it wasn't satisfied by drafting up those rules and regulations there, were to simplify, I understand you have a problem--those weren't adopted as far as I know, but were to simplify that monitoring process between the grantee and the state. And the reason for having a simplified set of procedures (inaudible) limit the amount of work to the grantee, but at the same time be able to provide the state with a way to monitor the activity of that grant progressively through its expenditure, and say "If something is going wrong, let us be able to speak up now." It was a tool for monitoring. As they say, they've become much too complex, but they were not intended to be that. It was to be a reporting system between the grantee and the grantor for us to monitor.

SENATOR GLEN HACKNEY - Mr. Chairman, we hear that constantly. And, I'd like to address that comment to Mr. Pegues. It appears to me that the attorney general's office is terribly protective of the regulation writers. You don't want anybody to get at them in any way.

ROD PEGUES - No. I wish they'd all be put on a desert island. We have to review those things. It's terrible. I'm just talking about the practical problem of administering the law. I mean, I'd rather do it with forms. It's so much easier to

do it with forms. But in order to adopt a form, you have to adopt a regulation. I mean you could give these people-- especially small grant people--a form to send in periodically that they would certify at the bottom what they spent the money for. Just a simple recitation, and they'd send it in two, three, four times a year depending upon the size of the grant and the nature of the project. And the grants administrator decides at the outset--just gives them a book of forms and says "Here, we expect to hear from you." Then if the guy takes the money and runs to Venezuela after certifying that he spent it for a public purpose, you can at least prosecute him. But we can't do that.

SENATOR BILL SUMNER - Why not?

ROD PEGUES - Well, because you have to adopt a regulation.

SENATOR BILL SUMNER - Mr. Chairman.

SENATOR JOHN SACKETT - Senator Sumner, then Senator Ray.

SENATOR BILL SUMNER - Somewhere between . . . you know if that was the attitude of the department, you wouldn't see 47 pages of an item here, you'd have seen a form and we wouldn't be holding this discussion.

ROD PEGUES - They're trying to cover everything; they're trying to cover all the grants and packages for the whole thing. I'm just talking about this one aspect of it--checking on progress.

SENATOR BILL SUMNER - I understand, but then I wouldn't want to see a form for every \$10 increment of a project. Why couldn't that be done in terms of the form, if you just explain very

simply, very straightforward and be done with it.

ROD PEGUES - It could be done.

SENATOR JOHN SACKETT - Got a good suggestion here. Why don't you draft a one-page form of what is required, and we'll incorporate that as a part of the legislation. And we've done that in the past, before, with municipal revenue sharing where we incorporated the form that was supposed to be used.

ROD PEGUES - Okay. On these grants, I wonder if we could go back to this problem. . .

SENATOR JOHN SACKETT - Can you do that?

ROD PEGUES - Yah, I think we can. I think we can. Community and Regional Affairs has some of those things too, and I think we can.

SENATOR BILL RAY - With the proviso, Mr. Chairman, that when they get this form, that we should be able to look at that form, because they might put stuff in that form that nobody could comply with.

SENATOR JOHN SACKETT - Oh yah, no, it would be part of the law.

ROD PEGUES - No, we'll bring it back here.

SENATOR BILL RAY - All right, but when you get down to subsection (b) here again, you better add the words "administrative policy," or you're going to have a . . . the same old bureaucracy again.

SENATOR JOHN SACKETT - Yah. Can you do that?

ROD PEGUES - Yes.

SENATOR JOHN SACKETT - Form for both municipalities and non-profits. Very good.

SENATOR BILL RAY - And make the necessary change about administrative . . . the only thing that we require is the things that are on that form, and then all the rest of it we aren't interested in.

SENATOR BILL SUMNER - (inaudible) to that amendment?

SENATOR JOHN SACKETT - Go ahead.

SENATOR BILL SUMNER - . . . or any other restrictive procedures . . . (inaudible) I don't care what you call it. I know you guys (inaudible).

(Laughter)

ROD PEGUES - On the other question about what, what eventually . . . be ruled about the direct grants for carrying out governmental programs, or programs by contracts, it probably would help get a favorable ruling if the method of application for these grants were standardized by the legislature. If people would apply on a form that would explain where they're coming from, what they intend to do, how much money they need for this project. It would probably help if that were included in the budget process. In other words, write this in (END OF TAPE #33).

(BEGIN TAPE # 34)

SENATOR BILL RAY - . . . 37 to see . . . and also the allowable duties of the commissioner there is to make regulations consistent with and bla, bla, bla. Be sure we cover that so that they don't . . . so that we aren't just covering the Administrative Procedures Act, the fiscal procedures act, and the executive budget act, and leaving under the grant act all the right and title and will make regulations or we'll have them back with us. You know what I'm saying. Make it air tight.

SENATOR JOHN SACKETT - How does that sound?

ROD PEGUES - Nothing's air tight. (Laughter) But, yes, I know what you want here and I don't see . . . that doesn't present a real problem. But I mean we have to figure out some simple but effective way of managing the program. I mean the use of grants as a functional matter, obviously, brings a lot of flexibility to government, and should be encouraged.

SENATOR JOHN SACKETT - Okay. Thank you very much. You'll work on that and have it to us by tomorrow?

ROD PEGUES - If I can find . . . I want to look at Community and Regional Affairs, and I don't know if anybody is down there today.

SENATOR JOHN SACKETT - Oh, that's right you have a holiday today. Well, we'll be meeting tomorrow at about 2:15.

ROD PEGUES - I think we can have something here, at least enough for the committee to look at and say that this is the type of thing . . .

SENATOR JOHN SACKETT - A work draft?

ROD PEGUES - Yes.

SENATOR BILL RAY - If we could just call Mr. Pegues' attention . . . 'cause I have the feeling that he wrote the majority of this letter that was sent to the President of the Senate and Speaker of the House in reference to the budget. And in there on page 2, he talks about the use of the appropriations bill for pass-through grants where a grants program has not been established by law creates both legal and administrative problems because of the absence of standards for determining recipients

and amounts. Could you establish us those standards, and we'll provide the amounts.

ROD PEGUES - (inaudible due to overvoices) . . . that's in my own mind the solution I came up with as the way to do it. You either have to have a program with standards--that is a statute which provides . . .

SENATOR BILL RAY - You wrote this whole thing.

ROD PEGUES - Oh, I probably had a little to do with it.

SENATOR BILL RAY - You wrote it all, I remember discussing it with you (laughter). Correct the problems that you've helped us with.

SENATOR KERTTULA - Rod, can a second class borough that doesn't have certain rights, only those voted in beyond a couple allotted them under the law (inaudible), can they do some of the things? Do they have the rights to handle funds passed through and so on (inaudible) (overvoices).

SENATOR BILL SUMNER - I think he's got the answer. One last sentence that says, "Thou shalt not do anything that the legislature wishes not done."

SENATOR JOHN SACKETT - Let's take a three-minute break, okay?

(END OF MEETING)

TRANSCRIPT
SENATE FINANCE COMMITTEE MEETING
MARCH 31, 1980
RELATING TO CSHB 578 am

SENATOR JOHN SACKETT - Without objection, we'll bring up before the committee House Bill 578 amended, for discussion. What the House has done is to add a special section calling it a municipal grant, and what they've done in House Bill 60 is to appropriate funds into that grant account, primarily because the attorney general has stated there may be problems. Garrey, can you explain to the committee in more detail what the problems were last year.

GARREY PESKA - Mr. Chairman, at the end of last session, the attorney general's office drafted a set of regulations that they sent to the operating departments telling them, among other things, that they couldn't make direct grants to non-profit organizations, and they alluded to the possibility of also having problems with municipalities in cases where there were other organizations in the area that might, by competitive bidding, be able to provide the services that the direct grant was intended for. The operating departments came to the Budget and Audit Committee during the interim and said "We have this problem. We want to make the direct grant payments, but the Department of Law is telling us that we need more accountability; we need to have some regulations to follow." So the minimum

regulations that were set last year, with the approval of the Budget and Audit Committee, was that the grant recipient had to agree to spend the money for the purpose for which the appropriation is made. They had to agree to make their books available for audit if the state chose to do such audits. And they had to agree to provide an accounting to the state at the end of the project's completion. After that, most of the grants, at least last year's, were paid. I understand there are still a few grants in certain Senator's districts that are having problems. However, the state internal auditor has prepared about a 40 page set of regulations, including such determinations as what are direct costs, what are indirect costs that are going to be allocated to the projects for which the grants are being made. There will be on-site inspections made by the operating departments to determine if the project is in accordance with various public purposes. And it's anticipated that money for administration of those grants, of course, would come off the top of the appropriation. So, the House has taken this action, creating the municipal grant account, and the language is written in such a way to direct the operating departments to just simply make the payment period. The House's approach does not address the non-profit corporations. There is a draft committee substitute in the committee members' files for your consideration if you would like to include the non-profit corporations.

SENATOR JALMAR KERTTULA - Mr. Chairman, I have one question.

SENATOR JOHN SACKETT - Senator Kerttula.

SENATOR JALMAR KERTTULA - I had some small problem, it was a big problem for me, on the flow-through grants from the municipality to the people intended--a bunch of small fire districts and so on throughout our district, road districts and so on. And there can be a tinkering at the municipal level with these grants unless there's an (inaudible) at that. And the legislature has a specific grant for flow-through--that's exactly what. . . it's just a bookkeeping flow-through. Are we protected in this in any way on that. You understand I want good bookkeeping, accounting, all those things. No misuse.

GARREY PESKA - In the case of the House Bill there is no accounting requirement. The House Bill simply says "make the payment to the municipality." The committee substitute includes some language for some minimum accountability requirements.

SENATOR BILL SUMNER - Mr. Chairman.

SENATOR JOHN SACKETT - Senator Sumner.

SENATOR BILL SUMNER - Have we checked to see that this is a legal, constitutional way or vehicle. Do we have this option?

GARREY PESKA - Mr. Chairman, yes we do. Billy Berrier and I prepared the proposed committee substitute draft.

SENATOR BILL SUMNER - Okay. We could require in this that they maintain audit capabilities, audit trails, or . . . that would be equally as responsible as from a municipality, let's say, as it would be from the state. Okay, thank you.

SENATOR BILL RAY - Mr. Chairman.

SENATOR JOHN SACKETT - Senator Ray.

SENATOR BILL RAY - That's the only part that I . . . on Line 18,

Subsection (2) allow on request (inaudible) I can understand that, but a lot of times by the . . . when they get around to looking at something, you'll find that the people who are connected with the grant have long since left the state. Perhaps this is an idea . . . we might put in language in there that upon completion of the grant or something that they ought to be made immediately so that we can make a determination whether they've spent the money properly or not.

SENATOR BILL SUMNER - The municipality would be . . . if it's from a municipality, they'd be held responsible.

SENATOR BILL RAY - Yah, we're putting in non-profit corporations up here also. That was the kicker.

SENATOR JOHN SACKETT - Okay, what was it again, Bill?

SENATOR BILL RAY - Line 18, Sub. (2).

SENATOR JOHN SACKETT - What were the words.

SENATOR BILL RAY - This just allows on request an audit by the state of the use they made of the grant. That's fine, but a lot of times when they find out, the people have already used the money and left the state and gone some other place. I think upon completion of the project or nearly the time when it's getting ready to whatever it is, maybe the audit should be made at that time. To see that they've spent the money properly and find out exactly what's happened. In your past experience you probably understand what I'm saying.

GARREY PESKA - Mr. Chairman, yes, I think I do. Senator Ray you are suggesting that you would require an audit before the final payout on all grants.

SENATOR BILL RAY - Right.

SENATOR BILL SUMNER - Mr. Chairman.

SENATOR JOHN SACKETT - Senator Sumner.

SENATOR BILL SUMNER - Can we limit that to non-profit organizations? Otherwise they still hold up the damn money in the municipalities.

SENATOR BILL RAY - Yes.

SENATOR JALMAR KERTTULA - Mr. Chairman.

SENATOR JOHN SACKETT - Senator Kerttula.

SENATOR JALMAR KERTTULA - I wonder if maybe this isn't, maybe we don't have the time either, but I wonder if we shouldn't have a quick capsule of why the Administration devised a 40-page group of regulations. Maybe there are some tremendous problems that three or four lines of law would solve . . . there are 40 beyond this (inaudible) but maybe there's some good reason for devised . . . anticipating some problems that we were trying to overcome and in their bureaucratic way wrote 40 pages of whatever it is. I'd sure like to hear from them why they had to because I bet there are some horror stories out there on some of these private non-profits and so on.

SENATOR JOHN SACKETT - Do you know? Jay do you want to testify on this?

JAY HOGAN - Do you have a committee substitute?

Mr. Chairman, Jay Hogan, Director of Legislative Finance. The bill as it came here, relating only to municipalities, grew out of essentially last year's problem. If you have these capital budget books, on May 5, the Governor wrote yourself

and Representative Meekins a letter stating that the budget was essentially veto-proof, if passed within his constraints-- overall dollar constraints. Then, after the legislature adjourned on June 1, when the Governor signed the General Appropriations Act, there were seven . . . well, ten pages of exceptions taken item by item through the budget. Many of these appropriations were never paid . . . haven't been paid to date. A lot of them were in the category of grants going through to municipalities and other purposes. So, in effect, although the budget last year was veto-proof, some of the appropriations simply were never spent. The original concept behind this bill . . . when the bill was originally introduced, it dealt with municipalities and non-profit corporations. Then in the committee substitute that was finally approved by the House, it was trimmed to deal only with municipalities to avoid the problem of trying to appropriate to non-profit corporations since they're not entities of the state and since they're really separate organizations. That's basically the thought behind the splitting into two parts.

SENATOR JOHN SACKETT - And what's your feeling about the committee substitute, Senate.

JAY HOGAN - Mr. Chairman, I think that, if you go on a scale of the most likely to the least likely, I would think that the legislature could pass, and have work, one that dealt with municipalities. I think the one that makes it more difficult is the bringing in of non-profit corporations. The reason I think that is that you have the . . . I'm not implying anything here . . . but you have the problem of creating something that

appears to be special legislation when you go and appropriate to a non-profit corporation. The reason for that is that under the various statutes that set up bidding requirements in the state, if you designate . . . if the legislature designates a specific non-profit corporation, it appears to override that general statute and select a vender, if you will. This is the problem the attorney general had with many of the grants last year to specific non-profit corporations. It had the effect of excluding other corporations--other bidders. And so they held that this was (1) special legislation and (2) that it was contrary to the general bidding requirements of the state.

Originally, when the act was drafted, as I said, it originally dealt with both. If you're interested perhaps you might want to separate the two--in other words, make a special one for municipalities . . . a grant program for municipalities and also one for non-profit corporations, and then the two could stand alone--two separate sections if there were a legal challenge. Right now, for instance, the way the committee substitute is written, everything is in one section, and if there were a legal problem with that section, it might nullify the entire section, whereas if they were split into two--one dealing with grants to municipalities and another dealing with grants to non-profit corporations--then the two sections could be argued . . . stood independently, and each one could be subject to its own tests and requirements.

SENATOR JOHN SACKETT - Senator Ray.

SENATOR BILL RAY - Are you implying, if I'm reading you right, that the attorney general says that appropriations to non-profit

corporations or special legislation such as appropriations to Alaska Crippled Children's Association . . .

SENATOR JALMAR KERTTULA - Alcoholism programs?

SENATOR BILL RAY - Alcoholism programs and all that . . . that these are unconstitutional? Is that the inference I'm gathering here?

JAY HOGAN - Mr. Chairman, what the attorney general has done in a nutshell . . . I think he gave the . . . gave his feelings away rather clearly when he testified on this bill on the House side. They did not stop these appropriations in prior years because there weren't very many of them. And he openly stated in the . . . before the committee that their concern was now, for instance last year's budget, that there were a large number of these types of appropriations. And so they started to throw the net out over them. They . . . the letter defines the problems that they found with each and every appropriation. And on the grants to non-profit corporations, from last year's budget bill, they continued to refer to the fact that it had the effect of excluding other bidders. This is the same thing as a piece of special legislation. It is an appropriation geared to a particular corporate entity that's not a municipality-- that's not a part of the state. So it does have some of that problem. They did not specify that in so many words, but I suspect it might be their next step. (Inaudible)

SENATOR JOHN SACKETT - Senator Ray.

SENATOR BILL RAY - Well, if you follow his logic, then grants

to municipalities would be also special legislation. And it wouldn't make any difference. If you appropriate to a municipality, that's a special . . . that's one special place that the money's going.

JAY HOGAN - Mr. Chairman, the appropriation to municipalities is an appropriation to a state entity, in fact. A municipality is a created body--created by the state--and it has in many respects the same legal implications as making an appropriation to the Department of Natural Resources or the Department of Education. It has an assumed public purpose; it has an assumed accountable lifestyle, if you will; it is a body that is created entirely at the whim of the state, and can be done away with at the discretion of the state.

SENATOR BILL RAY - That's not essentially correct. The state doesn't make municipalities. They don't make boroughs. They provide the legislation, but the people are the ones that make the final determination as to boroughs or municipalities, the class of the cities, and that other stuff. I think that's a pretty fine line to be drawing here and one that I would think would be suspect if he's going to draw that fine a line with it. ' Course by the time you get it through . . . into the courts and through the rest of it, it would be two or three years anyway.

SENATOR JOHY SACKETT - Senator Hackney.

SENATOR GLEN HACKNEY - Mr. Chairman, I sort of thought that one of the reasons for having this bill was to get away from Mr.

Smith, the state internal auditor, going ahead with this 41 pages of regulations. But there's nothing to prevent him from going ahead with that anyway. I'd like to hear some kind of testimony from Mr. Smith to the effect that he doesn't intend to do that if this legislation passes.

SENATOR JALMAR KERTTULA - Mr. Chairman.

SENATOR JOHN SACKETT - Senator Kerttula.

SENATOR JALMAR KERTTULA - Most of us understand the flow-through to any other public entity . . . the non-profit proliferation and I realize that somebody else's statesmanship might be my pork or vice versa, but we certainly want some accounting techniques and some credibility and some accountability of the public non-profits because they really, really can abuse the system badly. May as well predict that, even though I feel stronger that the legislative group has an obligation/opportunity to see to it that their appropriations get where they're supposed to be, and nobody in the middle starts screwing around with them either. The non-profit accountability must be there. It's just got to be there.

SENATOR JOHN SACKETT - Smith is now Deputy Commissioner of Administration; he's no longer state internal auditor. They don't have one right now.

SENATOR BILL RAY - Mr. Chairman, perhaps on Line 16 if we eliminate the word recipient and put in there non-profit corporation, that might . . . that might eliminate the municipalities from the . . . from the trouble and would just put the burden on the

non-profit corporation itself.

SENATOR JOHN SACKETT (Reading amended bill language) - So, when the department where the appropriation is made receives the agreement executed by the non-profit corporation . . .

SENATOR BILL RAY - By, you probably . . . a non-profit corporation. If that's what the intent is. That would eliminate the municipalities going through the audit division and would eliminate them from the . . . in other words it would put them back into almost the same as the original House measure, and it would be providing a little bit different for the . . . for the non-profit corporations. In fact, they would have to do . . . they would be the ones that would have to do these things and not the municipality itself.

SENATOR JALMAR KERTTULA - That sounds reasonable.

SENATOR JOHN SACKETT - Then still have your wording 'upon completion of the project' under . . .

SENATOR BILL RAY - Yah, I would think that there would be some method, that before the final payment is made, that an audit should be performed of some type to see that these people have done what they have. I can remember in the past, and I don't know if it's gotten any better, but because of the workload on the audit committee, sometimes we would go into audits and the people who would not function, so to speak, were long gone-- three or four years gone. And there were no culprit. The only victim was the state itself. As far as the money was concerned, you could never put a handle on anybody. The individuals themselves, there was no way possible you could get a hold of them.

SENATOR GLEN HACKNEY - Mr. Chairman.

SENATOR JOHN SACKETT - Senator Hackney.

SENATOR GLEN HACKNEY - I certainly don't have any qualms about providing for some kind of audit trail, but I don't want that damn department to come in there and have a fifteen page form that somebody who gets a \$30,000 grant is going to have to fill out in quintuplicate in order to prove how they spent the money.

SENATOR JALMAR KERTTULA - Mr. Chairman, why don't we bring up the Commissioner of Administration, its his responsibility, and tell him just that. Say, we want logic, and we want accountability, but we don't want burdensome bureaucracy. What will you do to respond to this? I think he's the man where the buck's got to stop in this particular case. Bring him up here and tell him that--and ask him.

SENATOR JOHN SACKETT - Mr. Hogan.

JAY HOGAN - Mr. Chairman, part of the thinking behind creating a special account to go through the Department of Administration is somewhat root in history. When the grants used to go through without great difficulty, they were formally appropriated to the Department of Administration--paid by the Commissioner. If they're allowed to go through the various departments, as this committee substitute would propose, then you increase the odds, I think, of having the various departments gets their hooks into the appropriation. You may want to consider funneling all of these items through the Department of Administration, and

then there is only one agency with which the legislature would have to deal if the grants were going out slowly, rather than all eighteen or nineteen agencies.

SENATOR JOHN SACKETT - Do you want the commissioner up here?

SENATOR JALMAR KERTTULA - I'd sure like to see him. I think we could express our interest in this subject to him pretty thoroughly, and he could also probably design a commitment of a minimum of accounting but a necessary minimum. I had the same experience is the reason that I'm both ways on the subject. When you put a small grant in to do a specific thing and four years later it still isn't done and they've got it all tangled up in the bureaucracy, and I can point to them so I know, then all of a sudden you have a holocaust as a result of perhaps not completing the project; you get pretty mad about it.

SENATOR JOHN SACKETT - Okay, for the next two days, if Resources doesn't meet from 1:30 p.m. to 3:00 p.m. do you want to meet here in addition from 8:30 a.m. to 10:00 a.m.?

UNIDENTIFIED SPEAKER - You mean to 3:00 o'clock?

SENATOR JOHN SACKETT - Yah, 1:30 p.m. to 3:00 p.m.

SENATOR BILL RAY - I can't. I have Judiciary tomorrow at 1:30 p.m.

SENATOR JOHN SACKETT - Skip it.

SENATOR RAY - Ha, ha, ha, I'd like to but we're putting on SB 239 tomorrow.

SENATOR JOHN SACKETT - What is it?

SENATOR BILL RAY - The new codification. What are we working on here?

SENATOR JOHN SACKETT - House Bill 60.

SENATOR JALMAR KERTTULA - Why don't we come in a little later tomorrow, like at 2:00 or 2:15 p.m. and maybe Bill could get that first on the Judiciary calendar--accommodate each other.

SENATOR JOHN SACKETT - Yah , we could do it later. But you could make it today though?

SENATOR BILL RAY - Oh, yes.

SENATOR JOHN SACKETT - Yah , we have the permanent fund at 1:30, but I'll try and up it to 1:00 p.m.

SENATOR BILL RAY - Okay.

SENATOR JOHN SACKETT - And then maybe 2:00 or 2:15 tomorrow. Okay, in the meantime, we'll have the commissioner come back on this one.

SENATOR GEORGE HOHMAN - Mr. Chairman.

SENATOR JOHN SACKETT - Senator Hohman.

SENATOR GEORGE HOHMAN - Were there attorney general's opinions on this?

JAY HOGAN - Mr. Chairman, on this bill?

SENATOR GEORGE HOHMAN - Yes, on this subject.

JAY HOGAN - No.

SENATOR JALMAR KERTTULA - He testified on it.

JAY HOGAN - Probably . . .

SENATOR JOHN SACKETT - Yah his letter would be . . .

JAY HOGAN - Yah , his letter of last year is probably the best and closest thing.

SENATOR JOHN SACKETT - Would you get a copy for every member?

JAY HOGAN - I think, Mr. Chairman, that you probably already have these at your desk. It's this pink section--the first pink section--of last year's capital budget and summary.

SENATOR GEORGE HOHMAN - Where are those at?

SENATOR BILL SUMNER - That's probably an opinion only operative for last year.

JAY HOGAN - It begins on page 47, the actual . . . well the letter.

SENATOR GEORGE HOHMAN - I don't have the document.

JAY HOGAN - Oh.

SENATOR JOHN SACKETT - Xerox it off and put it in each one's packet.

JAY HOGAN - All right.

SENATOR GEORGE HOHMAN - It seems to me . . . is there other material that we should have in our file?

GARREY PESKA - Mr. Chairman, we will invite Commissioner of Administration over, and his deputy, Mr. Smith, over without having copies of all of the regulations that have been drafted--the proposed regulations that have been drafted for this year--as well as an opinion from Billy Berrier regarding the lack of the internal auditor's authority to draft those regulations. I'll have that in all your files.

SENATOR GEORGE HOHMAN - Mr. Chairman, some appropriations were never spent. Where does this (inaudible). Would you give us an example.

JAY HOGAN - Mr. Chairman, I can get the list in just a moment. They're not here. I'll go get them.

SENATOR GEORGE HOHMAN - What is the nature of those projects. Why were they not spent? Can you categorize them into certain areas?

JAY HOGAN - Mr. Chairman, there were a variety of reasons.

SENATOR GEORGE HOHMAN - I'll look at those.

JAY HOGAN - Yah, there are several hundred.

SENATOR BILL RAY - He picked them as he wanted them. He allowed some of them and disallowed others.

JAY HOGAN - When I last checked, Mr. Chairman, at the end of January, there were several hundred appropriations from last year's budget from which nothing had been spent.

SENATOR GEORGE HOHMAN - I wonder if we couldn't have that material tomorrow (inaudible).

JAY HOGAN - Fine.

SENATOR JOHN SACKETT - This afternoon? Could you have it this afternoon?

JAY HOGAN - Yes, I have . . . I could get copies right now, if you'd like them.

SENATOR BILL RAY - Copy (inaudible) also Mr. Chairman by putting in there that the Governor does not necessarily have to follow this, but that it doesn't mean that he won't.

SENATOR JOHN SACKETT - I know it.

SENATOR BILL RAY - Remember all that?

SENATOR JOHN SACKETT - Yes. Okay, we'll start th . . . 30 p.m. today.

RECESS

AFTER RECESS 1:45 p.m.

SENATOR JOHN SACKETT - The first item of business we have is continuation of HB 578 am, and we have a couple of different possibilities, including what came over from the House. Okay, we have Mr. Smith and, Rod, why don't both of you come up here. There was a question this morning regarding the administration of grants that had gone out--that had been appropriated to various communities. And the number of regulations that had been proposed on that. In addition to that there is . . . I guess the question of constitutionality which you, Mr. Pegues, had written to us about last year in a letter that was dated June 1, 1979, questioned the validity of some of the appropriations. And in trying to resolve that issue, we've got before us a number of different alternatives or committee substitutes. And first of all, from you Mr. Pegues, we need to know what, based on your opinion in the letter here, what the position is at the present time in the administration.

SENATOR BILL RAY - What are we on now?

SENATOR JOHN SACKETT - House Bill 578. Go ahead.

ROD PEGUES - Mr. Chairman, I've had an opportunity to read over the committee substitute for HB 578 am, by the finance committee in the House, and I would say that, on its face, it is perfectly valid. The other committee working draft I've just had an opportunity to glance through, and I am not really able to comment on it, although the first part, grant to municipalities, appears to be quite permissible, and I don't see anything wrong with it.

There are some . . . the problem with the committee substitute for HB 578 am, would come in the municipality's administration of the grant, and how the grant was made.

SENATOR BILL RAY (in the momentary absence of Chairman Sackett) - While he's gone, can I ask you a question while I'm here?

ROD PEGUES - Surely.

SENATOR BILL RAY - On the grants to non-profit corporations, on the second page, line 9--this is on the audit--is there some way that, just on public non-profit corporations, we could have an audit before the finish of the . . . before the final thing is tuned out--before you make the final sign-off of the whole thing?

SENATOR JALMAR KERTTILA - If you had 10% withheld . . .

DICK SMITH - I'll go ahead and answer that. It's quite permissible. You could made an examination . . .

SENATOR BILL RAY - I think that would satisfy a lot of the people better than this does, because two or three years later, by the time you get around to making an audit or something, everybody's gone, the money is gone, and the people are gone. And you don't have any control over them.

DICK SMITH - Yah , generally you're auditing the procedures.

SENATOR GEORGE HOHMAN (Temporarily acting as Chairman) - Senator Hackney.

SENATOR GLEN HACKNEY - What kind of audit are we talking about?
A CPA?

DICK SMITH - I would assume you would talk about an ex . . .

SENATOR GLEN HACKNEY - No way. Mr. Chairman, if we start calling for CPA audits on every one of these stinking little appropriations that we put out, we're going to queer the whole thing; if that's their intention, they should say so. You get a CPA firm involved in this thing and you're going to have \$5,000 to audit \$10,000 worth of grants. And, by God, we're not going to have that.

DICK SMITH - Sometimes in the past what's occurred, you'd made a distinction on the amount of the grant. And I can think of on . . . for example pupil transportation, if the grant exceeded \$50,000, the school district could provide for an external examination by a certified public accountant. For those that fell less than that, it was subject to examination by the state.

SENATOR GLEN HACKNEY - Mr. Chairman, I'm not concerned about the big grants. I'm not concerned about the school districts because they retain audit firms, and that's really not a problem. The ones I'm concerned about are the small grants that we're continually funding. And it's simple harassment if you're going to make them come in with a big, complicated audit.

DICK SMITH - You're absolutely right. That's an expensive examination.

SENATOR GLEN HACKNEY - Darn right.

DICK SMITH - I might add one other thing. In many instances, depending upon how you contract with a certified public accountant, you may get a fiscal examination, when according to the substitute here you're really talking about an examination that couples

two things: one, fiscal compliance and, another, compliance to the terms of the grant.

SENATOR GEORGE HOHMAN - Senator Ray.

SENATOR BILL RAY - The only problem I have, Glen, is that on a lot of these things, the people get these grants and use the money, and we're left with egg on our face because . . . there are some that are very good, but how about the ones that aren't? That's the whole thing.

SENATOR GLENN HACKNEY - Well, Mr. Chairman, it appears to me that the ones that present us with egg on our faces . . . in one case we're going to have audited egg and in the other case we're going to have unaudited egg, and I don't see that much difference, because we should do some checking before we even bring a project in here, it seems to me.

SENATOR BILL RAY - Yah, well it would seem that way, but I'm talking realities and not never, never land like we always do--those projects that go out of here with grants and you don't know what they are, and I don't know what they are.

SENATOR GEORGE HOHMAN - We're discussing the bill, the committee substitute.

SENATOR BILL SUMNER - Mr. Chairman, I'd be interested in determining what sort of cost would be involved. I tend to agree with Senator Hackney. It looks to me like the way its drafted there on line . . . it can allow . . . on request you can have that option to require or request an audit by the state. You have that option the way it's drafted there now.

DICK SMITH - Unfortunately, I just saw copies. When you use the phrase "on request," whose request is that? Is that . . .

SENATOR BILL SUMNER - It would seem to me it could be either.

DICK SMITH - I would hope so.

SENATOR BILL SUMNER - It could be a request of the Department or the state.

DICK SMITH - Typically we would find that if procedures have gone bad, if there is a question about the propriety of expenditure money, generally you would not make a request for an examination. But the state, of course, would want to request that examination, in fact make an examination.

SENATOR BILL SUMNER - I just hate to get into a position where we having generated a paperwork machine . . . I can understand wanting to guard against somebody running away with the project, but it seems to me that if you audit at the end of the project instead of an ongoing surveillance, that if they're going to run, they're going to run.

DICK SMITH - So long as there is an examination made, I would think at that point although the money and the terms of the grant might have been exhausted, at least you have the responsibility to be able to hold back from other funds that might be due the subdivision.

SENATOR BILL SUMNER - Well, that would be true in the case of municipalities, but not necessarily true in the case of the non-profit. I don't know. It looks to me like we're talking risk. And I don't see that those risks are significantly

diminished as a result of our looking at the end of it, and maybe saving 10%.

ROD PEGUES - Well, if I may point out, back in the 1950's the Eisenhower administration did away with the audit on the paper tax stamp that was placed on cigarette packages, and the losses went up 500%. When they reinstated the audit, the losses declined 500%. So, an audit seems to have a beneficial affect on the conduct of the program out there.

SENATOR BILL SUMNER - But what does it cost for the audit.

ROD PEGUES - Well, if you're doing sampling audits rather than . . . you wouldn't audit everything. If you're doing sampling audits, and a person knows he's liable to be audited, he'll do a better job of keeping track . . .

SENATOR BILL SUMNER - I (inaudible) the authority to audit. I thought you had that the way it's written now.

ROD PEGUES - I think it is.

SENATOR BILL SUMNER - I just don't want to see where there's a mandatory audit on each and every project. I don't think that's necessary. Do you think it's necessary?

SENATOR JALMAR KERTTULA - At least for small amounts.

SENATOR JOHN SACKETT - Like a \$30,000 or \$40,000 grant that we give to somebody--even \$20,000--something like that.

DICK SMITH - I would think in many conditions, possibly even on a small grant, you would want to make an examination. But, if you found that the procedures and the mechanisms were working properly under those conditions, then maybe the next time or the time after that you could rely upon those conditions.

SENATOR JOHN SACKETT - Okay, have we discussed what the procedures are? I think that's one of the key problems.

SENATOR BILL SUMNER - No we have not.

SENATOR JOHN SACKETT - Okay, you know the procedures that you set up by which they're going to first get the grant and then operate with, I think are one of the key elements that we've found from people coming back to us from municipalities saying that they haven't received the grant for a number of reasons-- those being primarily the forms that they have to fill out.

SENATOR BILL RAY - Well, the only problem I have, Mr. Chairman, and I know that it's probably in the minority because most of the grant recipients are capable of going ahead and administering the programs. But, one that I was responsible in getting the money for, I found out it was for alcoholism up in the Anchorage area, and come to find out, the guy who ran it paid his own retirement. He joined the teamsters retirement fund and had his own retirement out of the money and never kept any records-- didn't keep anything at all ever. And this was a pretty good sized grant by the time it was over. I think it was around \$150,000 to \$200,000 and nobody knows anything about it. The money is gone, and he's gone.

SENATOR JOHN SACKETT - Right. There has to be some mechanism by which we make sure things like that don't happen. On the other hand we should make it not so cumbersome, particularly to municipalities. Well (inaudible) the incident how they do with the senior citizens in Anchorage. They didn't have any

complaint over that until after . . .

SENATOR JALMAR KERTTULA - You delivered \$1,500 and cost \$63.5 (inaudible).

SENATOR JOHN SACKETT - Those are the type of things that shouldn't happen. I mean there should be safeguards of that type without being extremely cumbersome for people that are (inaudible). Go ahead, Mr. Smith, how do you respond to something like that?

DICK SMITH - I think one of the ways to respond, Mr. Chairman, members of the committee, is that in many instances the State of Alaska has not exercised uniform grant procedures to show compliance to all the grants, whether they be to a non-profit or to a political subdivision. I think we have been subject to a fair amount of criticism in the past, whether it be in an instance of a court case, or whether it be in instances of appeals to grant procedures. We attempted, not too long ago, to attempt to set up uniform grant procedures to govern all . . . I think so . . . that was aimed to govern everything that's not conditional upon any specific program right now.

SENATOR JOHN SACKETT - What's the wish of the committee?

SENATOR GLEN HACKNEY - Well, Mr. Chairman.

SENATOR JOHN SACKETT - Senator Hackney.

SENATOR GLENN HACKNEY - I want on the tape for record, some kind of assurance from these cats that if we do pass this bill out, we're not going to end up anyway with a bunch of regulations like this, which are going to harass the people

who are getting these grants in addition to what's called for in the bill. I have no objection to audits whatsoever on the larger grants. But, I'll be darned if I'm going to have people run through a whole bunch of hoops just because the administration wants to do it.

SENATOR BILL RAY - Mr. Chairman, maybe we could ask . . .

SENATOR JOHN SACKETT - I wonder if we could get an answer to that.

SENATOR BILL RAY - Subsection (b) on here, on both of these, does this start fresh, and are these regulations implemented now, and how does that work? Does this mean no additional regulations, or what? We've got a whole bunch of regulations that have been adopted already haven't you, Glen?

SENATOR GLEN HACKNEY - Mr. Chairman, I don't believe they're adopted as yet.

SENATOR BILL RAY - Are those adopted?

SENATOR JOHN SACKETT - No, not yet.

SENATOR GLEN HACKNEY - We're safe. We're okay on these. We don't want to see them crop up again.

SENATOR BILL RAY - Well, this says that they can't do anything.

SENATOR JOHN SACKETT - Do you care to respond?

ROD PEGUES - Well, what it, the, I mean you cannot execute a law without applying it all the time. So, what it means is just ad hoc application, but it means there will be no regulations on it. There'll be no written rules set down.

When someone walks through the door, each one will be handled on an ad hoc basis. There isn't much leeway for doing that anyway here. You know grants are contracts. The person who's the grant recipient is a contractor, and he's agreeing to do something for the grantor. So we're into an area of contracts, and it's a very complex area. There are all sorts of things that apply here that the bills don't address: the rules governing municipal contracting, either their own charters, if they're home rule municipalities, or state laws if they're not. I don't know how this coincides with those provisions. I don't know if where we're dealing with a situation, I brought along HB 60, where we give a grant to a city for a specific program--we have one here, \$32,000 to the City and Borough of Sitka for education of handicapped children from birth to age three. Sitka will become the subsequent grantor, and it will make a contract with somebody, the school district or somebody, for this program. Where we name the contractor, we raise all sorts of new questions. I don't know if Sitka or whoever, Bethel, can contract that way, or if they have to ask for bids. If they have to ask for bids and someone else is the low bidder, can they spend the money. I don't know. So, this is creating additional questions and problems. It's not solving everything.

SENATOR JOHN SACKETT - Senator Ray.

SENATOR BILL RAY - Then you get right into the problem that they aren't going to put it under regulations, but they're going to adopt it as administrative policy. And the policy that they adopt

(inaudible).

ROD PEGUES - Well, you know, a guy walks into your office and says, "How come I can't do this when it says in the law I can?" And you look at the law and you say " Well, it doesn't say that to me." And he says, "Well, it says that to me." I mean, that's what we're talking about. And so what you do in the ordinary case is either rewrite the law, or you write a regulation to say what it means. And then at all times it means what you said. But, if you don't do that, then it's going to mean whatever the next guy who reads it says it means.

SENATOR SUMNER - Mr. Chairman

SENATOR JOHN SACKETT - Senator Sumner.

SENATOR BILL SUMNER - How in the hell is it that regulation writers wind up in a position of (inaudible) and we can't do it in terms of the law. That's what raises hell with me.

ROD PEGUES - Obviously, the legislature has the ultimate authority to do that. It's when nothing is done, what happens is that the law gets written, and then the law has to be applied. And, when you go to apply the law, two different people read it, and they say it means two different things.

SENATOR BILL SUMNER - Same with regulations.

ROD PEGUES - Sure. That's what happens with regulations. Then they have to rewrite the regulation. But, once you start interpreting the law, in order to make sure it's interpreted the same way for everybody, you adopt an interpretive regulation. And that's what the APA does, it requires the administrative

agency to adopt the regulations so you can't interpret it two ways.

SENATOR BILL SUMNER - What if we tell you to make the grant and then you can fight while the grant is going on or you can interpret while the grant is going on. The problem that we don't want, or at least that I don't want, is to set there, and I thought out of your previous conversation that without regulations drafted by you to interpret it the way you wanted it, to draft it, or the department, that you simply say, "Well, we don't know what to do. We just have to look at this on an ad hoc basis and come back the first of next year and maybe we'll get this money out to you."

ROD PEGUES - Know, know, that's not what I meant. I just simply meant that if that won't happen . . . that there will be no written regulation that applies any of this law, it will be applied on an ad hoc basis. But, these particular provisions are so narrow about the only place it will change is the condition explaining the grant for the purposes specified in the appropriation.

SENATOR BILL SUMNER - If someone comes in after he's been given a grant, will you issue the money? With this law?

SENATOR JOHN SACKETT - If we're specific as to who the grant is supposed to go to?

ROD PEGUES - Obviously with the municipalities, yes. There's no problem there, as I said. The grants to non-profit corporations, create a different problem. And, it's a problem of, again, it is

based on contracts. If we make a contract with somebody out there to do something, you know, we're getting him to perform something for the government. If he's performing it for an executive agency, he's doing something for them, they are required by law to come up with . . . to ask for solicitation for proposals or bids, whichever, and then to contract accordingly. If we name the grantee, we short-circuit that requirement; it probably can't be done that way.

SENATOR JOHN SACKETT - Well, can you say notwithstanding that portion of the law?

ROD PEGUES - I'm not sure you can because that brings in a second problem, and that is that when the legislature is contracting with someone, it does it in accordance with its procedures in order to further some legislative function: a contract for study by (inaudible) to do research on something you're going to enact legislation about or consider legislation about. If you're contracting with Meals on Wheels to provide food, that's not carrying on a legislative function. That's providing a welfare program, and that's what the executive is supposed to do. So, these types of grants may not be valid exceptions. I just don't know because we haven't got any case law on it. The closest we've got is a case in which the legislature contracted with an attorney to provide certain services that had nothing to do with their lawmaking function, and the court said that was invalid.

SENATOR JOHN SACKETT - Okay, to what degree then is the legislature restricted in its power of appropriation?

ROD PEGUES - Well, public purpose and whatever the constitutional limitations are. And on this one, this grants, I don't know. You know, if you go through the municipality, and the municipality follows the law or its charter, that on its face looks perfectly valid. If the legislature does it directly to the non-profit, that raises these questions of what function is being performed by the grantee. Is he carrying out a social services program, then perhaps the legislature shouldn't be contracting with him because that's not incidental to the lawmaking function.

SENATOR BILL RAY - Well, Mr. Chairman, that's the argument that I brought up this morning. I think you're drawing a pretty fine line when you're talking about municipalities being different. Why? Who makes municipalities?

ROD PEGUES - Different?

SENATOR BILL RAY - The government doesn't make municipalities. The people make municipalities by their vote.

ROD PEGUES - Well, they're political subdivisions of the State of Alaska, and they're vested with governmental powers and local government powers. And they're governed either by their charters or by the municipal code in their activities. If the legislature makes money available to them for a particular function, the legislature can delegate the functions that way--to local governments. It's done all over the country.

SENATOR BILL RAY - Then why can't the legislature delegate moneys to any non-profit corporation that meets the requirements of law.

ROD PEGUES - Well, it is this contracting to do something . . . In effect, the legislature is the grantor--is the contracting party contracting with the grantee. But, the grantee is not going to be doing something in aid of the legislative function. It's going to be conducting another program for the government. And that's what raises the question. And I can see it. I don't have any big group of cases on this; this is a new area.

SENATOR BILL RAY - Pretty narrow ground there.

ROD PEGUES - This is the problem that was raised last year.

SENATOR BILL SUMNER - Senator Ray brought up this morning though, something that sounds interesting to me, is that we didn't have this raised at the time we were funding non-profit corporations in terms of alcoholism problems, and a whole broad spectrum of similar sort of projects and programs. Where do we draw the line in that regard?

ROD PEGUES- Senator, as I say, this is a developing area. It's new. We're just opening the book on it, and I really don't know. I can just tell you that we do have these problems to consider.

SENATOR BILL SUMNER - All right. Second then, if we continue to grant in this regard, and you strike one of them down, you have to strike them all down. Is that true or not true?

ROD PEGUES - No, I don't know that anyone is going to strike any of this down. I don't think any were actually struck down. We did tell the agencies to follow the law. At this stage of the game we're . . .

SENATOR BILL SUMNER - Selectively (inaudible).

ROD PEGUES - No, no, no, we're fairly well off now because we're dealing with . . . even if you name the grantee, it's a unique institution. There is nothing else like it. No one else could provide the service. So if the agency asks for proposals, it will get a suitable proposal only from that one anyway, so it works out all right. But, of course, since the genius of our country is that once the government or anybody is paying for some goods or services, other people will be prepared to provide them for a lesser cost, we're going to have competitors--they're going to spring up. And that's when the problem will arise, and that's when we'll probably find legal action being brought when someone says, "Hey, I can do that better and cheaper--I'm suing."

SENATOR BILL SUMNER - Okay, but so far as the administration is concerned, which is at least the problem that I'm having in getting some of these grants out--you're treating some differently than others. Can we get any sort of commitment to treat them all alike. Either we don't fund any of them to non-profit or we fund them all alike?

ROD PEGUES - There shouldn't be any different treatment, Senator. If there has been, I don't know why there has been. Everybody is supposed to be following the same general guidelines. They're supposed to go ahead and find a way to carry this out.

SENATOR BILL SUMNER - We were shown several items this morning . . . I don't know if we still have it or not, that were not funded, presumably for some of these . . . for this reason.

ROD PEGUES - The only ones I know of that I heard about was where somebody couldn't be found--the Department of Natural Resources couldn't find a couple of the grantees. I'm really not that familiar with each one, but I recall going through this at the first of the year with the House committee, and there were none that were willfully withheld. Everybody was being taken care of if it was at all possible.

SENATOR BILL SUMNER - Well I think what I'm looking for is some consistent and uniform treatment of the people who get grants. If we're going to say, "Hey, this is an area that we're not going to do anymore," then we need to treat them all alike, and find some way to accommodate them. If we're not, then I'd like to see (inaudible).

ROD PEGUES - Well, we did do . . . as far as I know, it was done on a uniform, consistent basis. And all of the agencies were supposed to have followed those guidelines last year. I just don't know who was doing it differently.

SENATOR JOHN SACKETT - Senator Ray.

SENATOR BILL RAY - Mr. Chairman, lets get back to basics and forget all this nonsense of trying to figure out what is meant by something else. Why don't we just write this just exactly the way we want, and if we want to make grants to non-profit corporations, we only have them do these things:

1. Spend the grant only for the purposes specified in the appropriation.
2. Allow on request of the department an audit by the state of the use of the grant.
3. Assure that.

Now, if that's the way we want to handle these, we're going to have to tighten up (b) here because, whether purposely or otherwise, they've left a loophole here big enough to drive a truck . . . when they say they shall not adopt regulations, which means they have to go through the Administrative Procedures Act, etc. We understand that. But, regulations sometimes can be circumvented, or the use of regulations can be circumvented by just the little words "administrative policy, office administration" . . .

SENATOR BILL SUMNER - Ad hoc.

SENATOR BILL RAY - Yah. So, if these are the only three things that we want contingent upon making a grant, then we'd better put down there that they shall not adopt regulations or administrative policy to implement them. And that means that you've got three things to do. If you're going to do it, do it. And then you don't have anything to worry about, right?

SENATOR JALMAR KERTTULA - I have a question, Mr. Chairman.

SENATOR JOHN SACKETT - Senator Kerttula.

SENATOR BILL RAY - If you don't understand what I'm saying, let's forget it.

SENATOR JALMAR KERTTULA - Doesn't enlighten us except that . . . what happens if you put \$20,000 in a non-profit alcoholism program in some community and the money is completely misused-- nothing that the program presented by the legislature . . . nothing takes place except the money is just misused, maybe a taxi cab is bought with it or something. And it's supposed to haul the

drunks back and forth to what ever facility, or anything.
What do we have now in the mechanism of law that allows us
to prosecute for misuse?

ROD PEGUES - Well, if there was no intent to defraud at the
outset, and you didn't convert it to your own use, the money,
but rather just came up with the program of using the taxi
cab to haul people back and forth, I don't know. What would
happen would depend upon what a court decided the contract was.
The problem of not having, in other words, number one subsection
(1) . . .

SENATOR JALMAR KERTTULA - Would you prosecute a case like that?

ROD PEGUES - Oh, yes. You'd have to have criminal intent, and
you're possibly dealing with people who aren't too bright, but
they didn't intend to steal the money. They thought this would
take care of their problem.

SENATOR BILL RAY - Subsection (3) takes care of that. Section
3 . . . if they don't use it for the purposes.

ROD PEGUES - Well, but it would be.

SENATOR BILL RAY - Don't they have a statute. Don't they have
a statute "misuse of fund's money," don't they have something
like that?

ROD PEGUES - The point is, if under (1) the statement is that
we will spend this grant to solve the problem of getting
drunks off the streets, buying a taxi cab and picking up
drunks and taking them off the streets would solve that
problem. So, they wouldn't be in breach of contract; they

would have done what they were required to do.

SENATOR JALMAR KERTTULA - No, but suppose it was really a sensitive breach of contract, they misused the funds, maybe not through knowledge . . .

ROD PEGUES - That's the point, you have to write a contract, or have a court imply a contract, say "Here's the minimum you were required to do," which of course you don't like to do . . . it'll be very minimum if the court does it. So it would be up to the Department of Administration in one, I mean, they're going to need a couple of new positions to be grants administrators to write these--what you're going to do with the money. Because that's the only way you can really enforce these things. The outright crook you could prosecute.

SENATOR JALMAR KERTTULA - Mr. Chairman, there's one thing that occurs to me and that is the following, and it's been a long time experience of mine that if people you make grants to, and you had the political leadership . . . taken the leadership in making them, and they misuse them, it occurs to your negative satisfaction and, you know you really get blemished by that.

SENATOR BILL RAY - It makes you look like a jackass!

SENATOR JALMAR KERTTULA - Yah, and you're pretty soon watching that sort of thing. You just don't give them to just anybody. You make certain there's some public entity. I've got a case in example: Sutton community hall, which took all summer. Just \$10,000. We had a fire code problem. They have no local tax

base, but they pay a lot of taxes in the borough. Couldn't make anything stick, so we put \$10,000 in. Like a lot of these, those people have been in business for 35 years, since the coal mines, and they're honest as the day is long. Every dime is going to be spent the way it's supposed to be. They're now a legal entity, I guess. They're sort of a non-profit, like a library association or something. We make a good point when you say you don't want them to go through a \$5,000 audit, on the other hand, you'd kind of like to know they did it right. Eventually we used the borough, a second class borough, which probably has no real legal powers either, to pull through the money.

ROD PEGUES - Well you see Sutton was easy because Sutton was building a physical structure. Department of Natural Resources, I think, administered the money.

SENATOR JALMAR KERTTULA - Wasn't easy to get it going.

ROD PEGUES - They had trouble finding a community club to take care of it, but they did find one. It was a mountaineering club or something like that. And, they were willing to take the money and be responsible for building the building. And all you had to do was drive by one day and see the building.

SENATOR JALMAR KERTTULA - Well, yes, but that isn't the specific. The building is there, it just needed some firewalls.

ROD PEGUES - Yah, put in there, do the work. So, that's easy to check. Other things are much more difficult to check.

DICK SMITH - Although I understand what you say, that presumably the regulations that were proposed are not as clear and as simplified as you'd like them, basically, the intent of those was to indicate that a number of problems that have occurred in the past were because rules and regulations did not exist. Now the intent, and maybe it wasn't satisfied by drafting up those rules and regulations there, were to simplify, I understand you have a problem--those weren't adopted as far as I know, but were to simplify that monitoring process between the grantee and the state. And the reason for having a simplified set of procedures (inaudible) limit the amount of work to the grantee, but at the same time be able to provide the state with a way to monitor the activity of that grant progressively through its expenditure, and say "If something is going wrong, let us be able to speak up now." It was a tool for monitoring. As they say, they've become much too complex, but they were not intended to be that. It was to be a reporting system between the grantee and the grantor for us to monitor.

SENATOR GLEN HACKNEY - Mr. Chairman, we hear that constantly. And, I'd like to address that comment to Mr. Pegues. It appears to me that the attorney general's office is terribly protective of the regulation writers. You don't want anybody to get at them in any way.

ROD PEGUES - No. I wish they'd all be put on a desert island. We have to review those things. It's terrible. I'm just talking about the practical problem of administering the law. I mean, I'd rather do it with forms. It's so much easier to

do it with forms. But in order to adopt a form, you have to adopt a regulation. I mean you could give these people-- especially small grant people--a form to send in periodically that they would certify at the bottom what they spent the money for. Just a simple recitation, and they'd send it in two, three, four times a year depending upon the size of the grant and the nature of the project. And the grants administrator decides at the outset--just gives them a book of forms and says "Here, we expect to hear from you." Then if the guy takes the money and runs to Venezuela after certifying that he spent it for a public purpose, you can at least prosecute him. But we can't do that.

SENATOR BILL SUMNER - Why not?

ROD PEGUES - Well, because you have to adopt a regulation.

SENATOR BILL SUMNER - Mr. Chairman.

SENATOR JOHN SACKETT - Senator Sumner, then Senator Ray.

SENATOR BILL SUMNER - Somewhere between . . . you know if that was the attitude of the department, you wouldn't see 47 pages of an item here, you'd have seen a form and we wouldn't be holding this discussion.

ROD PEGUES - They're trying to cover everything; they're trying to cover all the grants and packages for the whole thing. I'm just talking about this one aspect of it--checking on progress.

SENATOR BILL SUMNER - I understand, but then I wouldn't want to see a form for every \$10 increment of a project. Why couldn't that be done in terms of the form, if you just explain very

simply, very straightforward and be done with it.

ROD PEGUES - It could be done.

SENATOR JOHN SACKETT - Got a good suggestion here. Why don't you draft a one-page form of what is required, and we'll incorporate that as a part of the legislation. And we've done that in the past, before, with municipal revenue sharing where we incorporated the form that was supposed to be used.

ROD PEGUES - Okay. On these grants, I wonder if we could go back to this problem. . .

SENATOR JOHN SACKETT - Can you do that?

ROD PEGUES - Yah, I think we can. I think we can. Community and Regional Affairs has some of those things too, and I think we can.

SENATOR BILL RAY - With the proviso, Mr. Chairman, that when they get this form, that we should be able to look at that form, because they might put stuff in that form that nobody could comply with.

SENATOR JOHN SACKETT - Oh yah, no, it would be part of the law.

ROD PEGUES - No, we'll bring it back here.

SENATOR BILL RAY - All right, but when you get down to subsection (b) here again, you better add the words "administrative policy," or you're going to have a . . . the same old bureaucracy again.

SENATOR JOHN SACKETT - Yah. Can you do that?

ROD PEGUES - Yes.

SENATOR JOHN SACKETT - Form for both municipalities and non-profits. Very good.

SENATOR BILL RAY - And make the necessary change about administrative . . . the only thing that we require is the things that are on that form, and then all the rest of it we aren't interested in.

SENATOR BILL SUMNER - (inaudible) to that amendment?

SENATOR JOHN SACKETT - Go ahead.

SENATOR BILL SUMNER - . . .or any other restrictive procedures . . . (inaudible) I don't care what you call it. I know you guys (inaudible).

(Laughter)

ROD PEGUES - On the other question about what, what eventually . . . be ruled about the direct grants for carrying out governmental programs, or programs by contracts, it probably would help get a favorable ruling if the method of application for these grants were standardized by the legislature. If people would apply on a form that would explain where they're coming from, what they intend to do, how much money they need for this project. It would probably help if that were included in the budget process. In other words, write this in (END OF TAPE #33).

(BEGIN TAPE # 34)

SENATOR BILL RAY - . . . 37 to see . . . and also the allowable duties of the commissioner there is to make regulations consistent with and bla, bla, bla. Be sure we cover that so that they don't . . . so that we aren't just covering the Administrative Procedures Act, the fiscal procedures act, and the executive budget act, and leaving under the grant act all the right and title and will make regulations or we'll have them back with us. You know what I'm saying. Make it air tight.

SENATOR JOHN SACKETT - How does that sound?

ROD PEGUES - Nothing's air tight. (Laughter) But, yes, I know what you want here and I don't see . . . that doesn't present a real problem. But I mean we have to figure out some simple but effective way of managing the program. I mean the use of grants as a functional matter, obviously, brings a lot of flexibility to government, and should be encouraged.

SENATOR JOHN SACKETT - Okay. Thank you very much. You'll work on that and have it to us by tomorrow?

ROD PEGUES - If I can find . . . I want to look at Community and Regional Affairs, and I don't know if anybody is down there today.

SENATOR JOHN SACKETT - Oh, that's right you have a holiday today. Well, we'll be meeting tomorrow at about 2:15.

ROD PEGUES - I think we can have something here, at least enough for the committee to look at and say that this is the type of thing . . .

SENATOR JOHN SACKETT - A work draft?

ROD PEGUES - Yes.

SENATOR BILL RAY - If we could just call Mr. Pegues' attention . . . 'cause I have the feeling that he wrote the majority of this letter that was sent to the President of the Senate and Speaker of the House in reference to the budget. And in there on page 2, he talks about the use of the appropriations bill for pass-through grants where a grants program has not been established by law creates both legal and administrative problems because of the absence of standards for determining recipients

and amounts. Could you establish us those standards, and we'll provide the amounts.

ROD PEGUES - (inaudible due to overvoices) . . . that's in my own mind the solution I came up with as the way to do it. You either have to have a program with standards--that is a statute which provides . . .

SENATOR BILL RAY - You wrote this whole thing.

ROD PEGUES - Oh, I probably had a little to do with it.

SENATOR BILL RAY - You wrote it all, I remember discussing it with you (laughter). Correct the problems that you've helped us with.

SENATOR KERTTULA - Rod, can a second class borough that doesn't have certain rights, only those voted in beyond a couple allotted them under the law (inaudible), can they do some of the things? Do they have the rights to handle funds passed through and so on (inaudible) (overvoices).

SENATOR BILL SUMNER - I think he's got the answer. One last sentence that says, "Thou shalt not do anything that the legislature wishes not done."

SENATOR JOHN SACKETT - Let's take a three-minute break, okay?

(END OF MEETING)

Original sponsors: Meekins and Beirne

Offered: 3/10/82
Referred: Rules

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 608 (Finance) am
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing uniform administrative procedures
7 for grants to and contracts with nonprofit organiza-
8 tions."

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

10 * Section 1. FINDINGS. The legislature finds that there is a need for
11 consistency and uniformity in administration of grants and contracts to
12 nonprofit organizations. The legislature further finds that nonprofit
13 organizations that receive grant or contract money from the state, for
14 programs to benefit the residents of the state, should have sound adminis-
15 trative structures and accountable fiscal procedures. The legislature
16 further finds that nonprofit corporations which receive public funds have a
17 public trust responsibility to manage those funds in accordance with the
18 highest standards of accountability.

19 * Sec. 2. AS 37.05 is amended by adding a new section to read:

20 Sec. 37.05.314. ADMINISTRATIVE PROCEDURES FOR GRANTS TO AND CON-
21 TRACTS WITH NONPROFIT ORGANIZATIONS. (a) The Department of Administra-
22 tion, after consultation with representative nonprofit organizations in
23 the state, shall

24 (1) develop uniform procedures for grants to and contracts
25 with nonprofit organizations, including

26 (A) uniform proposal application procedures;

27 (B) uniform application review requirements;

28 (C) a consistent application of cost principles for
29 nonprofit organizations;

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Administration has reviewed those procedures and has exempted the agency from the requirements. An exemption under this subsection must be renewed annually based on an annual evaluation of the procedures of the state agency.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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1 (D) provisions for a consistent cost rate negotiated by
2 the state with provisions for payment of individual costs based on
3 final determination of the indirect cost properly incurred as shown
4 by a fully certified audit by an independent audit firm;

5 (E) provisions for advances of grant or contract money;

6 (F) provisions for a single annual independent audit;

7 (G) requirements of annual certification of administra-
8 tive systems of the organization;

9 (H) identification and segregation of indirect costs
10 relating to each grant;

11 (2) annually examine the administrative system and fiscal
12 procedures of any nonprofit organization on request of the organization
13 and if the system and procedures are determined to be adequate for the
14 purpose of state grants or contracts and if the nonprofit organization
15 is currently certified by the Department of Commerce and Economic
16 Development to be in good standing as a nonprofit corporation certify
17 that the organization is eligible to receive state contracts or grants;

18 (3) require that each contract with or grant to a nonprofit
19 organization from a state agency provide for payment of indirect costs
20 of administration of the contract or grant at the rate established in
21 the contract;

22 (4) require that each application for a contract with or
23 grant to a nonprofit organization list all contracts with or grants from
24 a federal, state, or local government or agency that the nonprofit
25 organization has applied for or received within one year preceding the
26 date of the application.

27 (b) The requirements of this section do not apply to a state
28 agency that makes grants if the agency has developed procedures
29 consistent with the requirements of this section, and the Department of

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