Criminal penalties under the same statute were sustained by the Supreme Court in the companion case of Crane v. New York, 239 U.S. 195 (1915), affirming an opinion by Cardoza for the New York Court of Appeals, People v. Crane, 214 N.Y. 154 (1915), where the following statements appear:

> To defeat this law it must therefore be held that the constitution gives to the state a narrower liberty of choice in the expenditure of its own moneys than in the use or distribution of its other resources...214 N.Y. at 162.
>
> There may be forms of employment where efficiency would be promoted by the employment of citizens, and if the statute were restricted to such employments, its validity would not be doubtful...214 N.Y. at 163.
>
> When payment for public works is to be made from public funds, it may prefer in employment its own citizens, since to them the legislature may believe that the first duty is owing...214 N.Y. at 164.

Obviously, if the Heim and Crane doctrines are still valid, they constitute powerful support for preferential hiring statutes. While not "modern" cases, the Heim and Crane decisions have never been overruled.

The kind of competitive leasing arrangements under which the pipeline will be constructed will not require a cash outlay of public funds, as in the usual public works context. State land will be leased. The difference is merely the nature of the asset distributed by the State: cash in return for construction services in one case; land in exchange for the royalty benefits accruing to the State-lessor in the other case.

Truax v. Raich, supra, striking down Arizona's sweeping ban on

alien hiring, is distinguishable. This is graphically illustrated by the fact that Heim and Crane were decided one month after Truax. The lack of similarity between the statutory provision involved in the two cases was apparently so plain to the Court that the Heim and Crane opinions did not deem it necessary to attempt to distinguish or, for that matter, even cite Truax. Clearly, the Truax decision does not stand in the way of your proposed legislation.

In plaintiff's reply memorandum in support of a motion for partial summary judgment, in Knutson v. Alaska, No. 71-2941, Alask. Super. Ct., it is stated that Heim (and by implication Crane), is "no longer very good law." Two 1970 federal district court cases are cited in support of this statement: Gonzales v. Shea, 318 F. Supp. 572, 578, n. 15 (E.D. Wis, 1970), and Leger v. Sailer, 321 F. Supp. 250, 254, n. 10 (E.D. Pa. 1970).

Of course, federal district judges are without power to overrule Supreme Court decisions. Apart from that, Gonzales cites Heim with approval in holding that a Colorado Old Age Pension amendment requiring United States citizenship as a condition for eligibility is not an unconstitutional classification. 318 F. Supp. at 578, n. 15. The Leger decision questions the validity of Crane's holding concerning alien exclusion, but not the extent to which Crane sustains the preferential hiring aspect of the New York Labor Law. 321 F. Supp. at 254.

The school segregation case, Brown v. Board of Education, 347 U.S. 483 (1954), its progeny, as well as Takahashi v. Fish and Game Commission, 334 U.S. 410 (1948), holding unconstitutional a California statute denying

fishing licenses for aliens, and the 1964 Civil Rights Act's prohibitions concerning discrimination because of national origin in federally-assisted programs, 42 U.S.C. § 2000d (1969), may indeed cast doubt upon a State's ability to discriminate against aliens, even on public works projects But public works employment discrimination based on residency within the State is another matter. To that extent, Alaska Statutes, Chapter 10, Section 36.10.050, banning public works employment to non-resident aliens "unless the alien worker has in good faith declared his intention of becoming a citizen..." may be of doubtful validity today. Section 36.10.010, giving preference to Alaska residents on public works projects is, for the reasons developed in this memorandum, not of doubtful constitutional validity.

It is recommended that no distinction be made between aliens and persons not aliens in any preferential hiring legislation adopted by your Legislature.

That the Heim-Crane rationale is still valid as applied to preferential hiring based on place of residency in public works projects is evidenced by a number of factors. State and local legislation restricting public hiring to local residents has been sustained by virtually all courts considering the question. See e.g., Quigley v. Blanchester, 16 Ohio App.2d 104 (1968) (police and firemen), Detroit Police Officers Association v. City of Detroit, 190 N.W.2d 97 (1971) (policemen), Jackson v. Firemen's and Policemen's Civil Service Commission, 466 S.W.2d 414 (1971) (firemen); Marabuto v. Town of Emeryville, 183 C.A.2d 406, 6 Cal. Rptr. 690 (1960) (policemen and firemen); Kennedy v. City of Newark, 29

N.J. 178, 148 A.2d 473 (1959) (all employees); Williams v. Civil Service Commission of the City of Detroit, 383 Mich. 507, 176 N.W.2d 593 (1970) (all employees); Salt Lake City Fire Fighters Local 1645 v. Salt Lake City, 22 Utah 2d 115, 449 P.2d 239 (1969) (all employees).

State, County and Municipal Employees Local 339, AFL-CIO v. City of Highland Park, 363 Mich. 39, 108 N.W.2d 898 (1961), invalidated a public employee residency requirement, but only because the city did not have enough suitable housing available for the 163 employees required to relocate to the city; and compare, Williams v. Civil Service Commission of the City of Detroit, supra, sustaining legislation without that encumbrance. The only case flatly contra is Donnally v. City of Manchester, 274 A.2d 789 (1971), basing the rejecting of a public employee residency requirement on an interference with the right to travel.

The history of the Heim-Crane rationale may be traced to a 1932 Supreme Court decision sustaining a statute forbidding intrastate carriers from using the state highways without permits from a commission prescribing minimum cargo rates and requiring cargo insurance. Stephenson v. Binford, 287 U.S. 251 (1932). The legislation was attacked as an unlawful regulation of private business. Rejecting that contention the Court held:

> It is well established law that the highways of the state are public property; that their primary and preferred use is for private purposes; and that their use for purposes of gain is special and extraordinary, which, generally at least, the legislature may prohibit or condition as it sees fit. 287 U.S. at 264.

The Court drew a parallel between the legislation under review and the legislation sustained in Heim v. McCall:

> The provision...under review is governed by the same principle as that which recognizes the authority of a state to prescribe the conditions upon which it will permit public work to be done on its behalf. 287 U.S. at 275, 276.

While the case is forty years old and not "modern," the absence of extensive citations of its holding is perhaps best explained by the entrenched authority of states to regulate intrastate carriers.

The Contracting Power Analogy

In Perkins v. Lukens Steel Co., 310 U.S. 113, 127 (1940), the Supreme Court sustained the Public Contracts Act of 1936, requiring that all manufacturing or supply contracts with the United States contain a minimum wage stipulation. Against the argument that the statute constituted an illegal interference with the right of private employers to conduct business with the Government, the Court said:

> Like private individuals and businesses, the Government enjoys the unrestricted power to produce its own supplies, to determine those with whom it will deal, and to fix the terms and conditions upon which it will make needed purchases. 310 U.S. at 127.

In support of this statement the Court cited Heim v. McCall, 310 U.S. at 127, n. 15. The Perkins opinion concluded that a minimum wage determination made by the Secretary of Labor pursuant to the Public Contracts Act was not even reviewable in light of the Government's contracting power.

The Perkins' rationale has never been successfully challenged. The parallel between that decision and the validity of SB No. 53 (1971) is placed in clear perspective when the validity of racial quota requirements under federal executive orders is considered.

Federal Executive Order No. 11246, 30 Fed. Reg. 12319 (1965), requires that Government manufacturing and supply contracts, and contracts with federally-assisted employers, contain a clause obligating the contractor, supplier, or federally-assisted employer, to take affirmative action to assure nondiscriminatory employment policies. The Philadelhia Plan, and others like it, implementing the Executive Order, go further and require that the contractor, supplier, or federally-assisted employer take affirmative steps and make a good faith effort to reach a minority hiring goal established by the Area Coordinator for the Office of Federal Contract Compliance. Equal protection and due process attacks directed at the Philadelphia Plan's validity were rejected in Contractors Association of Eastern Pennsylvania v. Shultz, 442 F.2d 159 (3d Cir. 1971), cert. denied, _____ U.S. _____ (1971).

> The Philadelphia Plan is valid Executive action designed to remedy the perceived evil that minority tradesmen have not been included in the labor pool available for the performance of construction projects in which the federal government has a cost and performance interest. The Fifth Amendment does not prohibit such action.[6]
> 442 F.2d at 177.

6. As applied to the construction industry in state government contracts by virtue of federal assistance, the validity of the Executive Order has been sustained. Weiner v. Cuyahoga Community College, 19 Ohio St. 2d 35, 249 N.E.2d 907 (1969), cert. denied, 396 U.S. 1004 (1970), and Ethridge v. Rhodes, 268 F. Supp. 83 (S.D. Ohio 1967).

The perceived evil sought to be eradicated by Alaska through the preferential hiring requirement is its consistently high unemployment rate, perennially one of the highest in the nation. Its power to do so by establishing conditions in a lease which potential lessees are free to accept or reject is at least equal to the federal government's power to reduce the incidence of racial discrimination through its power to establish contract conditions which a potential government contractor is free to accept or reject.

Equal Protection, the Commerce Clause and the "Right to Travel"

Since Shapiro v. Thompson, 394 U.S. 618 (1969), invalidating a state and a District of Columbia one-year waiting period requirement for welfare assistance, a number of cases have invalidated waiting period requirements for other forms of public assistance. See Cole v. Housing Authority of the City of Newport, 435 F.2d 807 (1st Cir. 1970) (one-year waiting period for housing); Vaughan v. Bower, 313 F. Supp. 37 (Ariz., 1970), aff'd 400 U.S. 884 (1971); (one-year wait for mental hospital eligibility); King v. New Rochelle Municipal Housing Authority, 442 F.2d 646, 649 (2d Cir. 1971) (five-year wait for housing); Lane v. McGarry, 320 F. Supp. 562 (N.D.N.Y. 1970); Crapps v. Duval County Hospital Authority, 314 F. Supp. 181 (M.D. Fla. 1970) (one-year wait for free medical care).

All of the above cases dealt with durational residency requirements. The distinctions between a durational requirement and a non-durational residency requirement like that found in S.B. No. 53 (1971), is vital. It is the waiting period requirement that the courts have found unconstitutional.

To emphasize and fully discern the distinction, one need only contemplate a court holding that no state residency requirements need be met in order to qualify for welfare under a state's welfare laws or state unemployment compensation benefits. The result would clearly be fiscal chaos, as United States citizens living in any state could then receive welfare or unemployment compensation payments from any requested state.

SB No. 53 (1971) differs drastically from the types of durational residency requirement laws dealt with in the cases noted above. It does not require a residency period of any duration, but does require residency in the sense of a physical presence in the state with the intent to remain permanently. Specifically, a resident is defined by Sec. 38.05.179 as follows:

> DEFINITIONS. In secs. 176-179 of this chapter
>
> (1) "bona fide resident of Alaska" or "resident" means
>
> (A) a person who has been physically present in the state of Alaska, except for brief intervals, for a period of one year; or
>
> (B) a person who has not been present in the state for a period of one year, except for brief intervals, but shows by all attending circumstances that his intent is to make Alaska his permanent residence and the Department of Labor has certified that the attending circumstances show this intent.

While the issue, to my knowledge, has not yet been dealt with in a square holding by a court, dictum in numerous cases, including Shapiro v. Thompson, supra, suggest that a bona fide

residency requirement is entirely distinguishable from durational residency requirements. For example, in King v. New Rochelle Municipal Housing Authority, supra, the Court concluded:

> In reaching our conclusion (that a five-year durational residency requirement for public housing is invalid) we emphasize that we are here deciding only the validity of a durational residency requirement for admission to public housing. As in Shapiro (v. Thompson), there is no contention here that a state or a local government may not require that applicants for public services be bona fide residents. 442 F.2d at 649.

The "right to travel" argument necessarily encompasses interstate commerce clause considerations, as Edwards v. California, 314 U.S. 160 (1941), decided in striking down a California statute effectively prohibiting indigents from entering the State. Accordingly, the "new" equal protection theories as described in Shapiro v. Thompson, supra, are discussed here under a heading which includes the interstate commerce implications of preferential hiring legislation as typified by SB No. 53 (1971).

The issue of durational residency requirements, as opposed to mere residency requirements, was squarely dealt with by the prestigious First Circuit Court of Appeals in Cole v. Housing Authority of Newport, 435 F. 2d 807 (1970)--albeit by way of dictum. That court stated:

> The answer, we think, lies in the Court's concept of the right to travel. The Court apparently uses "travel" in the sense of migration with intent to settle and abide. See Note, Shapiro v. Thompson: Travel, Welfare and the Constitution, 44 N.Y.U.L. Rev. 989, 1012 (1969). Thus, laws that comparatively disadvantage persons traveling to take advantage of state benefits and then leaving are permissible under Shapiro. For example, the Court suggested that

> residency is a reasonable requirement for eligibility to receive welfare benefits but that the one-year waiting period was unconstitutional. Shapiro, supra at 636, 89 S.Ct. 1322, 22 L.Ed.2d 600. Any residency requirement might be thought to penalize the right to travel if "travel" is used in the sense of movement. A resident of Maine vacationing for a month in New Hampshire might be penalized for traveling if he could not obtain the benefits of a library card in New Hampshire during his vacation. Nevertheless, a residence requirement so "penalizing" that kind of travel is probably permissible under Shapiro.

Footnote eleven at the end of the above quoted paragraph provides:

> We do not think, for example, that Newport is required to convert its public housing into motel facilities for transients. A requirement that persons applying for public housing have a bona fide intent to reside in Newport would be permissible.

CONCLUSION

In my judgment neither the equal protection clause nor the interstate commerce clause should bar the contemplated legislation. As concluded earlier, I think that the privileges and immunities clause of Article IV Section 2 would not bar the contemplated legislation.

Other suggestions going to the form of the legislation, and make-weight arguments concerning a tie-in with equal employment opportunity legislation and general training programs, I should prefer to discuss after talking personally with Senator Croft and other interested legislators. It may be that these matters need only be mentioned as a legislative finding of fact in the preamble to the legislation.

A tax incentive to accomplish the preferential hiring objective,

while constitutionally valid, if not unreasonably discriminatory or confiscatory, would be valid but not as effective, overall, as the lease condition route.

Professor Reginald H. Alleyne, Jr.
UCLA School of Law
Los Angeles, California

February 14, 1972

SB

82

Pouch V,
State Capitol Bldg.
Juneau, Alaska
March 4, 1971

MEMO TO:

Rep. George Hohman,
Chairman,
House Finance Committee

FROM:

Rep. Mike Miller,
Chairman,
House Local Government Committee

I thought it might be useful for you to know why the Local Government Committee had requested a Finance Committee referral for Senate Bill 82. The bill would provide a vehicle by which boroughs (in this case, the Greater Anchorage Borough) could set up transit authority. This being the case, the Committee felt that the boroughs would thus create an additional draw on revenue sharing funds for transportation purposes in areas where no such funds are presently distributed.

Pouch V,
State Capitol
Juneau, Alaska
March 11, 1971

Mrs. Wilda Hudson
President,
Greater Anchorage Area
Borough Assembly
1542 E. 27th Ave.
Anchorage, Alaska 99504

Dear Wilda:

Thanks so much for your letter of March 8th relative to Senate Bill 82, an act related to public transit powers of 1st class cities.

I appreciate very much your thoughts on this bill. However, in as much as it has already passed out of this committee, I am taking the liberty of sending your letter to the Chairman of the next committee of referral - the House Judiciary Committee, Rep. Wm. Moran of Anchorage, Chairman.

Incidentally, I have been meaning to write you to thank you for your very evident interest in the Municipal Code. Your thoughtful suggestions are being considered and we are most appreciative that you took the time to appear and submit them.

Sincerely,

Mike Miller, Representative
District Four, (Juneau)

GREATER ANCHORAGE AREA BOROUGH
104 NORTHERN LIGHTS BOULEVARD
ANCHORAGE, ALASKA 99503

March 8, 1971

ASSEMBLY
1542 E. 27th Ave.
Anchorage, Alaska
99504

Honorable Mike Miller, Chairman
Local Government Committee
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99801

Dear Representative Miller;

It is my understanding that SB 82 entitled "An Act relating to the granting of public transit powers to first class cities" has been passed by the Senate and transmitted to the House for consideration.

This is to let you know that I support SB 82 in its present form since it is necessary that Title 29 be amended in order that general law municipalities might have the authority to enter into the public transportation field if they so desire. During the course of the consideration of this bill in the Senate, an amendment was proposed in the Local Government Committee to Title 7, and apparently it reached the Senate floor, that would have given assemblies of second class boroughs the authority to exercise the power of public transportation without placing the question on the ballot for the people to vote upon. This amendment, however, was defeated on the Senate floor and SB 82 passed in its original form.

For the record, when SB 82 is under consideration by your House Local Government Committee, please be advised that I would highly oppose any attempt to circumvent the voter by placing the authority within the hands of the Borough Assembly to exercise the power of public transportation. However, I would like to make it perfectly clear that I do not in any oppose general law municipalities being authorized the power of public transportation under Title 29. It is that I merely oppose any amendment to Title 7 that would place public transportation in any position different than any other power granted under Title 29 which would mean that if the residents of an area have chosen to function under the second class borough concept, then they have every right to have any power placed on the ballot and voted upon.

I would advise you and your Committee that the opinions expressed in this letter are those of myself as an individual assembly member and does not in any way express the opinion of the Greater Anchorage Area Borough Assembly as a whole. SB 82 has never come up for discussion before the Anchorage Borough Assembly. I would appreciate being notified when SB 82 will be before your Committee for your consideration.

Thank you very much.

Sincerely,

Wilda Hudson

Wilda G. Hudson
President
Greater Anchorage Area Borough Assembly

WGH: mc

cc: Representative Eugene Guess, Speaker of the House

SB

101

ALASKA
STATE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

Room 409
State Capitol

INTER-AGENCY ROUTING SLIP

TO: nick miller

ATTN:

REMARKS: FYI

FROM: Rose

DATE:

Alaska MUNICIPAL League

TELEPHONE
586-1325

JUNEAU, ALASKA 99801
210 Admiral Way

December 18, 1970

The Honorable Gene Guess, Chairman
Alaska State Legislative Council
Box 1332
Anchorage, Alaska 99501

Dear Gene:

Pursuant to your recent conversation with Mayor George Sullivan, I wish to confim that the Alaska Municipal League does have a draft of a revised municipal code which has been approved by both the boroughs and cities in the League. There are certain revisions which will have to be made to up-date the code in line with certain laws which have been enacted in the last couple of years.

The League now has a committee working on these revisions, and we hope to have the entire draft ready for consideration by January 11 when the Seventh State Legislature convenes. Many hours of work and deliberation have gone into the League-drafted bill and we would certainly appreciate its being given serious consideration before any other bill is introduced. Since our draft has already been accepted by practically all of the boroughs and cities in Alaska, we feel that much of the argument and dissent which have prohibited passage of a new municipal code in the past will be eliminated.

Bill Berrier is Chairman of the League committee drafting the necessary revisions to our bill. I have asked him to write you a more detailed letter explaining what has been done and will be done in the future. You may rest assured that we will cooperate with you in every possible way and will be pleased to testify before the Legislative Council or any committee you designate on the League's draft of a revised municipal code.

We certainly want to thank you for your usual courteous consideration in this matter.

Best wishes for a happy holiday season.

Sincerely,

Don M. Berry
Executive Director

DMB/mm

Alaska MUNICIPAL League

TELEPHONE
586-1325

JUNEAU, ALASKA 99801
210 Admiral Way

December 22, 1970

The Honorable Gene Guess, Chairman
Alaska State Legislative Council
Box 1332
Anchorage, Alaska 99501

Dear Gene:

After writing you on December 18, I have been advised that a meeting of the League's committee working on the municipal code will be held in Juneau, January 4th and 5th. It is hoped that the committee will, at that time, be able to put together our final version of the bill for your review.

For your information the members of the committee are Bill Berrier, Juneau; Bill Curtis, Palmer; Jim Nordale, Kenai Peninsula Borough; and Warren Christiansen, Sitka. If you have any suggestions for the group to consider at its Juneau meeting, please let me or any member of the committee know prior to January 4.

Sincerely,

Don M. Berry
Executive Director

DMB/mm

Superseded #101 by CSSB

SENATE BILL NO. 101

TITLE 29. MUNICIPAL GOVERNMENT

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SB

113

Alaska State Legislature

House of Representatives

Pouch V,
State Capitol Bldg.
Juneau, Alaska 99801
April 12, 1971

Memorandum: To Whom It May Concern

From: Representative Mike Miller

Representative John Huber has requested that you receive this copy of the proposed Municipal Code with the additional educational amendment.

He has requested if you have any questions or comments that you transmit them immediately. I am hoping to take action on this bill before the end of this week.

Enclosures:

SB 113
CSSB 113
CSHB 208

Please note: This material was mailed to you at the personal expense of Representative John Huber.

REPRESENTATIVE MIKE MILLER

COMMITTEES
CHAIRMAN, LOCAL GOVERNMENT COMMITTEE
MEMBER, RULES AND STATE AFFAIRS COMMITTEE

TO WHOM IT MAY CONCERN:

The following materials were sent to the Fairbanks area at the request of Representative John Huber:

1. Cover letter from Rep. Mike Miller
2. House Local Government Committee Report re education amendments.
3. Copy of CSHB 208
4. Copy of CSSB 113 with 3 comparisons stapled inside
5. Copy of SB 113

These materials were sent to the following persons:

City of Fairbanks

Hon. Julian Rice - Mayor
Mr. Ernie Carter - Councilman
Mr. Wallace F. Burnett - Councilman
Mr. Joseph M. Jackovich - Councilman
Mr. Thosmas Miklautsch - Councilman
Mr. Robt. Parsons - Councilman

Mr. Wallis C. Droz - City Manager
Mr. Ben T. Delahay - City Attorney
Miss Sally Rusnell - City Clerk
Mr. Clifford J. Rogers Jr. - City Treasurer
Mr. Richard Levine - City Engineer
Mr. Robt. Wolting - Finance Director
Mr. James A. Movius - General Manager, MUS

City of North Pole

Mr. J. Wright - Mayor

Fairbanks North Star Borough

Mr. John A. Carlson - Borough Chairman
Mr. John O. Gustafson,- Presiding Officer
Mr. Robt. H. Bettisworth - Assemblyman
Mr. Lynne Carpenter - Assemblyman
Mr. Foye L. Gentry - Assemblyman
Mr. Tom Kouremetis - Assemblyman
Mr. Joseph P. Lawlor - Assemblyman
Mr. Con B. Miller - Assemblyman
Mr. Joe Marshall - Assemblyman

Mr. James Bruce - Borough Attorney
Mr. Kenneth W. Anderson - Borough Clerk
Mr. Earl Wyman - Borough Assessor
Mr. Walter H. Peirce - Borough Engineer
Mr. Donald Gilmer - Borough Planning Director
The Chairman - Fairbanks N. Star Borough Planning & Zoning Commission

addendum:

at Rep. Huber's expense to:

Mr. Thos. Fenton, President
Fairbanks N. Star Borough
School Board
c/o Borough offices

Mr. Robert Claus, Pres. Fairbanks Real Property Taxpayers Assn.
301 Cushman ST.

Mr. Joe Vogler
P.O. Box 7, Fairbanks

Mr. Don Gilbert
c/o Ranch Motel - 22nd Ave. & Cushman ST., Fairbanks

Pouch V,
State Capitol Bldg.
Juneau, Alaska 99801
April 12, 1971

Honorable John A. Carlson
Chairman,
Fairbanks North Star Borough
P. O. Box 1267,
Fairbanks, Alaska 99701

Dear John:

Representative John Luber has requested that you receive this copy of the proposed Municipal Code with the additional educational amendment.

He has requested if you have any questions or comments that you transmit them immediately. I am hoping to take action on this bill before the end of this week.

Sincerely,

Mike Miller
Chairman,
House Local Government Committee

Enclosures:

SB 113
CSSB 113
CSHB 208

Pouch V,
State Capitol Bldg.
Juneau, Alaska 99801
April 12, 1971

Mr. Wallis C. Droz
Manager,
City of Fairbanks,
Fairbanks, Alaska 99701

Dear Mr. Droz:

Representative John Huber has requested that you receive this copy of the proposed Municipal Code with the additional educational amendment.

He has requested if you have any questions or comments that you transmit them immediately. I am hoping to take action on this bill before the end of this week.

Sincerely,

Mike Miller
Chairman,
House Local Government Committee

Enclosures:

SB 113
CSSb 113
CSLB 208

Pouch V,
State Capitol Bldg.
Juneau, Alaska 99801
April 12, 1971

Honorable Julian C. Rice
Mayor,
City of Fairbanks
Fairbanks, Alaska 99701

Dear Mayor Rice:

Representative John Huber has requested that you receive this copy of the proposed Municipal Code with the additional educational amendment.

he has requested if you have any questions or comments that you transmit them immediately. I am hoping to take action on this bill before the end of this week.

Sincerely,

Mike Miller
Chairman,
House Local Government Committee

Enclosures:

SB 113
CSSb 113
CSHB 208

HOUSE JOURNAL

APRIL 12, 1971

HOUSE LOCAL GOVERNMENT COMMITTEE REPORT

ON

COMMITTEE SUBSTITUTE HOUSE BILL NO. 208

House Bill 208 and CSHB 208 are identical in every respect to SB 113 and CSSB 113 respectively. Accordingly, as a committee report, the Local Government committee is submitting three documents: (1) a Foreword and Synopsis of Amendments; (2) a Comparison of CSSB 113 and Existing Municipal Law, and (3) a Comparison of CSSB 113 and SB 113.

In addition, House members should be aware that the Local Government committee met April 10th and unanimously adopted amendments in the educational field which change the substance of the bill as it relates to education and which, also, when incorporated into the total concept of the bill, make the summaries no longer accurate as they affect education.

Briefly, the House Local Government education amendments were designed to preserve the status quo as far as education is concerned in the field of municipal law. Currently, there is court litigation in process which should clarify the position of education and its relationship to home rule and general law municipalities. The amendments virtually remove education from the Municipal Code and place the entire field of education in Title 14 (the education title of state statutes). By removing education from the Code, it is the intent of the committee to maintain the status quo and thus to provide for guidance in this matter from the courts.

Mike Miller, Chairman
House Local Government
Committee

April 19, 1971

Mr. Robert E. Sharp
City Manager
City of Anchorage
P. O. Box 400
Anchorage, Alaska 99501

Dear Bob:

Thank you for your letter concerning CSSB 113.

I have read the memorandum written by the Budget Advisory Commission last year and I am forwarding a copy of your letter to the House Local Government Committee for their consideration.

I plan to discuss the matter with some of the other Anchorage legislators and we will see what we can do about amending the bill.

Thank you for bringing this matter to my attention.

Sincerely,

Gene Guess
Speaker of the House

cc: Rep. Mike Miller

CITY OF ANCHORAGE ALASKA

International
Polar air crossroads of the world

POST OFFICE BOX 400
ANCHORAGE, ALASKA
99501

April 16, 1971

Honorable Gene Guess, Speaker
Alaska House of Representatives

Honorable John Rader, Chairman
Senate Local Government Committee

Gentlemen:

This will confirm my wire today concerning the adverse affect of Section 29.48.190, CSSB 113, on the City of Anchorage.

The matter of changing the City's fiscal year was brought up last fall. At that time the City Council asked the Budget Advisory Commission to study the matter and make a recommendation. A copy of this study, dated November 20, 1970, is enclosed.

It was the unanimous decision of the study group that the City of Anchorage not effect the change to the June 30 fiscal year. The report contains seven reasons in support of continuation of the present January 1-December 31 fiscal year.

There has been no difficulty, insofar as we have been made aware, of the use of the present fiscal year of the City of Anchorage in connection with any Federal or State-shared revenue program.

Again, we urge that CSSB 113 be amended to delete home rule cities from Section 29.48.190.

Sincerely yours,

Robert E. Sharp
City Manager

RES:AFR
Enclosure

cc: Mr. Don Berry, Alaska Municipal League
Honorable Edward A. Merdes

AIRMAIL IS FASTER

M E M O R A N D U M

TO: Mayor and Council DATE: November 20, 1970

FROM: Budget Advisory Commission

SUBJECT: Fiscal Year

Dear Mayor Sullivan:

In response to a recent request of this Commission, Members Johnson and Brighton investigated the consequences of a change to a 30 June fiscal year.

That investigation raised technical questions of sufficient magnitude to warrant opinions by specialists in activities affected by the accounting cycle.

The attached report prepared by John Johnson briefly describes the remarkable concurrence of the panel to the effect that a change to June 30 would not result in a real or potential gain to the City---but would more likely result in significant costs during the changeover.

It was also suggested at that meeting that the proposed unification charter be mute on the cycle, thereby allowing the major components of that government to use their "natural cycle," i.e. City-calendar year, schools-fiscal year, and so forth.

We trust this report by the Commission is sufficient to your present needs.

Very truly yours,

BUDGET ADVISORY COMMISSION

By: H. R. Lee
H. R. Lee, Chairman

cc: Commission Members
Mayor
Council
City Manager
Messrs. Bettig, McKee, Orwoll, Morrison, Surrell, Sherwood and Siddle

Enclosures

HRL:ld

November 18, 1970

TO: Harry Lee, Chairman
Budget Advisory Commission

FROM: John M. Johnson, Member

RE: Whether the City should establish a fiscal year ending June 30th

On November 13, 1970, the members of the City Budget Advisory Commission met at the Captain Cook Hotel and discussed whether or not the City of Anchorage should change from a fiscal calendar year basis to a June 30th basis.

Budget Advisory Commission members present were: Harry Lee, Chairman· members, Dick Smith, Charles Leveige, Desmond Edwards, Everett Brighton, John M. Johnson, and Norman Levesque.

Attending the meeting and participating in the discussion were the following individuals, all of whom have had direct contact with the question:

1.	Robert Sharp	City Manager, City of Anchorage
2.	R. L. Rettig	State Legislator
3.	Pat McKee	Greater Anchorage Area Borough Assessor
4.	Earling Orwoll	Greater Anchorage Area Borough Comptroller
5.	Bob Morrison	Budget Officer, City of Anchorage
6.	Fred Surrell	Public Service Commission
7.	Clyde M. Sherwood	Certified Public Accountant
8.	Jay Siddle	Certified Public Accountant and Greater Anchorage Area Borough Assemblyman

It was the unanimous decision of the group that the City of Anchorage not effect the change to the June 30th fiscal year.

Although the Greater Anchorage Area Borough and the School District are on a fiscal year ending June 30th, the administrative officers of the respective contiguous entities, the Greater Anchorage Area Borough and the City of Anchorage, stated they were experiencing no fiscal difficulties as a result of being on different fiscal periods.

No major arguments were advanced with regard to a change to the June 30th date. On the contrary, strong arguments were made to maintain the present calendar year basis; they were:

1. Fiscal funds for the Capital Improvement Program would experience a year's delay; such loss would be non-recoverable.

2. The acceleration of tax payments during the transition would be detrimental to all.

3. The various governing agencies of municipal utility operations have set forth calendar year reporting, and since utility funds make up the greater part of the City's operations, the change would appear undesirable.

4. There is really no correlation between the receipt of funds from revenue sharing programs and participating funds grants and applicable fiscal periods, and as a consequence, the City is on a modified cash basis in its budgeting programs for such resources.

5. Budget planning and preparation time is at the most ideal time under the present accounting period as springtime budgeting is not the most feasible date for budget preparation because of the seasonal nature of various workloads in the Anchorage areas.

6. The planning and sale of bonding programs likewise appear to be more suited to the existing fiscal period.

7. The commitments of the subdividers, because of their inherent problems, financial and climatical, are better coordinated with the December 31st fiscal year.

Inasmuch as there were no major disadvantages and rather significant advantages to the December 31st fiscal period, we recommend the City continue the calendar year reporting basis.

Very truly yours,

John M. Johnson

City of Anchorage
Budget Advisory Committee

I. Question: Whether the City should establish a fiscal year ending June 30.

A. Legal Opinion: Rendered January 15, 1968 by Karl A. Walter, Jr., City Attorney

The question has been asked as to whether the City may establish a fiscal year other than a calendar year.

The answer to the question is that under Section 6.1 of the City Charter, the Council may establish a fiscal year other than one which coincides with a calendar year.

Section 6.1 of the City Charter provides as follows:

> "The fiscal year of the City shall be as established by the Council, unless otherwise provided by law."

At the present time the City fiscal year is the calendar year. As the City Charter gives the City Council the power to establish the fiscal year, the City may lawfully change and establish a different calendar year from, for example, July 1 to June 30. Although there is no "provision" which definitely established the calendar year as the fiscal year, Section 2-10 of the Code of Ordinanaces in prior City practice does establish the calendar year. Section 2-10 of the Code would, therefore, have to be changed.

In conclusion, there is no legal impediment to the City Council establishing a different City fiscal year other than the calendar year.

April 19, 1971

The Honorable John H. Huber
Alaska State Representative
Alaska State House
Juneau, Alaska 99801

Dear John:

Thank you very much for your letter of April 16 setting forth your concerns with the revised Municipal Code (CS HB 208). I hope I can answer your difficulties as well as you stated them.

1) Sec. 29.48.033 (b), (c), & (d) relating to private garbage collection firms in annexed areas: The joint Local Government Committees felt it was vital to retain existing law on such controversial issues rather than jeopardize the bill. As you know, the language in CS HB 208 regarding garbage was enacted last session. Another bill on the subject has passed the House, but is languishing in the Senate Rules Committee. We felt any change in existing law should go to the floor as separate bills and be decided on their own merits. The garbage provision in CS HB 208 is existing law.

2) Sec. 29.13.100 (18) establishing July 1 to June 30 as the fiscal year in all municipalities: We have been informed many times by reputable fiscal advisors and bond houses that having different fiscal years makes it very difficult to compare spending patterns and financial conditions of various municipalities. This problem may adversely affect the credit ratings of some local governments. In addition, Federal and State officials have problems making statistical comparisons. The greater amount of shared revenues from the State (or Federal) government, the more complex the problems when a locality receives its money halfway through its fiscal year. Finally, and most important now, I have been told that Fairbanks has to keep higher cash balances on hand than it would if the schools (on a July 1 fiscal year) did not have to wait six months or more for property tax revenues.

3) Sec. 29.53.220, providing for enforcement of personal property tax liens: Distraint and sale might not raise the amount of tax due because this is not a true market transaction. The buyer is willing, perhaps, but the seller is not. Besides, if the sale is delayed some time, and this happens, the property may have depreciated.

4) Sec. 29.53.135 allowing the assembly or council to delegate equalization disputes to a board: The case for this provision is that it will save the governing body's time for the most important equalization disputes and that it makes it possible to have a more experienced, longer-serving board to hear complaints. If this does not work, the assembly can always go back to hearing every dispute. The joint committee realizes this method could result in non-elected fficials taking "the heat" for elected councilmen, but the committee felt that the possible expertise developed by a regular committee would be in the public interest. Our decision could be wrong, but we could also end up being right.

5) Sec. 29.48.050 (c) and Sec. 29.48.100 relating to franchises and permits: The bill says the governing body "may" grant franchises (page 65, line 2); clearly, they could refuse one. You feel the locality should have the final word on reasonable terms, conditions, etc., for the use of streets by public utilities. But the utilities can always go to the courts over what is "reasonable". The idea of having the Alaska P.U.C. hear the matter was, hopefully, to avoid this. It would save considerable time and money for both parties. The joint committee felt it is not in the public interest to afford a municipality a veto on such a vital public interest area concerning customers outside the municipality.

Please contact me if you wish to discuss these matters further.

With best wishes, I am,

Cordially yours,

EDWARD A. MERDES

EAM:sb

April 16, 1971

M E M O R A N D U M

TO: Representative Mike Miller

FROM: Greg Machyowsky, Legislative Counsel

SUBJECT: Attached amendments

As requested I've prepared an amendment for CSHB 208 (as amended) setting the regular municipal election date on the first Tuesday in October rather than the Tuesday after the first Monday in November. The amendment is prepared for the Senate. It should be noted that does not affect the present provision of the bill setting the election every two years at the time of the state election, rather only sets that regular election date in October. Thus, if adopted, the amendment would result in local elections in October every two years, followed by state elections the next month, unless municipalities choose by ordinance to provide for local election every year on the first Tuesday of October, as under present law. If regular local elections every two years in the off-year of the state election are intended, then the amendments made on pages 35 and 123 in the attached amendment should read:

> Page 35, line 23: Strike "Tuesday after the first Monday in November every even-numbered year" and substitute "first Tuesday of October every odd-numbered year"
>
> Page 123, lines 24 - 25: Strike "Tuesday following the first Monday in November of even-numbered years" and substitute "first Tuesday of October of odd-numbered years"

As indicated, the bill still leaves the option to local governments to provide for an election every year (or even at longer intervals than every two years).

Senator Mordes hasn't specifically requested a Senate amendment to change election dates, I'm furnishing the amendment to you in accordance with your request yesterday to have the amendment ready.

Another, shorter amendment, is enclosed, also; it would make a few desirable technical improvements and corrections. If other amendments to the bill are adopted in the Senate, I would recommend that the amendments on the enclosed sheet (for pages 17, 25, 65, 73, 106 and 124 of the bill respectively) be also adopted. The first two,

on page 17 are for clarification only (as now worded the lines seem to contemplate an election only in state election years, whereas elections every year at the option of the local government are also intended). The amendment on page 25 corrects an error; the line in the bill (line 28) erroneously stipulates a general law city council election every year. As to this one amendment, the lengthier amendment to change election dates also includes the correction (in effect deleting the phrase "every year" on page 25, line 28).

The amendments following clear up ambiguity in the use of the term "general" election when "regular" election is meant; the ambiguity developed in the process of integrating existing recently enacted statutes on franchise and property disposal elections into the committee substitute bill. Except possibly for the correction on page 25, none of the amendments would appear to me important enough to complicate or delay passage of the code, and if necessary can be recommended as corrections in the revisor's bill next year. (There undoubtedly will be a number of other minor technical matters cropping up in the course of detailed examination of the committee substitute bill as enacted.)

I've also made a minor technical improvement, at page 124, line 17, making clear that incumbents in office at the time the Act takes effect serve until the October expiration date of their terms, and the elections for immediate successors are held in October, notwithstanding the present provisions for November elections.

Encl.

GM:ic

A M E N D M E N T No. 1

IN THE SENATE

TO: CS FOR SENATE BILL NO. 113

Page 17, line 28: Strike "at the time of the general election" and substitute "on the first Tuesday of October"

Page 18, line 1: Strike ", unless provided otherwise by ordinance"

Page 22, line 29: Strike "Tuesday after the first Monday" and substitute: "first Tuesday of October"

Page 23, line 1: Strike "in November"

Page 25, lines 28 - 29: Strike "every year on the Tuesday after the first Monday in November" and substitute "first Tuesday of October"

Page 27, lines 12 - 13: Strike "Tuesday after the first Monday in November" and substitute "first Tuesday of October"

Page 29, line 8: Strike "municipal"

Page 29, line 9: Strike "Tuesday after the first Monday in November" and substitute "first Tuesday of October"

Page 29, lines 22 - 23: Strike "municipal election on the Tuesday following the first Monday in November" and substitute "election held on the first Tuesday of October"

Page 35, line 23: Strike "Tuesday after the first Monday in November" and substitute "first Tuesday of October"

Page 123, line 24: Strike "Tuesday following the first Monday in November" and substitute "first Tuesday of October"

Page 124, lines 18 - 19: Strike "are elected on the date provided before enactment of this title and"

A M E N D M E N T No. 2

IN THE SENATE

TO: CS FOR HOUSE BILL NO. 208 as amended

Page 17, line 27: Strike "an election" and substitute "a regular election"

Page 17, line 28: Strike "at the time of the general election"

Page 25, line 28: Strike "every year"

Page 65, line 15: Delete "general" and substitute "regular"

Page 73, line 12: Delete "general" and substitute "regular"

Page 106, line 19: After "question" insert "at a regular or special election"

Page 124, line 19: After the period add the following new matter: "Insofar as the temporary provisions of this section conflict with other provisions of this Act relating to municipal elections and terms of office, the other provisions of this Act are superseded until the temporary provisions of this section have been fully implemented."

Alaska State Legislature

House of Representatives

Pouch V,
State Capitol Bldg.
Juneau, Alaska 99801
April 12, 1971

Memorandum: To Whom It May Concern

From: Representative Mike Miller

Representative John Huber has requeste that you receive this copy of the proposed Municipal Code with the additional educational amendment.

He has requested if you have any questions or comments that you transmit them immediately. I am hoping to take action on this bill before the end of this week.

Enclosures:

SB 113
CSSB 113
CSHB 208

Please note: This material was mailed to you at the personal expense of Representative John Huber.

REPRESENTATIVE MIKE MILLER

COMMITTEES
CHAIRMAN, LOCAL GOVERNMENT COMMITTEE
MEMBER, RULES AND STATE AFFAIRS COMMITTEE

Alaska State Legislature

House

JUNEAU ALASKA

Local Government Committee

April 9, 1971

Mr. James A. Anderegg
Director, Division of Environmental Health
State Department of Health and Welfare
Pouch H
Juneau, Alaska 99801

Dear Mr. Anderegg:

Chairman Miller has asked me to inquire about the Department's requirement that all sewer lines be 8" in diameter (Administrative Code, Title 7, Sub-chapter 2, Section 318 (c)). A number of individuals have contacted legislators and quoted engineers as stating that in some situations a 6" pipe was preferable for "volumetric" reasons. As I understand it, the smaller pipe in relation to the water and sewage involved will insure better flushing of the pipe. I am told there is not much cost saving in using a 6" instead of an 8" pipe, but the smaller one can be easier to maintain.

We would appreciate a short note on why 8" pipe is required without exception, and on how this requirement compares with that in some other western states and in projects built under Federal aid.

If this matter can be handled on the phone, please feel free to call me at 5-5290.

Sincerely,

James B. Rhode

James B. Rhode
Administrative Assistant
House Local Government Committee

JBR:jor

Alaska State Legislature

House

JUNEAU ALASKA

Local Government Committee

April 8, 1971

Mr. Robert Sharp, City Manager
City of Anchorage
City Hall
Anchorage, Alaska

Dear Mr. Sharp:

You will be pleased to know that all the points you raised about SB 113 in your wire of March 29 to Chairman Miller were discussed by the Senate and House Local Government Committees in a joint meeting. Most of your recommendations were either adopted (including a provision for city tax zones with "different services or a different level of services" than in the rest of the city) or had been acted on by the committees earlier. With respect to requiring dual majorities for the adoption of areawide powers, Senator Rader announced that he would take a "Committee amendment, by request" to the floor of the Senate.

SSSB 113 is now in the final stages of typing and the hope is to introduce the bill in both Houses tomorrow or Monday.

The chairmen of the Senate and House Local Government Committees have asked me to express their appreciation for your wire and the many other ways in which you have aided in revising the Code.

Sincerely,

James B. Rhode

James B. Rhode
Administrative Assistant to the
House Local Government Committee

March 29, 1971

Miss Gloria Watson
Secretary,
City of Petersburg
P. O. Box 329,
Petersburg, Alaska 99833

Dear Miss Watson:

The committee substitute for the proposed Municipal Code legislation has not yet been firmed up, however, I am enclosing a copy of the proposed Code and the changes we are considering. A final draft will probably be available in about a week. We will certainly see you receive an early copy.

Sincerely,

Mike Miller, Representative
Election District Four, (Juneau)

Enclosures:

1 copy SB 113
1 copy Summary - Proposed Amendments
1 copy Proposed Amendments

CITY OF PETERSBURG

P. O. Box 329 • Petersburg, Alaska 99833 • Phone 772-4425

Office of The
City Manager

March 17, 1971

Honorable Mike Miller
Alaska State Representative
State Capitol Building
Juneau, Alaska 99801

Dear Mr. Miller:

Please send the City of Petersburg a copy of all changes in the new Municipal Code affecting local governments.

Your assistance is greatly appreciated.

Sincerely,

Gloria Watson

Gloria Watson
Secretary

CITY OF PETERSBURG IN THE STATE OF ALASKA
CORPORATE SEAL
APRIL

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE 586-7477
JUNEAU, ALASKA 99801

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HONORABLE MIKE MILLER CHAIRMAN

2606

JUN

IN ADDITION TO ALASKA MUNICIPAL LEAGUE RECOMMENDED AMENDMENTS
AND DUAL MAJORITY PROPOSAL PREVIOUSLY SUBMITTED TO YOU,,
SUGGEST FOLLOWING AMENDMENTS TO SB115 [illegible] CONSIDERATION BY
COMMITTEES: PAGE 11, LINE 1[illegible], DELETE WORD "[illegible]" AND
INSERT WORD "[illegible]." PAGE 1[illegible] LINE 27 [illegible]
"BOROUGH" THE WORDS " OR CITY." PAGE 16 LINE [illegible]
25 AFTER WORD "BOROUGH" ADD WORDS "OR CITY." PAGE 47
DELETE ALL OF [illegible] (I) [illegible]
[illegible] LINE 1, PENALTY CLAUSE SHOULD [illegible]
FOR MISDEMEANOR [illegible] DAYS. [illegible]
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AND/OR DIFFERENT [illegible]."
PAGE 59 LINE 15, AFTER WORD "CITIES" [illegible]
BOROUGHS."

[illegible] CITY MANAGER

6-5465

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TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE 586-7177
JUNEAU, ALASKA 99801

1971 MAR 29 PM 4 21

155 SOUTH SEWARD ST.
JUNEAU, ALASKA 99801

THE CITY AND BOROUGH OF JUNEAU
CAPITAL OF ALASKA

586-3300

March 9, 1971

Mike— Please read over for our 8 AM meeting. ER—

The Honorable Edward A. Merdes
Alaska State Senate
Pouch "V" State Capitol Building
Juneau, Alaska 99801

Dear Senator Merdes:

Enclosed is my memorandum stating some of the major changes between the provisions of SB 113 and existing municipal law.

Very truly yours,

Billy G. Berrier/LB

Billy G. Berrier
City-Borough Attorney

BGB/llb

Enclosure

155 SOUTH SEWARD ST.
JUNEAU, ALASKA 99801

THE CITY AND BOROUGH OF JUNEAU
CAPITAL OF ALASKA

586-3300

March 8, 1971

MEMORANDUM

SOME MAJOR CHANGES BETWEEN THE PROVISIONS OF SB 113 AND EXISTING MUNICIPAL LAW.

Senate Bill 113, the current version of the revised Municipal Code, is an entire recodification of the laws relating to cities and boroughs now found in Titles 7 and 29. Such a recodification of course has innumerable changes from existing law both in form and in substance. SB 113 is based upon the draft revision of the Municipal Code prepared by the Alaska Municipal League. The instructions of the executive board of the league to the league legislative committee which did the actual work preparation was that this should be primarily a technical revision and should not attempt to solve the substantive problems existing in two areas, that of relations between cities and boroughs, and relations between school and general government. Accordingly the league draft in these areas is identical with existing law.

While it would be virtually impossible to detail the changes that have taken place between this code and existing municipal law certain changes are rather apparent. In the presentation made to the joint meeting of the Senate Local Government Committee and the House Local Government Committee by the Legislative Committee of the Alaska Municipal League certain of the changes were pointed out and discussed. In summary these are:

Possibily the most significant change made is the change from four classes of cities to two classes of cities. Under the new Municipal Code existing first class, second class, and third class cities would each become first class cities and the existing fourth class city would become a second class city. The primary difference in the revision between the first and second class cities is that the first class city has the school function and has the power to assess, levy and collect a general property tax while the fourth class city has neither of these powers. A population limit of 400 persons has been set as the number necessary to become a first class city under this code as in present law. It should be emphasized however, that while the existing first, second, and third classes are consolidated into the proposed first class existing municipalities are not automatically classified as first class municipalities. The reclassification to first class cities occurs only after favorable vote of the residents of the city affected. (Sections 29.08.010 through 29.08.050 and Sections 29.18.010 and 29.18.020)

Home rule limitations are gathered together in one place and listed. This section makes explicit the legislative intention to make only the sections specifically listed as applicable to home rule municipalities so applicable. Additionally the sections themselves contain a specific statement that they are applicable to home rule municipalities. (Section 29.13.100)

Present law provides for transitional assistance upon the creation of a new borough. In this revision such transitional assistance is also made available to cities. (Sections 29.18.180 through 29.18.200)

The procedures for ordinance enactment are smoothed out and the same procedures are made applicable both to boroughs and cities. This does not entail any change in the rights of the public to be heard or in the publication requirements. Essentially the only substantive change in this section is that the requirement has been eliminated that if a substantive change is made after hearing the ordinance must go to another public hearing. The reasoning behind this is that one of the primary purposes of the public hearing is to propose from the public changes which would better the operation of the ordinance. (Section 29.23.060)

The executive power has remained essentially the same except that the veto has been broadened and clarified. In the past there has been a question of whether a veto power could be used for motions and other actions of the assembly. Here it is clearly spelled out that they may be. Additionally a new authority for the line item veto in municipal budgets has been added. This line item veto does not apply to the school budget since the only power the assembly has is to approve or disapprove the total budget. The Chariman or Mayor may only veto that which the assembly has power to enact. (Section 29.23.170)

The city council is changed from what is normally referred to as the council-mayor form of government to the mayor-council form of government. (Section 29.23.200 through 29.23.220)

The article on school boards has been substantially shortened eliminating matters found in Title 14. There are no substantive changes between this section and current law. (Section 29.23.310)

The section on recall has been changed to eliminate the successor running at the same election as the recall election. Under this should the recall be successful a subsequent election is required to elect a successor. (Section 29.28.130 through 29.28.250)

Under current law the borough is charged with assessment and collection of real property taxes. The assessment and collection provision of the code broadens this to include the collection of the use and sales tax. (Section 29.33.030)

There has been considerable smoothing out in the planning, platting and zoning section. There are two significant alterations. One of these is that the planning commission itself may decide on variances subject only to appeal to the board of adjustment instead of the current procedure where all variances no matter how routine must go to the board of adjustment. The second change is that an official map act section has been added. The official map act in effect allows assembly adoption of an official map after hearing which upon adoption prohibits construction in areas designated for streets, parks, water courses and so on for the limited period of one year.

Under the current provisions of acquisition of additional areawide powers it is unclear whether second class cities may acquire additional areawide powers by transfer from the city. This section explicitly allows this. Additionally, this section no longer requires the Local Affaris Agency to pass upon the acquisition of additional areawide powers. In both this and present law additional areawide powers require a vote of the people in the areas involved which is considered to be sufficient. (Section 29.22.250 through 29.22.290)

The acquisition of additional powers and duties in the area outside cities again no longer requires review by the Local Affairs Agency since as in the acquisition areawide powers a favorable vote of the people involved is required. (Section 29.38.010 through 29.38 .050)

An entirely new approach has been taken to delineation of municipal facilities and services. Under existing law the various municipal facilities and services are spelled out in substantial detail in paragraphs applicable to each. Such detail seems to serve no useful purpose. The form involved here is to merely list the powers and to provide for liberal construction of the powers, as is required by the constitution. (Section 29.48.030 and 29.48.100)

The procedure for enactment of ordinances has been simplified and streamlined. As pointed out above this does not change any substantive rights. It does however, by changing the publication requirement for 5 days allow special meetings to be held on the same days that regular meetings would be held on and additionally eliminates the requirement for a new hearing should there be an amendment as to substance for the reasons pointed out above. (Section 29.48.140)

It further sets a fixed fiscal year binding upon general law cities the fiscal year being the July 1 to June 30 fiscal year. (Section 29.48.190)

Under current law emergency disaster powers are applicable only to first class municipalities. Under this code all municipalities regardless of class may exercise emergency disaster powers, the thinking being that should a disaster strike the classification of the city is not a particularly relevant matter. (Section 29.48.270)

This code also follows the constitution in providing that a liberal construction shall be given to powers granted to municipal government. This follows the constitutional provision that "a liberal construction shall be given to the powers of local government units" contained in Section 1 of Article 10. (Sections 29.48.310 through 29.48.330)

The most significant alteration in municipal assessment and taxation is that the existing section providing for taxation of boats and vessels on an optional tonnage basis is omitted. This would mean that boats and vessels would be taxed at full and true value as provided in the section for general property taxes. (Sections 29.53.010 through 29.53.180)

There are several changes concerning the enforcement of tax liens. One change is that the foreclosure list no longer must be presented to the court on the same day of publication. This requirement has created substantial difficulty where the newspaper of publication is not located within the same city as the borough seat or within the city which is foreclosing the taxes. Under current law tax foreclosed property is deeded to the borough. Under this code tax foreclosed property lying within a city is deeded to the city while tax foreclosed property lying within the borough but outside city is deeded to the borough. This code further provides that should property deeded to the city not be needed for public use by the city but needed by public use by the borough the borough may obtain such property and the same of course holds true for property deeded to the borough. This code also provides that should property be taken for public use by any governmental unit upon such taking the amount of taxes owing to the other governmental units will be paid by the governmental unit taking title. (Section 29.53.360 and Section 29.53.385)

Under current law general law municipalities are allowed to levy a sales tax but are not allowed to levy a use tax, under this code both a sales and use tax may be levied. The code requires an election on sales tax but since use tax is a correlative of the sales tax and can only be adopted subsequent to or at a referendum where the sales tax is adopted no separate elections are required for adoption of the use tax. (Section 29.53.410 and Section 29.53.420)

There is now no authority for issuance of tax anticipation notes by general law municipalities. Such notes as a matter of practice, are issued dispite the lack of clear authority. This code clears up the authority by specifically allowing tax anticipation notes. (Sections 29.58.010 through 29.58.040)

Under existing law an election is required to authorize issuance of revenue bonds in general law municipalities. This requirement is deleted in the new code since no general tax obligation is assumed and revenue bonds are generally a management tool for the utility involved. (Section 29.58.205)

Under existing law there are two distinct sections on special assessments each with minor variations and procedures. The major variation was cleaned up last session but still the procedures vary slightly depending upon whether the special assessment is initiated by petition of the people or by ordinance of the governing body. While these distinctions are not substantial it becomes troublesome to determine precisely what procedure should be followed. In both instances the procedures are extremely cumbersome. Under this code the sections on special assessments have been entirely rewritten to provide the same notice and hearing requirements as in existing codes. That is the procedural fairness requirements are retained but much of the unnecessary cumbersomeness is eliminated. Significantly the new code also provides that special assessments may be levied against property owned by the state. The rationale here is that special assessments are based upon special benefits conferred to the assessed property and that should property owned by the state be specially benefited by public improvements which increase the value of state property the state no less than any other property owner should pay for such special benefits. (Section 29.53.010 through 29.63.080)

The liability of a municipality has been limited under this code to the same limitations that currently exist on actionable claims against the state. (Section 29.73.010)

Obviously, any attempted catalogue of the changes in a bill such as this is incomplete and leaves room for discussion as to whether the changes included were particularly significant or whether other areas which may be significant were not included. The really significant change this act makes over existing law is not a change in substance at all; it is a technical change or better yet a series of technical changes which reconcile inconsistent provisions in existing law, modernize the archaic language found throughout Title 29, and provides a more workable and immensely more understandable basic framework for local government. Substantive changes are necessary in many areas. It is our belief that the revised municipal code will not only provide a better framework for existing law but will provide a better framework to which a desirable and necessary substantive changes may be added after individual consideration of each of the changes on its own merits.

Billy L. Brown

Alaska State Legislature

House

JUNEAU ALASKA

TO: Senator Edward Merdes
Representative Mike Miller

DATE: March 22, 1971

FROM: James B. Rhode
AA House Local Government Committee

Enclosed is a list of all the amendments to SB No. 113 that you wished to submit to the Joint Senate and House Local Government Committee. We did not have specific language for some of the amendments when this list was prepared. However, Dennis Cook worded a number of them before he left and Greg Machyowsky is finishing the rest.

A narrative summary of these amendments is being written today. We suggest that this summary be read to, and discussed by, the Joint Committee in preference to going over every change line by line. After the Committee has passed on the changes, a committee substitute can be typed immediately. This procedure would save the time of the Committee and the typists.

Dennis Cook drafted a summary of SB No. 113 and proposed amendments; he covered not only the substantive changes from present law but also noted the sensitive areas where little or no change was made. This summary is being reviewed for final typing today or tomorrow.

JR:kp

Enclosure

STATE OF ALASKA

WILLIAM A. EGAN, Governor

DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER / POUCH F — ALASKA OFFICE BUILDING
JUNEAU 99801

March 5, 1971

M E M O R A N D U M

TO: The Honorable John Rader, Chairman
Senate Local Affairs Committee

The Honorable Mike Miller, Chairman
House Local Affairs Committee

FROM: Robert P. Isaac
Assistant to the Commissioner
Department of Education

SUBJECT: Review of Senate Bill 113, Municipal Code

I am herewith transmitting a review of the education provisions in Seante Bill 113. In our opinion the proposed code, if modified as suggested, would meet most of the objections which have been raised.

A small committee of school administrators and school board members would like an opportunity to meet with the respective legislative local affairs committees when hearings are again scheduled to discuss Senate Bill 113 as redrafted.

R. P. I.

RPI:cjb

Attachment

STATE OF ALASKA

WILLIAM A. EGAN, Governor

DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER
POUCH F — ALASKA OFFICE BUILDING
JUNEAU 99801

March 5, 1971

MEMORANDUM

TO: The Honorable John Rader, Chairman
Senate Local Affairs Committee

The Honorable Mike Miller, Chairman
House Local Affairs Committee

FROM: Cliff R. Hartman
Commissioner of Education

By: Robert P. Isaac, Assistant to the Commissioner rpi

SUBJECT: Senate Bill 133, Revised Municipal Code in Respect to its Educational Provisions

We have reviewed the revised municipal code in respect to its education provisions, and we are especially concerned over the apparent omission of a specific education provision for school districts co-terminus with home rule municipalities.

A number of district superintendents, school board members, and other persons involved in education have also expressed a similar concern.

Section 29.33.050 pertaining to education is almost identical to a similar provision in the present borough law Title 7, (7.15.030). This section in the proposed revision applies only to the operation of schools in general law cities and boroughs.

Section 29.13.100 specifies the limitations on home rule powers and indicates the sections of the general code which may not be modified by a charter. Significantly, Section 29.13.100 does not include Section 29.33.050, Education, thereby giving a home rule municipality considerable latitude in legislating educational matters. It is our contention that education is a State function and delegated to the municipalities for administration and operation. We do not believe this delegation of the administrative-operational responsibility of schools also implies a delegation of the Legislature's legislative prerogatives.

As you may know, there is a local court case which revolves around this very matter; and while a decision has not yet been reached by the court, case law strongly supports State law as being superior to charter provisions if there is a conflict between the two.

Proponents of the concept that a charter may supercede State law argue that home rule municipalities may legislate on matters of local concern, including education, even though it might mean that charter provisions take an opposite view in respect to the law. They further argue that the Legislature, by placing the municipal education provision in the municipal code, have made education a matter of local concern.

We do not agree with this supposition. We believe that the specific provision in the existing borough code, Section 7.15.030 and its proposed successor, Section 29.13.100 in the revised code, are adopted by reference in Title 14 by Section 14.14.065, thereby defining this section as a general education law.

We do not argue that a municipality does not have a local concern or interest in education; however, we do believe that all municipal districts should be governed by the same basic laws and that a home rule municipality charter should not be in conflict with law.

The Department of Education is charged with the general management and supervision of the public school system and must do so in accordance with State law.

If a municipality also has legislative authority in respect to education, it would mean requiring the Department to adjudicate district education matters not only under State law, but under the provisions of home rule charters. As has happened already, we would foresee school boards requesting clarification and interpretation of law when conflicts arise. In this connection, it is likely a request of this nature would be referred to the Department of Law for an opinion. Whatever direction the opinion might give, the Department of Education is required to follow that direction (unless subsequently changed by court or legislative action). In order to write an opinion, the Department of Law would also have to read the charter and law together to arrive at a conclusion. In our opinion, such a procedure would be chaotic and unworkable and would only lead, ultimately, to greater devisiveness between local municipal governing bodies and school boards.

The Legislature, in accordance with the Constitution, has delineated quite clearly its intent in providing for public education. The following sequence of constitutional and State law provisions indicates how this was accomplished and the application of these provisions to the foregoing discussion:

Constitution: Article VII, Health, Education, and Welfare

> Section 1. Public Education. The Legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

Title 14:

> Section 14.03.010. Establishment of a School System. There is established in the State a system of public schools to be administered and maintained as provided in this title. (Sec. 1, Ch. 98, SLA 1966)
>
> Section 14.14.065. Relationship Between City School District and City. The relationships between the school board of a city school district and the city council and executive are governed in the same manner as provided in AS 07.15.330 for the school board of a borough school district and the borough assembly and executive. (Sec. 1, Ch. 98, SLA 1966)

By reference, Section 14.14.065 adopts 07.15.330 (29.33.050) and establishes it as general law to be observed by city and borough school districts, whether home rule or not.

Although there might be a number of alternatives, it would appear the most feasible recommendation we could make is to include Section 29.33.050 in the home rule limitations, Section 29.13.100. Such a revision would at least maintain the status quo.

If it is believed Section 29.33.050 is not adequate for both general law and home rule municipalities, we would then recommend the Legislature make such revisions as might be necessary. Our only case in point is that the education provisions should be in law and not in the charter, unless the law is repeated in the charter for convenience.

We would be glad to meet with the committees on this matter at their convenience.

RPI:cjb

Attachment

File: 023.1
023.2
022

Powers Over Education Conferred by Home-Rule Charters

It is the policy of a number of states, through either constitutional provision or statutory enactment, to grant to municipalities what are known as "home-rule charters." The purpose is to make such municipalities self-governing and free from legislative interference with respect to matters of local and internal concern. That is to say, cities having home-rule charters are free to determine their own local affairs and government, subject only to the constitution and to enactments of the legislature of a statewide concern. Frequently, a city in its regulation of its "local affairs" will attempt to exercise control of some educational activity or policy.

The principle is well established that "whenever the provisions of a home-rule charter are in conflict with the constitution or the legislative policy of a state as declared in its statutes, such provision must give way to the latter."[48] And, since education is not a local or municipal affair but an affair of statewide interest governed by constitutional and statutory provisions, a city will not be permitted to extend its control over education by virtue of its home-rule charter.[49] . . . .

---

[48] *Board of Education of City of Minneapolis v. Houghton,* 181 Minn. 576, 233 N.W. 834. In the case of a special charter for a particular city, it has been held that the charter provisions are applicable, even though they are in conflict with the general statutes on the subject (*State* ex rel. *Wallen v. Hatch,* 82 Conn. 122, 72 Atl. 575).

[49] *State v. Mayor et al. of City of Milwaukee,* 189 Wis. 84, 206 N.W. 210; *Esberg v. Badaracco,* 202 Calif. 110, 259 Pac. 730; *Lansing v. Board of Education of City and County of San Francisco,* 7 Calif. App. (2d) 211, 45 Pac. (2d) 1021; *McKee v. Edgar,* 137 Calif. App. 462, 30 Pac. (2d) 999; *Garth v. Dominguez,* 1 Calif. (2d) 239, 34 Pac. (2d) 135; *Board of Education of City of Ardmore v. State* ex rel. *Best,* 26 Okla. 366, 109 Pac. 563; *State v. Cummings,* 47 Okla 44, 147 Pac. 161.

CITY OF ANCHORAGE ALASKA

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POST OFFICE BOX 400
ANCHORAGE, ALASKA
99501

March 1, 1971

Mr. Don M. Berry
Executive Director
Alaska Municipal League
210 Admiral Way
Juneau, Alaska 99801

Dear Don:

The Anchorage and Fairbanks City Councils met in Anchorage on February 26, 1971. They discussed Senate Bill 113 and adopted a motion requesting the Alaska Municipal League to seek an amendment to this bill to provide for a dual majority in all elections in second class boroughs involving areawide powers or reclassifications.

During the discussion on this motion, it was stated that the Legislative Committee of the League voted, in Fairbanks last fall, to include a dual majority clause in the League-drafted bill. Perhaps this clause was erroneously omitted from the League-drafted bill.

It is requested that the Alaska Municipal League prepare and submit a proposed amendment to Article 5, Additional Areawide Powers, SB 113, which would require dual majorities on questions of additional areawide powers or reclassification in second class boroughs.

Copies of this letter are being distributed as indicated below.

Sincerely yours,

Robert E. Sharp
City Manager

RES:AFR

cc: Chairman, Senate Local Government Committee, Juneau
Chairman, House Local Government Committee, Juneau
Chairman, AML, Legislative Committee, Palmer
President, AML, Ketchikan
Local Affairs Agency, Office of the Governor, Juneau

AIRMAIL IS EASIER

Alaska MUNICIPAL League

TELEPHONE
[illegible]

[illegible]
JUNEAU, ALASKA [illegible]
210 Admiral Way

File

February 25, 1971

The Honorable Martin B. Moore
Alaska State House of Representatives

Dear Representative Moore:

You have requested that I outline to you the effect which the adoption of SB 113 would have on the present fourth class cities (villages). Simply stated, it would have little effect besides a change of name to second class.

The bill provides that 4th class cities regardless of population would be reclassified as second class cities. Present second and third class cities would be eliminated. Under the new law education would continue a responsibility of the state just as it is now. Property tax would also not be available to the villages.

The bill would increase the scope of other services which the village could provide and would permit the exercise of the power of eminent domain to secure property for public use. It is my understanding that this power is being sought by the villages through a bill introduced by Senator Hensley. The city council is not obliged to perform all of the services listed but may do so as the needs and abilities of the city dictate.

I realize that this letter is brief and perhaps does not adequately meet your needs. For further clarification and assistance I urge you to call upon Mr. Mallott and Mr. Strandberg of the Local Affairs Agency for further detail.

Sincerely,

James D. Nordale, Member
AML Legislative Committeee

cc: Local Affairs Agency
Senator John Rader
Representative Mike Miller

Representative M. Miller

SPECIAL NOTICE

TO: Chairman and members, House Committee on Local Government; and Sen. Clifford Groh

FROM: Sen. Edward Merdes, Chairman, Senate Sub-Committee on Local Government

SUBJECT: SB 113 - Revision of Municipal Code

Public hearings on subject bill have been scheduled for Monday, February 22, 1971, at 7:30 P.M., Tuesday and Wednesday, February 23 and 24, from 2:00 P.M. until 6:00 P.M. All hearings will be held in the Governor's Conference Room.

Attached hereto is a copy of SB 113. I urgently request that you read the bill and make marginal notes to any provision on which you have questions or comments.

Mr. Gregg Machyowsky, an attorney in the Legislative Affairs Agency, specializing in local government and currently a member of the Assembly of the City and Borough of Juneau, has been assigned to both committees as staff advisor and consultant.

Mrs. Wilda Hudson, President of the Greater Anchorage Area Borough Assembly, will be present at the hearings.

February 2, 1971

Wilda Hudson
1542 E. 27th Avenue
Anchorage, Alaska 99501

Dear Wilda:

Thank you for your letter of January 23, 1971 and the proposed amendments to Title 7. I will be getting together with Mike Miller, Chairman of the House Local Government Committee during the next week to review these.

I have also taken the liberty to refer them to Senator John Rader who is Chairman of the Senate Local Government Committee.

Kindest personal regards.

Sincerely,

Gene Guess
Speaker of the House

cc: Mike Miller
Senator John Rader

3/2/71 Anchorage Daily Times

Wilda Hudson Blasts Story On Borough Legislation Plan

Borough Assembly president and city councilwoman Wilda Hudson this morning blasted a story in Tuesday's Anchorage Daily Times concerning proposed legislation which the borough is presenting to the Anchorage legislative delegation.

"The facts don't bear it out at all," Mrs. Hudson said.

The proposed legislation concerning areawide powers to be transferred from city to borough is nothing new, she said.

She said she has been studying the transfer and exercising of areawide powers since 1968, and last year drafted amendments to existing law concerning this which subsequently was presented to the 1970 legislature.

The legislation was presented to the Borough Assembly last year, and also again this year, but so far no action has been taken. It is to be on the agenda again for the meeting Monday night.

Many of the changes are contained in the proposed Municipal Code which was introduced in 1969, she said.

Concerning a second class borough bypassing the first class borough step to home rule, Mrs. Hudson said she feels the second class borough is now stronger than the first class borough, she sees no reason to "go through the cumbersome process to become a first class borough before going to home rule." The Greater Anchorage Area Borough is a second class one.

"My experience has proven this to be a cumbersome method of presenting petitions to the Local Affairs Agency, then hearings by the Boundary Commission, when really we should know in our own area when we want to put something on the ballot."

"This is not a feature dreamed up by the borough administration," she stated, and this is also contained in the proposed Municipal Code.

The ideas are not Borough Chairman John Asplund's, she said, since she drafted the proposals in January 1970. The administration, however, concurs enough with them to put them in the packet sent to legislators, she said.

Mrs. Hudson drafted the proposals to clean up what she called "gray areas" in existing state law.

The law stated that once a first class borough is exercising areawide powers, the city council cannot take it back unless a majority of the council agrees, and she called this procedure "questionable for second class boroughs."

Her amendment, she feels, would clear this up, and would not allow first and second class borough areawide powers to revert back to the original entity.

The state of Alaska is bigger than the city and borough of Anchorage, Mrs. Hudson said. Problems which the local borough is encountering should be taken to the state legislature, so that laws can be passed would benefit other government bodies going through the same process.

"As a responsible and responsive elected representative of the people, it is incumbent upon me to bring them to the attention of the legislature.

WILDA HUDSON
Considerably Upset

1542 East 27th Avenue
Anchorage, Alaska

January 23, 1971

Rep. Mike Miller, Chairman
Local Government Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99801

Dear Rep. Miller:

Enclosed herewith are proposed amendments to the Borough Act, Title 7, that have been drafted by me. A copy of same have been forwarded to Rep. Guess and Rep. Moran.

It would be appreciated if the House Local Government Committee would have an appropriate bill drafted to incorporate these amendments. I have put forth some of my thoughts as to the necessity of these being passed this session to Rep. Guess and Rep. Moran. Perhaps you would like to discuss this matter with them and the reasoning behind why I am submitting same.

Although I am a member of the Anchorage City Council and am President of the Greater Anchorage Area Borough Assembly, these are being submitted by me and not for the City Council or Borough Assembly.

Thank you for your attention in this matter.

Very truly yours,

Wilda Hudson

(MRS.) WALTER HUDSON

WH:s

encl.