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major development; industrial, commercial, residential, will produce minimal adverse effects upon the people of the Borough and affected local governments by providing for the exchange of information between parties involved and that the increase in demand for public services occurring as a result of development will be met by a contribution of revenue from the development responsible for the increase in demand.

Section II. SITE PLAN APPROVAL AND DEVELOPMENT PERMIT:

(a) No person shall proceed with a major development of the value, on completion, of more than one (1) million dollars without first applying for and securing from the Borough Planning Commission a site plan and development approval and paying the fee provided in Section III of this chapter.

(b) An applicant for site plan approval and development permit under this section shall file an application with the Borough Planning and Zoning department in a form which the Borough Planning and Zoning Commission and Assembly, by regulation, have prescribed. The application shall contain the following information:

- (1) a description of the location and of the facility to be built at the location;
- (2) an estimate of the value of the facility upon its completion;
- (3) a summary of any studies or reports which have been made examining the economic impact of the construction and operation of the facility on the region; including, but not limited to, the applicant's estimate of the number of persons to be employed in the construction and operation of the facility during each year of the five-year period commencing with the submission of the application;

(4) a statement explaining the need for the facility;

(5) a description of any reasonable alternate locations for the proposed facility, a statement of the comparative merits and detriments of each location identified, and a statement of why the primary proposed location is best suited for the facility;

(6) any additional information which the department, by regulation, may require in order to fairly evaluate:

- A. conformance of the proposed facility to applicable local laws and regulations;
- B. the effects of the economic activity of the proposed facility on a municipality or service district within a twenty (20) mile radius of the proposed site(s);
- C. the effects of the proposed facility on the public health, welfare and safety;
- D. the capacity of the Borough and of municipalities affected by the proposed facility to provide necessary public facilities and services;

(7) any additional information which the applicant considers relevant.

(c) An application filed with the department shall be available for public inspection.

(d) An application shall be accompanied by proof of service of a copy of the application to the mayor or approved administrative official of each City or service district within a twenty (20) mile radius of a site at which any portion of the facility is to be located, both as primarily and alternatively proposed.

(e) The department may, by order entered after filing, require the applicant to serve notice of the application, and file proof of notice, on other persons as the department considers appropriate.

(f) The Borough Planning and Zoning Commission shall approve or deny the permit within 180 days of full and complete filing of permit application, including fees, except that on request of applicant, period of review may be extended up to an additional 360 days.

(g) The department shall require cities or service districts served with copies of permit application to recommend approval or disapproval of the permit within 120 days of service. No response shall be accepted as an approval of the application as it relates to that municipality or service district.

Section III. PERMIT FEE:

(a) At the time of filing an application for a permit under Section II of this chapter, the applicant shall pay a permit fee to the Borough Department of Finance.

(b) The fee payable under this section will be based upon the valuation of the proposed facility upon completion, with payment of two per cent (2%) of the estimated value up to \$5,000,000; plus one per cent (1%) of the estimated value over \$5,000,000 and up to \$20,000,000; plus one-half of one per cent (.5%) of the estimated value over \$20,000,000;

Section IV. APPEAL OF FEE:

(a) A city or service district which is within a twenty (20) mile radius of the development site may be entitled to receive a

portion of a site plan and development fee paid by an applicant under this chapter may appeal the determination of the amount of the fee. The governing body of the City or service district shall, within 30 days of receipt of written notice that an application has been submitted and a fee paid, file an appeal with the department setting out the reasons why it believes the fee paid has not been correctly computed.

(b) If a City or service district appeals the determination of the fee paid under (a) of this section, the director of the department shall, within 45 days after giving written notice to all parties, conduct a hearing on the matter. If, after the hearing, the director determines that the fee payable by the applicant has been incorrectly computed, he shall provide the applicant a written statement describing the error in computation and indicating the amount of the fee due. The applicant shall pay the additional amount of the fee within 30 days of receipt of the decision of the department director.

Section V. AMENDMENT OF PERMIT:

(a) A permit issued by the department under Section III of this Ordinance may be amended. An application for an amended permit shall be submitted in the manner provided for new applications in Section II of this Ordinance. If an amendment to an approved permit would result in a substantial change of an original permit, the amendment shall be treated as a new application and a supplemental permit fee shall be paid.

(b) If it appears to the director or to officials of a city or service district within a twenty (20) mile radius of the development site which may be entitled to receive a portion of a permit fee under this chapter that there will occur substantial change in the use of the facility from the activity described in the original application or an amended application for a permit, the director may call for a public hearing on the question. The director shall, within 45 days after giving written notice to all parties, conduct a hearing on the matter. If, after the hearing, the director determines that there has been substantial change in the use of the facility from the activity described in the original or amended application for an amended permit, he shall require the applicant to submit an application for an amended permit.

(c) An amended permit submitted by an applicant under an order of the director entered under (b) of this section shall be accompanied by payment of the increment in the fee due, together with a penalty payment of 10 per cent (10%) of the total amount of permit fees due for the facility.

(d) For purposes of this section, a change in the use of the facility for which a permit has been issued is "substantial" if the applicant or the director determines that the value of any changes or improvements in the facility would increase the estimated value of the facility by more than ten per cent (10%).

Section VI. REFUSAL OF PERMIT:

(a) The Borough Planning Commission, after public hearing, may refuse to issue a permit and approve the site plan, as presented or modified if it finds that:

- (1) The proposed site and development plan is not consistent with the approved Coastal Zone Management Plan.
 - (2) A fee due and payable by the applicant on an original application or amended application has not been paid.
 - (3) A city or service district with a twenty (20) mile radius can demonstrate that the development will adversely affect the quality of life or is in violation of local law.
 - (4) The concept of development is inconsistent with other established development in the immediate area.
 - (5) The concept of development is inconsistent with or detrimental to public health, safety and welfare.
- (b) On denial of permit, fees paid shall be refunded to applicant less five per cent (5%) for administrative costs without interest.

Section VII. REVOCATION OR SUSPENSION OF PERMIT:

(a) The department may revoke or suspend a permit issued under the provisions of this chapter if:

- (1) The facility does not conform, in location, construction or operation, to the details of the approved site plan; or
- (2) after notice and hearing to all parties, the Director determines that an additional fee is due and payable under Section IV(b) of this chapter or an additional fee and penalty are due and payable under Section V(b) of this chapter, and

the holder of the permit has failed to pay the additional fee, together with penalty due, if any, within the time prescribed by law.

Section VII. DISPOSITION OF FEES AND PENALTIES:

(a) The Borough Department of Finance shall retain five per cent (5%) of the fees and penalties collected under this Ordinance to defray the costs of receipt, review of applications for permits and for the enforcement of the provisions of this chapter. Not more than thirty per cent (30%) of the fee shall be apportioned to a city or service district or combination thereof in which the proposed development is to be located or which are in a twenty (20) mile radius for operational expenses. The remaining sixty-five per cent (65%) or more shall be apportioned to a City or service district or combination thereof in which the proposed development is to be located or which are in a twenty (20) mile radius for capital improvements. Such capital improvement apportionments will be specific and funds so apportioned will be so dedicated. Determination of the amount(s) transmitted to a municipality or service district shall be subject to negotiation between the Department of Planning and Zoning and any affected cities or service districts relative to services provided and anticipated impact.

Section IX. MONITORING OF DEVELOPMENT:

(a) The department shall review and monitor the operation of all development for which a permit has been issued under this chapter.

Section X. PENALTIES FOR VIOLATION OF PROVISIONS OF THIS CHAPTER:

(a) A person who wilfully violates a provision of Sections I through IX of this chapter or any regulation adopted by the department under this chapter is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than \$1,000.00 for each violation. Each day of a continuing violation constitutes a separate offense.

(b) At the request of the director, the Borough attorney shall enforce this chapter and institute legal actions to accomplish its enforcement.

Section XI. DEFINITIONS:

In this chapter, unless the context otherwise requires:

- (1) "Director" means the Director of the Department of Planning and Zoning.
- (2) "Department" means the Department of Planning and Zoning.

Section XII.

This ordinance shall take effect on passage in accordance with law.

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

DIVISION OF LOCAL GOVERNMENT ASSISTANCE

JAY S. HAMMOND, GOVERNOR

POUCH B -- JUNEAU 59311

October 20, 1977

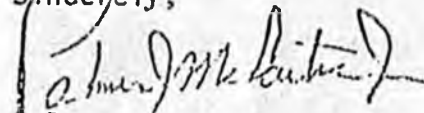
Dear State Legislator:

Enclosed is the department's new regulation implementing the Coastal Energy Impact Program (CEIP). The CEIP is a federal grant and loan program designed to help coastal states and communities deal with the impacts of energy development.

Under the CEIP the state is given the primary responsibility for administration with the federal CEIP office providing technical assistance and funding. On April 4, 1977, Governor Hammond designated DCRA as the lead agency for the CEIP. Accordingly, DCRA has assumed the responsibility of preparing the federally mandated intrastate allocation process required to implement and administer this program. Local government officials and interested state agency personnel helped draft the guidelines that implement this process and we expect these parties to continue to be active in guiding this program.

This allocation process and the criteria used to rank applications has undergone a great deal of public scrutiny and will be subject to periodic revision. We feel that much will be learned in the initial year of operation and therefore we need the flexibility to go back and revise the CEIP application process to make it a more workable and useful program. Public input on any proposed changes will be encouraged and in some cases changes will probably be initiated by eligible CEIP applicants or other interested parties. The adoption of this regulation will afford us the flexibility to make needed changes to insure the maximum benefit from this program.

Sincerely,


Palmer McCarter
Director

DEPARTMENT OF COMMUNITY AND
REGIONAL AFFAIRS

Notice of Proposed Changes in the Regulations of the
Department of Community and Regional Affairs

Notice is hereby given that the Department of Community and Regional Affairs, under authority vested by AS 44.47.160, proposes to adopt regulations in Title 19 of the Alaska Administrative Code to implement AS 44.47.050(14), as follows:

- (1) Chapter 17 is created by adding new provisions as follows:

Section 10 - Coastal Energy Impact Program

19 AAC 17.010. Loans and grants shall be made in accordance with the provisions of this Department's "Coastal Energy Impact Program Policy Guidelines". Copies of the "Coastal Energy Impact Program Policy Guidelines" are available from the Department of Community & Regional Affairs, without cost.

Authority: AS 44.47.050 (14)
AS 44.47.100

Notice is also given that any person interested may present written statements or arguments relevant to the action proposed at Room 209, Community Building, Juneau, Alaska, before 4 o'clock p.m. on November 18, 1977.

Copies of the proposed regulation may be obtained by writing to: CEIP Coordinator, LGAD, Pouch B, Juneau, Alaska 99811.

The Department, upon its own motion or at the instance of any interested person, may thereafter adopt the proposals substantially as described above without further notice or may decide to take no action on them.

DATE: October 14, 1977

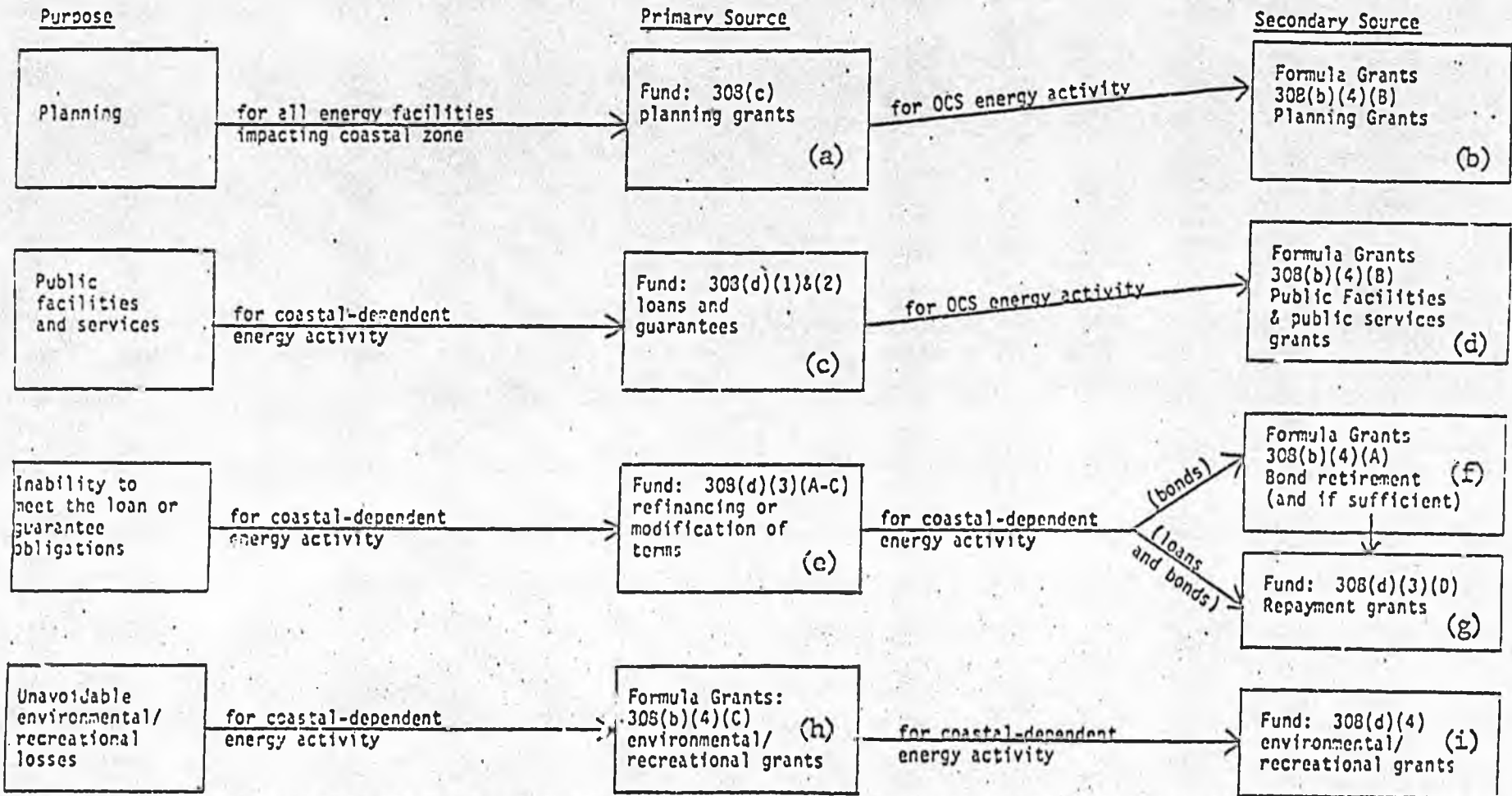
/s/ Lee McAnerney

Commissioner

CEIP FEDERAL ALLOTMENTS TO ALASKA FOR FY'77

Figure 1

PL 94-370 Coastal Energy Impact Program: Primary and Fund 308(c) Planning Grants



Square (a) Fund Planning Grants -- 308(c) 80% Fed./ 20% Local/State	Alaska Allotment	\$ 365,466
Squares (b)(d)(f)(n) Formula Grants -- 308(b) 100% Fed.	Alaska Allotment	1,178,643
Squares (c)(e)(g) Credit Assistance ("Fund") 308(d)(1),(2),(3) 100% Fed.	Alaska Allotment	48,612,973
Square (i) Environmental/Recreation Grants 308(d)(4) 100% Fed.	Alaska Allotment	662,904

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

November 1, 1977

SUBJECT: House Bill 219, establishing a program of shore facilities building permits as a means of providing financial assistance to municipalities adversely affected by outer continental shelf activity.

TO: Representative Lisa Rudd

FROM: John B. Chenoweth
Legislative Counsel

You have asked for an interim review of state and federal action relative to financial assistance to local governments affected by continental shelf petroleum exploration and development, with a view toward considering the relationship between state and federal action and modification, revision or other action with respect to HB 219. What follows is divided into two parts to facilitate your review.

STATE ACTION

Since adjournment, Governor Hammond has signed into law the state's Coastal Management Act (Ch. 84, SLA 1977), and appointed the nine public members to serve on the coastal policy council.

Anticipating the first allocation of federal financial assistance in the form of grants and federal credit assistance under various subsections of the federal coastal energy impact program, sec. 308 of the federal Coastal Zone Management Act of 1972, the Department of Community and Regional Affairs has been active in the preparation of the necessary intrastate allocation process required by sec. 308(g)(2) of that Act.

The allocation process proposed by the department takes the form of policy guidelines for the implementation of the Coastal Energy Impact Program. With this memo is a copy of the policy guidelines in draft form together with a 20-page narrative describing the process. As I mentioned to you, I

believe, when you were in Juneau prior to Labor Day, the department has had a workshop on the draft with local government officials and had allowed until September 9th, to receive further comment. Thereafter, the department proposes to make necessary revisions in the guidelines and adopt them as the basis by which to evaluate applications for financial assistance.

I believe I also informed you that, in my opinion, the department has failed to proceed in the manner required by the state's Administrative Procedure Act in that it has not followed the process required for the adoption of administrative regulations for the program. The Department of Law has since informed Community and Regional Affairs that it should comply with the state's Administrative Procedure Act and, to that end, the Department has proposed the adoption of a one-section regulation incorporating the guidelines by reference.

The flow of financial assistance to Alaska under section 308 of the Federal Coastal Zone Management Act should commence very shortly. The Coastal Energy Impact Program provides five basic types of assistance: planning grants, environmental grants, development grants, credit assistance and repayment assistance. Alaska is due to receive an allotment of funds in each category based on its share of nationwide coastal energy development. The department has provided these figures by way of anticipated FY 77 receipts:

1. Planning Grants are available on an 80 percent federal/20 percent non-federal basis to help prepare for the consequences of all new or expanded energy activity in the coastal zone. Planning grants can be used to study and plan for the economic, environmental, or social impact due to the siting, construction, expansion or operation of energy facilities. Alaska has been allotted a total of \$365,466 for this purpose for FY 77.
2. Environmental Grants, available on a 100 percent federal basis, are intended to prevent, reduce or repair damage to or loss of the valuable environmental or recreational resources due to coastal energy activity. Environmental grants may be used for impacts resulting from previous coastal energy activity which cannot be attributed to any one party. Alaska has been allotted \$662,904 for this purpose for FY 77.

3. OCS Related Facility Grants, also called formula grants, are available on a 100 percent federal funding basis to plan for, mitigate the impacts of, and develop public facilities and services as a result of OCS related energy facility development. These funds may be expected to be the primary source of assistance to help municipalities prevent the unavoidable loss of environmental or recreational resources. A loss is unavoidable when the cost of prevention or repair cannot be assessed to a responsible party. Alaska has been allotted \$1,178,643 in this category for FY 77.

4. Credit Assistance is available in the form of direct loans or guarantees of loans or bonds for the purpose of providing new or improved public facilities and services required as a result of coastal energy activity. Also available by way of such is repayment assistance, available to eligible applicants who cannot meet credit obligations because an anticipated revenue failed to materialize. Alaska has been allotted \$48,612,973 for both credit and repayment assistance for FY 77.

CONGRESSIONAL INITIATIVES

US Senate-adopted legislation (S 9) and legislation offered in the House of Representatives (HR 1614) remain under study in House committee, with no likelihood of final adoption of either before year end.

The Senate-adopted legislation (S 9), entitled the Outer Continental Shelf Lands Management Act of 1977, amends the Coastal Energy Impact Program portion of the 1976 Coastal Management Act amendments

(1) by eliminating the requirement in sec. 308(b)(4)(i) that all loan and bond guarantee resources shall have been exhausted for formula grant projects and programs resulting from Outer Continental Shelf energy activity -- presumably allowing states the use of formula grant funds for new or improved public facilities and services without regard to examination of adequacy of alternative funding sources;

(2) by eliminating a requirement that such facilities and services be needed because of "new or expanded" activity in order to qualify for support -- opening the door to financial support for the resultant community impact caused by additional activities in conjunction to an existing plant or facility; and

(3) by increasing the funding authorization level by \$25,000,000 annually after federal FY 77 which, if funded, should increase revenues available to Alaska: in this regard, the Coastal Management Office, Division of Policy Development and Planning, has offered the following projected revenue figures for Alaska:

(Federal)	FY 78	\$ 5,000,000
	FY 79	7,050,000
	FY 80	8,750,000
	FY 81	22,320,000
	FY 82	21,820,000
	FY 83	14,920,000
	FY 84	15,170,000

for a total of \$95 million dollars anticipated through the seven-year period.

Less certain, at least at the time the information was provided to me, is the course of HR 1614, in part because of the complexities of the amendatory language being proposed, and in part because of a change proposed in the manner of calculating assistance under the applicable formula. A computer run of the estimated payout to coastal states under the language of HR 1614 suggests payment of under \$60 million to Alaska through the period. House consideration is complicated by the proposal of an amendment by Representative Breaux and others to change key portions of HR 1614 with respect to the operable formula, making the Coastal Energy Impact Program more nearly a "revenue sharing" assistance program not coupled to payment based upon oil and gas leases or oil and gas landed. Apparently the general revenue sharing approach is gaining some favor among the members of Congress; the Carter administration apparently remains opposed in principle. The committee considering the legislation did ask adoption of the Breaux amendments by way of request of the Rules Committee that the bill be scheduled for floor action; there was a move to table until next year (second session), and there will be no further action until January.

Representative Lisa Rudd
Page 5
November 1, 1977

A copy of the bill, bearing the amendments offered in committee, is forthcoming from the Congressional Liaison, Office of Coastal Zone Management, in Washington, DC.

JBC:jpd

Enclosure

Testimony - Municipal Convention

Lynn Crystal - Valdez

how did Valdez spend 5 million?

- sewer & water system
- school construction
- tight \approx housing and schools - called short-term
- plane schedules were tight
Polar Airlines
- shortages in grocery
- areas of town were not paved
- heavy truck traffic did tear-up the roads

FAVORS loan from GF
[- should ~~not~~ be state impact money -
- short-term impact GF

- municipality controls permit approval
- this speaks to known impacts the bill

does not dispute that impacts do take place

Valdez opposes the add'l layer of gov't by not allowing

Valdez did sell revenue bonds to oil companies @ sale total of \$12 million - now in permanent 20 mil tax - 6.6 million

Valdez operating budget > 10 million
& school

DAVID Moffet - Petersburg -
strongly support Valdez in opposing as
a "no growth bill"

- check file for Petersburg mayor's letter to Hugen - M. Theodore Smidt
- no council action

Kodiak Island Borough - Betty Wallin
mayor -

- water control
- money for impact studies
- do have planning & zoning
- did a survey - 2,000 - 25% return
send copy of goals & objectives of Kodiak
Island Borough

* - Additional effort to get Kenai IMPUT

Carlson - FBKS. N.S. Borough

- couldn't get oil companies to tell her the impacts
- found that projections fluctuated enormously
- questions the purpose of the bill in requiring explanation & need for facility - he feels the need is obvious (i.e. OCS = need facility)
- revised penalty for underestimation
requests reevaluation of

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

DIVISION OF LOCAL GOVERNMENT ASSISTANCE

JAY S. HAMMOND, GOVERNOR

POUCH B - JUNEAU 59311

October 20, 1977

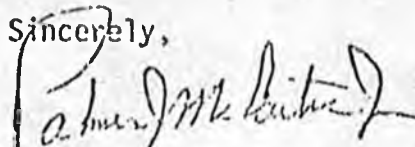
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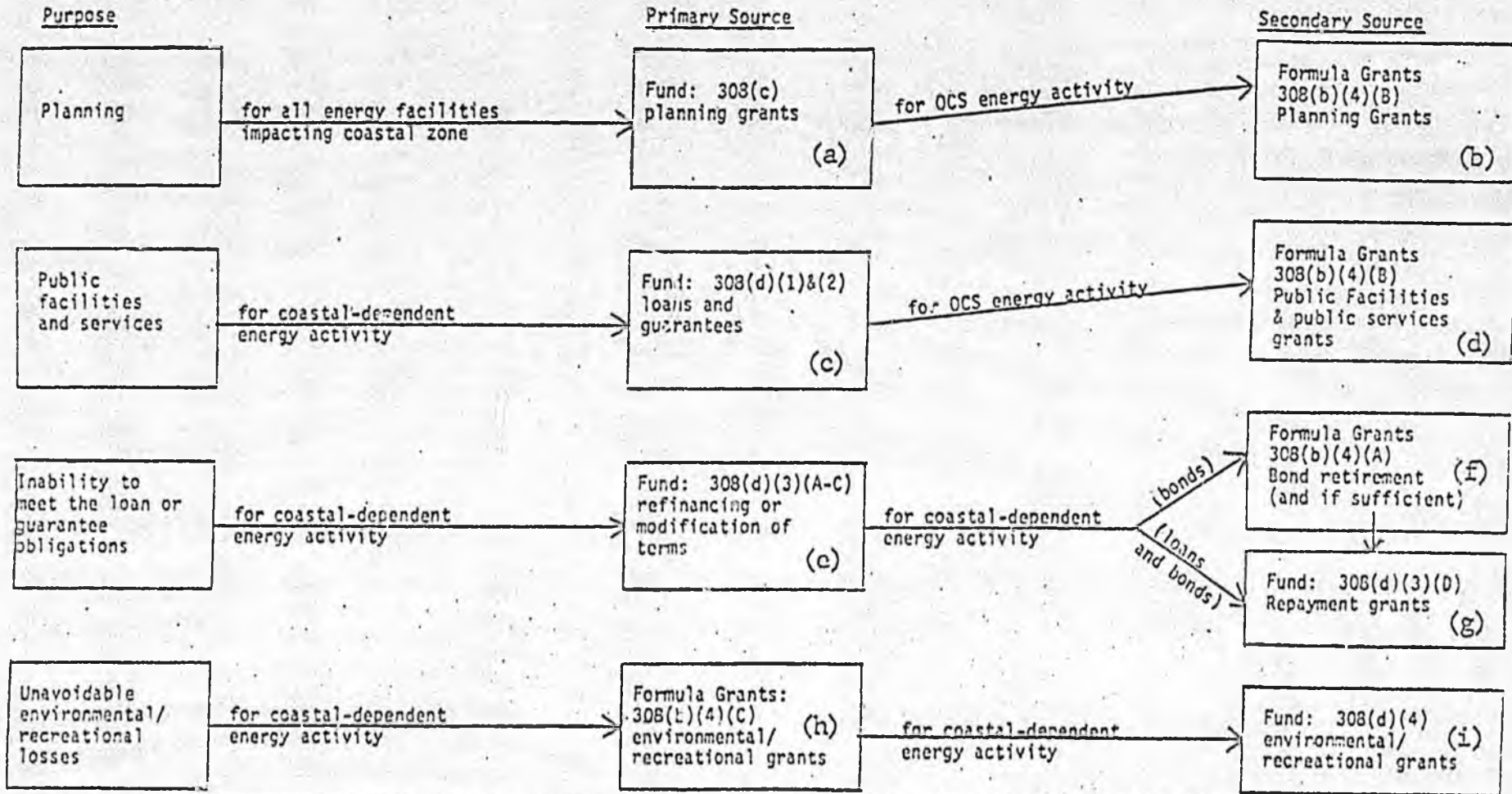
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CEIP FEDERAL ALLOTMENTS TO ALASKA FOR FY'77

Figure 1

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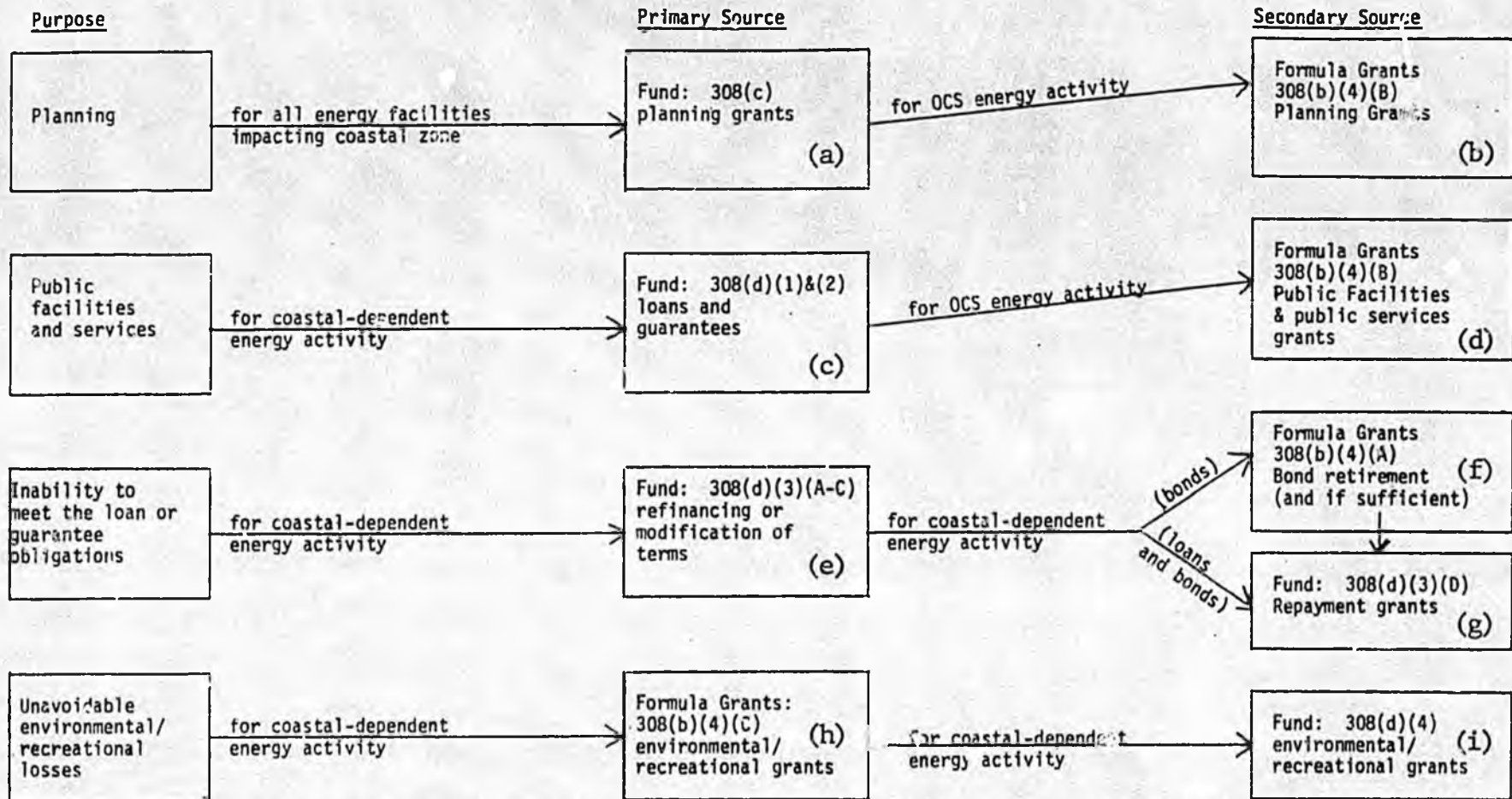


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STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

DIVISION OF COMMUNITY PLANNING

JAY S. HAMMOND, GOVERNOR

POUCH B - JUNEAU 99811

October 6, 1977

The Honorable Lisa Rudd
2827 Lore Road
Anchorage, Alaska 99507

Dear Lisa:

Enclosed are the materials on House Bill 219 which Rob Shoaf and I presented to the Community and Regional Affairs Committee in August. The materials are marked as Exhibits 1 through 8 and do not at this time represent departmental policy on this bill. The exhibits are summarized in the following paragraphs.

Exhibit 1. This exhibit shows the onshore and offshore employment assumptions used by this Department to forecast total OCS-related employment in the Northern and Western Gulf of Alaska. Also included are current population estimates for those coastal cities likely to be affected by exploration and commercial development of offshore petroleum resources. Please note that while none of the individual activities employ large numbers of people, the numbers of new jobs assumed would significantly contribute to the population of small cities which might be affected.

Exhibit 2. Exhibit 2 indicates the planning capabilities of those cities and boroughs which may be affected by leasing and development of offshore areas near their jurisdiction. While most of the municipalities have a planning and zoning commission, very few actually have a professional planning staff.

Exhibit 3. Exhibit 3 lists the loans and grants available through the Coastal Energy Impact Program (CEIP). Available are planning grants, formula grants and credit assistance. All planning grant money must be used before formula grants become available. Planning grant requires a 20 percent match by local communities. The twenty percent match required could be financed through OCS permit fees.

Exhibit 4. Exhibit 4 lists the types of planning activities which can be funded through the CEIP program. Please note that CEIP funds are not currently available to finance the cost of negotiating with a potential developer or handling increased administrative costs resulting from rapid growth.

Exhibit 5. Exhibit 5 is a summary of the most recent version of House Bill 219. It contains a table which estimates the hypothetical revenues that would be generated from the proposed fee schedule.

Exhibit 6. Exhibit 6 is a brief outline of the merits of House Bill 219, its shortcomings as it is currently written, and suggested improvements which might be considered by the Committee.

Page 2
The Honorable Lisa Rudd
October 6, 1977

Exhibit 7. Exhibit 7 is Rob's critical examination of two areas in the bill which he thinks may need further revision: local approval power and prior planning by the developer.

Exhibit 8. Exhibit 8 suggests examples of statutory language which might minimize problems raised in Exhibit 7.

I hope this information is useful to you and the Committee members. As I told you during our last meeting, I will be available to discuss the bill at the November Municipal League Meeting, or at another time if more convenient.

Looking forward to speaking to you soon.

Sincerely yours,

Lois

Lois Kramer
Planning Supervisor

LK/sv

Enclosures

ONSHORE EMPLOYMENT ASSUMPTIONS

Category	Employment
Rig Service.....	25 per rig
Platform Service: Installation.....	100 per platform
Drilling.....	80 per platform
Production.....	40 per platform
Administration.....	15 per rig 40 per platform
Service Bases.....	15 per berth
Oil Terminals: 250,000 b/d.....	150 per terminal
350,000 b/d.....	200 per terminal
450,000 b/d.....	250 per terminal
600,000 b/d.....	300 per terminal
LNG Plants: 1 billion cu.ft./d.....	200 per terminal
1.6 billion cu.ft./d.....	300 per terminal

Offshore Employment Assumptions

Operation	Number of Jobs/Activity
Rig.....	115
Platform: Installation and Hook-up.....	300
Drilling.....	250
Production.....	140
Lay-barge.....	250
Bury-barge.....	100

Construction Employment Assumptions

ONSHORE FACILITY		NUMBER OF JOBS			
		YEAR 1	YEAR 2	YEAR 3	YEAR 4
Service Base	2 berth	75	150		
	3-4 berth	100	200		
	4 berth	125	250		
Oil Terminal	250,000 b/d	150	600	1,200	300
	350,000 b/d	200	800	1,500	500
	450,000 b/d	200	1,000	1,900	600
	600,000 b/d	300	1,200	2,300	700
LNG Plant	1 billion cu.ft./d	300	1,300	2,500	800
	1.6 billion cu.ft./d	500	2,000	4,000	1,200

POPULATION OF CITIES

Yakutat	442
Cordova	2,406
Seward	1,823
Homer	1,538
Seldovia	612
Kodiak	4,960
Unalaska	510
Dillingham	1,176
City of St. Paul	456
Nome	2,585
Kotzebue	2,431
Barrow	2,307

TOTAL DIRECT AND INDIRECT EMPLOYMENT: NORTHERN GULF

YEAR	NO FIND	MODERATE FIND		HIGH FIND	BOHANZA
		NO PIPELINE	PIPELINE		
1976	240	240	240	240	240
1977	670	905	906	1123	1251
1978	905	1790	1790	1900	2155
1979	477	1366	1366	2843	3677
1980	249	1366	1669	3540	4745
1981		906	2336	4375	6140
1982		953	3242	5705	6681
1983		1353	2691	5218	9305
1984		2060	2360	7348	11,302
1985		2623	2923	8899	13,728
1986		2439	2739	6401	9622
1987		2299	2599	5349	8248
1988		2069	2169	4887	7803
1989		1838	2138	4173	6918
1990		1585	1885	3671	5840

TOTAL DIRECT AND INDIRECT EMPLOYMENT: WESTERN GULF

YEAR AFTER LEASE SALE	YEAR	NO FIND	MODERATE FIND		HIGH FIND
			NO PIPELINE	PIPELINE	
1st	1980	239	321	322	322
2nd	1981	454	834	834	1181
3rd	1982	669	1337	1447	2227
4th	1983	244	925	1145	2049
5th	1984		751	1160	2535
6th	1985		530	1,265	3360
7th	1986		1021	2251	4791
8th	1987		1421	3311	3791
9th	1988		1173	1622	2885
10th	1989		1920	2145	3584
11th	1990		1853	2078	3378
12th	1991		1735	1961	3261
13th	1992		1505	1730	3030

	LEASE SALE AREA			CLASSIFICATION	ORGANIZATION			PLANNING TOOLS			POPULATION (1976)	
	Lower Cook Inlet (11)	Gulf of Alaska (12)	Kodiak Basin (13)		Planning and Zoning Commission	Professional Planning Staff	Coastal Resource District (7/77)	Coastal Management Program (anticipated date of adoption)	OCS Planning Study (including EDA Title IX)	Comprehensive Plan (date of publication)		Capital Improvements Program (date of publication)
MUNICIPALITY OF ANCHORAGE	☑	☑	☑	☑	☑	☑	1979	☑	1961(b)	1963	☑	175,603
Yakutat	☑			☑	☑	☑	1980(a)	☑	1976		☑	442
Cordova	☑			☑	☑	☑	1980(a)		1976		☑	2,406
KENAI PENINSULA BOROUGH	☑	☑	☑	☑	☑	☑	1979	☑	1970	1967	☑	19,407
KODIAK ISLAND BOROUGH	☑			☑	☑	☑	1980	☑	1968(c)		☑	7,901
Unalaska		☑	☑	☑	☑	☑	1978(a)		1977			510
Dillingham		☑		☑	☑	☑	1980(a)		1970			1,176
BRISTOL BAY BOROUGH			☑	☑	☑	☑	1980		1966	1966	☑	1,147
City of St. Paul			☑				(a)					456
Nome			☑	☑	☑	☑	1980(a)		1968	1968		2,585
Kotzebue			☑	☑	☑	☑	1980(a)		1971(d)	1975		2,431
NORTH SLOPE BOROUGH				☑	☑	☑	1979		1973	1974		12,614

(a) Cities within the unorganized borough. Nearby areas in the unorganized borough may be affected by OCS development and may eventually be organized into coastal resource service areas. Coastal management plans for service areas may be adopted later than 1980.

(b) Comprehensive plan for the Municipality of Anchorage is being updated.

(c) Comprehensive plan updated for Port Lions in 1975 and for Near Island in 1974.

(d) Land use element of comprehensive plan for Kotzebue updated in 1976.

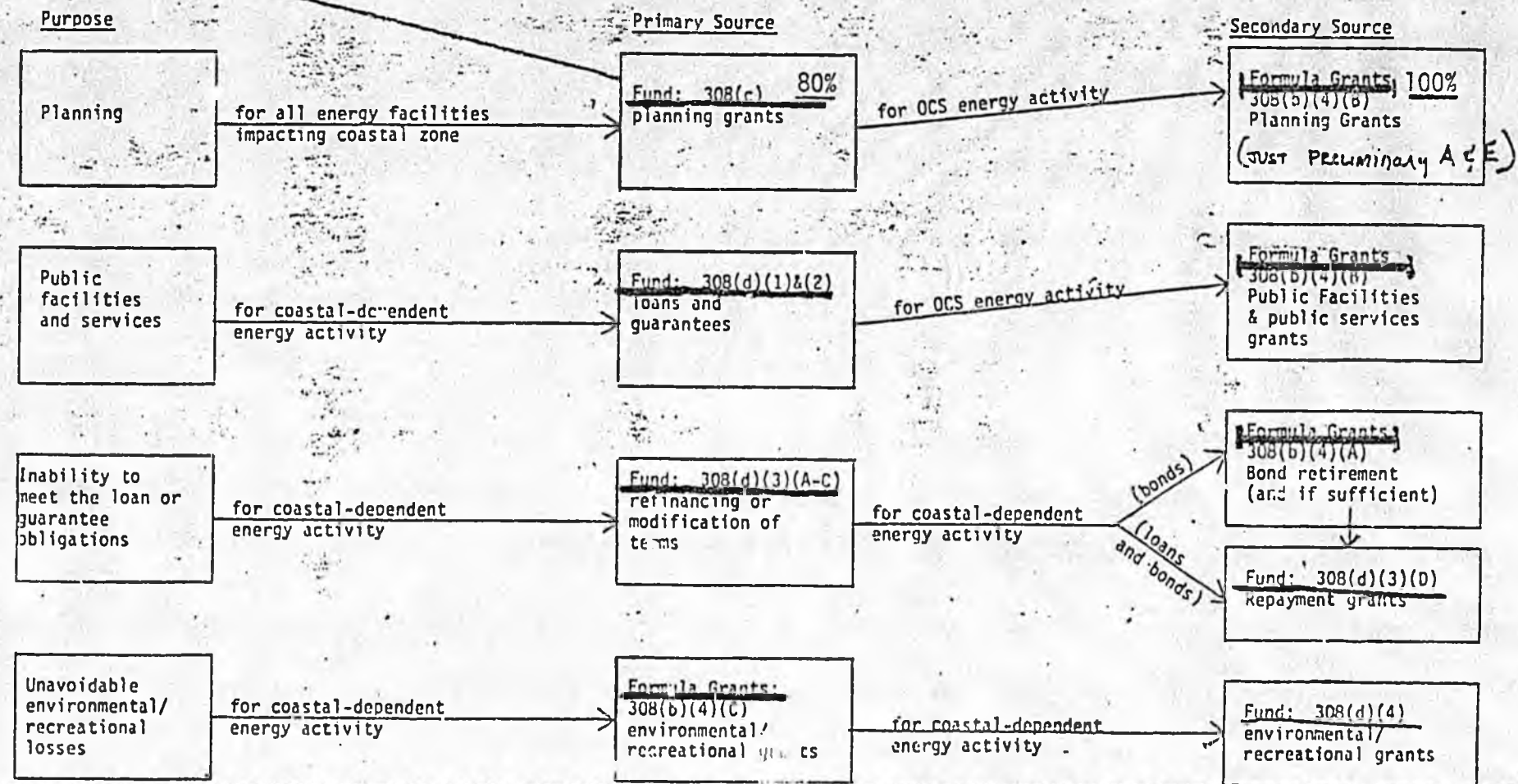
Figure 1

PLANNING CAPABILITIES

15% of \$3.5 million divided equally among 34 coastal states = approximately \$15,000
 85% of \$3.5 million allotted on basis of need

Figure 1

PL 94-370 Coastal Energy Impact Program: Primary and Fund 308(c) Planning Grants



Formula Grants:	308 (b)	U.S. \$ 10 million	AK: \$ 1,178,643
Credit Assistance ("Fund")	308 (d)(1), (2), (3)	110 "	48,612,973
Planning Grants	308 (c)	3.5 "	365,466
Environmental/Recreational Grants	308 (d)(4)	1.5 "	662,904

Exhibit 3

(1) Preliminary planning for the consequences of new or expanded energy facilities[^] significantly affecting the coastal zone, including

- (i) analysis of government or private industry siting policies;
- (ii) devising strategies for the public purchase of land or the establishment of other enforceable land-use controls for lands upon or near which energy development is to take place;
- (iii) devising methods of protecting environmental resources, as defined in §931.72, threatened by the siting, construction, operation, or expansion of new or expanded energy facilities; or
- (iv) conducting risk management studies, hazard analyses, emergency contingency planning and coordination studies, and assessment of mitigating measures for maintaining or improving public safety threatened by the siting, construction, expansion, or operation of new or expanded energy facilities.

(2) Planning for the consequences of a specific new or expanded energy facility significantly affecting the coastal zone, including

- (i) study of and planning for economic, social, or environmental consequences of the siting, construction, expansion, or operation of a new or expanded energy facility such as
 - (A) increased population;
 - (B) changes in employment patterns including those in fishing and tourism;
 - (C) changes in demand for public facilities, public services, and housing;
 - (D) local price inflation;
 - (E) changes in patterns of tax and user fee revenues or inter-governmental transfers;
 - (F) effects on fishing and tourism resources;

(G) effects on beaches, sand dunes, air quality, water quality, or other environmental or recreational resources;

(H) shoreline erosion;

(I) ecological effects; and

(J) effects on public safety.

(ii) conducting analyses required for state or local regulatory decisions related to energy facilities, including licenses, leases, permits, and zoning ordinances;

(iii) performing cost/benefit analyses or otherwise comparing the consequences of alternate energy facility sites or types;

(iv) devising strategies for recovering compensation from appropriate parties for any adverse effects caused by the energy facility involved;

(v) forecasting employment, population, public facility and public service needs and costs, and tax or user-fee revenues;

(vi) planning for the public facilities eligible for financing under Subpart E of this part;

(vii) study of and planning for the secondary consequences, including environmental and economic consequences, of alternative types and sites of public facilities eligible for financing under Subpart E of this part; and

(viii) study of and planning for the consequences of the phasing out of energy facilities.

(3) Carrying out projects necessary to administer assistance under Section 308, including;

(i) collecting data and analyzing information required in §§ 931.48 (a)(5) and 931.78(c)(4) for environmental impact assessment;

(ii) designing and carrying out an intrastate allocation process as described in Subpart J of this part; and

(iii) paying other reasonable costs of administering assistance under

July 5, 1977

I. Summary of HB 219

The onshore facilities construction permit bill was proposed in the Tenth legislature - First session by representative Parr and eighteen others. It is designed to provide municipalities affected by offshore energy development with a means of exercising control over the location and public costs of OCS related onshore development.

Under the bill, each facility must obtain a permit prior to beginning construction. Permits cannot be issued without local approval from the municipality where the facility will be located. Thus, local units are given a bargaining tool which can be used to negotiate over the location and types of OCS related facilities. If negotiation fails to satisfy local needs, municipal denial of project approval will bar issuance of the permit and prevent construction of the facility in that municipality.

Permit fees generated under the bill are to be used to plan for and minimize the public costs of the OCS related onshore development. Fee amounts are proportionate to the projected impacts of the facility. (see table 1) At least 50% of the fees will go directly to the municipality where the facility is being built. An additional 45% of the fees will benefit the municipality in the form of state assistance.

This 45% of the fees will be allocated among state agencies and the municipality by DCRA according to their relative responsibilities for the provision of public facilities and services necessitated by the development. State assistance will be in forms of planning, legal expertise, and the direct provision of services such as education, transportation, and health care.

HB 219 proposes two alternative fee schedules. One measure of fees is based on population growth and the cost of government. The alternative measure is based solely on the value of the proposed development. For each facility, the formula producing the highest fee is used.

Using the valuation measure of fees, the amount of revenues produced by a development is related to the size of the proposed facility. Facility value is roughly predictable by the stages of the oil extraction process. During exploration, support facilities on shore will be valued at \$10 million or less. Based on a value percentage fee calculation, a \$10 million facility would pay \$250,000 in fees. (see table 1) If oil is discovered, shore processing facilities will have a much higher value. The very large processing facility at Valdez is valued at \$1.2 billion dollars. Fees for a facility that size would be \$6 million dollars. Although the scale of the terminal at Valdez represents the largest type of terminal which may be built to service offshore oil, it is obvious that processing facilities will generate large fees. Table 1 gives examples of fees produced by different sized production facilities.

July 5, 1977

House bill 219 provides an important boost to local preparation for OCS - onshore facilities. Developers are required to submit plans to the state three years in advance. This advance notice allows time for local assessment of the project and definition of a local policy in regardⁿ to the project. Advance reporting also requires the developer to disclose information which will assist municipal decision making.

Municipalities may use fees paid to cover planning and capital improvements costs. Independent legal assistance, land use and financial planners, and administrative assistance may be paid for out of the fees. Localities can use the planning process to control growth and establish a pattern for evaluating subsequent land use demands.

Status of the bill: HB 219 was not reported out of committee in the first session. Public hearings are being held to explain the bill and provide a channel for local input into the legislative process.

July 5, 1977

TABLE 1

REVENUES THAT THE FEES WILL GENERATE

EXPLORATORY STAGE

IF the facility is valued at \$5 million fee = \$100,000

IF the facility is valued at \$20 million fee = \$250,000

Most of the facilities built to service OCS exploration will cost \$10 million or less. The assessed value of the service base at Yakutat is \$5.5 million as of the first of 1977.

DEVELOPMENT AND PRODUCTION STAGE

IF the facility is valued at \$500 million fee* = \$2.5 million

IF the facility is valued at \$750 million fee = \$3.75 million

IF the facility is valued at \$1 billion fee = \$5.0 million

IF the facility is valued at \$1.2 billion fee = \$6.0 million

The oil terminal at Valdez will process 1.2 million barrels of oil per day and is valued at 1.2 billion dollars. If the largest possible find is made in the Northern Gulf, shore terminal capacity will need to be 650,000 barrels per day at a value of approximately \$800 million. Also a larger discovery in the Northern Gulf would require a Liquefied Natural Gas terminal with one billion cubic feet per day capacity at a value of approximately one billion dollars.

*These fees for the production stage are calculated at a straight one half percent. If the developer failed to provide three year advance information, the fees would double.

MERITS OF HB 219

1. Places municipalities in the driver's seat for any OCS-related shoreside development.
2. Creates a land management tool which is applied statewide and thus is not a disincentive to development.
3. Provides money to finance costs of local planning not presently covered by CEIP or other grants.

SHORTCOMINGS OF BILL AS CURRENTLY WRITTEN

1. Local approval or veto of a proposed facility need not be consistent with existing local or State plans.
2. Standards for permit evaluation are not specified. No procedural or substantive rights of developers are enumerated or protected.
3. HB 219 is not tied to the Coastal Management Act and its requirements.
4. Three years advance notice of construction plans may not be feasible in all cases.

SUGGESTED IMPROVEMENTS

1. To limit potential arbitrary uses of local approval or veto of a proposed facility by:
 - a. Requiring municipal decisions to be consistent with existing and emerging plans and policies under the Coastal Management Act;
 - or b. Establishing decision guidelines in the bill to ensure that a municipal approval or veto is to protect the public welfare and is consistent with Coastal Management policies;
 - or c. Grant municipalities the power to suspend a permit application for one year while a Coastal Management program is written.

Each alternative should clarify the procedural rights of the developer.

2. Make the advance planning requirement more flexible so that developers will not be penalized by changes in their plans caused by forces beyond their control.

The views of this memo do
not reflect Departmental
Policy

TO: Members of House Committee
Community and Regional Affairs

DATE: August 9, 1977

FILE NO:

TELEPHONE NO:

FROM: Robert Shoaf
Summer Intern

SUBJECT: HB 219

Our critical examination of HB 219 focuses on two major topics:

- A. Local approval power
- B. Prior planning by developers

A. Local approval power

Local approval power and permit fees are the two major features of the onshore facilities construction permit. A permit will not be issued without local approval. Municipalities are not required to have planning and zoning in place to make this local decision. Areas that do exercise land use controls do not have to make their decision inconsistent with existing municipal plans and ordinances.

Regardless of how the permit is classified, the local approval power is regulatory in nature and should be designed to protect private property rights. Private property uses cannot be abridged by government unless the public intervention is reasonably related to public welfare. Traditionally, to prevent arbitrary public intervention in private land use, police power controls established standards for intervention (by planning and zoning) in advance.

The Division of Community Planning feels that local approval power in HB 219 is an essential tool which will enable municipalities to manage OCS onshore development. However, municipal decisions must be directed to protect the public welfare. Furthermore, HB 219 should be coordinated with coastal planning under the Coastal Management Act.

Three alternatives are available to remove the arbitrary nature of local approval.

1. Prior planning

OCS onshore facilities siting decisions will be made in the context of coastal planning under Alaska's Coastal Management Act. Local decisions under HB 219 should adhere to approval District Coastal Management Programs. In municipalities where no management programs have been written, local decisions should be in accordance with any existing land use controls and with the principles and emerging plans of the Coastal Management Act.

It is not certain that District Programs under CMA will produce the type of specific standards needed to guide local development decisions. Additionally, not every municipality may be able to afford adequate, on going planning.

2. Guidelines in HB 219

To guide local decisions and to prevent arbitrariness the legislature can incorporate guidelines for municipal decision making in HB 219. Because of the comprehensive mandate for coastal planning in the Coastal Management Act, these guidelines should mirror the policies of CMA.

Guidelines could require that municipal evaluation of a onshore facility construction proposal consider the environmental, social and economic impacts of the project. Approval of a project could issue when a City Council or Municipal Borough found that these impacts were manageable. For example, a municipality could base its decision in part, on whether or not the necessary supportive public facilities and services will be available when the development is completed.

Evaluation of a proposal will require detailed assessment of the proposal and its effects on a municipality. A third alternative is to structure a municipality's use of this assessment period so that local land use plans are produced to serve as a guide for the municipal decision.

3. Interim Planning

This alternative grants municipalities the power to suspend construction of an onshore facility for a reasonable time while District Coastal Management Programs are written and implemented. These programs would place the municipal decision in a more comprehensive framework than would the reliance on guidelines. Additionally, the municipal programs would serve as a guide for future management of OCS impacts, and as a basis for ongoing planning.

If a municipality chooses to approve a proposal without suspending construction pending implementation of a District Program, local approval should be based on positive findings that the impacts of the project are manageable.

In this alternative, HB 219 would only serve municipalities who have not yet written District Management programs.

B. Prior planning by developers

The requirement of three years advance notice of construction plans by developers (section 41.45.110, May 28, 1977 version) may not be feasible. Uncertainties not controlled by developers, such as Federal OCS leasing policies, may interfere with their ability to accurately project construction plans three years in advance.

When external factors dictate a change in plans for OCS onshore activities, developers should be able to change their plans without the excessive penalty of doubling the permit fee. To allow flexibility, the advance planning requirement might be reduced to two years, with changes in plans allowed with one years notice, unless waived by a municipality. Additionally, the Department of Community and Regional Affairs should determine what advance information is feasible in terms of progress of lease sales and exploration.

Statutory Language To Structure Municipal Decisions

Alternative 1: Prior planning

" Local approval or denial of a permit shall be in accord with existing or emerging Coastal Management Programs, policies and guidelines.

Alternative 2: Guidelines

" Local permit approval may be granted by a City Council or Borough Assembly if it finds:

- a. That the use will not materially endanger the public health or safety if located where proposed:
 1. That the municipal water supply will be of sufficient quality and quantity to meet the increased demand attributable to the facility;
 2. That the proposed use will not have an unreasonable impact of the coastal environment;
 3. That the necessary supportive public facilities and services will be available as the demand for them attributable to the facility increases;
 4. That associated land and water transportation will minimize degradation of waterfront uses.
- b. That the proposed facility is in accord with existing plans and regulations;
- c. That the use will not substantially injure the value of adjoining or abutting property, or is a public necessity;
- d. That the use will not unreasonably disrupt the social and economic well-being of the municipality. "

Alternative 3: Interim planning

HB 219 should specify whether the decision to utilize the moratorium or proceed immediately will be an administrative or legislative one.

Language to implement alternative three should be placed in a new section of the bill. The new section could state:

"Local Approval of an Onshore Facilities Construction Permit.

"When a developer of an OCS onshore facility requests local approval of its proposal, the municipal assembly or council shall meet to make one of two possible decisions.

"If the assembly finds that the project will be consistent with state and local plans then existing under Alaska's CMA [or consistent with enumerated standards], then local approval may be given.

"If the assembly finds that the proposal is not consistent with these guidelines [or will have a significant impact on coastal resources which is not adequately managed by present planning] or is not consistent with the local health, safety and welfare, then the assembly, by a majority vote, may choose to impose a two year moratorium on the proposal, during which time the municipality shall prepare a district coastal management program (See A.S. 45.35.030) to guide subsequent local decisions.

"If a municipality already has implemented a coastal management program, this section does not apply and the local permit decision shall be made in accordance with the policies and procedures of that plan.

"Once a moratorium is imposed, the municipality should contact the Department of Community and Regional Affairs to make arrangements to locate any funds needed for planning."

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

November 1, 1977

SUBJECT: House Bill 219, establishing a program of shore facilities building permits as a means of providing financial assistance to municipalities adversely affected by outer continental shelf activity.

TO: Representative Lisa Rudd

FROM: John B. Chenoweth
Legislative Counsel

You have asked for an interim review of state and federal action relative to financial assistance to local governments affected by continental shelf petroleum exploration and development, with a view toward considering the relationship between state and federal action and modification, revision or other action with respect to HB 219. What follows is divided into two parts to facilitate your review.

STATE ACTION

Since adjournment, Governor Hammond has signed into law the state's Coastal Management Act (Ch. 84, SLA 1977), and appointed the nine public members to serve on the coastal policy council.

Anticipating the first allocation of federal financial assistance in the form of grants and federal credit assistance under various subsections of the federal coastal energy impact program, sec. 308 of the federal Coastal Zone Management Act of 1972, the Department of Community and Regional Affairs has been active in the preparation of the necessary intrastate allocation process required by sec. 308(g)(2) of that Act.

The allocation process proposed by the department takes the form of policy guidelines for the implementation of the Coastal Energy Impact Program. With this memo is a copy of the policy guidelines in draft form together with a 20-page narrative describing the process. As I mentioned to you, I

Representative Lisa Rudd
Page 2
November 1, 1977

believe, when you were in Juneau prior to Labor Day, the department has had a workshop on the draft with local government officials and had allowed until September 9th, to receive further comment. Thereafter, the department proposes to make necessary revisions in the guidelines and adopt them as the basis by which to evaluate applications for financial assistance.

I believe I also informed you that, in my opinion, the department has failed to proceed in the manner required by the state's Administrative Procedure Act in that it has not followed the process required for the adoption of administrative regulations for the program. The Department of Law has since informed Community and Regional Affairs that it should comply with the state's Administrative Procedure Act and, to that end, the Department has proposed the adoption of a one-section regulation incorporating the guidelines by reference.

The flow of financial assistance to Alaska under section 308 of the Federal Coastal Zone Management Act should commence very shortly. The Coastal Energy Impact Program provides five basic types of assistance: planning grants, environmental grants, development grants, credit assistance and repayment assistance. Alaska is due to receive an allotment of funds in each category based on its share of nationwide coastal energy development. The department has provided these figures by way of anticipated FY 77 receipts:

1. Planning Grants are available on an 80 percent federal/20 percent non-federal basis to help prepare for the consequences of all new or expanded energy activity in the coastal zone. Planning grants can be used to study and plan for the economic, environmental, or social impact due to the siting, construction, expansion or operation of energy facilities. Alaska has been allotted a total of \$365,466 for this purpose for FY 77.
2. Environmental Grants, available on a 100 percent federal basis, are intended to prevent, reduce or repair damage to or loss of the valuable environmental or recreational resources due to coastal energy activity. Environmental grants may be used for impacts resulting from previous coastal energy activity which cannot be attributed to any one party. Alaska has been allotted \$662,904 for this purpose for FY 77.

3. OCS Related Facility Grants, also called formula grants, are available on a 100 percent federal funding basis to plan for, mitigate the impacts of, and develop public facilities and services as a result of OCS related energy facility development. These funds may be expected to be the primary source of assistance to help municipalities prevent the unavoidable loss of environmental or recreational resources. A loss is unavoidable when the cost of prevention or repair cannot be assessed to a responsible party. Alaska has been allotted \$1,178,643 in this category for FY 77.

4. Credit Assistance is available in the form of direct loans or guarantees of loans or bonds for the purpose of providing new or improved public facilities and services required as a result of coastal energy activity. Also available by way of such is repayment assistance, available to eligible applicants who cannot meet credit obligations because an anticipated revenue failed to materialize. Alaska has been allotted \$48,612,973 for both credit and repayment assistance for FY 77.

CONGRESSIONAL INITIATIVES

US Senate-adopted legislation (S 9) and legislation offered in the House of Representatives (HR 1614) remain under study in House committee, with no likelihood of final adoption of either before year end.

The Senate-adopted legislation (S 9), entitled the Outer Continental Shelf Lands Management Act of 1977, amends the Coastal Energy Impact Program portion of the 1976 Coastal Management Act amendments

(1) by eliminating the requirement in sec. 308(b)(4)(i) that all loan and bond guarantee resources shall have been exhausted for formula grant projects and programs resulting from Outer Continental Shelf energy activity -- presumably allowing states the use of formula grant funds for new or improved public facilities and services without regard to examination of adequacy of alternative funding sources;

(2) by eliminating a requirement that such facilities and services be needed because of "new or expanded" activity in order to qualify for support -- opening the door to financial support for the resultant community impact caused by additional activities in conjunction to an existing plant or facility; and

(3) by increasing the funding authorization level by \$25,000,000 annually after federal FY 77 which, if funded, should increase revenues available to Alaska: in this regard, the Coastal Management Office, Division of Policy Development and Planning, has offered the following projected revenue figures for Alaska:

(Federal)	FY 78	\$ 5,000,000
	FY 79	7,050,000
	FY 80	8,750,000
	FY 81	22,320,000
	FY 82	21,820,000
	FY 83	14,920,000
	FY 84	15,170,000

for a total of \$95 million dollars anticipated through the seven-year period.

Less certain, at least at the time the information was provided to me, is the course of HR 1614, in part because of the complexities of the amendatory language being proposed, and in part because of a change proposed in the manner of calculating assistance under the applicable formula. A computer run of the estimated payout to coastal states under the language of HR 1614 suggests payment of under \$60 million to Alaska through the period. House consideration is complicated by the proposal of an amendment by Representative Breau and others to change key portions of HR 1614 with respect to the operable formula, making the Coastal Energy Impact Program more nearly a "revenue sharing" assistance program not coupled to payment based upon oil and gas leases or oil and gas landed. Apparently the general revenue sharing approach is gaining some favor among the members of Congress; the Carter administration apparently remains opposed in principle. The committee considering the legislation did ask adoption of the Breau amendments by way of request of the Rules Committee that the bill be scheduled for floor action; there was a move to table until next year (second session), and there will be no further action until January.

Representative Lisa Rudd
Page 5
November 1, 1977

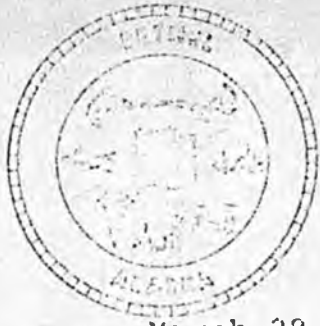
A copy of the bill, bearing the amendments offered in committee, is forthcoming from the Congressional Liaison, Office of Coastal Zone Management, in Washington, DC.

JBC:jpd

Enclosure

HB

232



CITY OF BETHEL

P. O. Box 358 • Bethel, Alaska 99559

543-2297 — Area Code 907

March 28, 1978

Representative Steve Cowper
Chairing, House Finance Legislative Committee
Pouch V
Juneau, Alaska 99811

RE: Senate Bill No. 182, and House Bill No. 232, "AN ACT
RELATING TO MUNICIPAL SALES TAX."

Dear Representative Cowper:

At the regular Bethel City Council Meeting of March 13, 1978, the Council passed Resolution No. 227, endorsing Senate Bill No. 182, and House Bill No. 232, "AN ACT RELATING TO MUNICIPAL SALES TAX." and encourages the State Legislature to pass and approve this legislation.

Although the City of Bethel has voted not to have the sale of intoxicating liquor under the local option this proposed legislation would give a municipality another option in administrating the necessary problems of alcohol. Since there exists such a variation in the size of communities in Alaska ranging from under 25, to a population of over 50,000, it seems quite difficult for the Alcohol Beverage Control Board to regulate each individual community. It is because of the varied sizes of communities in Alaska and the vast area in Alaska I believe that any legislation giving more local or regional control to the people that must inevitably live with the problems is the direction that the State must look at.

Going back to the two bills by giving a community the option to levy a higher sales tax on intoxicating liquor this could give each Community a revenue source that could eliminate many of the increased problems that arise from any community that does sell intoxicating liquor such as increased activity at the alcohol treatment centers, increased traffic problems, and increase social problems at home.

Sincerely,

Lyman Hoffman
City Manager

LH:lf

CITY OF BETHEL, ALASKA
RESOLUTION NO. 227

A RESOLUTION OF THE CITY OF BETHEL, ALASKA ENDORSING THE GOVERNORS REQUEST FOR AN ACT ENTITLED "AN ACT RELATING TO MUNICIPAL SALES TAX." IN THE FORM OF SENATE BILL NO. 182 AND HOUSE BILL NO. 232.

WHEREAS, these bills would enable a municipality to levey a sales tax at a higher rate on the sale of intoxicating liquor, and

WHEREAS, the City of Bethel has been dry since 1973, and has experienced numerous problems because of "bootleggers", and

WHEREAS, these bills would give the option to a municipality to provide regulations governing the barter, sale and possession of alcohol and the orderly conduct of business of selling intoxicating liquor.

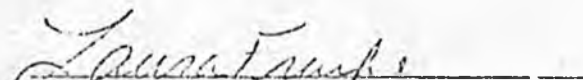
NOW THEREFORE BE IT RESOLVED THAT The City of Bethel, Alaska endorses Senate Bill No. 182, and House Bill No. 232, "An Act Relating to Municipal Sales Taxes", and encourages the State Legislature to pass and approve this legislation.

PASSED, APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF BETHEL, ALASKA THIS 27 DAY OF March, 1978.

APPROVED BY:


MAYOR

ATTEST:


CITY CLERK

HB 232

February 18, 1977

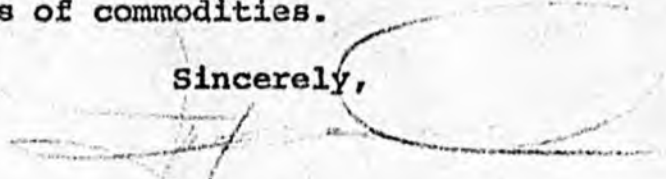
The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060 (b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill which would expand the authority of general law municipalities in imposing taxes on liquor.

This bill has been requested by the Interdepartmental Coordinating Committee on Alcoholism to give incorporated communities greater flexibility in using a sales tax to generate revenues needed to pay some of the costs created by the use of alcohol. Section 1 would amend AS 04.15.070 (a) by removing its present prohibition against putting a tax on intoxicating liquor when other commodities are not taxed. Section 2 would amend AS 29.53.415 (a) to authorize the taxing of a single class of commodity, and expressly permit a higher rate on intoxicating liquor. It also permits the setting of various rates within the ceiling on different classes of commodities.

Sincerely,



Jay S. Hammond
Governor

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. HB 232
 Title An Act Relating to Municipal Sales Taxes
 Requested by Office of the Governor Date February 17, 1977

II. FISCAL DETAIL
 Agency Affected None
 Program Category Affected None
 Budget Request Unit(s) Affected None

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-	-0-	-0-	-0-	

FUNDING (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

No State government activity or fiscal impact is implied by this proposed legislation.

IV. DATE February 17, 1977 PREPARED BY Ronald B. Lind
 AGENCY Division of Budget and Management
 PHONE 465-2213
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

HOME RULE AND GENERAL LAW MUNICIPALITIES

Alaska State Constitution (Article X, Section 11)

HOME RULE POWERS. A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.

AS 29.08.010. HOME RULE. A home rule municipality is a municipal corporation and political subdivision and is a borough of the first class or city of the first class which has adopted a home rule charter. It has all legislative powers not prohibited by law or charter.

AS 29.13.100. LIMITATION OF HOME RULE POWERS. Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise than as provided. They supersede existing, and prohibit future home rule enactments which provide otherwise:

(23) AS 29.53.415(d) (interest on sales tax) [8% ceiling]

AS 28. 78.010. DEFINITIONS. In this title, unless otherwise provided, or the context otherwise requires,

- (1) "borough" means a general law first or second class organized borough;
- (2) "city" means a general law first or second class city;

AS 29.43.020. . . . Cities outside boroughs may levy and collect sales and use taxes as provided by chap. 53 of this title for boroughs.

AS 29.53.440. Cities within a borough which levies and collects . . . [and]

AS 29.53.450. Cities within a borough which does not levy and collect . . .

sales or use taxes for areawide borough functions may levy and collect sales or use taxes in the manner provided for boroughs.

HB

256

COMMITTEE REPORT

2-23-77

FINANCE

HOUSE

3/15

Date

Mr. Speaker:

The Committee on C.S.R.A. has had HB 256

under consideration. A majority of the members of the Committee

- recommends it do pass
- recommends it do not pass
- recommends it do pass with attached amendment(s)
- recommends it be replaced with CS for HB 256 and that CS for HB 256 do pass
- (and) recommends it be referred to the _____ committee
- reports it back without recommendation
- AND attaches a report of its intent
- (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

Ridd - do pass _____ R. D. Self 100% _____

W. A. Anderson _____ 70% _____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

Adams recommends: No Rec.

_____ recommends: _____

_____ recommends: _____

Ridd
Chairman

A M E N D M E N T

OFFERED IN THE HOUSE:

BY: C&RA COMMITTEE

To: CS for HOUSE BILL No. HB 256

SENATE BILL No. _____

PAGE: 1

LINE: 8

Delete *Section 1. + Sec. 2

Replace with the following material:

*Section 1. AS 43.75.130 is amended to read:

Sec. 43.75.130. REFUND TO LOCAL GOVERNMENTS. The Commissioner of revenue shall pay to each municipality ORGANIZED BOROUGH AND EACH CITY OF THE FIRST CLASS 20 ~~10~~ percent of the amount of tax revenue collected in the ^{municipality} ~~borough or city~~ from taxes levied by secs. 10-90 of this chapter.

*Section 2.

AS 43.75.135 is repealed.

§Section 3.

This act takes effect January 1, 1979.

A M E N D M E N T

OFFERED IN THE HOUSE:

Representative Snider by re-
quest of:
BY: C&RA COMMITTEE

To: CS for _____ HOUSE BILL No. HB 256 _____

SENATE BILL No. _____

PAGE: 1 _____

LINE: 8 _____

Delete *Section 1.

Replace with the following material:

*Section 1. AS 43.75.130 is amended to read:

Sec. 43.75.130. REFUND TO LOCAL GOVERNMENTS. The
Commissioner of revenue shall pay to each municipality ~~ORGANIZED~~
BOROUGH AND EACH CITY OF THE FIRST CLASS] 20 ~~10~~ percent of
the amount of tax revenue collected in the borough or city
from taxes levied by secs. 10-90 of this chapter.

*Section 2.

AS 43.75.135 is repealed.

*Section 3.

This act takes effect January 1, 1979.

ALASKA FISH PROCESSOR RETURN

Year

Name Federal Employer Identification or Social Security Number.....
 Person, Firm or Corporation
 Address Fish Processor License Number.....
 Principal Office

Nature of Processing Location of Operation

A SEPARATE RETURN MUST BE FILED FOR EACH PLANT OR VESSEL

Fishing Resources Bought or Otherwise Obtained for Processing Through Freezing, Salting or other Method

RESOURCES	TOTAL POUNDAGE BEFORE PROCESSING	TOTAL POUNDAGE AFTER PROCESSING	VALUE OF RAW MATERIAL			RATE OF TAX	TAX DUE	OFFICE USE ONLY
			Actual Price Paid	Other Costs Chargeable Thereto	TOTAL VALUE			
Mon:								
King or Chinook (Red)			\$	\$	\$		\$	\$
King (White)								
Red or Sockeye								
Coho or Silver								
Pink or Humpback								
Chum or Keta								
Salmon Eggs or Roe								
Herring (Bait, etc.)								
Herring Eggs or Roe								
Halibut								
Halibut Liver & Viscera								
Flatfish (Black Cod)								
Rockfish (Red Snapper)								
Alaska Pollock								
Other Bottom Fish								
Other Misc. Fish								
Shrimp (All Methods)								
Penner Crab (Not Canned)								
Langeness Crab (Not Canned)								
King Crab (Not Canned)								
Other Misc. Shellfish								
Other Fish Resources (By-Products, etc.)								

CHECK TYPE OF OPERATION: Rate of Tax

Shore Based 1%

Floating - Herring (not eggs or roe) ... 1%

 — All Other 4%

Tax	\$	\$
Less Initial Payment for License No.		
NET TAX		
Prepaid Tax Credit		
Balance Due or Overpayment		
Penalty for Failure to Pay		
Penalty for Late Filing		
Interest		
TOTAL DUE WITH THIS RETURN	\$	\$

IMPORTANT: THE FOLLOWING SCHEDULE MUST BE COMPLETED TO ALLOW FOR ALLOCATION OF REVENUE BACK TO LOCAL GOVERNMENT.

This return must be filed before April 1 following the close of the taxable year. Make your remittance payable to the:

LOCATION AND ADDRESS OF PLANT OR VESSEL	WITHIN INCORPORATED CITY LIMITS	OUTSIDE CITY BUT WITHIN ORGANIZED BOROUGH	Outside All Cities Or Boroughs	OFFICE USE ONLY

Department of Revenue
Pouch SA
Juneau, Alaska 99811

I declare under the penalties of perjury that this return (including any accompanying statements) has been examined by me and to the best of my knowledge and belief is a true, correct and complete return.

Name of Taxpayer) 19..... (Date) Signature of Agent) 19..... (Date)

53539

1974 SHARED FISH TAX REFUNDS TO LOCAL GOVERNMENTS

Shared 7/75

	<u>CITY</u>	<u>BOROUGH</u>
Anchorage	7,489.57	
* Anchorage Borough		10,120.99
Bristol Bay Borough		4,843.30
Cordova	42,307.50	
Craig	4,753.38	
Dillingham	9,177.14	
* Haines Borough		62.76
Hoonah	1,246.02	
Homer	1,983.02	
Hydaburg	1,809.38	
* Juneau, City & Borough		7,270.50
King Cove	28,407.90	
Kenai	9,880.08	
* Kenai Borough		26,431.45
Ketchikan	11,296.21	
* Ketchikan Borough		24,650.89
Kodiak	32,344.14	
* Kodiak Borough		66,349.80
Petersburg	41,038.32	
Pelican	10,376.98	
Seldovia	1,950.43	
Seward	9,407.64	
Sitka	1,778.00	
* Sitka Borough		4,864.94
Unalaska	48,397.16	
Wrangell	5,234.04	
Valdez	794.00	
Yakutat	<u>2,222.24</u>	
TOTAL	271,893.15	144,594.63

CITIES	271,893.15
BOROUGHS	<u>144,594.63</u>
TOTAL	416,487.78

supplying of part of their home to others and who claim business deductions on their Alaska income tax return for that same part of their home are required to obtain an Alaska business license. 1960 Op. Att'y Gen., No. 20.

When an individual claims that part of his property is business property for income tax purposes, that same part of his property does not come within the meaning of the words "personal home" in §§ 1 and 15 of the business license regulations. 1960 Op. Att'y Gen., No. 20.

An individual may not claim a reduction of state income tax on the grounds that part of his home is business property and then escape the state business license tax on the basis that the same part of his home is not a business property but his personal home. 1960 Op. Att'y Gen., No. 20.

Educational, etc., institutions exempt when not "doing business."—The rule is that educational, religious, etc., institutions and hospitals need not pay the business license tax or the initial license fee as long as they refrain from doing "business" as defined in the business license act. 1960 Op. Att'y Gen., No. 25.

But there is no exemption of religious corporation when "doing business."—This section and AS 43.70.020 make no provisions for the exemption from the license requirement of a religious corporation which is doing business. 1960 Op. Att'y Gen., No. 25.

Sec. 43.70.120. Short title. This chapter may be cited as the Alaska Business License Act. (§ 1 ch 43 SLA 1949)

Chapter 75. Fisheries Taxes.

Article

- 1. Salmon Canneries and Certain Fish Processors (§§ 43.75.010—43.75.055)
- 2. Cold Storages and Other Fish Processors (§§ 43.75.060—43.75.095)
- 3. Taking of Fisheries Products Which Are Sold Outside Taxing Jurisdiction (§§ 43.75.100—43.75.120)
- 4. General Provisions (§§ 43.75.130—43.75.135)

Article 1. Salmon Canneries and Certain Fish Processors.

Section

- 10. Fisheries business licenses
- 20. Application for license
- 30. Filing return and payment of tax

Section

- 50. Violations and penalties
- 55. Security for collection of taxes

Sec. 43.75.010. Fisheries business licenses. (a) A person engaging or attempting to engage in any of the following lines of business

in connection with a license on the basis by levied.

(1) Salmon canneries. An annual tax equivalent to the cost of this license, to be considered to be a deduction from the first month of the last fiscal year of the license. Salmon received other than canned fresh fish may be exempt from the license tax of one per cent.

(2) Herring. Herring, salting, freezing, or other products including herring or bait herring. One per cent of the value of raw material used in herring including herring furnished by the processor or subsidized by lease or other means.

(3) Crab canneries. Annual license fee for crabs. The raw material price paid according to (2).

(4) Clam canneries. One per cent of the value of the clam according to (3). Butter clams are exempt from the value of the clam.

(b) "Wholesale price" of money, credit, or the sale of the property sold, or service cost, average cost, interest, cash discounts, commission, and other charges, not to exceed five per cent, or one per cent.

5.010

§ 43.75.010

REVENUE AND TAXATION

§ 43.75.010

in connection with the state's commercial fisheries shall first obtain a license on the basis of the following license taxes which are hereby levied.

(1) Salmon canneries, both shore-based and floating, shall pay an annual tax equal to three per cent of the value of the raw fish purchased or obtained for canning during the year. For the purpose of this license, the raw fish value of each kind of salmon is considered to be a dollar value equal to the average wholesale price obtained for the finished product by Alaska salmon canneries during the months of August, September, October, November and December of the last five years immediately preceding the license year. Salmon received by salmon canneries and diverted for purposes other than canning are valued at the average prevailing price on the fresh fish market for that fish and are subject to an annual license tax of one per cent of the value.

(2) Herring processing plants in the business of canning, curing, salting, freezing, or making meal or oil or other processed products including sale of bait herring by either processing plant or bait herring fisherman shall pay an annual license tax equal to one per cent of the value of the raw herring. The value of the raw material under this license is the actual price paid for the herring including indirect considerations such as fuel or supplies furnished by the processor or offsets to the cash value for gear furnished. This value applies to herring caught in company-owned or subsidized boats operated by employees of the processor or under lease or other agreement.

(3) Crab canneries, both shore based and floating shall pay an annual license tax equal to two per cent of the value of the raw crabs. The raw crab value for the purpose of this license is the actual price paid for the raw crab either by cash or its equivalent according to (2) of this section for herring processing plants.

(4) Clam canneries shall pay a license tax equal to two per cent of the value of the raw clams, with the value to be determined according to (3) of this section for crab canneries, on razor clams. Butter clams are taxed in the same manner at the rate of one per cent of the value of the raw clams.

(b) "Wholesale price" includes all receipts whether in the form of money, credits, or other valuable considerations received from the sale of the finished product without deduction for the cost of property sold, the cost of the material used, insurance costs, labor or service costs, label and labeling costs, transportation and storage cost, interest paid, taxes, losses, or any other expense except cash discounts allowed on sales not to exceed one and one-half per cent, commissions actually paid to independent brokers not to exceed five per cent, and swell allowance not to exceed one-tenth of one per cent.

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(c) The person, firm, or corporation engaging or attempting to engage in the above lines of business who actually and physically cans or processes the above fishery resources shall be liable for and shall pay to the department the whole tax imposed by this section. In determining this tax liability the person, firm, or corporation may not deduct from the value of the raw fishery resources canned or processed the value of any raw fishery resources canned or processed for other persons, firms, or corporations, but shall include this as a part of the value of the raw product obtained for canning or processing. (§ 1 ch 82 SLA 1949; am § 1 ch 113 SLA 1951; am § 1 ch 146 SLA 1962; am §§ 1, 2 ch 84 SLA 1967)

Revisor's note. — Section 1 ch 113 SLA 1951 began "Subsection (a) of Section 1 of Chapter 82, Session Laws of Alaska 1949, is hereby amended to read as follows:" and after these words appeared subsection (a), incorporating the rate amendment, but eliminating a paragraph numbered (1) which appeared in ch 82 SLA 1949. Section 1 ch 146 SLA 1962 makes a similar amendment, again without mentioning the paragraph numbered (1). This paragraph appears in AS 43.75.010 as the last sentence of subsection (1) and is included in the revision on the assumption that there was no legislative intention to omit it.

Effect of amendment. — The 1967 amendment substituted "three per cent" for "six per cent" in the first sentence of subsection (a) (1), deleted "50 per cent of" preceding "the average wholesale price" in the second sentence of such subsection, inserted "the last five years immediately preceding" in such sentence, and added subsection (c).

A tax on the business of catching and canning salmon is not a property tax. *Pacific Am. Fisheries v. Territory of Alaska*, 2 F.2d 9 (9th Cir. 1924), aff'd, 269 U.S. 269, 46 S. Ct. 110, 70 L. Ed. 270 (1925).

"Canning" is activity of salmon cannery which is taxed.—Under this section the salmon cannery activity which is taxed is that of "canning," whether the raw fish are "purchased or otherwise obtained." *Arctic Maid v. Territory of Alaska*, 277 F.2d 120 (9th Cir. 1960), rev'd on other grounds in 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

No discrimination in favor of local cannery against freezer ships. — As between the tax laid on local cannery

by this section and those laid on "freezer ships," by AS 43.75.060 there is no discrimination in favor of the former and against the latter. *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

...Since tax on freezer ships did not exceed six per cent.—No matter how the tax on "freezer ships" is computed, it did not exceed the six per cent tax on local cannery imposed by this section. *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

And any difference does not violate commerce clause.—If there is a difference between the taxes imposed on freezer ships and the taxes imposed on their competitors, they are not so "palpably disproportionate" as to run afoul of the commerce clause. *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

For case discussing priority of claims for license taxes under prior law in a bankruptcy proceeding, see *In re King Salmon Fisheries Co.*, 7 Alaska 97 (1923).

Constitutionality of former provisions taxing salmon cannery on basis of number of cases packed.—See *Territory of Alaska v. Pacific Am. Fisheries*, 7 Alaska 160 (1924), aff'd, 2 F.2d 9 (9th Cir. 1924), aff'd, 269 U.S. 269, 46 S. Ct. 110, 70 L. Ed. 270 (1925).

Applied in *Schlotham v. Territory of Alaska*, 276 F.2d 605 (9th Cir. 1960), cert. denied, 362 U.S. 990, 80 S. Ct. 1079, 4 L. Ed. 2d 1022 (1960): *Territory of Alaska v. Arctic Maid*, 16 Alaska 126, 140 F. Supp. 190 (D. Ala. 1956), aff'd, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

Am. Jur. reference.—51 Am. Jur. Taxation, § 594.

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149 F. Supp. 190 (D.
Ed. 365 U.S. 199, 81 S.
2d 227 (1961).

ference.—51 Am. Jur.

Sec. 43.75.020. Application for license. (a) Application for a li-
cense shall be filed with the Department of Revenue and accompa-
nied by an initial fee of \$25. A separate initial fee is required for
each plant specified in the application covered by the license. The
application shall contain the name of the applicant, the line of
business to be licensed, place of business, and other facts which
the department prescribes. The applicant shall state that he agrees
to pay the license tax, and that he will make a return and pay the
tax at the time provided by law.

(b) Upon receipt of the application in proper form accompanied
by the initial fee, the department shall issue the license as of the
date the application is filed or mailed, and the applicant may carry
on the business from the date the application was actually made.
(§ 2 ch 82 SLA 1949)

✓ Sec. 43.75.030. Filing return and payment of tax. (a) A person
subject to the tax shall file a return stating the value of raw fish-
eries products processed during the license year, computed as re-
quired by §§ 10—50 of this chapter, and such other information
as the department prescribes by regulation. The return shall show
the license number and shall be signed by the taxpayer or his au-
thorized agent, under penalty of perjury. If a receiver, trustee,
or assign is operating the property or business, he shall file the
return for the person. A tax due on the basis of such a return
shall be collected in the same manner as if collected from the per-
son of whose business he has custody and control.

(b) The return shall be made on the basis of the calendar year
to the Department of Revenue at Juneau before April 1 after the
close of the calendar year.

(c) The department may prescribe regulations for the granting
of a reasonable extension of time for filing and may grant an ex-
tension of time for filing.

(d) The tax shall be paid before April 1 after the close of the
calendar year.

(e) Every person engaging or attempting to engage in a busi-
ness for which a license is required under §§ 10—50 of this chap-
ter shall keep such records, make such statements under oath, file
such returns, and comply with such regulations as the commis-
sioner of revenue may prescribe.

(f) When the department considers it is necessary, it may re-
quire a person, by notice served upon him, to file a return, make
such statements under oath, or keep and display to it such records
as it considers sufficient to show the tax for which the person is
liable. If a person fails to file a return as prescribed by law or by
regulation, or makes, wilfully or otherwise, a false or fraudulent re-
turn, the department shall make the return from the information
which it can obtain. A return made by the department is prima

facie good and sufficient for all legal purposes. (§ 3 ch 82 SLA 1949; am §§ 2, 3 ch 146 SLA 1962)

Applied in *Schlothan v. Territory* 1960), cert. denied, 362 U.S. 990, 80 of Alaska, 276 F.2d 836 (9th Cir. S. Ct. 1079, 4 L. Ed. 2d 1022 (1960).

Sec. 43.75.050. Violations and penalties. (a) If a person fails to file a return within the time prescribed by law or regulation, unless the failure is due to reasonable cause and not to wilful neglect, five per cent is added for each 30 days or fraction of 30 days during which the failure continues, not exceeding 25 per cent in the aggregate. The amount added to the tax shall be collected at the same time, in the same manner and as a part of the tax. If the tax is paid before discovery of the neglect, the amount added shall be collected in the same manner as the tax.

(b) If the tax is not paid when due, a penalty of five per cent of the total amount of the tax deficiency shall be assessed, collected and paid in the same manner as if it were a tax deficiency.

(c) If a part of a deficiency in the tax is due to fraud with intent to evade tax, 50 per cent of the total amount of the deficiency, in addition to the deficiency, shall be assessed and collected.

(d) Interest upon the amount determined as a deficiency in the tax shall be assessed at the same time as the deficiency. The interest shall be paid upon notice and demand by the department, and shall be collected as a part of the tax at the rate of six per cent a year from the time prescribed for payment of the tax to the date the deficiency is paid.

(e) A tax under §§ 10—55 of this chapter and the penalties and interest on the tax are a lien prior, paramount, and superior to all other liens, mortgages, hypothecations, conveyances, and assignments, upon all the real and personal property of the person liable for the tax, and upon all the real and personal property used with the permission of the owner to carry on the business. The special remedy provided for the recovery of license taxes set out in §§ 10—55 of this chapter is not exclusive of other civil or criminal remedies provided by law for the recovery of license taxes.

(f) A person who wilfully fails to obtain a license, pay a tax, make a return, keep or display a record, or supply the information at the time required by law or regulation, in violation of §§ 10—55 of this chapter, is, in addition to other penalties provided by law, guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both, together with the cost of prosecution.

(g) A person who wilfully makes and subscribes a return which he does not believe to be true and correct as to every material matter is guilty of a felony, and, upon conviction, is subject to the penalty prescribed for perjury.

(h) In this section "person" includes an officer, agent, or em-

ployee of a corporation who, as an agent, is under a duty to perform the same. (§ 4 ch 82 SLA 1949; am 1968)

Effect of amendment 1968 amendment revised (b).

The second 1968 amendment "§§ 10—55" for subsections (e) and (f) Legislative committee report on ch. 55, SLA see 1968 House Journal

Subsection (e) is copied from the authority of *Harvester Credit Corp* 350 U.S. 537, 76 S. Ct. 681 (1956), the constitutionality of subsection (e) of this section challenged on the ground of unconstitutionality must be upheld. *Territory of Alaska*, 271 U.S. 448, 26 S. Ct. 1079, 4 L. Ed. 2d 1022 (1960).

The fact that Alaska has imposed a lien to secure fees on other businesses of a creditor of a salmon processor in the Territory of Alaska. *9th Cir. 1960*, cert. denied, 362 U.S. 990, 80 S. Ct. 1079, 4 L. Ed. 2d 1022 (1960).

Lien provision is law insuring collection of tax provision of subsection (e) is a lawful means of collection of taxes from taxpayer from the prosecution of the business. *Territory of Alaska*, 16 Alaska 126, 190 (D. Alas. 1956), 199, 81 S. Ct. 929, 6 L. Ed. 2d 1022 (1961).

The power to impose a lien subject to the test of "necessity" and is not unlimited in the broad scope of "necessity" the taxpayer is dependent upon the legislature to liens as he is with tax itself. *Schlothan v. Territory of Alaska* 253 (1957), aff'd 9th Cir. 1960, cert. denied, 362 U.S. 990, 80 S. Ct. 1079, 4 L. Ed. 2d 1022 (1960).

Lien reaches total value of tax. — It is the total

Article 3. Taking of Fisheries Products Which Are Sold Outside Taxing Jurisdiction.

Section	Section
100. Tax imposed on taking of fisheries products	110. Duty of taxpayer and payment of tax
	120. Violations and penalties

✓ **Sec. 43.75.100. Tax imposed on taking of fisheries products.** A person taking the fisheries products enumerated in §§ 10—50 or 60—90 of this chapter who sells the products to freezer ships, floating cold storages or floating canneries outside the taxing jurisdiction of the state is subject to the tax set out in §§ 10—50 of this chapter for the fisheries products enumerated in §§ 10—50 of this chapter, and is subject to the tax set out in §§ 60—90 of this chapter for the fisheries products enumerated in §§ 60—90 of this chapter. (§ 1 ch 190 SLA 1959)

Am. Jur. references.—1) Am. Jur., Commerce, § 119; 5) Am. Jur., Taxation, §§ 202, 206.

✓ **Sec. 43.75.110. Duty of taxpayer and payment of tax.** A person subject to taxes under §§ 100—120 of this chapter shall make a return stating the value of raw fisheries products taken during the license year for sale to freezer ships, floating cold storages, or floating canneries outside of the taxing jurisdiction of the state computed as required by §§ 100—120 of this chapter, and other information to carry out the provisions of §§ 100—200 of this chapter as may be prescribed by the department. The return shall contain the license number and shall be signed by the taxpayer or his authorized agent, under penalty of perjury. If a receiver, trustee, or assign is operating the property or business, he shall make the return for the person. A tax due on the basis of such return shall be collected in the same manner as if collected from the person of whose business he has custody and control. The requirements for time and place of payment of tax, and the obligation to keep records and make the records available to the commissioner of revenue are the same as those prescribed in the business license tax law for salmon canneries. (§ 2 ch 190 SLA 1959)

Sec. 43.75.120. Violations and penalties. (a) The liability to file returns and pay interest and deficiency assessments, and the subjection of property to liens is the same as prescribed in the business license tax law for salmon canneries.

(b) A violation of §§ 100—120 of this chapter or the regulations issued under §§ 100—120 of this chapter is a misdemeanor subject to punishment as prescribed in the business license tax law for salmon canneries. (§ 3 ch 190 SLA 1959)

Article 4. General Provisions.

Section 130. Refund to local governments

Section 135. Additional refund to boroughs and cities

✓ Sec. 43.75.130. Refund to local governments. The commissioner of revenue shall pay to each organized borough and each city of the first, second, and third classes 10 per cent of the amount of tax revenue collected in the borough or city from taxes levied by §§ 10—90 of this chapter. (§ 6 ch 155 SLA 1962; am § 75 ch 69 SLA 1970)

Effect of amendment. — The 1970 amendment inserted "and each," deleted "incorporated or independent school district, and public utility district" preceding "10 per cent," and substituted "borough or city" for "municipality or district."

Legislative committee report.—For report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

✓ Sec. 43.75.135. Additional refund to boroughs and cities. In addition to the payment allowed in § 130 of this chapter, the commissioner of revenue shall pay to each organized borough 10 per cent of the amount of tax revenue collected in the borough from taxes levied by §§ 10—90 of this chapter and shall pay to each city of the first, second, and third classes located in the unorganized borough 10 per cent of the amount of the tax revenue collected in the city from taxes levied by §§ 10—90 of this chapter. (§ 1 ch 89 SLA 1963; am § 1 ch 120 SLA 1969)

Effect of amendment. — The 1969 amendment, effective January 1, 1970, added the language beginning "and shall pay to each city."

Editor's note. — Section 2, ch. 89, SLA 1963, provides: "This Act applies retroactively to January 1, 1963."

Chapter 80. General Provisions.

Section 10. Accounts to be kept by persons subject to tax
20. Prosecution for failure to secure license

Section 30. Production of license
40. Definition

Sec. 43.80.010. Accounts to be kept by persons subject to tax. A person subject to a tax shall keep in permanent form at his principal place of business or occupation within the state correct accounts in a manner which will readily disclose, upon examination, the amount of tax due the state. The department may adopt regulations for the making and keeping of these records. (§ 35-1-15 ACLA 1949)

Sec. 43.80.020. Prosecution for failure to secure license. (a) A person engaging in or carrying on or attempting to engage in or carry on a business, trade, profession or occupation for which a license is required as a condition precedent, without obtaining the

§ 43.80.030

license, is guilty of a misdemeanor. (b) All fines and expenses, shall not exceed \$100. (1949)

Am. Jur. references Licenses, § 75 et seq.

Sec. 43.80.030. Under § 20 of this chapter, a person who procures the services of another that he did not

Sec. 43.80.040. Department of

Chapter

Revisor's note: publication of this Act to the Alaska Statutes

STATE OF ALASKA

DEPARTMENT OF REVENUE

STATE OFFICE BUILDING

POUCH SA - JUNEAU 99811

March 7, 1977

Attn Judith

JAY S. HAMMOND, GOVERNOR

The Honorable Lisa Rudd
Chairman
House Community & Regional Affairs
Committee
Alaska State Legislature
Room 620 - Court Building
Juneau, Alaska

Re: House Bill No. 256

Dear Representative Rudd:

House Bill No. 256, an Act relating to the raw fish tax was introduced in the House on February 23, 1977 and was referred to the House Community & Regional Affairs and Finance Committees.

For the consideration of the House Community & Regional Affairs Committee, I am enclosing a Fiscal Note prepared by Mr. P. A. Wall, Director, Administrative Services Division, Department of Revenue, Juneau concerning the proposed legislation.

Very truly yours,



R. D. Stevenson
Special Assistant

Enclosure

cc: The Honorable Steve Cowper
Chairman
House Finance Committee
Alaska State Legislature
State Capitol Building
Juneau, Alaska

P. A. Wall, Director
Administrative Services Division
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. CSHB 256
 Title Relating to raw fish tax
 Requested by House C & RA ext. 3370 Date 5/11/78

II. FISCAL DETAIL
 Agency Affected Revenue
 Program Category Affected Development
 Budget Request Unit(s) Affected Shared taxes

EXPENDITURES (Thousands of Dollars)

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES	*336.0	*336.0	*336.0	*336.0	*336.0	*336.0
700 GRANTS, CLAIMS, ETC.						

TOTAL
 *Raw Fish Tax revenue varies with harvest each year. The amount of sharing will vary accordingly.

FUNDING (Thousands of Dollars)

GENERAL FUND	(336.0)	(336.0)	(336.0)	(336.0)	(336.0)
FEDERAL FUNDS					
OTHER (Specify)					

POSITIONS

FULL TIME					
PART TIME					
TEMPORARY					

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The assumption is that CSHB 256 will be amended with the result that AS43.75.135 is abolished, that AS43.75.130 is changed by deleting the first class city restriction thereby broadening the section to include second class cities and by increasing payments from 10 to 20 percent. The effect of the amendment would be that each borough will be paid 20 percent of the Fish Tax Revenue collected in that borough and that each city (First or Second class) will be paid 20 percent of the Fish tax revenue collected in that city.

Boroughs received 489.9 from Fish Tax Revenues in FY 77. Sharing to Boroughs would have been 640.0, an increase of 150.0, if the amendment were applied to FY 77. First class cities received 529.7 from Fish Tax Revenues in FY 77. Second class cities were not eligible for sharing in FY 77. Sharing to First and Second class cities would have been 715.6, an increase of 185.9, if the amendment were

IV. DATE May 15, 1978 PREPARED BY [Signature]
 AGENCY Department of Revenue
 PHONE 465-2313
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

using these increase the effect upon the general fund would be a decrease of 336.0 in FY 79.

There is no additional cost in administering the Bill.

HB

273

Minimum and Optional Local Government Services

Services	<u>Boroughs</u>				<u>Cities</u>	
	1st Class	2nd Class	3rd Class	Unorganized	1st Class	2nd Class
<u>Minimum</u>						
1. Assessment & Collection of Taxes						
-Authority	AS 29.33.030	AS 29.33.030	AS 29.41.010	—	—	—
-Mechanism	AS 29.53	AS 29.53	AS 29.53	—	—	—
2. Education						
-Authority	AS 29.33.050	AS 29.33.050	AS 29.41.010	AS 14.08	AS 29.43.030 ¹	—
-Mechanism	AS 14.14.060	AS 14.14.060	AS 14.14.060	AS 14.08	AS 14.14.065	—
3. Planning, Platting & Zoning						
-Authority	AS 29.33.070	AS 29.33.070	AS 38.05.037 AS 40.15.075	AS 38.05.037 AS 40.15.075	AS 29.43.040 ¹	—
-Mechanism	AS 29.33.070-245	AS 29.33.070-245	AS 38.05.037 AS 29.33.210-240	AS 38.05.037 AS 29.33.210-240	AS 29.33.070-245	—
<u>Optional</u>						
1. General	AS 29.48	AS 29.48	2	—	AS 29.48	AS 29.48
2. Areawide						
-Authority	AS 29.33.250	AS 29.33.250	—	—	—	—
-Mechanism	local election AS 29.33.270-290	local election AS 29.33.270-290	—	—	—	—
3. Nonareawide						
-Authority	AS 29.38.010	AS 29.38.020 AS 29.48.020	—	—	—	—
-Mechanism	ordinance ³ AS 29.38.010	local election AS 29.38.020-050	—	—	—	—
4. Service area						
-Authority	AS 29.63.090	AS 29.63.090	2	AS 29.03.020	—	—
-Mechanism	ordinance AS 29.63.090	local election AS 29.63.090	2	—	—	—

1. In the unorganized borough only.

2. See the January 6, 1977 Attorney General's opinion and January 26, 1977 Legal Services Division opinion.

3. Some statutory ambiguity.

→ need for planning depends on density
→ does he agree how is ambiguous?

Finance -

~~Salary -~~



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Haines, Alaska 99827

Friday, February 11, 1977

Borough powers: for education only?

by Bill Hartmann

A large public turnout packed the main school band room last Tuesday night during a special Borough meeting called to discuss what should be done concerning the new State attorney general's opinion concerning third class borough powers.

What the attorney general's opinion said was that the powers of a third class borough are limited to ONLY education. No service districts, or no powers of planning, zoning or platting may be exercised. This was in direct contradiction to an earlier attorney general's opinion, and went against what many in the Haines Borough understood as being the powers of the third class borough, of which Haines is the only one in the State.

At the invitation of the Borough Assembly, Jesse Dodson, special assistant to the governor, and Bruce Aronson of the Department of Community and Regional Affairs were in Haines to discuss the matter and what action Haines Borough officials should take.

The major problems that the attorney general's opinion poses for the Haines Borough is the withholding of some revenue sharing funds and the forbidding of any possibility of the Borough establishing fire service districts outside the City limits.

It was Mrs. Dodson's opinion that if the area needed more powers, it would have to form another form of government. This advice sparked a heated round of questions asking if, in effect, the State was trying to force Haines to form a second class borough. Although this was emphatically denied by the State officials, it was presented as one alternate solution to the present conflict.

It was pointed out by Mayor Gail Wallace that the City is acting illegally by extending fire services outside the City, and that this problem could have disastrous effects at any time. Fire Chief Frank Wallace stated that the department had a test run to enable people outside the City to obtain better insurance rates, but they are now told that these people must be within a service area to qualify.

Some people felt the best answer was to opt for forming a second class borough, the only additional mandatory powers being those of planning, plotting and zoning. This would also permit the borough to form any necessary service areas without problem. Only those residents in the area would be taxed for the added services. The major objection to the second class borough expressed by public comment was not wanting planning

or zoning outside the City. However, it was pointed out that the State could come in and plan and zone the borough if it wanted to, because any powers not granted to a borough automatically rest with the State. The State would then plan and zone the area and the area would pay for it eventually in some form.

Several more alternatives were discussed. One was to ask the legislature to pass a bill clarifying the powers of the third class borough. Another was to ask the legislature to initiate a class-action suit to determine: a) if the third class borough is legal, and, b) if the attorney general's opinion on borough powers is correct. Still further, the local borough could exercise the questioned powers and take the State to court if challenged.

Although no definitive action was taken at the meeting, the borough assembly will investigate questions raised at the meeting and then call another public meeting later. The Tuesday night meeting was ably chaired by Borough Mayor David Black, who along with other members of the Assembly and City made up the panel. The others, in addition to Dodson and Aronson were Mayor Gail Wallace, City Administrator Don Bockhorst, Councilmen Harold Hannon and Jon Halliwill, and Borough Assembly members Pat Jones, Erwin Hartz and Paul Swift.

HELP!

OVERALL ECONOMIC DEVELOPMENT COMMITTEE
CITY OF HAINES
Drawer D, Haines, Ak.
99827

House

Mar. 4, 1977

The Hon. Mike Miller
Majority Leader
State Legislature
Pouch Y
Juneau, Alaska 99811

Dear Mike:

There has been a number of hearings regarding the 3rd Class Borough, the last of which had a good representation of the City and the outlying area. It was clear that the problems of a third class borough can only be corrected by having the Legislature take action to take the 3rd Class Borough Act off the books.

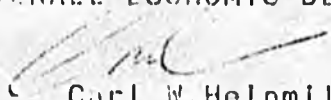
David Black, Borough Chairman gave me a copy of your Mar. 2nd letter with the copy of House Bill No. 273. I seriously question par. (b) as being legal. While service areas would be able to exercise the powers of 2nd Class borough, as stated in the proposed bill, I could see such a hodgepodge of problems that would be unbelievable. Example: Service area A has zoning and planning, adjoining service area B, does not. The unplanned area could be a mishmash of shacks, trailers, no sewers etc. and effect the development of the adjoining area.

The Haines Chamber of Commerce went on record at the last meeting to ask the Legislature to dissolve the Third Class Borough statute and require the 3rd Class borough to come a 2nd Class Borough. OR, have an election to determine whether the electorate desires to be 2nd, 1st or unified.

The State has caused a Frankenstein with the 3rd Class Borough and the sooner they do away with it, the better it will be. Then, these areas which are getting a free ride will have to pay taxes like the rest of us. The Legislature put us in this spot, it is up to them to get us out of it.

Best regards,

OVERALL ECONOMIC DEVELOPMENT COMMITTEE


Carl W. Holmiller
Ex. Sec.

CWH/p
CC: Boro
City
Haines C of C

MEMORANDUM

January 26, 1977

SUBJECT: Third Class Boroughs - Work Order #3146

TO: Representative Charles H. Parr

FROM: Billy G. Berrier
Director, Legal Services Division

You have asked whether third class boroughs may exercise powers other than the areawide powers of education and tax assessment and collection. The statute on third class boroughs is ambiguous in this regard.

Third class boroughs were authorized by Ch. 156, SLA 1968. The relevant sections are AS 07.17.020 and the second sentence of AS 07.17.010. No change has been made in these sections except the second sentence of AS 07.17.010 became the second sentence of AS 29.41.010 in the revised municipal code adopted in 1972 and the phrase "and if" which appeared in that sentence was omitted as redundant. In my opinion this is only a matter of organization of material and has no effect on the legal meaning. This opinion was shared by the free conference committee on the revised municipal code where the changes were made. The committee report which the free conference meeting adopted stated on page 7 "Third class borough powers are unchanged." (Supplemental Report to Free Conference Committee Report on SCS CSHB 208 am S and CSHB 208 am (Revised Municipal Code) June 16, 1972.) The relevant present statute is AS 29.41.010(a) and (b). A copy of the 1972 Act, all amendments since that date that relate to this, the present law, and the material parts of the committee report are attached.

Since the 1968 Act adopted the provisions in question and these provisions have been unchanged since it is to that Act we must look if the meaning is ambiguous. It seems reasonably clear that the third class borough may not exercise areawide powers other than those enumerated. The limitation to the two named powers seems apparent when the bill is read in the context of the law existing at that time under which provision for three "mandatory" areawide powers and detailed means of arguing other areawide powers existed.

Representative Charles H. Parr
January 26, 1977
Page #2

A distinct ambiguity is created by AS 07.17.020(b) relating to service areas. This term by 1968 had acquired a firm usage under the constitution and statute. (Sec. 5, art. X, Alaska Constitution). It refers to an area less than the whole area of the borough in which different and additional services are provided with power to tax within the area served only to pay for this service. No powers, other than the two areawide powers, have ever expressly been granted to third class boroughs. Service areas are an inappropriate device to utilize areawide powers. The sharp distinction between services performed on a service area basis or on a nonareawide basis (this is in the entire borough area outside cities) was clearly recognized early and was underscored by the provision that once a borough exercised an areawide power no city within the borough could exercise that power. (This was provided by AS 07.15.310 then and now is law as AS 29.33.010.) The differences were so clearly apparent in the law (as they still are) between areawide power and service area power that a claim that service area formation was considered necessary or useful in exercising areawide power strains creditability.

However, the service area is merely a device for providing services otherwise authorized to an area lesser in extent than the whole borough and having those services financed by the area served. The essential purpose is to eliminate the general rule in municipal law that taxes must be uniform throughout the municipality.

Following the usual rule of statutory construction that all parts of the law are presumed to have some effect, at least two creditable interpretations of the addition of the power to form service areas by a third class borough with no grant of powers exercisable on a service area basis are possible.

One is to interpret the second sentence of AS 07.17.010 (now in AS 29.41.010(a)) which provides:

"Provisions of law relating to first and second class organized boroughs apply with respect to third class boroughs only if and to the extent they are consistent with this chapter."

as a grant to the third class boroughs of all powers, other than areawide powers, that could then or in the future be exercised by first or second class boroughs. This stretches the language of what on its face appears to be a procedural provision very considerably.

Representative Charles H. Parr
January 26;,1977
Page #3

In my opinion a more plausible interpretation of the intent in allowing creation of service areas is to be found when section 2, article X of the constitution is considered. That section provides:

"All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only."

A substantial effect of this provision was the abolition of the prestatehood independent school districts. The primary characteristic of the independent school district was that it possessed the power of education and of taxation and assessment over the entire area of the district. There is a slight distinction between the third class borough powers and that of the independent school district since the borough exercises its areawide power independent of the cities within it while the school district did not have this full independence of cities. This slight distinction may be and probably is, sufficient to avoid the constitutional mandate but it at best leaves an insecure constitutional foundation for a municipal government.

An obvious answer is to differentiate the structure. A reasonable way to do that is to create a mechanism by which the third class borough could exercise powers in addition to those granted but to reserve the actual grant of additional powers for consideration at a later date. The 1968 Act accomplished this.

Research has disclosed nothing materially helpful in determining intent of the legislature in 1968. Statements by legislators of what they understood the intent to be are not admissible as proof of the intent of the legislature. I find no committee reports on this point and the rejection of an amendment (one of a series) offered on the floor of the house to add new language reading:

"except third class boroughs may not exercise additional areawide powers or powers in the area outside cities only." (House Journal 1968, page 808)

can be explained in too many ways to be helpful.

My conclusion is that the questions cannot be answered with that degree of certainty necessary. None of the suggested interpretations are in my opinion compelling although the argument that the service area is only a mechanism to exercise powers if additional powers are granted in the future and that no additional powers were granted by the 1968 Act appears more solidly based than the others.

EGB:smh

Enclosures

HB 273 -

shd. have had AG's opinions
" " " Chensworth.
" " " LAA opinion

Dick Brown, Fairbanks

3rd class Boro Com. Chair -

4000 signatures for 3rd class Boro in Fbks.
Zoning ord. gave rise to effort.

Jensen Co RA told them 3rd class Boro
do not have ~~5~~ serv. area powers.

Copies for members files

Box 1166
Fairbanks, Alaska
March 11, 1977

Community & Regional Affairs Committee
Lisa Rudd, Chairman
Pouch V
Juneau, Alaska 99801

Re: HB 273

Dear Representative Rudd:

The Third Class Borough Committee met on March 7, 1977 to consider HB 273 and resolved that they are in favor of the bill as written. My views, along with the views of other persons at the meeting, differed from that of the Third Class Borough Committee. Therefore, I will state my view of the bill as written and propose amendment thereto.

The original purpose of the proposed legislation was to clarify the law as already written with respect to powers of third class boroughs. The committee should look to this purpose as a guide in evaluating and amending HB 273. For this reason I am enclosing a letter addressed to myself from Daniel T. Saluri, an attorney at Fairbanks, dated February 3, 1977, and entitled Powers of Third Class Boroughs. The new legislation should not substantially alter the powers of third class boroughs, but rather should clarify those powers and supplement existing legislation with provisions providing for a smooth transition from second to third class status.

7.
Enclosed please find a copy of HB 273 amended by me in such a way as to clarify existing third class borough powers and providing for an orderly transition from second to third class status. The second sentence of Subpart (a) of HB 273 should be deleted as it substantially limits the exercise of areawide borough powers, which third class boroughs presently have authority to exercise. Subsection (b) of AS 29.51.010 need not be amended. As amended by HB 273, service areas could not be established by voter petition and election. Again, HB 273 would substantially change the law rather than clarify existing law. I have added Subsection "(e)" for clarification purposes only. I believe that Subsection (b) as written makes provision for establishment of service areas in the manner provided for second class boroughs.

Community & Regional Affairs Committee
Lisa Rudd, Chairman
Page Two

March 11, 1977

There exists almost no legislation about transition from second class to third class status. AS 29.33.290 (c) provides that the new third class borough will succeed to the debts and obligations of the present borough and that the third class borough could levy and collect special charges or taxes for the purpose of continuing the same services in the new borough. That subsection also provides for "consultation" between the old and new boroughs for purposes of arranging an orderly and equitable transfer of power from the old to the new borough, including the transfer of existing services.

Transition would be facilitated by legislation allowing the new borough to continue to exercise powers exercised by the old borough at time of reclassification for a stated period of time, during which time the new borough would hold public hearings so that the people living in various areas of the borough could be given an opportunity to approve the continuation of these services on a service area basis. Elections could then be held by service area for approval of various borough services to be provided in each area. In this manner an immediate lack of services borough wide upon reclassification would be avoided and all areas of the borough would have the opportunity of continuing to receive services on an uninterrupted basis. This appears to be the general intent of AS 29.33.290.

I hope that these comments will be of some assistance to your committee.

Very truly yours,



WOLFGANG FALKE

DTS:nw

cc: Committee Members

Fairbanks Caucus Members

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February 3, 1977

File No. F-2766-9-1

Wolfgang J. Falke
918 7th Avenue
Fairbanks, Alaska

Re: Powers of a Third Class Borough

Dear Mr. Falke:

Alaska law, Title 29, provides for classification of general law municipalities into five classes: First, Second, and Third Class Boroughs and First and Second Class Cities. AS 29.08.030. Provision is made for reclassification of a Second Class Borough to Third Class Borough and for the election of an assembly, "to serve as the combined assembly and school board of the Third Class Borough if reclassification is approved." AS 29.08.040(h).

The powers of a Third Class Borough are all those powers granted to general law municipalities under Title 29 and not limited by the special provisions therein specifically relating to powers of Third Class Boroughs. A Third Class Borough is a "municipality" by definition, §AS 29.78.10(8) and may exercise those powers applicable to all municipalities as provided by Chapter 48 of Title 29. This grant includes the exercise of whatever powers may be necessary to provide for enumerated public facilities and services, including sewers and sewage treatment facilities, flood control facilities, police protection, water and power utilities, transportation systems, libraries, recreation facilities, airport facilities, garbage and solid waste collection and disposal, and fire protection. AS 29.48.030.

Chapter 41 specially provides for the powers of Third Class Boroughs. It is provided that, with respect to education and tax assessment, those powers shall be exercised on an area-wide basis by a Third Class Borough in the same manner as provided for a Second Class Borough. The exercise of these two available powers is mandatory. AS 29.33.050 provides that each

Wolfgang J. Falke
February 3, 1977
Page 2

first and second class borough constitutes a borough school district and establishes, maintains and operates a system of public schools on an area-wide basis. AS 29.33.030 and 29.53.010 provide for the levy of area-wide property tax by general law boroughs, regardless of their class. A general law borough includes a Third Class Borough. The third area-wide power provided for under Chapter 33 is zoning. AS 29.33.070. Only First and Second Class Boroughs are granted the zoning power under this Section. Only First and Second Class boroughs may acquire additional area-wide municipal powers. AS 29.33.250. | ?

The 1968 opinion of the Attorney General was that a Third Class Borough had only the area-wide powers of education and taxation in that only these two powers are referred to by Chapter 17 (now Chapter 41) and therefore the other general area-wide power, that of zoning, expressed by Chapter 15 (now Chapter 33) does not apply. That opinion held that the Third Class Borough had power to exercise non area-wide powers to the extent they are consistent with Chapter 17 (now Chapter 41), the Chapter providing that: "Provisions of law relative to First and Second Class Organized Boroughs apply with respect to Third Class Boroughs only to the extent they are consistent with this Chapter".

The area-wide power of zoning is not specifically denied by Chapter 41; however, it is not specifically designated. The Attorney General's opinion of 1968 therefore chose to conclude that Third Class Boroughs do not have zoning powers. The 1968 opinion does not cite or refer to the legislated general intent of Title 29 as expressed by AS 29.48.310, 29.48.320 and 29.48.330, which provide that a liberal construction shall be given to all powers and functions of boroughs conferred by Title 29; that unless otherwise limited by law, boroughs have all powers necessarily or fairly implied or incident to the object or purpose of all powers conferred in Title 29; and, that specific examples within an enumerated power or function conferred upon boroughs in Title 29 are illustrative of the object and not a limitation on or exclusion from the exercises of the power or function. It would seem from these provisions that a Third

Wolfgang J. Falke
February 3, 1977
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Class Borough has whatever powers are consistent with law, i.e. the general powers conferred upon municipalities and the area-wide powers conferred upon boroughs, but only to such a degree as may be consistent with the object of Chapter 41. Even zoning, so long as it related to the education function, might be a function properly exercised on an area-wide basis by a Third Class Borough, in the same manner as First and Second Class Boroughs. For example, the zoning of areas around schools throughout the Borough should be a proper function of the Third Class Borough.

Non area-wide powers of a Third Class Borough are the same as those of First and Second Class Boroughs, only to the extent that they are consistent with Chapter 41, i.e., only so long as the exercise of such power may be consistent with the object of Chapter 41. The 1968 opinion of the Attorney General found that AS 29.41.010(b) relating to the establishment of service areas by Third Class Boroughs expanded the "object" of Third Class Boroughs as expressed by Chapter 41, to something beyond that relating directly to the area-wide education power. I would have to agree, not only because of the general construction provisions of Title 29 cited in the previous paragraph, and the provisions for general powers to all municipalities, but also because Subsection (b) is a specific expression of the additional power conferred, is not limited by Subsection (a) of that Section, and refers to AS 29.63.090 which provides for service areas to provide for "special services within a borough", which include, "services not provided on an area-wide basis within the borough". This power by definition must be in addition to the education power in that the education function is area-wide and Subsection (b) relates to services not on an area-wide basis within the borough.

In conclusion the law as written and as previously construed by the Attorney General provides for Third Class Boroughs and makes them different from First or Second Class Boroughs in that the only area-wide functions or powers to be exercised by Third Class Boroughs are those of education, taxation and possibly zoning; and that the exercise of these area-wide

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powers is proper only to the extent that the same is consistent with the function of education and tax assessment. The Third Class Borough may exercise all additional powers that it has to create service areas for special services within the borough on a non area-wide basis and then only in the same manner as a Second Class Borough.

Your observation that a Third Class Borough is included within the legislative definition of municipality and that the general powers conferred to all municipalities are not mandatory and are not limited to exercise on a non area-wide basis is a point well taken. As noted previously, these powers include the "providing" of libraries and fire protection. The term "to provide the following public facilities and service" (emphasis added), as stated in AS 29.48.030, could very well be interpreted to include the establishment of the necessary facilities and the expenditure of monies by the borough for these capital expenditures, and the operation of such facilities on an area-wide basis once those facilities have been acquired.


To answer your question about the zoning powers of a Third Class Borough, I have already noted that a Third Class Borough does have some area-wide power to zone. A Third Class Borough, as a municipality, also has the power to provide for housing and urban renewal, rehabilitation and development, may establish building, housing and related codes, may provide for the abatement of public nuisances, and exercise other powers and functions affecting the health and welfare of inhabitants. AS 29.48.030 and 29.48.035. Because the Third Class Borough has some zoning authority, the State of Alaska, Department of Natural Resources, Division of Lands, would not become the zoning authority for the Third Class Borough. The Division of Lands has zoning authority only in areas of "unorganized borough where there is no political subdivision of the State with a zoning power". AS 38.05.37. A Third Class Borough is an organized borough, and therefore does not qualify as an "unorganized borough". Also, note that AS 38.05.37 assumes that all organized boroughs

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have zoning powers, and has never been amended by the legisla-
ture to read otherwise.

Very truly yours,

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DTS:nw