

2166

HCRA

HB 158

-

HB 172

(FILE

1)

OK

Table 9. Per Capita Sales, Total Sales and Sales by Beverage Class, Beverage Alcohol and Absolute Alcohol, for Persons 19 Years of Age and Older, Alaska, 1976-1982.

YEAR	BEVERAGE CLASS	GALLONS PER CAPITA		19 YRS. & OLDER POPULATION
		Beverage Alcohol	Beverage Alcohol	
1982	Distilled Spirits	4.81	1.98	272,796
	Wine	4.92	.63	
	Beer	43.69	1.97	
	TOTAL	---	4.58	
1981	Distilled Spirits	4.83	1.99	259,806
	Wine	4.65	.60	
	Beer	42.05	1.89	
	TOTAL	---	4.48	
1980	Distilled Spirits	4.26	1.75	264,991
	Wine	3.92	.51	
	Beer	37.13	1.67	
	TOTAL	---	3.93	
1979	Distilled Spirits	4.17	1.71	271,439
	Wine	3.62	.47	
	Beer	34.15	1.54	
	TOTAL	---	3.72	
1978	Distilled Spirits	4.39	1.80	269,570
	Wine	3.51	.45	
	Beer	34.21	1.54	
	TOTAL	---	3.79	
1977	Distilled Spirits	4.63	1.90	271,546
	Wine	3.44	.44	
	Beer	34.03	1.53	
	TOTAL	---	3.87	
1976	Distilled Spirits	4.83	1.99	263,375
	Wine	3.28	.42	
	Beer	33.89	1.53	
	TOTAL	---	3.44	

CITY	Population	Beauty & Dispensary	Package Store	RESTAURANT	CLUB	TOTAL Per Lic
Anchorage	182740	174	113	112	15	384
Pop Required for new Lic.		216000	169500	168000	22000	
Cordova	2223	6	6	-0-	2	14
Pop Required ✓		9000	9000		3000	
Fairbanks	25548	43	24	15	5	87
Pop Required -		64500	36000	22500	7500	
Haines	1017	5	3	1	2	11
Pop Required ✓		7500	4500	1500	3000	
Homer	2588	9	7	2	1	19
Pop Required ✓		13500	10500	3000	1500	
Juneau	21080	27	15	15	2	59
Pop Required -		40500	22500	22500	3000	
Kenai	4558	11	4	4	3	22
Pop Required -		16500	6000	6000	4500	
Ketchikan	7220	23	16	6	6	51
Pop Required ✓		34500	24000	9000	7000	
Kodiak	4678	12	6	4	2	24
Pop Required -		18000	9000	6000	3000	
McCarthy	313	2	3	-0-	-0-	5
Pop Required ✓		3000	4500	-	-	
Nome	3039	7	4	2	1	14
Pop Required ✓		10500	6000	3000	1500	
Palmdale	2275	6	3	2	2	13
Pop Required ✓		9000	4500	3000	3000	
Wrangell	2345	5	6	-0-	1	12
Pop Required ✓		7500	9000	-	1500	
TOTAL	132086	300	210	163	42	715
Persons Per Lic		974	1105	1424	5526	325

BEV. Dispensing Licenses do not include public convenience or duplicates.

Article 2. Licenses and Permits.**Section**

80. Types of licenses and permits
 90. Beverage dispensary license
 100. Restaurant or eating place license
 110. Club license
 120. Bottling works license
 130. Brewery license
 140. Winery license
 150. Package store license
 160. Wholesale licenses

Section

170. Distillery license
 180. Common carrier dispensary license
 190. Community liquor license
 200. Retail stock sale license
 210. Recreational site license
 220. Pub license
 230. Caterer's permit
 240. Special events permit
 250. Conditional contractor's permit

Sec. 04.11.080. Types of licenses and permits. Licenses and permits issued under this title are as follows:

- (1) beverage dispensary license;
- (2) duplicate beverage dispensary license for additional rooms;
- (3) restaurant or eating place license;
- (4) club license;
- (5) bottling works license;
- (6) brewery license;
- (7) package store license;
- (8) general wholesale license;
- (9) wholesale malt beverage and wine license;
- (10) distillery license;
- (11) common carrier dispensary license;
- (12) retail stock sale license;
- (13) recreational site license;
- (14) community liquor license;
- (15) pub license;
- (16) winery license;
- (17) caterer's permit;
- (18) special events permit;
- (19) conditional contractor's permit. (§ 2 ch 131 SLA 1980)

Am. Jur. 2d and C.J.S. references. — 48 C.J.S. Intoxicating Liquors
 45 Am. Jur. 2d, Intoxicating Liquors. §§ 121-128.
 §§ 124-133.

Sec. 04.11.090. Beverage dispensary license. (a) A beverage dispensary license authorizes the holder to sell or serve on the licensed premises alcoholic beverages for consumption on the licensed premises only.

(b) The annual beverage dispensary license fee is \$1,250.

(c) An applicant for a beverage dispensary license must file with the application a cash bond or a surety bond executed by a surety company approved by the board. The bond shall be in the sum of \$2,500. Upon revocation of the license under AS 04.11.370(4), the bond shall be forfeited and the amount deposited in the general fund of the state.

Article 4. Denial, Suspension, or Revocation of Licenses and Permits.

Section

320. Denial of new licenses and permits
 330. Denial of license or permit renewal
 340. Denial of transfer of location
 360. Denial of transfer of a license to another person

Section

370. Suspension and revocation of licenses and permits

Sec. 04.11.320. Denial of new licenses and permits. (a) An application requesting issuance of a new license shall be denied if

(1) the board finds, after review of all relevant information, that issuance of the license would not be in the best interests of the public;

(2) issuance of the license is prohibited by AS 04.11.390, relating to residency, or AS 04.11.410, relating to location of premises near churches and schools;

(3) the application has not been completed in accordance with AS 04.11.260;

(4) issuance of the license would violate the restrictions pertaining to the particular license imposed under this title;

(5) issuance of the license is prohibited under this title as a result of an election conducted in accordance with AS 04.11.502;

(6) the requirements of AS 04.11.420 — 04.11.450 relating to zoning, ownership and location of the license, and the identity and financing of a licensee have not been met;

(7) the licensed premises are to be located in a municipality, the type of license sought is a beverage dispensary or package store license, and that type of license is already in effect in the municipality under a community liquor license, unless the new license is to become effective after the community liquor license is no longer effective, whether as the result of a local option election or otherwise;

(8) the authority sought is authority to operate a beverage dispensary or package store under a community liquor license for premises to be located in a municipality where the authority sought is already held by a private licensee under a beverage dispensary or package store license, unless the community liquor license is to become effective after the privately held license is no longer effective, whether as the result of a local option election or otherwise;

(9) issuance of the license is prohibited under AS 04.11.400(a) or prohibition of issuance of the license is found necessary under AS 04.11.400(b);

(10) the application contains false statements of material fact;

(11) the license is sought for the sale of alcoholic beverages in a first or second class city in which there are no licensed premises at the time of application unless a majority of the voters in a local option election conducted in accordance with AS 04.11.502 have voted "no" on the question set out in AS 04.11.490, or have voted "yes" on a question set out in AS 04.11.492 or 04.11.500;

(12) the license is sought for the sale of alcoholic beverages in an established village in which there are no licensed premises at the time of application unless a majority of the voters in a local option election conducted in accordance with AS 04.11.502 have voted "no" on the question set out in AS 04.11.490 or have voted "yes" on the question set out in AS 04.11.500.

(b) An application requesting issuance of a new permit shall be denied if

(1) the board finds, after review of all relevant information, that issuance of the permit would not be in the best interests of the public;

(2) the board finds that any of the statements made in the application are untrue;

(3) the application has not been completed in accordance with AS 04.11.260;

(4) the permit is sought for the sale of alcoholic beverages in a first or second class city or established village in which there are no licensed premises at the time of application unless a majority of the voters in a local option election conducted in accordance with AS 04.11.502 have voted "no" on the question set out in AS 04.11.490. (§ 2 ch 131 SLA 1980)

Cross reference. — As to application for new license or permit, see AS 04.11.260.

Sec. 04.11.330. Denial of license or permit renewal. (a) An application requesting renewal of a license shall be denied if

(1) the board finds, after review of all relevant information, that renewal of the license would not be in the best interests of the public;

(2) the license has been revoked for any cause;

(3) the applicant has not operated the licensed premises for at least 30 eight-hour days during the immediately preceding calendar year, unless the board determines that the licensed premises are under construction or cannot be operated through no fault of the applicant;

(4) the board finds that issuance of an existing license under AS 04.11.400(g) has not encouraged tourist trade;

(5) the requirements of AS 04.11.420 — 04.11.450 relating to zoning, ownership of the license, and financing of the licensee have not been met;

(6) renewal of the license would violate the restrictions pertaining to the particular license under this title;

(7) renewal of the license is prohibited under this title as a result of an election conducted in accordance with AS 04.11.502;

(8) the application has not been completed in accordance with AS 04.11.270;

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 30, 1983

SUBJECT: Limitation of liquor licenses
(SSHB 158)

TO: Representative M. Mike Miller

FROM: *RJ* Russ Josephson
Legislative Counsel

Enclosed is a draft of the sponsor substitute you requested for HB 158. I thought it would be useful to explain the contents of the draft.

Sections 1 through 6 and sec. 8 all contain technical changes necessitated by the repeal of the tourist trade exception and the public convenience exception provisions in sec. 9. The remaining section, sec. 7, is the "guts" of the bill, changing the population requirements for bar and package store licenses. Rather than the present figure of 1,500 persons per license, the bill would require 3,000 persons per license for those two types of licenses.

RJ:ljb

Enclosure
12/040

Barb -
attached is Mr. Miller's
revised HB 158 - limiting
Liquor licenses. He wants to
know if you prefer a committee
substitute or a sponsor sub.?
if you want to hear it again,
I'll get a sectional analysis.

162

HB

COMMITTEE REPORT HOUSE

FURTHER: JUDICIARY

2/14/83

Date: _____

Mr. Speaker:

The Committee on C & RA has had HB 162

An Act authorizing general law municipalities to limit the number of consecutive full terms certain municipal officials may serve.

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 12/29/83

REQUEST

Bill/Resolution No.: HB 162 CS
Title: Limit Terms of Municipal Officials Rec ID 664

Sponsor: C&RA Committee
Requestor: Jay Hogan
Date of Request: 12/16/83

FISCAL DETAIL

Agency Affected: Community & Regional Affairs
Program Category Affected: Development

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	No fiscal impact DCRA					
CAPITAL	No fiscal impact DCRA					
REVENUE	No fiscal impact DCRA					

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Mar Winagan
Division: Municipal & Regional Assistance

Phone: 465-4750
Date: 12/29/83

Approved by Commissioner: [Signature]
Agency: Community and Regional Affairs

Date: 12/29/83

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 12/29/83

Bill/Resolution No.: HB 162 CS(C&RA)
Title: Limit Terms of Municipal Officials
Rec ID 664

ANALYSIS:

Assumptions:

No fiscal impact on Community and Regional Affairs.

Positions:

Other Expenditures:

Funding:

Section Cost Analysis:

Computations:

Economic Impact:

Impact on Local Government:

Attachments

file

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: All members of the Community and Regional Affairs Committee.
FROM: Representative Barbara Lacher
Chair of the House Community and Regional Affairs Committee.
DATE: April 8th, 1983
RE: House Bill 162 *BL*

Attached is a copy of the Attorney General's opinion on limiting terms of municipal officials as requested by the committee members on April 6th, 1983.

MEMORANDUM

State of Alaska

TO: Hon. Lee McAnerney, Commissioner
Department of Community &
Regional Affairs

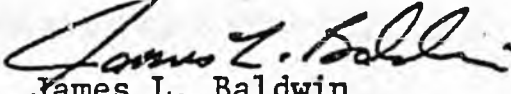
DATE: January 20, 1982

FILE NO: J66-150-82

TELEPHONE NO: 465-3600

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Tenure limitation for
mayor of general law
municipality

By: 
James L. Baldwin
Assistant Attorney General

We have reviewed the opinion of the borough attorney for the Fairbanks North Star Borough dated February 12, 1981. That opinion concerns the power of a second class borough, which is a general law municipality, to limit the number of successive terms of the borough mayor. By ordinance #79-38, the assembly provided that an elected borough mayor may only serve for two consecutive terms.

A limit on the number of consecutive terms for a municipal officer creates a qualification for office. See Benzow v. Cooley, 199 N.Y.S.2d 22 (Sup. Ct. 1960). The qualifications for the office of borough mayor are established by AS 29.23.-130(b), which provides:

A borough voter is eligible to be borough mayor. The assembly may by ordinance establish residence requirements for candidates for borough mayor not exceeding three years.

A review of AS 29.48 discloses that general law municipalities have not been expressly granted the power to prescribe the qualifications of elected municipal officers. See AS 29.48.010. It is also evident that an express power does not exist to which the power to establish these qualifications may be inferred. See AS 29.48.010(1) and (2). Other evidence of a legislative intent to reserve this power may be inferred by comparing the limitations concerning the term of mayor imposed on a home rule city. See AS 29.13.100(4). We believe that if the legislature limited the power of a home rule city to adopt inconsistent qualifications, then it is reasonable to assume that a general law municipality may not exercise an unlimited power to create new qualifications for the office of mayor.

We hope this letter answers your question.

JLB:pjg:CLY

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811
Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: House Community and Regional Affairs Committee
FROM: House Community and Regional Affairs Staff
DATE: April 6th, 1983
RE: House Bill 162

Under current statutes, municipalities do not have the authority to limit the number of terms elected officials may serve.

House Bill 162 provides that General Law Boroughs and cities may limit, by ordinance, the number of terms that may be served by assembly members, borough mayors, city council members, and city mayors.

Proposed CS HB 162 expands the provisions of HB 162 in that it is applicable to home rule as well as general law municipalities and, requires that limitations on the number of terms served by members of the governing bodies be ratified by the voters.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

APR 1 1983

MEMORANDUM

March 31, 1983

SUBJECT: Limits on terms of municipal officials
(CSHB 162 (C&RA))

TO: Representative Barbara Lacher
Chairman, House Community and
Regional Affairs Committee

FROM: Tamara Brandt Cook
Legislative Counsel *TBC*

Here is the sectional analysis of the draft of CSHB 162 (C&RA) that you requested.

Section 1. This makes material added in secs. 3 - 5 of this draft applicable to home rule municipalities as home rule limitations. Since AS 29.23.050 is a home rule limitation now under AS 29.13.100(3), no addition is needed to include the material in sec. 2 as a home rule limitation.

Section 2. Unless ratified by the voters, no limit may be placed on the total number of terms or number of consecutive terms that a person may serve on the assembly of a home rule or general law borough.

Section 3. Unless ratified by the voters, no limit may be placed on the number of terms or number of consecutive terms a person may serve as mayor of a home rule or general law borough.

Section 4. Unless ratified by the voters, no limit may be placed on the number of terms or number of consecutive terms a person may serve as mayor of a home rule or general law city.

You have also asked me to compare this draft to HB 172. Under sec. 29.20.140 of that bill, no limit may be placed on the number of terms or number of consecutive terms a person may serve on the governing body. This applies to all home rule and general law municipalities. The section is made a

Representative Barbara Lacher
Page 2
March 31, 1983

home rule limitation under sec. 29.10.200(4). Under sec. 29.20.230(c) of HB 172 no limit may be placed on the number of terms or number of consecutive terms a person may serve as mayor of a general law city or borough. That section does not apply as a home rule limitation. HB 172 differs from this draft in that the restrictions on limiting the terms of mayors do not apply to home rule municipalities. Otherwise, the restrictions on limiting terms are the same in that bill and in the draft of CSHB 162 (C&RA).

TBC:ljb

13/001

STATE OF ALASKA

Bill Sheffield, Governor

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

POUCH B
JUNEAU, ALASKA 99811
PHONE: (307) 465-4700

April 6, 1983

POSITION PAPER

RE: HB 162

SPONSOR: Representative Ward

PROGRAM EFFECTS OF BILL

This bill allows municipalities to limit, by ordinance, the number of consecutive full terms that a person may serve as mayor or as a member of the assembly or council.

COMMENTS

This bill would give each municipality an option regarding whether or not individual elected officials should be turned out of office not by the voters but by a limitation on the consecutive number of terms they may serve. There are advantages and disadvantages to limiting terms of office, but the Department will not debate them here. The overriding consideration is that this legislation provides for a local option on the question, a philosophy this Department generally favors.



Mark Lewis, Commissioner

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: HB 162
 Title: Limit terms of Municipal Officials
 Sponsor: Ward, et al
 Requestor: HCRA

II. FISCAL DETAIL

Agency Affected: DCRA
 Program Category Affected: Development
 BRU, Program of Subprogram(s) Affected: Local Government Assistance Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING		-0-	-0-	-0-	-0-	-0-
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL		-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard Rainery
 Division: Commissioner's Office

Phone: 465-4703
 Date: 4/6/83

Approved by Commissioner: [Signature]
 Department: Community & Regional Affairs

Date: 4/6/83

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)
 Copy to Sponsor
 Copy to Requestor (if different from Sponsor)

FEB 10 1983



Alaska State Legislature

House of Representatives

REPRESENTATIVE JERRY WARD
DISTRICT 13

MEMBER FINANCE COMMITTEE
CHAIRMAN OF SUBCOMMITTEE ON
COMMERCE & ECONOMIC DEVELOPMENT
CHAIRMAN OF SUBCOMMITTEE ON LABOR

P.O. BOX 2716
ANCHORAGE, ALASKA 99510

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811

February 9, 1983

The Honorable Barbara Lacher, Chairman
Alaska State Legislature
House Committee on Community and Regional Affairs

Dear Representative Lacher:

In support of House Bill No. 162 which I have introduced, I have attached a copy of a letter from Fairbanks North Star Borough discussing the problem as well as a copy of a resolution passed by Fairbanks North Star Borough. The voters of both Fairbanks North Star Borough and Matanuska-Susitna Borough have passed advisory propositions on this matter.

Briefly, the legislation simply puts the power to limit the number of terms of elected officials back into the hands of the local governments where it belongs.

Yours very truly,

Jerry Ward
State Representative

A handwritten signature in cursive script that reads "Jerry Ward".

Attachments

fairbanks north star borough

p.o. box 1267 520 fifth ave. fairbanks, alaska 99707 907-452-4761



January 26, 1983

JAN 31 1983

The Honorable Jerry Ward
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Ward:

Enclosed please find the following resolutions which were adopted at the regular meeting of the Fairbanks North Star Borough Assembly on January 13, 1983, which was reconvened on January 19, 1983.

Resolution No. 83-2. A Resolution Relating To Limitation Of Terms For The Assembly And Mayor.

Resolution No. 83-3. A Resolution Requesting The Alaska State Legislature For Funding Of An Annual Spring Hockey Tournament.

Please note that Resolution No. 83-2 has been extensively discussed and we would certainly like to see some action during this 13th Session of the Legislature.

If you have any further questions, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads 'Gaye J. Patrick'.

GAYE J. PATRICK
Borough Clerk

GJP:mgc

enclosures (2)

By: Bob Blake
Juanita Helms
B. B. Allen
Bruce Wammack
Mike Ribar
Bill Walley
Sandra Stringer
Paul Chizmar
Buzz Otis

Introduced: 01/13/83
Adopted: 01/13/83

RESOLUTION NO. 83-2

A RESOLUTION RELATING TO LIMITATION OF
TERMS FOR THE ASSEMBLY AND MAYOR

WHEREAS, an advisory proposition on the question of limiting the terms of assemblymen and the mayor was placed on the October 5, 1982, ballot; and

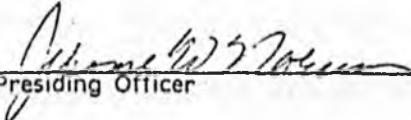
WHEREAS, this advisory proposition was passed 11520 - 5197 by the voters of the Fairbanks North Star Borough; and

WHEREAS, this question was also passed 2700 - 1100 by the voters of the Matanuska-Susitna Borough on October 6, 1981; and

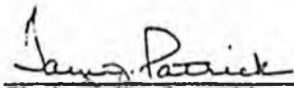
WHEREAS, an Attorney General's opinion has been rendered stating general law municipalities do not have the power to place such a limitation on elected officials:

NOW, THEREFORE, BE IT RESOLVED by the Fairbanks North Star Borough Assembly that the Twelfth Legislature of the State of Alaska is urged to revise Title 29 to allow general law municipalities the option of placing a limitation on the number of consecutive full terms a person may serve.

PASSED AND APPROVED THIS 13th DAY OF JANUARY, 1983.


Presiding Officer

ATTEST:


Clerk of the Assembly

MEMORANDUM

State of Alaska

TO: Hon. Lee McAnerney, Commissioner
Department of Community &
Regional Affairs

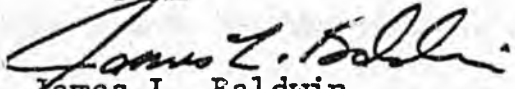
DATE: January 20, 1982

FILE NO: J66-150-82

TELEPHONE NO: 465-3600

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Tenure limitation for
mayor of general law
municipality

By: 
James L. Baldwin
Assistant Attorney General

We have reviewed the opinion of the borough attorney for the Fairbanks North Star Borough dated February 12, 1981. That opinion concerns the power of a second class borough, which is a general law municipality, to limit the number of successive terms of the borough mayor. By ordinance #79-38, the assembly provided that an elected borough mayor may only serve for two consecutive terms.

A limit on the number of consecutive terms for a municipal officer creates a qualification for office. See Benzow v. Cooley, 199 N.Y.S.2d 22 (Sup. Ct. 1960). The qualifications for the office of borough mayor are established by AS 29.23.-130(b), which provides:

A borough voter is eligible to be borough mayor. The assembly may by ordinance establish residence requirements for candidates for borough mayor not exceeding three years.

A review of AS 29.48 discloses that general law municipalities have not been expressly granted the power to prescribe the qualifications of elected municipal officers. See AS 29.48.010. It is also evident that an express power does not exist to which the power to establish these qualifications may be inferred. See AS 29.48.010(1) and (2). Other evidence of a legislative intent to reserve this power may be inferred by comparing the limitations concerning the term of mayor imposed on a home rule city. See AS 29.13.100(4). We believe that if the legislature limited the power of a home rule city to adopt inconsistent qualifications, then it is reasonable to assume that a general law municipality may not exercise an unlimited power to create new qualifications for the office of mayor.

We hope this letter answers your question.

JLB:pjg:CLY

Alaska State Legislature



Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski

Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

HOUSE COMMUNITY AND REGIONAL AFFAIRS AGENDA

APRIL 6th, 1983

- 1). Call to order.
- 2). Roll Call.
- 3). The first order of business will be HB 162.
- 4). Witnesses presentation.
- 5). Closing.
- 6). Adjournment.

BON

H

B

/

7

2

#

/

COMMITTEE REPORT HOUSE

JUDICIARY

FURTHER:

2/7/83

Date: 2-7-83

Mr. Speaker:

The Committee on C & RA has had HR 172

An Act relating to municipal government; and providing for an effective date.

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HR 172 (C & RA) same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note Sept 100
 Zero Fiscal Note Attached
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Mr. Miller

Mr. Miller

CHAIRMAN

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tische, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff *Lacher*
DATE: April 25, 1983
RE: House Bill 172 amendment 1

Page 35, line 4:
After "request" insert "by a member of the governing body"

Page 35, line 5:
Delete "and"

Page 35, line 6:
After "request" insert "by a member of the governing body"

Page 35, line 8:
Delete "." insert ";

Page 35, after line 8:
Insert "(4) a municipal employee or official, ~~other~~ than a member of the governing body, may not participate in any official action in which the employee or official has a substantial financial interest.

(b) If a municipality fails to adopt a conflict of interest ordinance within 180 days after July 1, 1983, the conflict of interest provision of this section is automatically applicable to and binding upon that municipality."

Page 35, line 9:
Delete "(b)" and insert "(c)"

Page 163, line 24:
Delete "allocable" insert "allocatable"

passed
Keep

Alaska State Legislature



Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski

Room 104
State Capitol
Juneau, Alaska 99811
Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 2

The following changes are proposed by Ginny Chitwood, Alaska Municipal League.

Page 68, lines 5-7:
Delete section 29.26.250. ←

Page 68, line 15:
Delete "grounds of", insert "reasons for".

Page 68, line 24:
Delete "grounds" insert "reasons".

Page 69, lines 20,24:
Delete "25", insert "35".

Page 71, line 18:
Delete "grounds of" insert "reasons for".

Explanation: The issue of determining the sufficiency of grounds for a recall election was discussed by the committee. It appeared that a consensus was reached to eliminate the requirement for providing legal grounds to conduct a recall election and to increase signatory requirements for the petitioners.

Adopted

Yewoke

STATE OF ALASKA
THE LEGISLATURE

POUCH Y. STATE CAPITOL
GENERAL ALASKA OFFICE
907-465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 24, 1983

SUBJECT: Recall of municipal officials
(Work Order No. 13-0837)

TO: Representative Barbara Lacher

FROM: Tamara Brandt Cook
Legislative Counsel

TBC

You have asked what the responsibility of the clerk is in reviewing recall petitions for sufficiency.

What a recall petition must contain and the method of determining the sufficiency of a petition depends on the specific statute involved and these types of laws vary from state to state. Some statutes require only a general statement of the grounds for recall and an official may be recalled for purely political reasons. However, other statutes require grounds for recall that are more than simple disagreement with matters of policy and the grounds stated must actually constitute misfeasance, malfeasance or nonfeasance in office. McQuillan, Municipal Corporations, vol. 4, sec. 12.251b: Noel v. Oakland County Clerk, 284 N.W.2d 761 (Michigan 1979); Bent v. Ballantyne, 368 S.2d 351 (Florida 1979); Tolar v. Johns, 147 S.2d 196 (Florida 1962); Jacobsen v. Nagel, 96 N.W.2d 569 (Minnesota 1959).

Where petitioners are required to state only general grounds, the recall petition need not state the cause for removal with the same particularity as where the requirement is that reasons for removal be stated clearly. The purpose of a general statement of grounds is to furnish information to electors upon which a political and not a legal issue may be raised. Under statutes providing that a statement of grounds for recall is for the information of the electors, the question of the sufficiency of those grounds is also for the electors, but under provisions authorizing recall for malfeasance or similar language, the sufficiency of the grounds provided is a legal question. 63 Am. Jur.2d, Public

February 24, 1983

Officers and Employees, sec. 245; Pybus v. Smith, 141 P. 203 (Washington 1914).

Statutory provisions as to recall are to be liberally construed in favor of the electorate's right to exercise recall. Hazelwood v. Saul, 619 P.2d 199 (Colorado 1980). Under this principle and in the absence of statutory language limiting the recall to specific, indicated reasons, the adequacy of grounds stated in a petition is treated as a political matter and courts refuse to enjoin recall petitions on complaints that charges are insufficient. However, where recall is limited to specified grounds of malfeasance or similar language it is generally held that

. . . petitions are inadequate when they indicate only disagreement on matters of policy or political criticism. Antieau, Municipal Corporation Law, sec. 22.200, pages 22-304 - 22-305.

The officer designated to ascertain the sufficiency of a petition in a particular statute may be required to determine legal sufficiency rather than matters of form only. Unless an appeal is specifically provided for, the officer's determination as to sufficiency of a recall petition is final and subject only to judicial correction if the determination is capricious, arbitrary, or plainly erroneous as a matter of law. McQuillan, supra., vol. 4, sec. 12.251(d); Hold v. Trantham, 575 S.W.2d 83 (Texas 1979).

Article XI, section 8 of the Constitution of the State of Alaska provides:

All elected public officials, in the State, except judicial officers, are subject to recall by the voters of the State or political subdivision from which elected. Procedure and grounds for recall shall be prescribed by the legislature. (Emphasis added)

In carrying out this constitutional responsibility the legislature has provided under AS 29.28.140 that misconduct in office, incompetence, and failure to perform prescribed duties are the grounds for recall. In addition, under AS 29.28.150(a)(3), a petition for recall must contain ". . . a statement of the grounds of the recall stated with particularity as to specific instances". (Emphasis added)

The municipal clerk is required to review the petition
". . . for content and signatures . . ." under AS 29.28.160.

These statutory provisions dealing with recall have not been judicially construed by the Supreme Court in this state, so it cannot be determined with certainty whether the clerk is required to review the petition for signatures and form only or whether the clerk must determine as a legal matter whether the specific instances set out in a petition, if true, constitute misconduct in office, incompetence or failure to perform prescribed duties. Under the principles set out previously in this memorandum it appears that the clerk is required to determine whether the specific instances set out support a claim of misconduct in office, incompetence or failure to perform prescribed duties because AS 29.28.150 demands more than just a general statement of the grounds for recall and does not specifically indicate that the stated grounds are for the information of the voters only.

Under both versions of the bill revising Title 29, SB 1 and HB 172, the grounds for recall remain unchanged although the procedure for recall has been substantially changed. Nevertheless, an applicant for a recall petition under Sec. 29.26.260(a)(3) is still required to set out the grounds ". . . with particularity". The clerk must prepare a recall petition only if the clerk determines that the application for the petition meets the requirements of AS 29.26.260, including the requirement that grounds be ". . . stated with particularity" (Sec. 29.26.280). After a petition is filed the clerk must again determine whether the petition is sufficient and, if insufficient, ". . . identify the insufficiency and notify the sponsors. . ." (Sec. 29.26.290). It seems clear that since the clerk must identify the insufficiency, a determination of sufficiency is not limited to review of signatures, even though (b) and (c) of the section only provide for correcting a petition insufficient for lack of signatures. It appears under these sections that the clerk would still be required to determine whether the grounds stated, if true, actually constitute misconduct in office, incompetence, or failure to perform prescribed duties.

I believe that his interpretation conforms to the intent of the policy committee that produced the original version of a Title 29 revision bill. There was considerable discussion of the recall provisions by that committee and at one point

Representative Barbara Lacher

Page 4

February 24, 1983

the committee considered requiring only a general statement of reasons for recall and allowing recall to proceed upon purely political grounds. It was even suggested that grounds for recall be eliminated entirely. That approach was specifically rejected by the committee. Consequently, I would recommend that HB 172 be amended to clearly reflect the fact that the clerk is to review a recall petition for form and signatures only, and not to determine whether grounds stated actually constitute misconduct in office, incompetence, or failure to perform prescribed duties, if that is the result intended by the legislature.

TBC:ljb

Alaska State Legislature



Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski

Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 3

Page 76, lines 19 and 20:

Delete "determine fair market value" insert "acquire the certificate, equipment and facilities of the carrier, or that portion of the certificate that would be affected".

Explanation: The right of eminent domain is not used to determine fair market value. The determination of fair market value is a step in the process of exercising eminent domain. As written, the statement may not meet the intent of allowing municipalities to exercise the right of eminent domain to acquire certificates or property.

adopted
Keep

Alaska State Legislature



Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski

Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 4

Page 126, line 3:
Delete "\$100,000.00" insert "\$20,000.00".

Explanation: During Committee review of House Bill 172, there appeared to be a consensus of the committee that the minimum value of property to be foreclosed upon without notification to the owner by certified mail is too high (\$100,000.00).

adopted
Keep

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs

FROM: Staff

DATE: April 25, 1983

RE: House Bill 172 amendment 5

Page 204, lines 7 and 8:
Recommend change to read:

Sec. 85. AS 29.45 "as enacted in Sec. 11 of this Act is effective on January 1 of the year following enactment.

Explanation: HB 172 may be enacted into law in 1983 or 1984, depending on legislative action. The amendment will avoid the possibility of a "split" tax year and will provide time for municipal planning purposes.

S. Hanson

adopted

Keep

Alaska State Legislature



Barbara Lacher, Chairman
Mac Fischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski

Room 104
State Capitol
Juneau, Alaska 99811
Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 6

The attached letter of intent and proposed language for implementation was prepared during hearings of SB 1, comparison legislation to HB 172.

Present law requires first class and home rule cities in the unorganized borough to accept the responsibility for delivery of Educational services. It is perceived that the requirement to be responsible for educational services may be a deterrant to certain cities or areas to organizing or upgrading to first class or home rule status. The opposition for a city to assume the educational powers could come either from an existing REAA or the city.

The proposed change to HB 172 would resolve the issue of the assumption of education powers by vote of the residents in the city and in the REAA.

Failed

Failed

Alaska State Legislature

Senate

Committee on
Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99801



Official Business

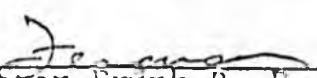
LETTER OF INTENT
TO CSSB 1

February 24, 1983

It is the intent of the Senate Community and Regional Affairs Committee that the assumption of the education power by newly formed or upgraded first class or home rule cities be dependent upon a vote in the existing Regional Education Attendance Area. If the vote both within the city and in the remainder of the REAA was not in favor of the city assuming the education power, it would not.

This Letter of Intent was discussed and unanimously approved by the Senate C & RA Committee. The attached page labelled "Proposed Amendment #10" is what the committee members had in front of them when the Letter of Intent was endorsed. The longer attached amendment, drafted by Legal Services, represents all of the actual changes that need to be made to SB 1 to carry out the Letter of Intent.

Though the committee strongly endorses this concept it was felt the full amendment should be available for review before it was adopted, which is why this method of presentation was followed. The Community and Regional Affairs Committee urges the Finance Committee to incorporate the intent of the attached proposed Amendment #10 into SB 1.



Senator Frank R. Ferguson
Chairman

S-E-N-A-T-E---A-M-E-N-D-M-E-N-T

PROPOSED SENATE AMENDMENT

By Community & Regional Affairs Committee

To: _____ SENATE BILL No. 1

To: _____ HOUSE BILL No. _____

PAGE: _____ LINE: _____

Note: This change is listed as a proposal rather than an amendment because of the complex drafting that will be required to make sure all the necessary sections are cross referenced. Legal Services has reviewed this proposal and suggested this approach because of time constraints. If the Committee approves this proposal, Legal Services will incorporate it as part of the Committee Substitute.

Page 10, after line 19, insert new section:

"29.05.145. ASSUMPTION OF THE EDUCATION POWER. (a) When an unincorporated area or second class city that is part of a Regional Education Attendance Area incorporates or upgrades to first class or home rule city status, the assumption of the education power shall be in accordance with this section

(b) When an unincorporated area or city that is part of a REAA incorporates or upgrades to first class or home rule city status, that Director of Elections shall conduct an election in the REAA within 90 days of the incorporation.

(c) At this election, voters of the REAA shall be given an opportunity to approve or disapprove the assumption of the education power by the newly incorporated or upgraded first class or home rule city.

(1) The vote shall be counted separately within the city limits of the newly incorporated or upgraded city and in the remainder of the REAA.

(2) A majority of voters in both areas must approve the assumption of the education power by the newly incorporated or upgraded city or it may not assume the education power"

Alter other sections as necessary to conform.

A M E N D M E N T

Offered in the SENATE

By the Community and Regional

TO: CSSB 1 (C&RA)

Affairs Committee

Page 2, after line 25 insert:

"(f) A second class city in a regional educational attendance area that reclassifies to first class status after July 1, 1983 remains part of the regional educational attendance area unless education power is acquired under AS 29.35.270."

Page 10, after line 18 insert:

"(d) A first class or home rule city in a regional educational attendance area that incorporates after July 1, 1983 remains part of the regional educational attendance area unless the education power is acquired under AS 29.35.270."

Reletter the following subsection accordingly.

Page 34, after line 20 insert:

"(36) AS 29.35.270. (acquisition of education power)"

Reorder the following paragraphs accordingly.

Page 85, line 23:

Delete "A" and insert "Subject to AS 29.35.270, a"

30
Page 86, after line 5 insert:

"Sec. 29.35.270. ACQUISITION OF EDUCATION POWER. (a) A home rule or first class city formed in a regional educational attendance area after July 1, 1983 remains part of the regional educational attendance area and may not establish a city school district unless the education power is acquired by the city under this section.

(b) Within 90 days after a community in a regional educational attendance area is incorporated as a home rule or first class city or a second class city in a regional educational attendance area reclassifies to first class status or adopts a home rule charter, the director of elections shall conduct an election in the regional educational attendance area on the question of whether the city should acquire the education power and form a city school district.

(c) After an election under this section the vote shall be counted separately within the boundaries of the newly formed city and within the area of the regional educational attendance area outside the city.

(d) If a majority of voters within the newly formed city and a majority of the voters within the area of the regional educational attendance area outside of the newly formed city approve, the city shall assume the education power and form a school district. If a majority of voters in both areas do not approve, the city remains part of the regional educational attendance area.

(e) This section applies to home rule and general law cities."

30
Page 186, after line 6 insert:

"* Sec. 21. AS 14.08.031 is amended by adding a new subsection to read:

(e) A first class or home rule city in a regional educational attendance area that incorporates after July 1, 1983 and a second class city in a regional educational attendance area that reclassifies to first class status or adopts a home rule charter after July 1, 1983 shall be included in the regional educational attendance area bound by AS 29.35.270 unless the city acquires the education power under AS 29.35.270."

Renumber following sections accordingly.

Page 186, after line 29 insert:

"* Sec. 24. AS 14.12.010(1) is amended to read:

(1) each home rule and first class city in the unorganized borough is a city school district, except as provided under AS 29.35.270;

* Sec. 25. AS 14.12.010(3) is amended to read:

(3) the area outside organized boroughs and outside home rule and first class cities is divided into regional educational attendance areas, except that a home rule or first class city may be included in a regional educational attendance area in accordance with AS 29.35.270."

Renumber following sections accordingly.

Page 205, line 20:

Delete "86" and insert "89"

Page 205, line 23:

Delete "86" and insert "89"

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szimanski



Room 104
State Capitol
Juneau, Alaska 99811
Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 7

During Committee review of HB 172 there was discussion but no apparent consensus concerning the exemption of greenhouses from assessment at full valuation for taxation purposes (Page 109, line 22).

The existing law does not give special treatment for greenhouses. The intent of providing special tax treatment for farm lands (not including barns, houses, sheds, etc.) was to assist the farmer in resisting the pressures of urban growth rather than being forced to subdivide farm land because of inflated land values. The effect of the new language is to provide a special tax treatment for greenhouses, including commercial greenhouses raising ornamental flowers.

adopted
make
special cover taking level
on farm use.

Alaska State Legislature



Barbara Lacher, Chairman
Mac Tischer, Vice-Chairman
Randy Phillips
Mdo Fritz
Don Clocksin
Jack McBride
Mike Szymanski

Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives
Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 8

Sec. 29.45.030 dealing with required tax exemptions contains new language that defines "developed" for the implementation of a required federal tax exemption (Page 105, line 10). The new definitions are supported by Alaska Native Corporations and are opposed by municipalities. Similar definitions were added as last minute floor amendments during legislative action on the municipal code revision in 1982 which were, in large part, responsible for the subsequent Governor's veto.

In that the purpose of HB 172 is to administratively revise Title 29 into a usable document and not to make substantive or controversial changes, staff recommends that all new materials pertaining to the federal tax exemption, including references to reverting to an undeveloped state, be deleted from HB 172 and that the issue be addressed in separate legislation.

*introduced -
need to fail -
taken care of in
Amend # 10*

30



THIRTEENTH ALASKA LEGISLATURE

FIRST SESSION

HB172 Suggested Amendments - Cape Fox Corporation

Line 15, Page 105

- (1) (m) (1) ... gainful and [or] productive present use...

Line 18-19, Page 105

- (2) (m) (1) ... process even though income may be derived from related incidental timber harvesting, utility usage, or similar activities.

Line 3, Page 106 - Add New Subsection:

- (3) (m) (4) "Gainful" means a condition resulting in net taxable income or when revenue derived from an activity taking place over the tax year of the property owner exceeds the expenses and deductions related to the activity.

Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-4801

BOROUGH ATTORNEY'S OFFICE

April 6, 1983



The Honorable Barbara Lacher
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Barbara:

Subject: HB 172 "DEVELOPED" DEFINITION

The present version of HB 172 provides for a tax exemption as required by 43 U.S.C. 16.20(d) for certain Native lands. This exemption provides a definition of "developed" for implementing the federal law. I recommend that this matter be treated in a separate bill rather than in HB 172 or SB 1, the parallel bills intended as housekeeping measures to revamp Title 29.

During the last legislative session certain amendments were made to the Title 29 bill on the House floor which caused a great deal of controversy. In re-introducing the Title 29 in the present legislature, all of these amendments were removed except for the provisions for implementing the tax exemptions under 43 U.S.C. 16.20(d). This amendment was incorporated in AS 29.45.030 of the bill.


Pursuant to federal law, certain Native lands are not taxable until "developed". The intent of the proposed definition in AS 29.45.030 is to clarify what improvements of land will constitute "development" for tax exemption status.

I believe that the intent of this section is to assure that lands will not be taxed simply because an access road is constructed to the property or improvements are placed on the property in anticipation of future development. However, the language is sufficiently ambiguous to permit the interpretation that even a regular, residential or commercial subdivision development would not be taxable until the lots were sold. Once land is subdivided, roads are constructed and other improvements are put in place, the available lots become the sale inventory of the real estate developer. An exemption from taxation of these lots would give the exempted developer an unfair advantage over other developers with which it was in competition.

Because this provision is not in existing Title 29 and because there is potential controversy involved, I recommend that

it not be included in HB 172, a housekeeping bill. As a separate bill, I believe that the Borough would support a definition between a taxable subdivision development and tax exempt lands which have been surveyed and have constructed roads.

Sincerely,



Steven H. Morrisett
Borough Attorney

er

cc: Steve VanSant, Borough Assessor



KENAI PENINSULA BOROUGH

BOX 850 • SOLDOTNA, ALASKA 99669
PHONE 262-4441

STAN THOMPSON
MAYOR

February 24, 1983

TO: Stan Thompson, Mayor

FROM: Don Thomas, Assessor

SUBJECT: Native Lands, Title 29 Revisions - see M #1 *Items 28 + 29*
140 100-101

By the definition included in the work draft of Title 29 the Kenai Peninsula Borough would loose approximately 13.9 Million in assessed valuation. This would equal about \$41,727 based on a 3 mill average.

This would also put the Native lands in a better position to develop and compete in the open market, if they wished. They could do all the preliminary work, such as roads, utilities, survey, and hold the property for the highest return, and still not pay taxes. *- this would only*
be a matter of time before the lands are sold
We currently have 13.9 million in assessed value that the different regions have been paying taxes on. We have had them on the tax rolls for 4 or 5 years and they paid their taxes without paying under protest.

Cook Inlet	7,281,205
Ninilchik	924,950
Seldovia Native	2,882,300
Slamatoff	599,500
English Bay	2,708,800
Port Graham	1,068,000
Total	<u>15,454,755</u>

*Also when you see up & Native Lands
we would be ^{be} on the top rolls - they they
would be ~~front~~ at a tremendous loss to
the Board - until sold*



THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT - 586-5242

May 20, 1983

Bob Harris
House Community & Regional
Affairs Committee
Pouch V
Juneau, Alaska 99811

FILE: HB 172

SUBJECT: Substitute Utility Language
for Title 29 Revision

Dear Bob:

If the House Community and Regional Affairs Committee would like to consider alternative language to that which has been proposed for the utilities section of the Title 29 revision, may I suggest the following. This language, I believe, accommodates the interests of the municipalities and of the utilities. It would exempt from municipal regulation those utilities, including co-ops, which have elected to exempt themselves from APUC regulation by a vote of the subscribers or members. It would also exempt from municipal regulation those small electric, telephone and garbage utilities which are presently exempt from APUC regulation but which may come under APUC regulation if 25% of the subscribers petition the commission for regulation. In addition, it would exempt from municipal regulation those utilities which the APUC itself exempts upon a finding of no legitimate public interest in regulation if the commission also finds that the utility should also be exempt from municipal regulation. If cable TV is given an exemption from APUC regulation, and the legislature believes that it should also be exempt from municipal regulation, a simple amendment to the following language making reference to the statute exempting cable TV would extend the exemption to municipal regulation of cable TV also. The substitute language would be as follows:

AS 29.35.070 PUBLIC UTILITIES. (a) The assembly acting for the area outside all cities in the borough and the council acting for the area in a city may regulate the service and may fix, establish and change the rates and charges imposed for a utility service provided to the municipality or its inhabitants by a utility except as provided in (b).

(b) A municipality may not regulate a utility

(1) to the extent it is subject to regulation under AS 42.05; or

Re: HB 172 Substitute Language
May 20, 1983
Page Two

- (2) exempt from Alaska Public Utility Commission regulation under AS 42.05.711(d) if the commission finds that no legitimate public interest will be served by regulation by the commission or a municipality; or
 - (3) exempt from Alaska Public Utility Commission regulation under AS 42.05.711(e), (f), (g), (h) or (i); or
 - (4) specifically exempted by law from municipal regulation.
- (c) The municipality may provide for a reasonable deposit for meters and service to be given if interest is paid on the deposit.
- (d) Unless the utility is owned by the regulating municipality, all rates, charges and regulations established under this section shall be established as provided by an ordinance of the municipality which sets forth the procedures for regulating service and establishing and changing the rates and charges of the utility. The ordinance shall provide for notice, hearing and other procedures necessary to guarantee the utility due process. The rates and charges established shall be reasonable and shall permit a fair return on invested capital.
- (e) This section applies to home rule and general law municipalities.

Sincerely,



Gerald L. Sharp
City/Borough Attorney

GLS:jr

Alaska State Legislature



Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Mido Fritz
Don Clocksin
Jack McBride
Mike Szymanski

Room 104
State Capitol
Juneau, Alaska 99811
Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

MEMORANDUM

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 proposed amendment number 9

The attached amendment proposed by representatives of utility companies is a significant change from present law.

The net effect of the amendment is to prohibit municipalities from regulating utilities unless the type of regulation proposed or the particular utility is also subject to regulation by the Alaska Public Utilities Commission. Stated in another way, if the Alaska Public Utilities Commission does not or can not regulate a utility or a matter pertaining to a utility, then a municipality may not impose a regulation.

Present law provides municipalities the power to regulate utilities and matters pertaining to utility services to the extent the utilities are not regulated by the Alaska Public Utility Commission.

In several instances, the regulation of a condition of service by a utility company, or the regulation of a utility company is optional for the Public Utilities Commission, or optional for the utility.

In cases where utilities are not regulated by the Alaska Public Utilities Commission, Municipalities generally feel they need to have the authority to exercise regulatory powers. On the other hand, utility companies believe that; if the Alaska Public Utility Commission does not regulate them, then the municipalities should not have the authority to provide regulation.

*introduced -
needs to be
voted down. -
taken care of in
Amend # 10*

SENATE AMENDMENT

By Community & Regional Affairs CommittTo: _____ SENATE BILL No. 1

To: _____ HOUSE BILL No. _____

PAGE: 33 LINE: 2723

Insert "(26) 29.35.060 (franchise and permits)". Renumber following paragraphs accordingly.

✕ Page 33, line 29, insert:

"(28) 29.35.075 (disputes and conflicts with state certificated utilities)"

Page 77, after line ~~36~~, insert:

— "(c) This section applies to home rule and general law municipalities."

Page 77, line ~~4-19~~⁷⁻²², delete Section 29.35.070 and insert:

"Sec. 29.35.070. PUBLIC UTILITIES. (a) The assembly acting for the area outside all cities in the borough and the council acting for the area in a city may regulate the service, and may fix, establish, and change the rates and the charges imposed for a utility service provided to the municipality or its inhabitants by a utility except to the extent

(1) the utility is subject to regulation under AS 42.05; or

(2) municipal regulation is prohibited by AS 42.05.711(k) or otherwise specifically prohibited by law.

(b) The municipality may provide for a reasonable deposit for meters and service to be given if interest is paid on the deposit.

(c) Unless the utility is owned by the municipality that is regulating it, all rates, charges and regulations established under this section shall be established as provided by an ordinance of the municipality establishing

the procedures for regulating service and procedures for establishing and changing the rates and charges of the utility. The ordinance shall provide for notice, hearing and other procedures necessary to guarantee due process. The rates and charges established shall be reasonable and shall permit a fair return on invested capital.

(d) This section applies to home rule and general law municipalities.

Page 77, after line ²²~~19~~, insert:

"Sec. 29.35.075. DISPUTES AND CONFLICTS WITH STATE CERTIFICATED UTILITIES. (a) A dispute as to the reasonableness of the fees for or the terms, conditions, or exceptions to a permit for a utility certificated under AS 42.05 to use municipal streets, alleys or other public ways of the municipality shall be decided under AS 42.05.251."

(b) In case of a conflict between the provisions of AS 29.35.070 or AS 42.05 or an action taken under either as to the regulation of service, rates or charges of a utility, the provisions of AS 42.05.641 apply.

(c) This section applies to home rule and general law municipalities.

Page 195, after line ²²~~17~~, insert:

"*Sec. 62. AS 42.05.711 is amended by adding a new subsection to read:

delete

(k) Except for municipally owned and operated utilities subject to (b) of this section, municipalities may not regulate utility services, including but not limited to rates, terms and conditions of services, provided by a person, utility or cooperative that is exempt from regulation under AS 42.05.711."

Renumber following sections accordingly.

Lee Sharp
City - Boro ~~attorney~~ Jun 1981

Chugach Elec. Ass'n, Sup. Ct. Op. No. 1636 (File Nos. 2969, 2993), 580 P.2d 687 (1978); B-C Cable Co. v. City of Juneau, Sup. Ct. Op. No. 2112 (File No. 4567), 613 P.2d 616 (1980).

Sec. 42.05.711. Exemptions. (a) The provisions of AS 42.05.010 — 42.05.721 do not apply to a person who furnishes water, gas or petroleum or petroleum products by tank, wagon, or similar conveyance, unless the person is thereby supplying water, gas, petroleum or petroleum products to a public utility in which he has an "affiliated interest."

(b) Public utilities owned and operated by a political subdivision of the state and none of whose utilities is in competition with any other utility, are exempt from the provisions of AS 42.05.010 — 42.05.721, other than the provisions of AS 42.05.221 — 42.05.281, unless the owner and operator elects to be subject to all provisions of AS 42.05.010 — 42.05.721.

(c) The ownership in whole or part, of the corporate stock of a public utility does not make the owner a public utility.

(d) The commission, on a finding that no legitimate public interest will be served, may exempt a utility from all or any portion of AS 42.05.010 — 42.05.721.

(e) Notwithstanding any other provisions of AS 42.05.010 — 42.05.721, any electric or telephone utility that does not gross \$50,000 annually is exempt from regulation under AS 42.05.010 — 42.05.721 unless 25 percent of the subscribers petition the commission for regulation.

(f) Notwithstanding any other provisions of AS 42.05.010 — 42.05.721, an electric or telephone utility that does not gross \$325,000 annually may elect to be exempt from the provisions of AS 42.05.010 — 42.05.721 other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

(g) A utility, other than a telephone or electric utility, that does not gross \$100,000 annually may elect to be exempt from the provisions of AS 42.05.010 — 42.05.721 other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

(h) A cooperative organized under AS 10.25.010 — 10.25.650 may elect to be exempt from the provisions of AS 42.05.010 — 42.05.721, other than AS 42.05.221 — 42.05.281, under the procedure described in AS 42.05.712.

(i) A utility which furnishes collection and disposal service of garbage, refuse, trash, or other waste material and has annual gross revenues of \$200,000 or less is exempt from the provisions of this chapter, other than the certification provisions of AS 42.05.221 — 42.05.281,

D01
this
public

sub-
not
s an
mis-
king
d or
on in

re of
.010
the
the
order
nfor-
iten
olic.
ount,
a it.

981

in the
mally
rocess
neless
ty of
n &
Op.
493

175
n v.

unless 25 percent of the subscribers or subscribers representing 25 percent of the gross revenue of the utility petition the commission for regulation.

(j) The provisions of this chapter do not apply to sales, exchanges or gifts of energy to an electric utility certificated under AS 42.05.010 — 42.05.721 when the energy which is the subject of the sale, exchange or gift is waste heat, electricity, or other energy which is surplus or the by-product of an industrial process. In an area in which no electric utility is certificated for service, energy provided by sale, exchange or gift may be provided to any utility which is certificated for service to that area. A contract for the sale, exchange or gift of energy exempt under this subsection does not make the supplier a public utility, and does not transfer the responsibility to provide utility services from a certificated utility to any other person. (§ 6 ch 113 SLA 1970; am § 3 ch 76 SLA 1973; am § 8 ch 83 SLA 1980; am §§ 7-9 ch 136 SLA 1980; am § 89 ch 59 SLA 1982)

Revisor's notes. — As enacted by chs. 83 and 136, SLA 1960, present subsections (j) and (i) were designated as subsections (n) and (j), respectively, but were redesignated by the revisor of statutes pursuant to AS 01.05.031(b). Former subsection (i) of this section was transferred as § 13, ch. 136, SLA 1980 to the 1980 Temporary and Special Acts and Resolutions by the revisor of statutes pursuant to AS 01.05.031(b).

Effect of amendments. — The first 1980 amendment added subsection (j).

The second 1980 amendment deleted "excepting the furnishing of collection and disposal service of garbage, refuse, trash or other waste material" following "none of whose utilities" near the beginning of subsection (b), deleted the former second sentence in subsection (b), which read: "Notwithstanding any other provisions of this chapter, municipalities providing collection and disposal service of garbage, refuse, trash or other waste material within their corporate boundaries are not subject to regulation by the Alaska Public Utilities Commission unless the municipality elects to be subject to the provisions of this chapter," substituted "\$50,000" for "\$25,000" following "does not gross" near the middle of subsection (e), substituted "under this chapter" for "hereunder" following "exempt from regulation" near the middle of subsection (e), and added subsections (n) through (i).

The 1982 amendment, effective May 28, 1982, deleted "on June 30, 1980" preceding

"a utility," and inserted "annual" preceding "gross revenue" in subsection (i).

Editor's notes. — Section 13, ch. 136, SLA 1980, as revised by the revisor of statutes, provides: "Cable television systems are exempt from the provisions of AS 42.05 [AS 42.05.010 — 42.05.721], other than the provisions of AS 42.05.221 — 42.05.281, until July 1, 1983. This exemption does not apply in cities or villages which have a population of less than 3,500 people and which are not located on a state road or marine highway. The effects of the exemption of cable television systems from rate regulation by the Alaska Public Utilities Commission provided in this section shall be reviewed by the legislature before July 1, 1983. If the legislature fails to extend the exemption before July 1, 1983, this section is repealed on that date and cable television systems lose their exempt status on that date and become subject to regulation by the Alaska Public Utilities Commission."

Opinions of attorney general. — An electrical utility owned and operated by a regional electrical authority would continue to qualify for the broad exemption from this chapter, available to political subdivisions under subsection (b) of this section once the regional electrical authority had completed its proposed organization as a nonprofit corporation pursuant to AS 10.20.005 et seq. June 7, 1976, Op. Att'y Gen.

Alaska State Legislature



Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski

Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

MEMORANDUM

To: Committee On Community and Regional Affairs
From: Staff
Re: HB 172, proposed utilities amendment.

The attached amendment to HB 172 has been requested by Mr. Dave Hutchins, representing the Alaska Rural Electric Cooperative Association.

The controversy over the proposed amendment is based on the authority of municipalities, or lack of authority, to regulate utilities that are not subject to regulation by the Alaska Public Utilities Commission under AS 42.05.

A summary of the controversial portions of the three options presented to the committee is as follows:

1. Present Statues:
 - a. Municipalities cannot regulate or grant franchises to any utility that is regulated by the Alaska Public Utilities Commission (APUC) under AS 42.05.
 - b. APUC approval is required for a municipality to extend a municipal utility's service area.

The present laws are silent on the authority--or lack of authority-- of municipalities to regulate non-municipal owned utilities that are not regulated under AS 42.05. Since a General Law municipality has only the powers granted by law, it would probably be upheld that a General Law municipality does not have the authority to regulate a non-municipal owned utility that is not regulated by APUC. This limitation does not apply to a Home Rule municipality.

2. HB 172 Provides:
 - a. Municipalities may grant franchises and regulate utilities to the extent they are not subject to regulation by APUC under AS 42.05, or not otherwise prohibited by law.
 - b. Municipal owned utility services may be extended outside of the municipal boundaries (subject to approval by APUC).

3. Amendment requested by utilities:
 - a. Whenever a utility is exempted from regulation by APUC or subject to regulation under AS 42.05, a municipality may not regulate the utility.
 - b. A municipality may only extend utility services to an area adjacent to the municipal boundaries. This provision would prevent a municipal utility from providing utility services to an area that is not adjacent to the municipal boundaries.

The utilities that are, or may be, exempted from APUC regulation and as such are the utilities that are at the center of this issue are identified in AS 42.05.711 (copy attached).

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

Page 33, after line 28, insert:

"(26) AS 29.35.060 (franchise and permits)"
 Renumber following paragraphs accordingly.

Page 33, after line 29, insert:

"(28) AS 29.35.075 (disputes and conflicts with state
 certificated utilities)"
 Renumber following paragraphs accordingly.

Page 74, line 12, delete:

"utility services,"

Page 77, after line 6 add a new subsection to read:

"(c) This section applies to home rule and general
 law municipalities."

Page 77, lines 7 through 22, delete present language and
 replace it with the following:

"Sec. 29.35.070. PUBLIC UTILITIES. (a) The
 assembly for the area outside all cities in the borough
 and the council acting for the area in a city may
 regulate a utility service and fix, establish, and
 change the rates and charges imposed for a utility
 service provided to the municipality or its inhabitants
 by a utility except to the extent

(1) the utility is subject to regulation under AS
 42.05; or

(2) municipal regulation is prohibited by AS
 42.05.711(k) or other law.

(b) A municipality may provide for a reasonable
 deposit for meters and service to be given if interest
 is paid on the deposit.

(c) A municipality that owns or operates a utility
 may extend service to adjacent areas outside its
 municipal boundaries. For that purpose the
 municipality may acquire, maintain, and operate utility
 facilities together with necessary interests in real
 property outside its municipal boundaries.

(d) Unless a utility is owned by the municipality
 that is regulating it, all rates, charges, and
 regulations shall be established by the municipality in
 accordance with an ordinance that provides procedures
 for regulating service and establishing and changing

rates and charges. The ordinance shall provide for procedures necessary to guarantee due process, including notice and hearing requirements. Rates and charges established under this section shall be reasonable and permit a fair return on invested capital.

(e) A dispute involving a utility certificated under AS 42.05 as to the reasonableness of the fees for or the terms, conditions, or exceptions to a permit to use municipal streets shall be decided under AS 42.05.251.

(f) In case of a conflict between the provisions of this section and AS 42.05 or concerning an action taken under this section or AS 42.05 involving the regulation of service or the rates or charges of a utility certificated under AS 42.05, the provisions of AS 42.05.641 apply.

(g) This section applies to home rule and general law municipalities."

Page 195, after line 22, add a new section to read:

"* Sec. 62. AS 42.05.711 is amended by adding a new subsection to read:

(k) A public utility that is exempt or partially exempt under (d) through (j) of this section from the provisions of AS 42.05.010 - 42.05.721 may not be regulated by a municipality."

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

Chugach Elec. Ass'n, Sup. Ct. Op. No. 1636 (File Nos. 2969, 2993), 580 P.2d 687 (1978); B-C Cable Co. v. City of Juneau, Sup. Ct. Op. No. 2112 (File No. 4587), 613 P.2d 616 (1980).

Sec. 42.05.711. Exemptions. (a) The provisions of AS 42.05.010 — 42.05.721 do not apply to a person who furnishes water, gas or petroleum or petroleum products by tank, wagon, or similar conveyance, unless the person is thereby supplying water, gas, petroleum or petroleum products to a public utility in which he has an "affiliated interest."

(b) Public utilities owned and operated by a political subdivision of the state and none of whose utilities is in competition with any other utility, are exempt from the provisions of AS 42.05.010 — 42.05.721, other than the provisions of AS 42.05.221 — 42.05.281, unless the owner and operator elects to be subject to all provisions of AS 42.05.010 — 42.05.721.

(c) The ownership in whole or part, of the corporate stock of a public utility does not make the owner a public utility.

(d) The commission, on a finding that no legitimate public interest will be served, may exempt a utility from all or any portion of AS 42.05.010 — 42.05.721.

(e) Notwithstanding any other provisions of AS 42.05.010 — 42.05.721, any electric or telephone utility that does not gross \$50,000 annually is exempt from regulation under AS 42.05.010 — 42.05.721 unless 25 percent of the subscribers petition the commission for regulation.

(f) Notwithstanding any other provisions of AS 42.05.010 — 42.05.721, an electric or telephone utility that does not gross \$325,000 annually may elect to be exempt from the provisions of AS 42.05.010 — 42.05.721 other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

(g) A utility, other than a telephone or electric utility, that does not gross \$100,000 annually may elect to be exempt from the provisions of AS 42.05.010 — 42.05.721 other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

(h) A cooperative organized under AS 10.25.010 — 10.25.650 may elect to be exempt from the provisions of AS 42.05.010 — 42.05.721, other than AS 42.05.221 — 42.05.281, under the procedure described in AS 42.05.712.

(i) A utility which furnishes collection and disposal service of garbage, refuse, trash, or other waste material and has annual gross revenues of \$200,000 or less is exempt from the provisions of this chapter, other than the certification provisions of AS 42.05.221 — 42.05.281,

unless 25 percent of the subscribers or subscribers representing 25 percent of the gross revenue of the utility petition the commission for regulation.

(j) The provisions of this chapter do not apply to sales, exchanges or gifts of energy to an electric utility certificated under AS 42.05.010 — 42.05.721 when the energy which is the subject of the sale, exchange or gift is waste heat, electricity, or other energy which is surplus or the by-product of an industrial process. In an area in which no electric utility is certificated for service, energy provided by sale, exchange or gift may be provided to any utility which is certificated for service to that area. A contract for the sale, exchange or gift of energy exempt under this subsection does not make the supplier a public utility, and does not transfer the responsibility to provide utility services from a certificated utility to any other person. (§ 6 ch 113 SLA 1970; am § 3 ch 76 SLA 1973; am § 8 ch 83 SLA 1980; am §§ 7-9 ch 136 SLA 1980; am § 89 ch 59 SLA 1982)

Revisor's notes. — As enacted by chs. 83 and 136, SLA 1980, present subsections (j) and (i) were designated as subsections (f) and (j), respectively, but were redesignated by the revisor of statutes pursuant to AS 01.05.031(b). Former subsection (i) of this section was transferred as § 13, ch. 136, SLA 1980 to the 1980 Temporary and Special Acts and Resolutions by the revisor of statutes pursuant to AS 01.05.031(b).

Effect of amendments. — The first 1980 amendment added subsection (j).

The second 1980 amendment deleted "excepting the furnishing of collection and disposal service of garbage, refuse, trash or other waste material" following "none of whose utilities" near the beginning of subsection (b), deleted the former second sentence in subsection (b), which read: "Notwithstanding any other provisions of this chapter, municipalities providing collection and disposal service of garbage, refuse, trash or other waste material within their corporate boundaries are not subject to regulation by the Alaska Public Utilities Commission unless the municipality elects to be subject to the provisions of this chapter," substituted "\$50,000" for "\$25,000" following "does not gross" near the middle of subsection (e), substituted "under this chapter" for "hereunder" following "exempt from regulation" near the middle of subsection (e), and added subsections (f) through (i).

The 1982 amendment, effective May 28, 1982, deleted "on June 30, 1980" preceding

"a utility," and inserted "annual" preceding "gross revenue" in subsection (i).

Editor's notes. — Section 13, ch. 136, SLA 1980, as revised by the revisor of statutes, provides: "Cable television systems are exempt from the provisions of AS 42.05 [AS 42.05.010 — 42.05.721], other than the provisions of AS 42.05.221 — 42.05.281, until July 1, 1983. This exemption does not apply in cities or villages which have a population of less than 3,500 people and which are not located on a state road or marine highway. The effects of the exemption of cable television systems from rate regulation by the Alaska Public Utilities Commission provided in this section shall be reviewed by the legislature before July 1, 1983. If the legislature fails to extend the exemption before July 1, 1983, this section is repealed on that date and cable television systems lose their exempt status on that date and become subject to regulation by the Alaska Public Utilities Commission."

Opinions of attorney general. — An electrical utility owned and operated by a regional electrical authority would continue to qualify for the broad exemption from this chapter, available to political subdivisions under subsection (b) of this section once the regional electrical authority had completed its proposed organization as a nonprofit corporation pursuant to AS 10.20.005 et seq. June 7, 1976, Op. Att'y Gen.

(a) The assembly acting for the area outside cities and the council acting for the area within a city may grant franchises, including exclusive franchise privileges, for the construction, operation and maintenance of bus transportation systems and public utilities not regulated under AS 42.05 and may permit them the use of streets and other public places under regulations prescribed by ordinance.

(b) No franchise is valid until it has been submitted to the qualified voters of the city or borough area outside cities in which it applies, and at least 55 per cent of the votes cast are in favor of the franchise. At least 30 days notice of a franchise referendum election shall be given in the same manner as is provided for notice of regular municipal elections, and the notice shall specify the purpose of the election. The ordinance granting a franchise shall provide for its submission for ratification to the qualified voters of the city or borough area outside cities at either a regular or special election, and the result of the election shall be canvassed publicly by the council or assembly and spread upon the records of the minutes and the result declared and certified in the same manner as in a regular election.

(c) Public utilities regulated under AS 42.05 have the right to use the streets and other public places, upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the assembly or council requires. A dispute as to whether fees, terms, conditions, or exceptions are

reasonable shall be decided by the Alaska Public Utilities Commission.

Sec. 29.48.060. PUBLIC UTILITIES RATES.

The assembly acting for the area outside cities and the council acting for the area within a city may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the municipality or its inhabitants by a municipally owned utility not regulated under AS 42.05.010 - 42.05.721 and may regulate and provide what is a reasonable deposit for meters and security for service to be given, provided that interest is paid on the deposit. All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return on invested capital.

(a) The assembly acting for the area outside cities and the council acting for the area within a city may grant franchises, including exclusive franchise privileges, for the construction, operation and maintenance of bus transportation systems and public utilities not regulated under AS 42.05 and may permit them the use of streets and other public places under regulations prescribed by ordinance.

(b) No franchise is valid until it has been submitted to the qualified voters of the city or borough area outside cities in which it applies, and at least 55 per cent of the votes cast are in favor of the franchise. At least 30 days notice of a franchise referendum election shall be given in the same manner as is provided for notice of regular municipal elections, and the notice shall specify the purpose of the election. The ordinance granting a franchise shall provide for its submission for ratification to the qualified voters of the city or borough area outside cities at either a regular or special election, and the result of the election shall be canvassed publicly by the council or assembly and spread upon the records of the minutes and the result declared and certified in the same manner as in a regular election.

(c) Public utilities regulated under AS 42.05 have the right to use the streets and other public places, upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the assembly or council requires. A dispute as to whether fees, terms, conditions, or exceptions are

reasonable shall be decided by the Alaska Public Utilities Commission.

Sec. 29.48.060. PUBLIC UTILITIES RATES.

The assembly acting for the area outside cities and the council acting for the area within a city may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the municipality or its inhabitants by a municipally owned utility not regulated under AS 42.05.010 - 42.05.721 and may regulate and provide what is a reasonable deposit for meters and security for service to be given, provided that interest is paid on the deposit. All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return on invested capital.

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

MEMORANDUM

TO: Committee on Community and Regional Affairs

From: Staff

Date: May 20, 1983

Re: Amendments to HB 172

The Committee has completed action on proposed amendments One through eight; except that representatives of the Cape Fox Corporation were offered an opportunity to prepare new language for amendment No. 8.

Amendment No. 8 deals with a definition of developed lands for tax exempt status. A revised definition has been prepared for Committee review.

Amendment No.9 has been requested by representatives of the Alaska Rural Electric Cooperative Association. A staff summary has been prepared in an attempt to clarify the basis of the issue.

Following Committee decision on the above proposed amendments, staff will request a Committee Substitute HB 172 that will incorporate all approved amendments.

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811
Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

MEMORANDUM

TO: Committee on Community and Regional Affairs

From: Staff

Date: May 20, 1983

Re: Amendments to HB 172

The Committee has completed action on proposed amendments One through eight; except that representatives of the Cape Fox Corporation were offered an opportunity to prepare new language for amendment No. 8.

Amendment No. 8 deals with a definition of developed lands for tax exempt status. A revised definition has been prepared for Committee review.

Amendment No.9 has been requested by representatives of the Alaska Rural Electric Cooperative Association. A staff summary has been prepared in an attempt to clarify the basis of the issue.

Following Committee decision on the above proposed amendments, staff will request a Committee Substitute HB 172 that will incorporate all approved amendments.



Fairbanks North Star Borough

Mayor: B.B. Allen

April 6, 1984

Honorable Mike W. Miller
Alaska State Legislature
State of Alaska
Pouch V
Juneau, Alaska 99811

Dear Mike:

Over the past eleven years a number of amendments to Title 29, the Municipal Code, have resulted in numerous conflicts and inconsistencies which make the title very difficult to use, let alone read and understand. Because of the difficulties with Title 29, a proposed revision of the entire title is before you which clarifies the municipal code without making major policy changes. I would like to request that you work to insure the adoption of this critical piece of legislation in this session. Though local governments are the only direct constituency for this legislation, all citizens of this state are affected.

I would also hope that this legislation could be passed without the type of controversial amendments which lead to its veto two years ago. Such a "clean" bill would provide us with the basis from which major policy changes could be addressed.

Thank you in advance for your positive consideration of this legislation.

Sincerely,

B.B. Allen
Borough Mayor

BBA:rlf

cc: Fairbanks North Star Borough Assembly

A M E N D M E N T

Offered in the HOUSE

BY THE COMMUNITY AND REGIONAL

TO: HB 172

AFFAIRS COMMITTEE

Page 35, line 4:

After "request" insert "by a member of the governing body"

Page 35, line 5:

Delete "and"

Page 35, line 6:

After "request" insert "by a member of the governing body"

Page 35, line 8:

Delete "." and insert ";"

Page 35, after line 8:

Insert:

"(4) a municipal employee or official, other than a member of the governing body, may not participate in any official action in which the employee or official has a substantial financial interest.

(b) If a municipality fails to adopt a conflict of interest ordinance within 180 days after July 1, 1983, the conflict of interest provision of this section is automatically applicable to and binding upon that municipality."

Page 35, line 9:

Delete "(b)" and insert "(c)"

Page 163, Line 24

Delete "allocable" and insert "allocatable"



THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT - 586-5242

May 16, 1983

Tony Strong
Sealaska Building
One Sealaska Plaza
Juneau, Alaska 99801

Kellus Sewell
8489 Jennifer Drive
Juneau, Alaska 99801

FILE: Legislature - 1983/84 - SB 260

SUBJECT: Proposed Substitute

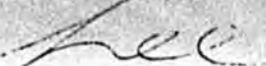
Gentlemen:

Enclosed is a proposed substitute for Senate Bill 260 which I believe incorporates the changes we agreed could be made to help clarify the definition of "developed" in the bill. As you requested, I have shown the changes which the three of us propose by using brackets and underlining.

I appreciate the time you spent with me in discussing the changes. Please note that I still feel that subsection (1) should be deleted as it will lead to a changing tax status for property which cannot be pinned down to some specific event such as a transfer of ownership. While I recognize that such a system may be beneficial to the native corporations, it creates a situation which will undoubtedly lead to disagreements (and perhaps court battles) between municipalities and native corporations.

While I believe the language in the attached proposed substitute is more clear than that in Senate Bill 260, I strongly suggest that this proposal be reviewed by the attorneys and assessors in other municipalities as well as other native corporations. The situation varies from municipality to municipality and from native corporation to native corporation. It may even be profitable to try to set up a meeting of officials from concerned municipalities and native corporations to try to work out something to which a majority of us can agree.

Sincerely,


Gerald L. Sharp
City/Borough Attorney

GLS:jr
Enclosure

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811
Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

*all in favor
except Tischer
296/3022*

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 1

Page 35, line 4:
After "request" insert "by a member of the governing body"

Page 35, line 5:
Delete "and"

Page 35, line 6:
After "request" insert "by a member of the governing body"

Page 35, line 8:
Delete "." insert ";"

Page 35, after line 8:
Insert "(4) a municipal employee or official, other than a member of the governing body, may not participate in any official action in which the employee or official has a substantial financial interest.

(b) If a municipality fails to adopt a conflict of interest ordinance within 180 days after July 1, 1983, the conflict of interest provision of this section is automatically applicable to and binding upon that municipality."

Page 35, line 9:
Delete "(b)" and insert "(c)"

Page 163, line 24:
Delete "allocable" insert "allocatable"

Alaska State Legislature



Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski

Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 2

The following changes are proposed by ^{Phillips} ~~Ginny~~ Chitwood, Alaska Municipal League.

Page 68, lines 5-7:
Delete section 29.26.250.

Page 68, line 15:
Delete "grounds of", insert "reasons for".

Page 68, line 24:
Delete "grounds" insert "reasons".

Page 69, lines 20,24:
Delete "25", insert "35".

Page 71, line 18:
Delete "grounds of" insert "reasons for".

Explanation: The issue of determining the sufficiency of grounds for a recall election was discussed by the committee. It appeared that a consensus was reached to eliminate the requirement for providing legal grounds to conduct a recall election and to increase signatory requirements for the petitioners.

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 3

Page 76, lines 19 and 20:

Delete "determine fair market value" insert "acquire the certificate, equipment and facilities of the carrier, or that portion of the certificate that would be affected".

Explanation: The right of eminent domain is not used to determine fair market value. The determination of fair market value is a step in the process of exercising eminent domain. As written, the statement may not meet the intent of allowing municipalities to exercise the right of eminent domain to acquire certificates or property.

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 4

Page 126, line 3:
Delete "\$100,000.00" insert "\$20,000.00".

Explanation: During Committee review of House Bill 172, there appeared to be a consensus of the committee that the minimum value of property to be foreclosed upon without notification to the owner by certified mail is too high (\$100,000.00).

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 5

Page 204, lines 7 and 8:
Recommend change to read:

Sec. 85. AS 29.45 "as enacted in Sec. 11 of this Act is effective on January 1 of the year following enactment.

Explanation: HB 172 may be enacted into law in 1983 or 1984, depending on legislative action. The amendment will avoid the possibility of a "split" tax year and will provide time for municipal planning purposes.

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 6

The attached letter of intent and proposed language for implementation was prepared during hearings of SB 1, comparison legislation to HB 172.

Present law requires first class and home rule cities in the unorganized borough to accept the responsibility for delivery of Educational services. It is perceived that the requirement to be responsible for educational services may be a deterrant to certain cities or areas to organizing or upgrading to first class or home rule status. The opposition for a city to assume the educational powers could come either from an existing REAA or the city.

The proposed change to HB 172 would resolve the issue of the assumption of education powers by vote of the residents in the city and in the REAA.

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811
Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 7

During Committee review of HB 172 there was discussion but no apparent consensus concerning the exemption of greenhouses from assesement at full valuation for taxation purposes (Page 109, line 22).

The existing law does not give special treatment for greenhouses. The intent of providing special tax treatment for farm lands (not including barns, houses, sheds, etc.) was to assist the farmer in resisting the pressures of urban growth rather than being forced to subdivide farm land because of inflated land values. The effect of the new language is to provide a special tax treatment for greenhouses, including commercial greenhouses raising ornimental flowers.

Alaska State Legislature



Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski

Room 104
State Capitol
Juneau, Alaska 99811
Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 8

Sec. 29.45.030 dealing with required tax exemptions contains new language that defines "developed" for the implementation of a required federal tax exemption (Page 105, line 10). The new definitions are supported by Alaska Native Corporations and are opposed by municipalities. Similar definitions were added as last minute floor amendments during legislative action on the municipal code revision in 1982 which were, in large part, responsible for the subsequent Governor's veto.

In that the purpose of HB 172 is to administratively revise Title 29 into a usable document and not to make substantive or controversial changes, staff recommends that all new materials pertaining to the federal tax exemption, including references to reverting to an undeveloped state, be deleted from HB 172 and that the issue be addressed in separate legislation.

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

MEMORANDUM

TO: Committee on Community and Regional Affairs

FROM: Staff

DATE: April 25, 1983

RE: House Bill 172 proposed amendment number 9

The attached amendment proposed by representatives of utility companies is a significant change from present law.

The net effect of the amendment is to prohibit municipalities from regulating utilities unless the type of regulation proposed or the particular utility is also subject to regulation by the Alaska Public Utilities Commission. Stated in another way, if the Alaska Public Utilities Commission does not or can not regulate a utility or a matter pertaining to a utility, then a municipality may not impose a regulation.

Present law provides municipalities the power to regulate utilities and matters pertaining to utility services to the extent the utilities are not regulated by the Alaska Public Utility Commission.

In several instances, the regulation of a condition of service by a utility company, or the regulation of a utility company is optional for the Public Utilities Commission, or optional for the utility.

In cases where utilities are not regulated by the Alaska Public Utilities Commission, municipalities generally feel they need to have the authority to exercise regulatory powers. On the other hand, utility companies believe that; if the Alaska Public Utility Commission does not regulate them, then the municipalities should not have the authority to provide regulation.

City of Fairbanks

MEMORANDUM

APR 2 '84

The Fairbanks City Council has requested the attached Resolutions, passed and approved at their meeting of 3/26/84, be forwarded to your office.

Thank you,

Carma Roberson

Carma B. Roberson, City Clerk

Introduced by: Mayor Bill Walley
Date : March 26, 1984

RESOLUTION NO. 2515

A RESOLUTION REQUESTING THE THIRTEENTH
LEGISLATURE TO ADOPT THE REVISED ALASKA
STATUTE TITLE 29 AS PROPOSED.

WHEREAS, Title 29 of the Alaska Statutes, the Municipal Code,
has not been revised since 1972; and

WHEREAS, eleven years of amendments to Title 29 have created a
confusing patchwork that is very difficult to read and understand; and

WHEREAS, the proposed revision of Title 29 reorganizes and
clarifies the Municipal Code without making major policy changes; and

WHEREAS, major policy changes to Title 29 should be considered
in separate legislation in order to keep the Title 29 revision a "clean"
bill;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY
OF FAIRBANKS, ALASKA, as follows:

SECTION 1. That the thirteenth legislature is respectfully
requested to adopt in this legislative session the revised Title 29, of
the Alaska Statutes, as proposed, without any controversial amendments.

SECTION 2. That the City Clerk is hereby directed to send to
each member of the thirteenth legislature a copy of this Resolution.

PASSED and APPROVED this 26th day of March, 1984.

Bill Walley
BILL WALLEY, Mayor

ATTEST:

Carma B. Roberson
CARMA B. ROBERSON, City Clerk

Introduced by: Mayor Bill Walley
Date : March 26, 1984

RESOLUTION NO. 2516

A RESOLUTION REQUESTING THE THIRTEENTH
LEGISLATURE TO FULLY FUND THE MUNICIPAL
ASSISTANCE PROGRAM.

WHEREAS, the Alaska State Legislature adopted a formula funding the program for Municipal Assistance, which is thirty percent of the previous year's corporate income tax; and

WHEREAS, that amount for fiscal year 1985 is estimated to be \$90.9 million, which is \$20.4 million more than the \$70.5 million requested by Governor Bill Sheffield in his fiscal year 1985 budget request; and

WHEREAS, the municipalities of Alaska base their fiscal planning on this formula and rely on the law; and

WHEREAS, partial and irregular funding of the formula causes major budgeting problems for municipalities because local budgets must be approved before the state budget is adopted; and

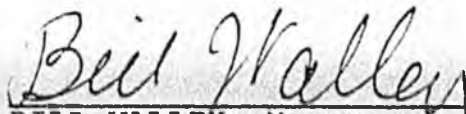
WHEREAS, reduced funding for the municipalities will result in either increased local property taxes or reduced local services;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:

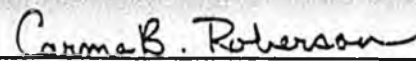
SECTION 1. That the thirteenth legislature is respectfully requested to fully fund at the statutory adopted formula the Municipal Assistance Program for fiscal year 1985 at \$90.9 million.

SECTION 2. That the City Clerk is directed to send to each member of the thirteenth legislature a copy of this Resolution.

PASSED and APPROVED this 26th day of March, 1984.


BILL WALLEY, Mayor

ATTEST:


CAFMA B. ROBERSON, City Clerk

Alaska State Legislature

Representative Milo Fritz
District 5
P.O. Box 158
Anchor Point, Alaska 99556
(907) 235-8366



While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-4833

House of Representatives

MILO FRITZ

MEMORANDUM

TO: Representative Mike W. Miller
Chairman, House C & RA Committee

FROM: Representative Milo H. Fritz
Interim Chairman, House C & RA Committee *MHF*

DATE: January 17, 1984

SUBJ: HB 172 Amendments

During the interim, my staff and I have studied HB 172 and its effects and implications. I have changes and alternatives to suggest that the Committee consider. These ideas come from my review of this legislation during the first session and an analysis of the Interim Report on HB 172. I will briefly outline my reasoning for each change in the hope that my ideas will be of assistance to you and the committee.

I believe that current amendments #2 and #7 will not have the effect which is desired, and that the legislation should be left as currently written in HB 172. Amendment #2 eliminates the "legal grounds" for a recall election. Although this would remove the legal problem of determining the sufficiency of grounds, it leaves totally open the right to pursue a recall. If any group has an inclination to start a recall, they state "a reason" and start collecting signatures. It would indeed be difficult to gather the amount of signatures necessary to have a recall election. However, the group will have received much media attention, the person who they are trying to recall has had his/her image tarnished, and the whole political process put into a state of turmoil. This is not even considering the mental anguish caused by this action.

I do not want to see any group have the ability to singularly influence the destiny of a city or borough by the use of a threat of recalling one or more members of the governing body. If we do not have the "grounds" of a "recall", we will be allowing the recall system to be used for purely political/personal interest purposes.

Amendment #7 would eliminate the exemption of greenhouses from assessment at full valuation for tax purposes. The argument against this exemption was that "the purpose of the exemption was to allow farms to continue in spite of otherwise inflated land prices, and the corresponding taxes. I believe that the greenhouses in our state also need this help. If a greenhouse is to be successful, it must have the ability to get its produce to market, which is the urban population centers. The law is written so that a highly prosperous greenhouse, will be taxed at a high "true value of farm use", thereby seeing that equitable taxes are paid. This exemption will allow our fledgling greenhouse industry a chance to grow.

Amendments #8 and #9 should be withdrawn from consideration. The 13th Legislature, as a whole and with concurrence of the Governor, has dealt with these issues by the passage of SB 260 and HB 274, respectively. This decision should be incorporated into the Committee Substitute as recommended by amendment #10.

Amendment #11 was requested by the Alaska State Hospital Association and should be judged on its merits. Their claim of discrimination against a "special" hospital seems to be valid.

Amendment #12 was placed in the Interim Report because it is a part of the information, and is an alternative. However, I strongly urge the rejection of this amendment. The differences between the two bills, were caused in a large part, by the rejection of proposed amendment #6 during the first session. I believe the Senate may change their bill or accept our version if it passes first. The proper time to discuss any remaining differences will be in Conference Committee.

Amendment #13 is a matter of housekeeping.

In addition to the Municipal Code revision, the report to the 13th State Legislature examining court decisions and opinions of the Attorney General construing Alaska Statutes revealed a problem with the local preference law. AS 04.11.502 states that one or "several questions" can be placed before the voters. The preceding paragraphs which have been updated specifically state that only one question can be placed before the voters at a time. Correcting this oversight will only take a short amendment removing the words "or several questions" from A.S. 04.011.502 (a) and (b). This action was suggested on page 78 of the report.