

ALASKA LEGISLATURE COMMITTEE FILES 1903-1904 8072

2168 HCRA HB 172 (FILE 2)

2168

the transfer, to include, but not be limited to, feasibility studies, transfer of funds and control, transfer of assets, and resolution of disputes.

B. ASSEMBLY/COUNCIL-SCHOOL BOARD RELATIONSHIPS

The League supports legislation to clarify assembly/council-school board relationships and opposes legislation which would diminish assembly/council authority in education matters.

C. PUBLIC COMMUNICATIONS

1. Education by Satellite: The League encourages state and federal governments to improve satellite communication facilities for education in the state. The telecommunications system should provide a harmonious balance of instruction for student-teacher interaction.

2. Televising of Legislative Sessions: The League urges full funding of the limited televising of legislative sessions to assure that the general public has the greatest access possible, not only to floor sessions, but also to major committee hearings and teleconferencing, but not to interfere with the normal state satellite program.

PART III PUBLIC SAFETY

A. ALCOHOL/DRUGS

1. Public Intoxication: The League supports legislation which would amend the State Alcoholism Act to include public intoxication as an offense so as to provide the court with alcoholism treatment as an alternative to incarceration in order to provide a measure of control in the initial phase of rehabilitation and, additionally, to streamline the process of involuntary commitment within the State Alcoholism Act.

2. Alcohol & Substance Abuse and Domestic Violence: The League recognizes the serious individual and public safety problems that exist in all communities in Alaska as a result of alcohol and substance abuse and domestic violence. It supports the enforcement of the Domestic Violence sections of Title 9, Code of Civil Procedure (AS 09.55.600 - AS 09.55.640) in all parts of the state as a public safety priority. It further supports financial support for shelters and programs within communities to meet the needs of victims. The League further supports the establishment and utilization of mandatory rehabilitation programs for offenders in domestic violence cases as an alternative to incarceration.

3. Drug Enforcement Units: Recognizing the state-wide and interstate nature of narcotic and dangerous drug traffic, the League recommends full state support of state-wide and metropolitan drug enforcement units.

B. PUBLIC SAFETY TRAINING

1. Local Safety Training: The demand for trained competent local police and fire departments is accelerating throughout Alaska. The League urges the Legislature to assure that full-time and volunteer police, fire, and emergency medical personnel throughout the state have access to adequate facilities and program resources for training of local safety people and to provide financial support to assist the communities who participate.

2. Public Fire Education and Arson Investigation: The League urges the state to establish a comprehensive public fire education program and a comprehensive statewide arson investigation

program, through the state fire marshal's office, that will utilize professionally trained fire educators.

3. Village Public Safety: The League supports the Village Public Safety Officer Program to include all village communities in Alaska. The League further supports the continuation and expansion of the VPSO Program, which constitutes the only access to law and order available within small rural communities. The League urges the Legislature to ascertain that adequate funding continues to be made available to provide for the salaries, support, and training of these officers.

C. COURT SYSTEM

1. Use of TV Capacity: The League encourages the Court System to make maximum use of TV capacity for arraignment, grand jury, and similar court functions to release the burden on highly trained public safety personnel.

2. Judicial Presence: The League supports the funding of a judicial system that would assure the presence of a judicial officer in each community in the state when the need arises.

D. STATE ASSISTANCE PROGRAMS

1. Police Standards Council: The League supports full state funding for the Alaska Police Standards Council to provide the training necessary for municipal police officers to meet the requirements of the Police Standards Act and recommends increased funding to the Council for specialized police training programs.

2. Detention Costs: The League recommends that costs associated with prisoner care and prisoner transportation be borne by the state. When a municipal police officer makes an arrest for a violation of either a state or municipal law, the state should assume the legal and financial responsibility for the prisoner as soon as the prisoner is presented to a magistrate or a correctional facility.

3. Civil Defense: The League supports full state and federal funding of civil defense and emergency preparedness activities, particularly in regards to emergency communications, medical and food supplies.

4. Fire Fighting Equipment: The League supports full funding for basic fire fighting equipment which meets minimum Insurance Services Office (ISO) or state criteria for small Alaska cities and fire service districts.

E. CORRECTIONS FACILITIES

1. Short Term Detention: Recognizing that corrections is a state function, the League urges the state to fund the construction and operation of short-term detention facilities within local communities, or pay the cost of construction of new facilities to local communities and contract with local communities for the care of prisoners.

2. Long-Term Maximum Security: Recognizing that the determinate sentencing provisions of the State Crime Code will increase the volume of long-term state prisoners and the fact that the Federal Correctional System which currently houses this state's long-term prisoners has reduced its level of prisoner acceptance from the state, the League urges the immediate funding and construction of a long-term maximum security correctional facility within the state.

F. ANIMAL CONTROL

The League requests an amendment to Prohibited Use of Decompression Chambers sections of Title 3, Agriculture and Animals (AS 03.60.005) to state that the use of decompression chambers shall be regulated by the Department of Environmental Conservation. DEC regulations shall contain all the information necessary to ensure the humane disposal of animals.

PART IV LAND USE

A. LOCAL OPTIONS

The League feels strongly that laws pertaining to the powers of local planning and zoning must allow for the greatest flexibility at the local level.

B. LAND SELECTION

1. Easements: The League urges modification of state statutes which encourage the undesirable practice of blanketing all waterways within municipal selections with reservations for public easements and unnecessarily encumbering patents with undefined easements. The League, however, supports the policy of preserving needed specific rights-of-way and easements which provide for present and future public access.

2. Conveyance and Land Use: The League urges (A) immediate conveyance of native and state lands presently identified and jointly agreed upon for selection, and (B) the state move expeditiously to convey lands to municipalities with the least amount of encumbrance and restrictions. ~~The League encourages~~ funding of a cooperative intergovernmental land use planning commission to expedite land conveyance that considers municipal, state, and federal lands affected by the land selection process.

3. Energy Project Sites and ^{related} Rights-of-Way: The League urges the state selection of potential hydroelectric and alternative energy project sites by providing headwater rights, sites for dam sites, corridors for water and electric transmission lines, power houses, associated substations, and all attendant facilities. ~~The League further supports the preservation of rights-of-way across all land selected and classified for the purpose of providing for future construction of public access of various types.~~

4. Fish Ladder and Hatchery Sites: The League urges that potential fish ladder and fish hatchery sites be selected by the state. The sites would be those identified by the FRED division of ADF&G and aquaculture organizations, formally organized within the State of Alaska.

5. C. HISTORIC AND RECREATION SITES

1. Monuments & Historic Sites: In order to help municipalities to retain as much as possible of Alaska's colorful and historic past, the League supports continuation of a state matching grant program and funding for acquisition, maintenance, and rehabilitation of monuments, historic sites, and rights-of-way.

2. Outdoor Recreation Sites: In order to help municipalities to provide local outdoor recreation sites, the League supports the establishment of a state matching grant program to be used to assist in the cost of projects initiated by communities to acquire, develop, or extend local outdoor recreation sites and facilities.

5. Support legislation this session to allow state to return land with proven native allotments to BIA for adjudication + conveyance to rightful owners.

A = add stream enhancement

3. Recreational Opportunities: Since many of Alaska's citizens recreate outside of local government jurisdictions in which they reside, the League urges the state to exercise its responsibility to provide a broad spectrum of recreation opportunities for all Alaskans. The League strongly supports adequate funding for improved development and maintenance of accessible parks, recreation areas, and trails.

D. COASTAL MANAGEMENT

1. Local Control: The League supports continued and maximum local control in the development, management and implementation of coastal planning and policies.

2. Extra-Territorial Planning: The League supports the concept of "extra-territorial" planning by municipalities in the unorganized borough with statutory provisions to permit the Alaska Coastal Policy Council to adopt the "extra-territorial" planning as part of the Alaska Coastal Management Program, provided that the planning process allows for participation and comment by all affected private and quasi-public parties and is mutually agreed on by affected local governments, until such time as a resource district plan is adopted.

3. Agency Review of Local District Programs: All state and federal agency comments and recommendations must be made expeditiously by these agencies prior to local government conceptual approval of the district plan.

4. Coastal Leasing: The League discourages the state from pursuing oil, gas, tideland, or mineral leasing activity in a coastal area until a local coastal management plan is in effect or the deadlines for establishment of that plan have expired.

5. Financial Support: The League encourages state financial support of the Alaska Coastal Management Program.

E. SUBDIVISIONS

1. Proof of Approval: Subdivision of land is a major factor in community development, creating patterns which have long lasting effects. Although present legislation clearly recognizes the need for regulation of subdivisions, means of enforcement are inadequate. The League supports legislation which would require proof of approval by local authorities prior to the filing of an instrument, including those filed by the state, which would change the boundaries of land and prior to any judicial partition of real property.

2. Compliance with Local Ordinances: The League urges passage of legislation which requires the State of Alaska to comply with all local subdivision ordinances and regulations in connection with state land disposal programs. The state should meet the same local requirements imposed on private citizens.

F. STATE LAND DISPOSAL

1. Improvement Funding: Recognizing the pressure on both state and municipal governments to dispose of land, the League supports a cooperative effort by the state and municipalities to dispose of land in a continuous and orderly manner. The League also supports state funding to provide planning grants, funds for necessary access roads, survey costs for land scheduled for disposal, and state, borough and city subdivision roads, sewers and utilities to meet local subdivision improvement ordinances.

2. Mandated Programs: The League continues to oppose any state mandated program regarding disposal of municipal selected land relative to timing, size, or use.

3. Compliance with Municipal Planning: The League supports state legislation or administration policy which would require state land disposals to recognize local planning efforts, such as comprehensive plans and coastal management plans, including existing or planned municipally approved trails, by means of right-of-way dedication.

PART V
TRANSPORTATION, DOCKS, AND PORTS

A. TRANSPORTATION PLANNING

1. DOT/PF Reorganization: The League supports the further regionalization and localization, where appropriate, of the Department of Transportation and Public Facilities to increase local knowledge and efficiency of the department.

2. Rights-of-Way: With the difficulty in acquiring public rights-of-way throughout the state, primarily due to different land classification and ownerships, the League supports the identification of adequate corridors for construction for public access through such lands and early acquisition of adequate rights-of-way.

3. Transportation Systems: (a) The League continues to support state planning for a state transportation system comprised of marine and land highway components. This system would embody: (1) shorter ferry runs between communities with extensions to the land highway system and by the utilization of high speed ferries and end-loading vessels with more frequent ferry service with minimal on-board facilities for passengers, and (2) transportation of freight by surface, water, and air and to include specific provisions addressing the needs of individual communities for docks, dredging, and riverbank stabilization, with priority consideration to communities not connected to the state's highway or rail system.

(b) The League urges the review of all transportation resources within a community in the development and support of transit programs to meet local mobility needs.

4. Ports and Harbors: Since Alaska's economy depends heavily upon ocean and inland water shipping, fishing, and other marine travel, the League finds the existing port and harbor grant programs to be inadequately funded and urges expansion of these programs. Major port and harbor facility plans should be prepared and developed consonant with the municipalities' plans.

B. SURFACE TRANSPORTATION

1. Railroad System: The League supports efforts towards an expanded and improved railroad system to better serve all areas of Alaska, including, but not limited to, extension to additional tide-water ports, and to link the State of Alaska with Canadian rail facilities. The League supports the transfer of the Alaska Railroad, including all present and future needed rights-of-way.

2. Highways and Trails: a. The League supports implementation of a scheduled maintenance program encompassing the entire Alaska primary road system.

b. Since the Alaska economy depends on the existence of transportation routes, the League supports the continued use and expansion of the state highways and trails systems. In view of the increased use of bicycles, the League urges that new state roads and state road construction, whenever feasible, have provisions for safe use by bicyclists and pedestrians.

c. The League urges that a program of permanent trail marking be established and funded by the state.

C. AIR TRANSPORTATION

1. Construction Assistance: The League supports an equitable approach to state construction assistance for all airports and supports the concept of continued expansions and upgrading of airports, airport facilities, and air navigational aids in Alaska. The League urges the state to provide increased levels of funding to provide for these facilities.

2. Maintenance: The League supports the adequate funding and maintenance of airports, including dust control measures when appropriate.

3. Air Service: The League strongly recommends the State of Alaska maintain the level of essential air service established in the deregulation act for Alaska communities to maintain the provision that allows these communities to be served by large (jet) aircraft.

4. Land Transfer: The League supports transfer to municipalities of federal and state lands to provide for needed construction and expansion of municipal airport facilities and operations.

D. MARINE TRANSPORTATION

1. Citizens Advisory Committee: The League supports creation of a marine highway citizen's advisory committee to develop an action plan for correcting maintenance, scheduling, reservations, and personnel attitude problems and for implementing a program of major and minor in-state ferry maintenance.

2. Expansion of the Alaska Marine Highway: With the ongoing development of natural resources in Alaska, the League supports legislation which will expand the Alaska Marine Highway to Western Alaska and improve transportation to tie the Central Alaska ports in with the Aleutian Alaskan ports, and further supports the expeditious procurement of a number of appropriate ocean going vessels to accomplish the expansion of the Alaska Marine Highway System.

3. Efficiencies in Operation: The League supports efforts to provide efficiencies in the operation of the Alaska Marine Highway System providing these efficiencies are based on publicly available economic and technical data. However, the League strongly objects to any reduction in existing marine highway systems and strongly urges community input be required prior to establishing marine highway rates, schedules, and operational changes, and requests public input for studies affecting the operation of the Alaska Marine Highway System be solicited on a state-wide basis.

4. Jones Act: The League urges the state join in requesting modification of the Jones Act limits on the time permitted and number of port calls in Alaska by foreign bottom ships.

5. Shipping Corridors: The League requests that the State of Alaska support mandatory shipping corridors within Alaska waters wherever local communities request such mandatory shipping corridors.

6. Acquisition: The League supports transfer to municipalities of federal and state lands to provide for needed expansion of municipal port facilities and operations.

PART VI
UTILITIES

A. STATE REGULATION

1. Grants and Loans for Services: The League supports continued funding which would make available to the various essential utilities in the State of Alaska direct grants and/or low interest loans in order that they may meet the needs of the citizens served by the utilities.

2. APUC: The League supports the current statutory exemptions which allow municipal utilities to operate in the best interest of the consumer public without regulation by the APUC.

3. Grants and Loans for Energy Sources: The League supports the concept of direct grants and low interest loans from state funds for the construction of conventional and alternative energy sources, including fossil, hydroelectric, geothermal, wind power, and other means, and for the exploration of alternative energy sources, in order that rates paid by the Alaska consumer for these necessary services may be set at a reasonable level.

4. Acquisition: In order to eliminate service area conflicts between municipalities and utilities, the League supports legislation which would allow municipalities to acquire the facilities of a utility under specific terms which would fairly compensate the utility.

5. Utility Relocation Costs: The League opposes any effort to shift to municipalities the cost of all non-municipal utility relocation within existing rights-of-ways associated with municipal street work.

B. WATER, SEWER, AND SOLID WASTE

1. Clean Water Act: Amendments were passed by the US Congress to allow exemption to the Clean Water Act with respect to sewage disposal in marine waters with sufficient fluctuation. The League opposes any federal regulation for implementing Section 301(h) of the Clean Water Act which would unduly burden the Alaska community in receiving these exemptions.

2. Construction Grant Program: The League strongly endorses the concept of the state paying at least 75% for sewage, solid waste facilities, and water systems constructed by municipalities under the State of Alaska Construction Grant Program and that the replacement of out-moded systems be grant eligible in the same manner as the installation of new systems. The League strongly supports appropriation levels to meet statewide needs.

3. General Fund Support: The League endorses an amendment to federal law which would allow general fund support from the State of Alaska and municipalities for operation of sewage treatment facilities.

4. Rural Facilities: The League strongly urges the state, through the Department of Environmental Conservation, to assess the needs of rural communities and service districts for adequate and appropriate water treatment and waste disposal facilities, including the need for operator training and assistance with facility maintenance.

PART VII
MUNICIPAL ELECTIONS

A. PLURALITY

The League strongly supports legislation which would permit a municipality to opt out of

the 40% plurality requirement for election to office and which would clarify the 40% rule for municipalities that continue to use it.

B. POLL HOURS

Experience has proven that extension of polling hours has not increased voter turnout and has been costly. The League, therefore, opposes legislation which would expand the hours beyond the present 8:00 a.m. to 8:00 p.m.

C. REGISTRATION

1. State Voter Registration: The League opposes legislation which would eliminate or erode the state registration system and supports efforts to improve the processing and quality of the state voter registration system.

2. On-Line Computer Access: The League supports state funding to promote immediate on-line computer access for the election supervisor offices of Juneau, Fairbanks, Anchorage, and Nome.

D. ADMINISTRATION

The League strongly supports legislation which consolidates all functions pertaining to elections, conflict of interest, and campaign disclosure into one agency.

E. DISCLOSURE RESTRICTIONS

The League opposes imposition upon local governments of campaign and financial disclosure restrictions. The League urges the Legislature to review the laws and make the reporting requirements less onerous than present, in effect. The League specifically supports legislation which would exempt from campaign disclosure and/or financial disclosure elected or appointed advisory boards as defined in the Services Areas section of Title 29, The Municipal Code (AS 29.63.090).

F. VOTER QUALIFICATION

The League supports legislation that would allow a municipality, by ordinance, to require persons to be state registered voters in, and residents of, the precinct, district, or service area in which they seek to vote.

G. QUALIFICATION FOR ELECTIVE OFFICE

The League supports legislation that would include provisions in Title 29, the Municipal Code and Title 14, the Education Code for municipalities to set qualification for all elected municipal officials including school board members.

H. TITLE 29 REVISIONS

1. Signature Requirements: The League supports legislation which would clarify the Initiative and Referendum sections of Title 29, the Municipal Code (AS 29.28.070(b)) to specify that signature requirements for petitions be based upon the last regular municipal election held just preceding the date of first circulation of the petition.

2. Recall: The League supports legislation amending the Recall sections of Title 29, The Municipal Code (AS 29.28.070) to provide that the number of signatures required to initiate a petition for recall be 35% of the number of voters voting in the last regular municipal election

for that office regardless of population of the municipality, and to make recall procedures clearer, including provisions to make the grounds more specific.

PART VIII
LOCAL GOVERNMENT POWERS

A. LOCAL AUTONOMY

1. Effective Local Government: Because certain restrictions currently exist in the Alaska Statutes which impede effective independent local government, the League supports legislation which would promote more effective and independent local government in all organized boroughs and cities, and opposes any legislation which unduly restricts local government operations.

2. Lobbying: The League supports the continued exemption of municipal officials and employees from the lobbying reporting requirements under the Lobbying sections of Title 24, the Legislative Code (AS 24.45).

3. Anti-Trust Laws: The League supports legislation at both the state and federal levels placing municipalities in an equal posture with state governments with respect to federal anti-trust laws.

4. Enforcement of Municipal Ordinances: The League opposes state restriction on enforcement of municipal ordinances and supports legislation clearly establishing local autonomy in the creation of mandatory sentences and other remedies for violation of local ordinances.

5. Public Records: The League supports legislation ensuring that local governments are free to adopt, through ordinance or resolution, their own policies and procedures concerning local public records.

6. Utility Regulation: The League endorses the return to municipalities of the authority to regulate all utilities, other than co-op utilities and utilities that have opted out of the Alaska Public Utility Commission (APUC) regulation, within their jurisdiction to the extent not regulated or specifically exempted from municipal regulation under state law.

7. Interest on Retainage: The League supports repeal of the application to municipalities of the Public Construction Contract Payments section of Title 36, Public Contracts Code (AS - 36.90.001) relating to payment of interest on retainage on construction contracts. *(check)*

8. Eminent Domain: The League strongly supports legislation amending the Prerequisites to Taking of Private Property section of Title 9, Code of Civil Procedure (AS 9.55.270) to create a rebuttable presumption that the choice of the condemning authority has been made in a manner compatible with the greatest public good and least private injury.

9. Local Construction: Local governments should have autonomy to administer local construction projects. Title 36, the Public Contracts Code should be amended to permit local governments to establish their own notice, reporting, and prevailing wage requirements for local construction.

P. PUBLIC EMPLOYEE LABOR RELATIONS

1. Alaska Public Employees Labor Relations Act: The League strongly opposes any legislation which would force municipalities to be subject to the provisions of the Alaska Public Employees Labor Relations Act. The League opposes just as strongly any legislative efforts to

dictate the provisions of local public employees labor relations ordinances. The League supports legislation to allow each municipality at any time to reject or withdraw from the terms of the Alaska Public Employees Relations Act.

2. Binding Arbitration: The League opposes legislation imposing binding arbitration on local governments. Such legislation would hinder local governments' ability to determine their personnel costs and prevent local governments from having complete control of determining the local tax rate.

C. CLASSIFICATION OF MUNICIPAL GOVERNMENTS

The League urges the Legislature to address the classification of municipal governments, including the organization of the unorganized borough.

D. TRIBAL/LOCAL GOVERNMENT RELATIONS

The League supports and encourages efforts on the part of the Legislature and other concerned parties to address tribal/local government relations. → BZA

E. TITLE 29 REVISIONS

1. Fundamental Elements: The League encourages the Governor and Legislature to recognize the significance of the effort to revise Title 29, the Municipal Code and the importance of maintaining this legislation in a basic form and of insuring that the legislation contain only the fundamental elements and guidelines for a basic municipal code.

2. Other Proposals: The League requests other proposals which would constitute or policy revisions or innovations in the function of local government be considered in separate legislation which, if approved, would be incorporated into Title 29 once the revised basic code has been adopted.

* 3. THE LEAGUE SUPPORTS OF TITLE 29 REVISION TO ALSO ALLOW THE ELECTION AT LARGE MAYOR OF A 2ND CLASS CITY.

PART IX RESOURCES

A. NON-RENEWABLE

1. Oil and Gas Policy: The League supports a clear policy for gas and oil encouraging the exploration, production, and processing of state royalty oil and gas within Alaska with due consideration for local municipalities.

2. Energy Efficiency: (a) The League urges the federal government, the State of Alaska, and League members to design, construct, and use their facilities with an emphasis on energy efficiency, as a part of life cycle cost considerations.

(b) The League urges regionalized studies by the state recommending changes in building codes which would achieve maximum cost effective energy savings over the lifetime of new facilities.

3. Coal: In consideration of having a diversified, dynamic Alaska mineral industry and recognizing the current importance of petroleum products for energy production and the potential for a considerable coal export market, the League urges the state to vigorously encourage the development of Alaska's coal resources by private industry.

4. Mineral Policy: The League strongly urges the administration and legislature to establish a clear mineral policy to encourage resource development and in-state ore concentration and/or reduction.

5. Gas Liquids: The League strongly supports optimum use of gas liquids as feed stocks for in-state petrochemical development, with coal or other energy sources to be used for the processing.

6. Site Reclamation: The League encourages the state and federal agencies to vigorously enforce reasonable and best use of regulations for the reclamation of mined areas.

7. Alternate Fuels: The League strongly supports the use of alternate fuels (compressed natural gas), as a substitute to gasoline or diesel in areas where it is feasible.

B. RENEWABLE

1. Development and Processing Policy: The League requests that the executive and legislative branches of the state establish a policy strongly encouraging the development and processing of renewable resources in Alaska, and through appropriate inventory and management practices make all renewable resources available for development and processing on a sustained yield basis. The League encourages a federal/state policy requiring out-of-state and foreign processors to comply with federal and state regulations.

2. Study and Development: The League requests the executive and legislative branches of the state to accelerate the study, research, development, and marketing of Alaska's renewable resources.

3. Fisheries: (a) The League supports legislation for the development of aggressive and substantially accelerated marketing studies and market development for Alaska's seafood industry, with emphasis on a quality assurance program.

(b) The League requests the State of Alaska take a stronger stance in negotiating with respect to salmon interception treaties with foreign nations as well as negotiations with the North Pacific Fisheries Management Council with regards to salmon harvest quotas. The League urges the state to carefully evaluate, identify, and attempt to minimize the negative economic impact to communities caused as a result of these negotiations.

(c) The League urges the state to provide adequate funding for the full operation of viable FRED hatcheries and continue to support and provide sufficient loans to regional non-profit aquaculture associations for expansion of their programs.

(d) The League encourages the state to support modification of the Fisheries Management Act (FMA) so that the North Pacific Fisheries Management Council has a greater representation of Alaskan delegates.

(e) The League urges the State of Alaska to take a stronger stance in negotiating with the North Pacific Fisheries Management Council in opposition to the proposed share-quota system in the halibut fishery.

4. Agriculture: The League supports state encouragement of agriculture through farmland preservation and opening up of new agriculture lands, with adequate road access within a farm area and by encouraging the development, processing, and marketing of Alaska agriculture products.

C. HUMAN RESOURCES

1. Alaska Hire: The League supports and encourages, within the confines of the constitution and human resource limitations, any efforts on the part of the Governor and the Legislature to implement an Alaska hire policy particularly within state government.

2. Resources of Institutions of Higher Learning: The League encourages the Legislature and Administration to use both human resources and technical resources of the institutions of higher learning inside the state over institutions outside the state.

3. Training Incentives: The League supports the development of incentives that would encourage contractors and other employers to train and apprentice local workers and encourage their employment.

4. Day Care: The League supports state funding for day care at a sufficient level to insure that a high standard of day care is available to Alaska families who desire day care and pre-school services.

D. PLANNING

1. Resource Development Projects: The League supports resource development and funding policies which provide that state assisted resource development projects substantially impacting communities should be approved by the municipalities.

2. Waste Disposal: The League encourages the state to maintain high standards concerning waste disposal from processing of all resources.

3. Cooperative Planning: The League recognizes the many of the state's most valuable resource lands are already under private control through mining claims, leases, and conveyances pursuant to the Alaska Native Claims Settlement Act. Thus, in furthering its goals of both resource development and the protection of Alaska's environment, the League urges meaningful, cooperative planning between the state, municipalities, and appropriate private parties, particularly Alaska Native Corporations.

PART X ECONOMIC DEVELOPMENT

A. IMPACT

The exploration, development, and industrial utilization of renewable and non-renewable resources, both inside and outside municipal boundaries, creates a substantial and immediate impact on the need for municipal facilities and services which exceeds the financial ability of most municipalities to meet in the short period of time available to have such facilities and services operational. The League urges adoption of legislation which would provide financial assistance to municipalities which are facing such impacts. Such legislation needs to establish criteria for impact assistance with appropriate trigger mechanisms to activate such assistance.

B. INCENTIVES

1. Resources: The League supports legislation that will aid in the exploration, development, and in-state processing of Alaska's raw materials and vast mineral wealth, and urges the state to provide incentives to those industries engaging in in-state primary and secondary processing of Alaska's resources.

2. Economic Development: The League urges that legislation be enacted to allow local municipalities to adopt and implement incentives for economic development, such as economic development corporations and tax increment financing authorities.

3. Permanent Fund: The League supports maximum investment of the Permanent Fund in the state.

C. PAPERWORK REDUCTION

The League supports a reduction of state regulations requiring redundant reports for small business and local governments.

D. LOANS

1. State Funding: The League supports the continued state funding for small business loans. The League also supports the Alaska Industrial Development Authority concept where appropriate, but recognizes as well a need for smaller businesses and projects to obtain funding, and most importantly, the inclusion of working capital providing lower interest rates and more flexibility in its application process and provisions.

2. Financial Institutions: The League supports a program to educate the lending institutions so as to expedite loans to small businesses. The League encourages the administration to revamp current Alaska Industrial Development Authority policy to encourage greater service on the part of local financial institutions, where the business loan needs of smaller communities are not being met.

E. TOURISM DEVELOPMENT

The League recognizes the importance of tourism to the economy of the State of Alaska and encourages increased assistance to municipalities for tourism promotion and attraction programs, especially within the Visitor Information Center and Tourist Attraction Development Grant Programs administered by the Division of Tourism.

F. BONDED INDEBTEDNESS

The League supports the adoption of legislation which would raise the level of bonded indebtedness for the Alaska Municipal Bond Bank to \$300 million and approve a suitable level of bonded indebtedness for revenue bonds.

*Fill with
rewrites*

There are currently three procedures in practice within the state regarding taxation of motor vehicles. When the present statute [AS 28.10.411 (d)] was written, it took into account only one of those practices, leaving the other two as problem areas.

In the case where a municipality has opted to have the state collect taxes on motor vehicles for the municipality, the senior citizen is exempt, and the municipality is reimbursed. That is the way the program was intended to work.

One of the problems occurs in a municipalities where a local property tax is levied on motor vehicles. Based on the current statute, the State reimburses those municipalities. However, Title 29 presently does not allow the municipalities to exempt Seniors, therefore the Senior pays the tax and the State "reimburses" the municipality, producing a double payment.

The second problem occurs in municipalities which do not tax motor vehicles. Under the current statute, the state reimburses those municipalities for revenues which they might have lost had they assessed and exempted the motor vehicles.

Currently, the Seniors complete an exemption form when they buy their license plates. That form is forwarded to the Department of Community and Regional Affairs, and the affected municipality is subsequently reimbursed based on the schedule located in AS 28.10.431 (b).

The following suggested language would correct the problems which exist under current law and would allow the State to continue with the current very simple and inexpensive administrative procedure.

AS 28.10.411 (d) The state shall reimburse a municipality for revenues lost to it under (c) of this section. The payment shall be an amount equal to the tax levied under AS 28.10.431 (b) for each vehicle for which a senior citizen exemption form is approved.

Alaska State Legislature

HB 172



FEB 7 1983

Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

February 4, 1983

Mr. Wayne Mabry
Ombudsman
Municipality of Anchorage
Pouch 6-650
Anchorage, Alaska 99502

Dear Wayne:

Thank you for your recent letter regarding the lack of clarification in statutes and case history as it refers to recall petitions. I am aware of the recent problems this has caused in Anchorage and can appreciate the position you have been put in.

A complete revision of Title 29, Municipal Code, is indeed taking place again this year. Last year, as I am sure you are aware, a similar bill passed but later became mired in controversy and was vetoed. SB 1 is now in the Senate committee process and is the vehicle which is being used to address this question. Eventually, should it pass the Senate, it will be referred to the Community and Regional affairs committee in the House chaired by Representative Barbara Lacher.

I am forwarding your letter and backup to her at this time for investigation and consideration. This matter could be taken up as a separate issue or incorporated as part of the overall Title 29 examination. In any case, it warrants investigation and Representative Lacher's committee has proper jurisdiction over this matter. I will keep in touch with her to monitor the progress on this situation. You may wish to contact her as well at 465-4894.

I hope we can reach an acceptable solution. Please feel free to contact me at any time if I can be of assistance.

Very truly yours,

Joe L. Hayes
Speaker

JLH/jkd

Barbara- Joe has asked
that you take this into
consideration as you review
Title 29- Thader.
JLH

Municipality
of
Anchorage



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FEB 3 1983

OFFICE OF THE OMBUDSMAN

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February 1, 1983

Joe L. Hayes, Legislator
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Joe:

I have recently investigated a complaint about a recall petition for a Municipal Assemblyman. My investigation found that the State Law (AS 29.28.130) on recall petitions is not clear as to the legislative intent regarding a clerk's authority and/or responsibility. The legal opinions regarding similar cases are, in my view, conflicting. In the case I reviewed, the Anchorage Municipal Clerk ruled that the "grounds" stated in the recall petition did not "constitute incompetence or failure to perform prescribed duties" and rejected it. The Municipal Clerk's decision was based on several legal opinions which stated the Clerk had the responsibility and authority to review the grounds based on the word "content" in AS 29.28.160.

My case summary disagrees with those legal opinions and states that a recall petition can only be rejected for one of the reasons stated in AS 29.28.150. I feel that no individual can rule the grounds for recall insufficient except the voters in a duly called recall election. A copy of my case summary is enclosed with four attachments covering the legal opinions. Also enclosed is a copy of the Anchorage Municipal's Clerks January 11th letter to the complainant, Tom Staudenmaier.

I understand that you are involved in revising this portion of the Alaska Statutes and ask that you review my case summary. I would appreciate your comments on this problem and would like to be informed of any proposed changes to this state law. Also, if any hearings are being planned, please let me know as I would like to testify.

February 1, 1983
Recall Petition
Page 2

If you have any questions, please don't hesitate to call.

Sincerely yours,

Wayne

Wayne D. Mabry
Ombudsman

WDM:s1

cc: Ruby Smith, Municipal Clerk
Jerry Wertzbaugher, Municipal Attorney
Steve Morrissett, Matanuska-Susitna Borough Attorney
Tom Staudenmaier, complainant

Attachments



3 JUN 83 11:30

PETITION FOR RECALL

OF GERRY O'CONNOR, ASSEMBLYMAN

SECTION (2) TWO, SEAT C

507
91
16

P.O. BOX 8-9110
ANCHORAGE, AK
694-4982
694-2322

We the undersigned registered voters of Section (2) two, Seat C, of the Municipality of Anchorage, which includes Fort Richardson, Eagle River and Chugiak, hereby petition for the recall of Assembly Member Gerry O'Connor under the Anchorage Municipal Charter, Article III, Section 3.03, Recall; Title 29, Section 29.28.140 for incompetence and failure to perform prescribed duties.

Said recall is based upon dereliction of duty of this representative of Eagle River and Chugiak. At the December 2nd, 1982 Municipal Assembly Meeting, Gerry O'Connor joined Tony Knowles, Mayor of Anchorage and voted to increase property taxes up to 50%. His other past actions and this tax increase are contrary to the best interest of the citizens of Eagle River and Chugiak.

Print first and last name	Signature	Date	Full Residence Address (No P. O. Box Numbers)
1. TEASNE BLATTOT	Teasne Blattot	12-31-82	58 2 Box 2344 Eagle River AK 99577
I.A. Christopher Walters	Chris Walters	12/31/82	PO Box 1334 Chugiak
I.B. Roger R Rasmussen	Roger R Rasmussen	12/31/82	P.O. BOX 447 Eagle River 99577
II.A. Sung Laining Cell	Sung Laining	12/31/82	133 Marlene St E.R. 99577
NR RONALD WILD	Ronald Wild	12/31/82	551 Box 3505 Chugiak AK
NR SHARON WILD	Sharon Wild	12/31/82	"
#7. Clifford Wilson	Clifford Wilson	12/31/82	PO Box 1252 Chugiak 99567
8. RITA E WILSON	Rita E Wilson	12/31/82	Box 1252 Chugiak 99567
9. FRANK CAPPAS	Frank Cappas	12-31-82	Box 7713 Chugiak AK 99577
10. FRANK CAPPAS	Frank Cappas	12-31-82	"
11. CHARM KIDDY	Charm Kiddy	1-2-83	Box 70 citation ER 99577
12. LESTER KIDDY	Lester Kiddy	1-2-83	" " " " "
13. RA Morris	RA Morris	11/2/83	Lot 6 Blk 4 Horizon
II.A. FRANK CAPPAS	Frank Cappas	1/7/83	2011K 5 Mountain View
15. JENNIFER LEGAT	Jennifer Legat	1/7/83	28 CARIBOU
II.B. FRANK CAPPAS	Frank Cappas	1/2/83	Box 393 Eagle River AK

Date Petition Started: Dec. 29, 1982

ALASKA CONSERVATIVE POLITICAL ACTION COMMITTEE

Paid for by AKC-PAC Tom Staudenmaier, Chairman P.O. Box 11-9110 Anchorage, AK 99508

Municipality
of
Anchorage



POUCH 6-650
ANCHORAGE, ALASKA 99502-0650-
(907) 264-4311

OFFICE OF THE CLERK

January 11, 1983

Mr. Tom Staudenmaier, Chairman
AKC-PAC
P.O. Box 8-9110
Anchorage, AK 99508

RECEIVED

JAN 11 1983

OFFICE OF THE OMBUDSMAN

Dear Mr. Staudenmaier:

On January 3, 1983, you presented to the Municipal Clerk a petition for recall of Assemblyman Gerry O'Connor. In accordance with AS. Section 29.28.160, the Municipal Clerk shall, within 10 days, review the petition for content and signatures and shall certify on the petition whether it is accepted or rejected.

A review of the signatures was made and of the 509 signatures, 354 were registered voters. In reviewing the grounds, the petition was found to be insufficient because the act i.e., voting on the municipal budget, does not constitute incompetence or failure to perform prescribed duties.

It is the decision of the Municipal Clerk the petition is insufficient and it is therefore rejected and will be filed for public record.

A copy of the legal opinion from the Municipal Attorney is enclosed for your information.

If you have any questions, please contact this office.

Sincerely,

Ruby E. Smith
Ruby E. Smith
Municipal Clerk

Municipality of Anchorage

MEMORANDUM

DATE: January 20, 1983
TO: Ruby Smith, Municipal Clerk
FROM: Office of the Ombudsman
SUBJECT: CASE SUMMARY, NO. 82-3

The following case summary is provided for your information and review. If you have any questions, clarifying information, or comments regarding our determination or any other aspect of the case, please bring them to our attention so that we can incorporate them into this summary.

CASE SUMMARY

Investigator Wayne D. Mabry In Date: 1-11-83 Close Date: 1-17-83

Category: MUNICIPAL CLERK'S OFFICE

Complaint Summary: The complainant presented a petition for the recall of Assemblyman Gerry O'Conner to the Municipal Clerk's office on January 3, 1983. On January 11, 1983, the Municipal Clerk rejected the petition as being insufficient on the grounds that "voting on the Municipal budget does not constitute incompetence or failure to perform prescribed duties". The complaint is that the Clerk's office does not have the authority under state law (AS 29.28.160) to rule on the alleged grounds.

Case Description: The complainant approached this office on January 3, 1983, after delivering the petition to the Clerk's office, and wished to file a complaint that the petition was going to be rejected based on an opinion by the Municipal Attorney. The complainant felt the Clerk had no right to solicit the Municipal Attorney's opinion. On that date, I informed the complainant the Clerk did have the right to solicit the Municipal Attorney's opinion and since no action had been taken by either the Clerk or the Municipal Attorney, this office could not investigate.

Based on the complainant's contact I did discuss the matter with the Municipal Clerk and Attorney explaining that an official complaint was probably going to be filed with this office if the petition was rejected. At that time, neither the Clerk nor the Attorney had made their determination; a reply by the Clerk to the petition was required by January 11, 1983.

In anticipation of a complaint being filed with this office and a decision to look into the matter on this office's "own motion", I then contacted the Matanuska-Susitna Borough attorney's office and the State Attorney General's office in Anchorage. I spoke with Steven H. Morrissett, Matanuska-Susitna Borough Attorney, about recall petitions because his office has gone through several in the last few years. Mr. Morrissett had given his opinion on the last recall petition filed in the Borough in a memorandum dated August 13, 1981, (attachment #1) which determined that the recall petition was insufficient. I provided a copy of this memorandum to the Municipal Clerk.

On January 11, 1983, the complainant came to this office to lodge a formal complaint based on the Clerk's rejection of the recall petition he had filed. His specific

complaint was that the Municipal Clerk did not have the authority to review the grounds and determine if they constituted "incompetency or failure to perform prescribed duties". I explained to the complainant that this office would accept the complaint and open a case file; however, any recommendation from this office could not change the outcome. Furthermore, the only possible way to change the outcome of the Clerk's decision is through the court system. This was based on my assumption that once the Clerk made a decision, within the 10 day time limit allowed by state law, there is no mechanism to allow the Clerk to change that decision.

I contacted Mr. David LeBlond at the State Attorney General's office. He helped me locate two memorandums regarding recall that had been prepared by the Attorney General's office in 1977. I went to the Attorney General's office, reviewed their files and made copies of the two memorandums regarding a recall petition of a School Board member located in the upper Railbelt School District. In this case there was no municipal clerk involved to handle the recall petition, so the Commissioner of the State Department of Education was handling it. [Later in this Case Summary, I will be quoting from the memorandums by the Assistant Attorneys General, Roger W. Pegues, dated April 12, 1977 and Ronald W. Lorensen, dated June 6, 1977 (attachment #2, #3).]

I then met with the Municipal Clerk, Ruby Smith, to discuss her decision and she informed me that she had contacted numerous Municipal Clerks around the State and had requested an opinion from the Municipal Attorney, Jerry Wertzbaugher. Ms. Smith tended to agree with my analysis that the term "content" in Section 29.28.160 of the State Statutes, Examinations of Sufficiency, did not relate to determining if the grounds stated in the recall petition were sufficient. She made her decision based on legal opinions she had reviewed and discussions with other clerks around the State, giving the overwhelming opinion that state law did require her to rule on whether the grounds constituted "incompetence or failure to perform prescribed duties". Ms. Smith had contacted Mr. Rubini of the State Attorney General's office in Juneau and the discussion included the opinion by the lawyer that the petition was valid and should go on the ballot. When Ms. Smith requested this opinion in writing the response was that the State Attorney General's office would not give an opinion as the Municipality of Anchorage had an attorney for that purpose.

Basis for Determination: After my first contact with the complaint I reviewed a copy of the applicable state law regarding recall petitions. My first impression of the state law was that there was no legislative intent to have municipal clerks across the state of Alaska determine if the grounds stated in a recall petition were, in fact, "misconduct in office, incompetence, or failure to perform prescribed duties". I then discussed this concept with the Municipal Clerk and the Municipal Attorney, but neither had yet formed a specific opinion although the Municipal Clerk did tend to agree with my concerns. I then met with the Matanuska-Susitna Borough attorney and also reviewed the files of the State Attorney General's office here in Anchorage. There were several other memorandums in the State Attorney General's files regarding recall petitions, but the two attached were the only ones that related to the specific question of "content".

In reading the January 11, 1983, opinion by Jerry Wertzbaugher, Municipal Attorney, (attachment #4) to the Municipal Clerk, I find that his basic premise revolves around the word "content" located in Section 29.28.160 and that this word "content" means the Municipal Clerk can determine if the grounds stated in the recall petition are in fact grounds for recall as stated in Section 29.28.140. Mr. Wertzbaugher's memorandum goes to great lengths to prove that the term "content" could only refer to the statement of grounds.

My position regarding the term "content" as used in the state law is that it does not nor could not refer to the grounds. In the State Statutes regarding recall petitions, Section 29.28.140 states the grounds for recall. Then Section 29.28.150 entitled "Petition" states:

- (a) A petition seeking recall of one or more municipal officials is filed with the Municipal Clerk. The petition shall contain
- (1) the signatures and residence addresses of a number of voters as prescribed in §70(b) of this chapter for initiative and referendum;
 - (2) the date each voter signed the petition; and
 - (3) a statement of the grounds of the recall stated with particularity as to specific instances; B. A petition for recall must be filed with the Clerk within 60 days after the date of the earliest signature on the petition. (§2 ch 118 SL 1972)

Then comes Section 29.28.160, Examination for Sufficiency. It states "The Municipal Clerk shall review the petition for content and signatures and shall certify the petition within 10 days of the filing date whether it is accepted or rejected" In my non-legalistic mind it appears that the term "content" in Section 29.28.160 refers to the words "shall contain" in Section 29.28.150 and the only thing the Clerk can look at relating to the grounds is stated in number 3 above: that the grounds will be particular and specific. There is nothing in the law that says the Clerk can determine if the grounds, if assumed to be true, must fit the test of being "misconduct in office, incompetence or failure to perform prescribed duties". As stated in Mr. Morrisett's August 13, 1981 memorandum, I feel the charges must be definite enough to allow the public to determine the truth or falsity of those charges. Mr. Morrisett's memorandum rejecting the recall petition submitted was rejected on the basis that all five charges were too vague and would not give the voter a chance to determine if the Assemblyman should be recalled or not. I think Mr. Morrisett's memorandum tends to support my opinion because the reason for rejecting that recall petition was based on vagueness.

Also, two other recall petitions in 1980 were accepted by the Matanuska-Susitna Borough Clerk based on grounds related to how a particular Assemblyman voted on issues similar to the one in this case (copies of the two 1980 petitions are attached to Mr. Morrissett's memorandum).

It is difficult for me to imagine that the legislative intent was to have any clerk make this decision on the grounds for recall as it could relate to one or more of their bosses. If the clerk is appointed by a manager, the clerk's action could be construed as a political move by the administrative branch against the legislative branch. This would be a terrible position for a clerk to be put in; to have to say one of the members of the legislative body is guilty of "incompetence, misconduct in office or failure to perform prescribed duties" and could put a clerk's job in jeopardy.

The April 12, 1977 memorandum from the Assistant Attorney General regarding the recall of a School Board member states "The recall petition must contain a statement of grounds 'with particularity as to specific instances.'" The petition in question stated that its aim was to correct the incompetency of the School Board and cited two particular instances: "(1) the Board's approving a new position of Assistant Superintendent and (2) the Board's approving funds for a computer." The memorandum further goes on to state:

It is not the role of the officer charged with ascertaining the petition's sufficiency to judge the merit or truth of the grounds asserted (68 Am. Jur.2d Public Officers and Employees § 245) It suffices that the reasons have been stated and with sufficient particularity to inform the office holder and the electorate. The latter will determine the merit of the charges.

I feel these "grounds" are similar in nature to the ones filed by the complainant and these were acceptable enough to call for a recall election. Also, it is clear that the electorate should determine the merits of the charges, not the clerk.

The second memorandum from the Attorney General's office dated June 6, 1977, goes into even further detail regarding the allegations and what exactly can or cannot be determined by the Commissioner in this case. The first part of the memorandum speaks to the fact that the allegation's truth or untruth is irrelevant to the question of whether or not the recall petition is legally sufficient. The memo goes on to say:

The decisions of those courts are virtually unanimous in their holding that the question as to whether or not the charges contained in the

petition are true or false is irrelevant. ... the only question to be decided is whether or not the charges which have been made are sufficiently specific to allege incompetence or misfeasance if they were in fact true. ... 'recall is political in nature and it is for the people and not the courts to decide the merits of the reasons stated in the petition'.

Further, the memo goes on to say:

In those states where the power of recall is constitutionally established, the courts have viewed recall as a 'fundamental right' and have consistently said that statutes dealing with recall should be liberally interpreted and that any restrictions which are placed on the power of recall must be strictly construed. ... Consequently, neither you nor the Board may determine the propriety of the policy in this area or the sufficiency of the petitions based on potential factual inaccuracies. A good general description of the judicial approach to recall can be found in State ex rel. Citizens Against Mandatory Bussing v. Brooks, 492 P.2d 536 (Wash., 1972):

First, in determining the validity of recall charges, courts are limited to examination of the charges stated and cannot inquire into factual matters extraneous to the allegations. Second, courts must assume the truth of the charges in determining whether legally sufficient grounds for recall

have been stated. Third, just as there can be no inquiry into the truth or falsity of the charges, there can be no inquiry into the motives of those filing the charges. Fourth, recall charges are sufficiently specific if they are definite enough to allow the charged official to meet them before the tribunal of the people.

These statements lead me to believe that rejecting the petition because the grounds are political is invalid as everything a politician does is political. Also, rejecting the petition because it does not fit the definitions of "incompetence or failure to perform prescribed duties" is a right that can only be exercised by the voters.

My concern is if the legal opinion stated by Jerry Wertzbaugher and Steven Morrissett is correct. Then, what I hear this saying to those voters who wish to submit a recall petition, is to make allegations that, although possibly blatant lies, could be determined non-political statements and therefore allow a recall election. I do not think this concept is the intent of the state law. I totally agree with the statement that the recall petition is a "fundamental right" and that these petitions should be liberally interpreted and that restrictions placed on the power of recall must be strictly construed. Otherwise, the voters, as in this case, are not being allowed their fundamental right to a recall election.

Based on all of the above information, my opinion is that the state law does not allow the Municipal Clerk to review the content of a recall petition as it relates to the grounds for recall as stated in the state law, I have determined this case to be JUSTIFIED.

Note: I did not seek another legal opinion for two reasons. The first is my assumption that this matter will have to be settled in the courts which will generate additional legal opinions. Secondly, I felt I had enough information on which to base my determination.

Case Action:

This investigation leads me to the opinion that the state law needs to be revised in such a way that this question of content can be cleared up and made very specific as to what the legislature's intent is in regards to review by any municipal clerk within the State. Based on that I will be forwarding my memorandum on to members of the State Legislature who are interested in amending the Alaskan Statues regarding recall petitions. It is my understanding that some changes were recently passed by the State Legislature but vetoed by the Governor.

January 20, 1983
R. Smith, Municipal Clerk
Case Summary 82-3
Page 7

In my discussions with the complainant I stated that I felt the recall effort was premature if based on a Municipal tax increase. My reasoning is that approving the budget does not automatically raise taxes. Taxes are set in April or May by the Assembly only when it approves a specific mill rate for each Municipality service area. At this time the Assembly still retains the option to not raise the mill rate which, in effect, would lower the budget.


WAYNE D. MABRY, OMBUDSMAN

WDM:s1

Attachments (4)

cc: Complainant
Assembly Representatives
Jerry Wertzbaugher, Municipal Attorney
Steve Morrissett, Matanuska-Susitna Borough Attorney



Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-3246

BOROUGH ATTORNEY'S OFFICE

August 13, 1981

RECEIVED

JAN 07 1983

OFFICE OF THE OMBUDSMAN

ATTACHMENT
#1

MEMORANDUM

To: Evelyn Thompson, Borough Clerk
From: Steven H. Morrissett, Borough Attorney
Subject: Recall of an Elected Official--Procedures

The recall of an elected official is governed by AS 29.28.130--.250. Any elected official of the Borough may be recalled by the voters after he or she has served six months in office, subject to the provisions of those sections. The subject of this memorandum is discussed in relation to a petition received on August 6, 1981, to recall Assemblyperson Dorothy Jones.

Recall Charges

It is for the voters to decide whether the charges in the recall petition are true and, if true, whether they are enough reason for recalling the elected official. However, it is the duty of the Borough Clerk to determine whether the charges alleged, if taken as true, constitute "misconduct in office, incompetence or failure to perform prescribed duties" within the meaning of the law. Bocek v. Bagley, 505 P. 2d 814 (Wash 1973). AS 29.28.140.

The requirement that reasons be provided means that a recall petition is not sufficient if it is submitted solely for political reasons. However, the Clerk must look only to the language of the charge in determining whether adequate reasons are alleged in the petition.

Charges must be made which "state the grounds with particularity as to specific instances." AS 29.28.150(a)(3). An allegation of "misconduct", for instance, must be supplemented by specific facts which demonstrate "misconduct". The charges must be definite enough to allow the public to determine the truth or falsity of the charges. If even one charge, or if all together meet these requirements then the petition is sufficient.

"Misconduct in office" includes any wrongful conduct which affects or interferes with performance of official duty and includes misfeasance or malfeasance: the performance of a duty in an improper manner or the doing of an unlawful or unethical act. Knowledge by the official that the act was "misconduct" may not be relevant except to the extent that knowledge is required to show misconduct.

"Incompetence" ordinarily means intellectual, physical or moral inability to carry out a required task. It may include serious ignorance of basic information or a lack of mental or emotional ability necessary to carry on the duties of the official. It would not include making decisions which were politically unpopular.

"Failure to perform prescribed duties" means a failure to carry out those responsibilities of the office set out in state or local laws. Prescribed duties are numerous, from the obligation to attend Assembly meetings unless excused, to ordering elections on the acquisition of Borough powers if requested by the voters. MSB 2.12.070(F), 2.04.050. A "prescribed" duty may be created by implication; e.g., when the Assembly as a whole is required to perform a function, it is the implicit duty of each official who is a member to aid in the performance of that function. However, it is not a "prescribed duty" of each Assemblyperson to take every conceivable action which might make that official a more informed or more popular representative. Thus, it is not a "prescribed duty" to attend meetings which are not official or are sponsored by other non-Borough organizations. It is not a "prescribed duty" of an Assemblyperson to inform all constituents of the economic impact of an Assembly decision.

On the Jones recall petition, five charges were made, as set forth in the footnote below.^{1/} The petition characterizes these charges as "incompetency and/or failure to perform prescribed duties." However, the sufficiency of the petition is not determined by this characterization, but by whether any charge, or all of the charges together, constitutes misconduct in office, incompetency or failure to perform prescribed duties.

The first charge is that Assemblyperson Jones has generally failed to consult with constituents or keep them informed. Taking this as true, it fails to allege specific instances which would constitute

^{1/} (1) Has generally failed to consult with constituents and has failed to keep citizens informed concerning the various activities of the Borough Assembly and Borough Government; (2) Has failed to inform constituents concerning the true size and scope of Borough Government and the sources of revenues for the operation of Borough Government. This was especially true during early 1981 at Borough budget meetings; (3) Has failed to inform and/or consult with constituents concerning future property tax liabilities if and when present sources of state and federal revenues should cease to be available for the operation of the Borough Government. Specifically, she failed to discuss these matters at Borough budget meetings in 1981; (4) Has failed to recognize the desires of many constituents to lead quiet, peaceful, and uncomplicated lifestyles with a minimum of government regulation, intrusion, and interference. Has sponsored and/or voted for ordinances which interfere with privacy rights and individual freedoms of citizens; and (5) Has favored and/or voted for more expensive and burdensome Borough Government despite the objections of many of her constituents. Specifically, in May 1981, she ignored a petition signed by approximately 50 of her constituents, the purpose of which was to inform the Borough Assembly that many Borough citizens were against the addition of permanent employees to the general Borough Government staff.

statutory grounds for recall. It does not allege refusal to talk with constituents in specific cases, nor does it state the nature of the failure to inform. It is not a prescribed duty of an Assemblyperson to inform all constituents of all matters. The charge is not specifically clear to establish a valid reason for recall, nor would it generally be a sufficient charge if referenced to a specific instance.

The second charge is that Jones has failed to inform constituents concerning the true size and scope of the government and its sources of revenue, particularly during the 1981 Budget hearings. This charge sets a specific time, but is as vague as the first charge in showing an act constituting misconduct, incompetence or failure of duty. The "true size and scope of government" is no more specific a subject than "various activities". There is no categorical duty of Assemblypersons to inform all constituents of all matters in a representative form of government.

The third charge is that Jones has failed to inform constituents of future tax liability "if and when present sources of state and federal revenues should cease to be available..." This is so vague as to be impossible to respond to or for voters to determine whether the charge is true. It also fails for the reasons stated previously.

The fourth charge is that Jones has "failed to recognize the desires of many constituents..." This is strictly a "political" reason for wanting a different representative. It is inevitable that some voters will be disappointed by every action taken by an Assemblyman. The elective process is the remedy. Recall requires specific, limited grounds for removal of an official before the end of his or her regular term.

The fifth charge is that Assemblyperson Jones has voted for "expensive Borough government", despite objections and a petition signed by 50 constituents. If true, this is a charge that the elected official has acted contrary to the wishes of certain voters, not that the official is guilty of misconduct or failure of duty.

No charge states an allegation of incompetence, i.e. that Assemblyperson Jones is incapable of performing her duties. No charge alleges misconduct in office, i.e. an illegal or unethical act. Allegations directed towards claims of failure to perform prescribed duties establish no duties that were not performed. No allegation is made by the petition which is a basis for recall and which could be considered by informed voters as to its truth. The charges set forth in the recall petition are therefore insufficient. 2/

2/ This opinion is consistent with two previous written opinions of attorneys Allen Tesche and Harland Davis, provided at the request of the Clerk in 1980. Each of those opinions, issued in relation to petitions for the recall of Assemblypersons Schmall and Hitchcock, concluded that certain reasons on the petition were not legally sufficient. The charges that Schmall and Hitchcock failed to discuss "certain matters and general charges were noted not to be sufficient. However, charges of a specific instance of slander, excessive absences from meetings and illegal actions related to dismissal of the manager in violation of the law were detailed and sufficient to present to the voters.

Form of Petition Signatures

A recall petition must have a statement of the grounds of the recall stated with particularity. It must have the signature, residence address and signing date for each signer.

There is no requirement that the petition be on one page. Where the petition extends to several pages, each page should be attached to the others which form a complete petition and should be identified clearly as to the purpose of the petition to assure no signer is misinformed as to what he is signing. However, it is permissible to circulate more than one petition, each of which can be filed in a joint petition, if the form of each petition is identical.

It is preferable if each page of a petition has a full statement of the petition or a summary clearly setting forth the purpose. There is no apparent requirement that proof be provided that all sheets in a petition were circulated as a unit; some states require an affidavit to that effect.

The signatures on the petition must meet certain statutory requirements. If the area concerned by the petition in the Borough has fewer than 7,500 persons, the petition must contain the signatures of persons who are registered to vote in and living in the concerned area equal to 25% of the total number of votes cast at the last general election within that area. If the concerned area has 7,500 persons or more, the petition must be signed by voters equal in number to at least 15% of the total votes cast in the last general election in that area. In this case, the concerned area is District 5 only.

The signature must be in ink or indelible pencil. To be valid a signature must be followed by the date of signature and the person's current residence address. Each and every signature on the petition must have been signed within 60 days of the filing of the petition with the clerk.

Only those persons who are currently registered voters within the concerned area may be counted toward the petition. The petition itself is not an affidavit of residency; the required voter registration establishes the validity of a person's signature, residence and right to sign the petition. Because of the lack of specific residence addresses within the Borough, certain leeway must be granted to describing the location of residence. However, a signature may not be counted if it cannot be ascertained from the address that the person lives within the area concerned.

Processing a Petition

The municipal clerk is required to review the petition for content and signatures and accept the petition within ten days of the filing date. Until such time as the petition is accepted, any signer of the petition may withdraw his signature upon written application to the clerk.

RECALL PETITION
 THE PETITION FOR RECALL OF ASSEMBLYPERSON DOROTHY JONES

13
 11/12/81

THE UNDERSIGNED VOTERS of the Matanuska-Susitna Borough Assembly District 5, currently composed of Precincts 3, 8, 15, 17, 21, and 50, seek the recall of DOROTHY JONES due to incompetency and/or failure to perform prescribed duties. Each of the undersigned states that he/she petitions for the recall of DOROTHY JONES for each of the instances of incompetency and/or failure to perform prescribed duties cited below with or without the other, and whether such instances constitutes incompetence, failure to perform assigned duties, or both: (1) Has generally failed to consult with constituents and has failed to keep citizens informed concerning the various activities of the Borough Assembly and Borough Government; (2) Has failed to inform constituents concerning the true size and scope of Borough Government and the sources of revenues for the operation of Borough Government. This was especially true during early 1981 at Borough budget meetings; (3) Has failed to inform and/or consult with constituents concerning future property tax liabilities if and when present sources of state and federal revenues should cease to be available for the operation of the Borough Government. Specifically, she failed to discuss these matters at Borough budget meetings in 1981; (4) Has failed to recognize the desires of many constituents to lead quiet, peaceful, and uncomplicated lifestyles with a minimum of government regulation, intrusion, and interference. Has sponsored and/or voted for ordinances which interfere with privacy rights and individual freedoms of citizens; and (5) Has favored and/or voted for more expensive and burdensome Borough Government despite the objections of many of her constituents. Specifically, in May 1981, she ignored a petition signed by approximately 50 of her constituents, the purpose of which was to inform the Borough Assembly that many Borough citizens were against the addition of permanent employees to the general Borough Government staff.

THE VOTERS OF ASSEMBLY DISTRICT 5 RESPECTFULLY REQUEST THAT A RECALL ELECTION BE HELD AS SOON AS POSSIBLE.

11/10/1983
 OFFICE OF THE OMBUDSMAN
 DATE

PRINTED NAME	SIGNATURE	MAILING ADDRESS	RESIDENCE ADDRESS	DATE
✓ AE Frantz	<i>AE Frantz</i>	Box 17-351 Big Lake	Same	7-15-81
✓ JUDY RIFE	<i>Judy Rife</i>	P.O. BOX 2637 Palmer	KNICK RD 1/2 mile APT #6	7-15-81
✓ JAMES OLSON	<i>James Olson</i>	P.O. Box 17-248 Big Lake	Same Big Lake	7-15-81
✓ Raymond A Puhl	<i>Raymond A Puhl</i>	P.O. Box 17306 Big Lake	Lot 25 Burkshire	7-15-81
✓ Bethel C. Puhl	<i>Bethel C Puhl</i>	70 Box 17306 Big Lake	Lot 25 Burkshire	7-15-81
✓ Mike Winchester	<i>Mike L. Winchester</i>	P.O. BOX 17229 Big Lake	Lot 22 Butler Sub	7-15-81
✓ LOLA J JENSEN WINCHESTER	<i>Lola Jensen Winchester</i>	P.O. Box 17229 Big Lake	Lot 22 Butler Sub	7-15-81
✓ Herbert L. Riem	<i>Herbert L Riem</i>	57. RT # BOX 470 Willow	Mile 9 1/2 P H W	8-1-81
✓ MARGERIT S. RIEM	<i>Margaret S. Riem</i>	SRQ-Box 470, Willow, AK.	Mile 9 1/2, Parker Highway	8-1-81
✓ Paula Sue Apper	<i>Paula S. Apper</i>	Box 133 - Hopper Creek, AK	Mile 1 1/2 Hopper Creek	8/1/81
✓ Stephanie Cordill	<i>Stephanie Cordill</i>	P.O. Box 17048 Big Lake	mile 2 1/4 Big Lake rd.	8/2/81
✓ Mary J. Oberg	<i>Mary J. Oberg</i>	Box 17-234 Big Lake	Knollwood Heights Big Lake	8/2/81

RECALL PETITION

THE PETITION FOR RECALL OF ASSEMBLYPERSON KATHRYN R. SCHMALL

*Certified for submission to electorate
261 signatures
Engelmann
Baronoff
8.1.80*

The undersigned voters of the Matanuska-Susitna Borough Assembly District 4, currently composed of precincts 18, 19 and 35, seek the recall of Kathryn R. Schmall due to incompetence and/or misconduct. Each of the undersigned states that he/she petitions for the recall of Kathryn R. Schmall for each of the instances of incompetence and/or misconduct cited below with or without the others, and whether such instance constitutes misconduct, incompetence, or both.

- A. Voting at the Assembly meeting on June 3, 1980 to dismiss the Borough Manager, constituting incompetence because (1) the vote was based upon unsubstantiated charges presented at an executive session, which charges affected the character and reputation of the Manager, without allowing the Manager an opportunity to respond to the charges or confront the witnesses against him; (2) failing to publish the topic of the Manager's dismissal on the Assembly's agenda, not allowing for appropriate input from all interested segments of the community; and (3) voting to dismiss the Manager capriciously, without making any provision for a smooth administrative transition at a critical period in the development of several major economic development projects in the Point McKenzie area, generating the likelihood of great economic loss to the Borough and its residents.
- B. Voting to hold executive sessions beyond the authority granted by statutes, in derogation of the people's right to attend and observe the Assembly's deliberations.
- C. Refusing to discuss Borough Assembly actions with constituents, who have a right to know.
- D. Making slanderous remarks against the Borough Manager at the Wasilla Chamber of Commerce meeting of May 20, 1980.

RECEIVED
JAN 10 1983

OFFICE OF THE OMBUDSMAN

The voters of Assembly District 4 respectfully request that a recall election be held as soon as possible.

PRINTED NAME	SIGNATURE	MAILING ADDRESS	RESIDENCE ADDRESS	DATE
<i>John Jones</i>	<i>Roy Johnson</i>	<i>Box 513 Wasilla 99587</i>	<i>1 - ... Ave,</i>	<i>6/26/80</i>
<i>Wesley Jones</i>	<i>Wesley Jones</i>	<i>Box 513, Wasilla</i>	<i>Southway Ave</i>	<i>6/26/80</i>
<i>Charlotte Cremer</i>	<i>Charlotte Cremer</i>	<i>P O Box 657 Wasilla 99587</i>	<i>Southway Ave</i>	<i>6/30/80</i>
<i>Thomas Cremer</i>	<i>Theodore F. Cremer</i>	<i>P O Box 657 Wasilla 99587</i>	<i>Southway Ave</i>	<i>6/30/80</i>
<i>John Poljs</i>	<i>John Poljs</i>	<i>Box 525 Wasilla</i>	<i>Porter Highway + Airport Rd</i>	<i>7/4/80</i>
<i>John M. ...</i>	<i>John M. ...</i>	<i>Box 155 Wasilla</i>	<i>Suburban ...</i>	<i>7/4/80</i>
<i>Robert G. Cottle</i>	<i>Robert G. Cottle</i>	<i>P O Box 341 Wasilla</i>	<i>Recreation Area</i>	<i>7-4-80</i>
<i>Oliver Minnick</i>	<i>Oliver Minnick</i>	<i>P.O. Box 455 Wasilla</i>	<i>Suburban East</i>	<i>7-4-80</i>

If the petition is sufficient, the clerk should immediately submit it to the Borough Assembly to be placed on the ballot within 75 days of submission of the petition to the clerk. If the clerk finds that there are insufficient signatures, or that the petition is otherwise inadequate, the clerk must let the petitioners know within the ten day period for review of the petition. The petitioners are entitled to an additional ten days from the date of rejection to provide additional signatures.

If the petition is insufficient for any reason other than insufficient signatures, it must be rejected in its entirety. If insufficient signatures are provided within a supplemental ten day period, the petition shall also be rejected. A new recall petition cannot be filed for six months after rejection of the first petition.

The recall petition must be placed on the ballot within 75 days of submission of the petition. The question on the ballot must include:

- (1) The grounds for recall as stated in the recall petition.
- (2) The elected officer's response to the petition, in 200 words or less.
- (3) The proposition questions: "Shall (the elected official) be recalled from the office of (office)?
Yes ___ No ___

A majority vote on the question is required to recall an officer. Failure to recall an elected official prevents the filing of a new recall petition within six months after the election. A successful recall requires that an election be conducted for its successor at least ten but not more than 45 days after the date of the recall election, except that the election for the successor may be held at a regular election if occurring within 75 days of the recall election.



Steven H. Morrisett
Borough Attorney

RECALL PETITION

THE PETITION FOR RECALL OF ASSEMBLYPERSON KATHRYN R. SCHMALL

*certified for summary
to elect a later
able signature
Engelmann
Borough
8-1-80*

The undersigned voters of the Matanuska-Susitna Borough Assembly District 4, currently composed of precincts 18, 19 and 35, seek the recall of Kathryn R. Schmall due to incompetence and/or misconduct. Each of the undersigned states that he/she petitions for the recall of Kathryn R. Schmall for each of the instances of incompetence and/or misconduct cited below with or without the others, and whether such instance constitutes misconduct, incompetence, or both.

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- B. Voting to hold executive sessions beyond the authority granted by statutes, in derogation of the people's right to attend and observe the Assembly's deliberations.
- C. Refusing to discuss Borough Assembly actions with constituents, who have a right to know.
- D. Making slanderous remarks against the Borough Manager at the Wasilla Chamber of Commerce meeting of May 20, 1980.

RECEIVED
JAN 10 1983
OFFICE OF THE OMBUDSMAN

The voters of Assembly District 4 respectfully request that a recall election be held as soon as possible.

PRINTED NAME	SIGNATURE	MAILING ADDRESS	RESIDENCE ADDRESS	DATE
Mark Jones	<i>Mark Jones</i>	Box 513 Wasilla 99687	Southway Ave	6/26/80
Marian Jones	<i>Marian Jones</i>	Box 513 Wasilla	Southway Ave	6/26/80
Charlotte Cremer	<i>Charlotte Cremer</i>	P O Box 657 Wasilla 99687	Southway Ave	6/30/80
Theodore E. Cremer	<i>Theodore E. Cremer</i>	P O Box 657 Wasilla 99687	Southway Ave	6/30/80
John Poljs	<i>John Poljs</i>	Box 525 Wasilla	Postoffice + Airport Rd	7/4/80
John M. Munnich	<i>John M. Munnich</i>	Box 455 Wasilla	Suburban Country Club	7/4/80
Robert G. Cottle	<i>Robert G. Cottle</i>	P O Box 341 Wasilla	Recreation Area	7-4-80
John Munnich	<i>John Munnich</i>	P.O. Box 455 Wasilla	Suburban Est.	7-4-80

ATTACHMENT
#2

Hon. Marshall L. Lind
Commissioner
Dept. of Education

April 12, 1977

RECEIVED
JAN 12 1983
OFFICE OF THE OMBUDSMAN

Ayrum M. Gross
Attorney General

Petition for recall,
Upper Railbelt school
board

W: Rodger W. Pegues
Assistant Attorney General

As you requested, we have reviewed the recall petition from REAA #14, the Upper Railbelt School District. In our opinion, the petition meets the statutory requirements, and we advise that it be accepted as sufficient in form and substance. */

By law, the grounds for recall are misconduct in office, incompetence, or failure to perform prescribed duties. AS 29.23.140. The recall petition must contain a statement of the grounds, "with particularity as to specific instances." AS 29.23.150(a)(3). **/ While certain of the recall petition's allegations are vague and do not meet the statutory requirements for particularity, the petition recites that the "aim is to correct the incompetency of the School Board," and the petition states two particular instances of alleged misconduct or incompetency: (1) the board's approving a new position of assistant superintendent, and (2) the board's approving funds for a computer. Accordingly, while far from a perfect instrument, the petition does facially meet the statutory requirements.

It is not the role of the officer charged with ascertaining the petition's sufficiency to judge the merit or truth of the grounds asserted. 60 Am. Jur.2d Public Officers and Employees § 245. It suffices that the reasons have been stated and with sufficient particularity to inform the office holder and the electorate. The latter will determine the merit of the charges.

*/ This assumes that a check of the signatures results in a determination that the petition has been signed by the required number of qualified voters.

**/ AS 14.08.081 makes REAA school board members subject to recall under AS 29.23.130--250, except that the commissioner of education performs the municipal clerk's functions and the state Board of Education performs the functions of the assembly. All elected public officials in Alaska, except judicial officers, are subject to recall. Alaska Const., art. XI, § 8.

In preparing the recall ballot, you are required to include on it "the grounds as stated in the recall petition." AS 29.23.210(1). In our view, this should be interpreted to mean the grounds as stated with particularity so as to comply with AS 29.23.150(a)(3), which requires particularity. Therefore, the statement of grounds on the ballot should exclude the non-specific grounds and include those stated "as to specific instances."

The first statement of grounds in the petition (consistently ignored the will, etc.) may or may not meet these criteria. It is probably sufficiently particular to advise the officers and the electorate in the district. It does not give "specific instances." You should exercise your own judgment as to whether it should be included on the ballot based on your knowledge of the situation, i.e., if you believe that, under the circumstances, the statement adequately recites the alleged misconduct, you should include it on the ballot.

The second statement (created dissension, etc.) is facially inadequate. It states a broad conclusion without the slightest reference to a particular act or instance. It should not be placed on the ballot.

The third statement (new position) and the fourth statement (allocated funds for a computer) are particularized and give specific instances. They should be placed on the ballot.

The statements of grounds placed on the ballot are to be "as stated in the recall petition." AS 29.23.210(1). Following these allegations, the official's rebuttal or defense of not more than 200 words is placed. AS 29.23.010(2).

This is a proceeding without precedent in Alaska, and if you require additional assistance, please do not hesitate to request it.

RMP:chp

AMMUNITION
#3

June 6, 1977

Marshall L. Lind
Commissioner
Department of Education

RECEIVED

Avrum M. Cross
Attorney General

JAN 12 1983
OFFICE OF THE OMBUDSMAN

Recall petition of the
Upper Railbelt School
Board
A.G. File No. J-66-512-77

By: Ronald W. Lorensen
Assistant Attorney General

This will confirm my oral advice to you of May 19, 1977 in response to certain questions which you raised as to whether or not the charges contained in the recall petition filed in the above-referenced matter were legally sufficient to require that a recall election be undertaken. I advised you that those charges were in fact sufficient, despite some substantial questions which you had raised as to the apparent untruth of certain of the factual allegations.

While a review of the relevant school board minutes for the Upper Railbelt School District does seem to indicate that certain of the factual allegations contained in the petitions are indeed not correct, this factor, under applicable judicial decisions dealing with the question of recall elections, is irrelevant to the question of whether or not the recall petition is legally sufficient to bring on the holding of the recall election. This point has been addressed in numerous judicial decisions throughout the United States, although it has not yet been addressed in Alaska. The decisions of those courts are virtually unanimous in their holding that the question as to whether or not the charges contained in the petition are true or false is irrelevant. According to those decisions, the only question to be decided is whether or not the charges which have been made are sufficiently specific to allege incompetence or misfeasance if they were in fact true. As recently stated by the Wisconsin Supreme Court in In re Recall of Certain Officials, 217 N.W.2d 277 (1974), "recall is political in nature and it is for the people and not the courts to decide the merits of the reasons stated in the petition."

The power of the people to recall their elected officials is established by our state constitution in Article XI, Section 8 which provides as follows:

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. Procedures and grounds for recall shall be prescribed by the legislature.

In those states where the power of recall is constitutionally established, the courts have viewed recall as a "fundamental right" and have consistently said that statutes dealing with recall should be liberally interpreted and that any restrictions which are placed on the power of recall must be strictly construed. See, for example, Burns v. City of Boulder, 525 P.2d 416 (Col., 1974).

Although you and the state Board of Education may disagree with respect to the established policy behind the widespread judicial support for recall powers, and though you have substantial concerns over the truth of the factual allegations made in the petitions, neither of these areas are concerns with which either you or the Board in your respective roles in the recall procedure have any vested authority. Consequently, neither you nor the Board may determine the propriety of the policy in this area or the sufficiency of the petitions based on potential factual inaccuracies. A good general description of the judicial approach to recall can be found in State ex rel. Citizens Against Mandatory Bussing v. Brooks, 492 P.2d 536 (Wash., 1972):

This court has on numerous occasions interpreted and applied these constitutional and statutory provisions. Some basic rules may be gleaned from these prior cases. First, in determining the validity of recall charges, courts are limited to examination of the charges stated and cannot inquire into factual matters extraneous to the allegations. Second, courts must assume the truth of the charges in determining whether legally sufficient grounds for recall have been stated. Third, just as there can be no inquiry into the truth of falsity of the charges, there can be no inquiry into the motives of those filing the charges. Fourth, recall charges are sufficiently specific if they are definite enough to allow the charged official to meet them before the tribunal of the people. Finally, any one sufficient charge requires the holding of a recall election. (Citations omitted.)

Consequently, as you can see from the above, I am able to reach only one conclusion in this matter and that is that you and the state Board must proceed to hold the recall election called for under AS 14.03.001.

RML:jf

Municipality of Anchorage

MEMORANDUM

**ATTACHMENT
#4**

DATE: January 11, 1983
TO: Municipal Clerk
FROM: Municipal Attorney
SUBJECT: Petition for Recall of Gerry O'Connor, Assemblyman,
Section 2, Seat C

ISSUE PRESENTED

Are the grounds set forth in the above referenced recall petition sufficient as a matter of law under the provisions of AS 29.28.150 to permit a submission by the Clerk to the Municipal Assembly for the purpose of calling an election pursuant to AS 29.28.200?

CONCLUSION

The above referenced petition is legally insufficient and no recall election may therefore be called. Under AS 29.28.160 - .170, the Municipal Clerk is required within 10 days of submission to examine the sufficiency of the recall petition, both as to the adequacy of signatures and for content with respect to compliance with AS 29.28.130 - .150. On the basis of the authorities and the reasoning referenced below, it is my opinion that an individual assembly member's vote on an ordinance approving the municipal budget cannot, as a matter of law, constitute misconduct in office, incompetence, or failure to perform prescribed duties under the meaning of AS 29.28.140, if that vote was in compliance with state and municipal law governing ethics and conflicts of interest and if the measure passed was in all respects a lawful action.

DISCUSSION

The necessity and sufficiency of specific grounds to support a recall petition is a matter governed by applicable constitutional or statutory provisions. For this reason, the weight given to various legal precedents from other jurisdictions depends on an examination of the specific legal framework involved. Generally, there would be no examination of the legal sufficiency of grounds where the governing statute permits removal from office for any reason or where grounds must be stated in a general manner. This is the case in many states, including, for example, Colorado, Michigan, Oklahoma and Wisconsin. In those states, it is held that recall can be based merely on a disagreement with the policies of the officeholder. A different rule applies, however, where, as in Alaska, the governing statute dictates that only certain grounds are suf-

finitely at the expense of the taxpayers. And suppose the faction seeking power through recall of those in office should be successful and the first, second, or third attempt, then the ousted faction could then in turn employ the same in repeated trials to regain its lost prestige, and the interminable wrangell and turmoil would go on. This would result in the fostering and maintaining of political feuds to the detriment of society and the great expense of the taxpayers. 121 S.E. at 493.

Additional support for this conclusion is found in AS 29.28.160 entitled, EXAMINATION FOR SUFFICIENCY. That section requires that the Municipal Clerk review a recall petition for content as well as for signatures. Since a petition is required to contain only dated signatures with addresses and a statement of grounds, the term "content" could refer only to the statement of grounds. Any other conclusion would make the use of the term "content" superfluous. On this point, note that AS 29.28.170(a) provides for a supplemental petition if, and only if, it is rejected on the basis of insufficient signatures. The statute also provides that "if the petition is insufficient for any other reason, it shall be rejected and filed as a public record." (emphasis added). Obvious from the emphasized language, the legislature contemplated that the Clerk's duties include an examination of the petition for compliance with other requirements. This interpretation of the Clerk's authority is consistent with the Alaska Supreme Court's decision in Warren v. Boucher, 543 P.2d 731. In that case, the Court approved the Lt. Governor's determination that an initiative petition was "substantially the same" as a measure passed by the legislature and therefore barred from the ballot. The Court's approval of the Lt. Governor's authority in that case involved a statute which, like the one under analysis here, permitted the highest election officer of the jurisdiction to make certain threshold decisions on the validity of a petition. This is not an unusual position. In the case of Steadman v. Halland, 641 P.2d 448, the Supreme Court of Montana addressed the same issue; "We agree that the statement of grounds for recall to be included in the petition is 'part of the form of the petition' and find that the filing officer not only is 'empowered to' but is required to reject the petition when it does not comply with statutory requirements." (emphasis added) 641 P.2d at p. 453.

The inquiry need not be confined to the governing statute alone as there exists precedent from other states with similar statutory language.

In states where the law permits recall to be based on political grounds alone, the above referenced statement (or any statement for that matter) would be sufficient. It is, however, insufficient to support the grounds of incompetence or failure to perform prescribed duties.

Relative to removal from public office, the terms "incompetence" and "dereliction of duty" have well established meanings. 63 Am.Jur.2d, Public Officers, §§ 191-192. The petition describes one act allegedly constituting incompetence. The allegation does not meet judicially defined standards for "incompetence" as that term has been defined by the courts. "Incompetence" means "some demonstrated lack of capacity or ability to perform the professional functions of office", Vivian v. Examining Board of Architects, 213 N.W.2d 359 (Wisc. 1974), including physical handicap inability to perform official functions; Tafoya v. New Mexico State Police Board, 472 P.2d 973 (N.M. 1970), or other legal disqualification, incapacity, or fitness to discharge the required duty. It means want of physical, intellectual, or moral ability, insufficiency, inadequacy, want of legal qualifications. Appeal of School District of Bethlehem, 30 A.2d 726 (Pa. Super. 1943); Hughes v. Hughes, 271 P.2d 172 (C.A. 4th 1954). The allegation in the petition falls short of claiming lack of capacity, ability, or physical, educational or mental ability to perform official functions; rather the allegation merely recites an action of the Assembly to which petitioners object. Failure to perform prescribed duties means a failure to carry out those responsibilities of the office set out in state or local law. Prescribed duties are numerous, from the obligation to attend assembly meetings unless excused to voting on matters for which one is not excused on the basis of a conflict of interest. A prescribed duty may be created by implication, as for example, when the assembly as a whole is required to perform a function. It is the implicit duty of each official who is a member to aid in the performance of that function. It is not, however, a prescribed duty of each assembly person to take every conceivable action which might make that official more informed or a more popular representative. Thus, it is not a prescribed duty to attend meetings which are not official or are sponsored by other nonmunicipal organizations. It is not a prescribed duty of an assembly person to inform all constituents of the basis of his or her political decisions, nor is it a prescribed duty to follow the popular will of ones constituency on any particular issue.

While the Alaska Supreme Court has not ruled on the precise question addressed here, at least one Superior Court Judge has

Amendments to Recall Sections

- page 68*
Line 5-7
p. 68, Line 15 Sec 29.26.250 - delete
- p. 68, Line 24* Sec 29.26.260(a)(3) - change "grounds of" to "reasons for"
- p. 69 Line 20, 24* Sec 29.26.270(a)(2) - change "grounds" to "reasons"
- p. 71, Line 18* Sec 29.26.280(b) - change "25" to "35" in both places
- p. 71, Line 18* Sec 29.26.330(1) - change "grounds of" to "reasons for"

Alaska Municipal League

Ginny Chitwood
Executive Director

204 N. Franklin St.
Juneau, Alaska 99801

Phone (907) 586-1325

1 recall of municipal officials in AS 29.26.240 - 29.26.350 [AS 29.28.-
2 130 - 29.28.250]. The lieutenant governor functions in place of the
3 assembly or council and municipal clerk for receipt and review of
4 recall petitions and the conduct of recall elections.

5 * Sec. 81. AS 46.40.210(2)(A) is amended to read:

6 (A) unified municipalities [ESTABLISHED UNDER AS 29.-
7 68.240 - 29.68.440];

8 * Sec. 82. AS 47.35.010(b) is amended to read:

9 (b) The department shall, within 90 days after receiving a
10 written request that it do so, delegate its powers relating to nur-
11 series under this section and under AS 47.35.040, 47.35.050 and 47.-
12 35.060 to a municipality which has adopted an ordinance providing for
13 day care licensing under home rule powers or as authorized under
14 AS 29.35.200 - 29.35.210 [AS 29.48.035(a)(20)]. A municipality to
15 which these powers have been delegated may waive or modify any regu-
16 lation or standard established by the department under the authority
17 of AS 47.35.010 - 47.35.080 as it applies to nurseries or the applica-
18 tion of any such regulation or standard as it applies to a particular
19 day care licensee but must notify the department of any waiver.

20 * Sec. 83. The following laws are repealed: AS 04.11.400(c); AS 04.-
21 21.080(11); AS 14.56.065(b), 14.56.180(3); AS 15.13.130(6); AS 18.55.950-
22 (10); AS 19.20.015(f); AS 24.55.330(3); AS 28.35.260(a)(10); AS 29.08;
23 AS 29.13; AS 29.18; AS 29.23; AS 29.28; AS 29.33; AS 29.38; AS 29.41; AS
24 29.43; AS 29.48; AS 29.53; AS 29.58; AS 29.63; AS 29.68; AS 29.73; AS 29.-
25 78; AS 29.88; AS 29.89; AS 29.90; AS 29.95; AS 30.15.070(3); AS 30.30.170-
26 (2); AS 35.15.120(3); AS 42.06.630(6); AS 43.18.500(j)(6); AS 43.20.016;
27 AS 43.56.210(8); AS 44.47.310(5); and AS 44.85.410(4).

28 * Sec. 84. A right or liability of a municipality existing on July 1,
29 1983, is not affected by the enactment of this Act. Ordinances and

1 regulations in effect on July 1, 1983, remain in effect unless they
2 conflict with provisions of this Act. Ordinances and regulations in effect
3 on July 1, 1983, that conflict with provisions of this Act remain in effect
4 for 180 days after July 1, 1983. The terms of elected or appointed
5 municipal officials in office on July 1, 1983, are not affected by this
6 Act, and their terms expire as provided before July 1, 1983.

7 * Sec. 85. AS 29.45 as enacted in sec. 11 of this Act is retroactive to
8 January 1, 1983. - *for tobacco*

9 * Sec. 86. AS 29.45 as enacted in sec. 11 of this Act and sec. 85 of
10 this Act take effect immediately in accordance with AS 01.10.070(c).

11 * Sec. 87. Except for AS 29.45 as enacted in sec. 11 of this Act and
12 except for sec. 85 of this Act, this Act takes effect July 1, 1983.



~~SB~~ 20 April 83
HB 172 -

End page 181 (top) line 23

22 April -

Amend page 204, Line 8 -

to read beginning of tax year.

Start on amendments

28 22 March 83 - HB 172

1. P. 105 'Developed' definition -

get thurlow's opinion.

2. Class 'B' misdemeanor - throughout - too much?
definition.

~~2/3~~ 3. Page 126 - \$100,000 - too much -
\$20,000

Finished Line 3, page 126

Amend population definition on
page 161

- page 163 - allocatable spelling

- End page 163

SENATE AMENDMENT

By Community & Regional Affairs Committee

To: _____ SENATE BILL No. 1

To: _____ HOUSE BILL No. _____

PAGE: 33 LINE: ~~27-28~~ 10

CSRB 1 ok

Page 34

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

NO

Page 33, line 29, insert:

"(28) 29.35.070 (disputes and conflicts with state certificated utilities)"

Page 77, after line ~~3~~ ²⁰, insert:

OK in CSRB 1

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

Page 77, line ~~19~~ ²², delete Section 29.35.070 and insert:

OK CSRB 1

"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

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

(2) municipal regulation is prohibited by AS *OK* 42.05.711(k) or ~~otherwise specifically prohibited by law.~~ *other laws*

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

Shall be with

(d) (e) 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~~ *in accordance* ~~that~~ *that*

provides

~~the procedures for regulating service and procedures for establishing and changing the rates and charges of the utility. The ordinance shall provide for notices, 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.~~

including notice and hearing requirements

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

under this section

Page 78, after line ~~19~~ ²⁰, 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."~~

This section and involving

~~(b) In case of a conflict between the provisions of AS 29.35.070 or AS 42.05 of an action taken under either as to the regulation of service rates or charges of a utility, the provisions of AS 42.05, ~~and~~ apply.~~ ^{or the provisions of AS 42.05, 641 apply.}

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

Page 196, after line ~~19~~ ²⁹, insert:

~~"*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 this section from the provisions of AS 42.05.010 - 42.05.701 may not be regulated by a municipality. These subsections do not apply to a public utility exempt under (b) of this section. (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.

p. 78, line 20

(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.

SENATE AMENDMENT

By Community & Regional Affairs Committee

To: _____ SENATE BILL No. 1

To: _____ HOUSE BILL No. _____

PAGE: 74 LINE: 212

Delete "utility services," *? where?*

Page 78, after line ~~27~~²⁰⁶, insert:

OK "(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."

Page 77, line ~~28~~³¹, delete:

OK ← "(d)" and insert "(e)"

SENATE AMENDMENT *Lee Sharp*

By COMMUNITY & REGIONAL AFFAIRS COMMITTEE

To: _____ SENATE BILL No. 1

To: _____ HOUSE BILL No. _____

PAGE: 107 LINE: ~~26~~ 29
109 Line 9

After "borough", delete:

"including but not limited to, excluding personal property from taxation, establishing exemptions, and extending the redemption period"

SENATE AMENDMENT

Lee Sharp

By COMMUNITY & REGIONAL AFFAIRS COMMITTEE

To: _____ SENATE BILL No. 1

To: _____ HOUSE BILL No. _____

PAGE: 61 LINE: ~~210~~
21

OK After "(3)", delete "is", and insert "has been"

After "elections", insert "for 30 days immediately preceding the election"

SENATE AMENDMENT

TAM COOK

PROPOSED SENATE AMENDMENT

By Community & Regional Affairs Committee

To: _____ SENATE BILL No. 1

To: _____ HOUSE BILL No. _____

Can't find this in CSSB it

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 ²⁰19, 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.

AMENDMENT

Offered in the SENATE

By Halford

TO: Senate Bill No. 1

Page 14, line 25:

Delete "." and insert ";

Page 14, after line 25 insert:

"(4) standards and procedures governing detachment shall be identical to standards and procedures governing annexation, except that procedures governing detachment shall provide for equitable prorated payment--of debts acquired by the municipality prior to the detachment."

~~The~~
Newly worded - see p 14 line 17

A M E N D M E N T

Offered in the SENATE

By Halford

TO: Senate Bill No. 1

Page 14, line 25:

. Delete "." and insert ";"

Page ¹⁵~~14~~, after line ⁴~~25~~ insert:

OK "(4) within 90 days after receipt of a petition for annexation or detachment the Local Boundary Commission shall make a decision on the petition."

A M E N D M E N T

Offered in the HOUSE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

TO: HB 172

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)"

Senate Community and
Regional Affairs
February 8, 1983
Page Two

agreements with the Forest Service for fire protection of rural properties of mutual concern, or for joint state, federal, and local drug enforcement operations or for a host of other municipal functions which are exercised jointly or in cooperation with state or federal agencies or other municipalities. I strongly suggest that this section be eliminated as it is not only superfluous, but its existence may lead courts to two unfortunate conclusions; first, that the only way municipalities may engage in a cooperative or joint emergency service communication center is as provided in the subject section; and second that inasmuch as the legislature went to great pains to detail the procedures and structures for joint operation of emergency communication centers, other similar joint operations must have specific and detailed legislative authorization. It was for these types of reasons that the technical committee for the Title 29 revision recommended striking or generalizing such detailed procedures found in the present Title 29. If there is some feeling that striking this section would jeopardize the authority of municipalities to enter into such arrangements, I suggest the section be struck and replaced with a new section under the general powers portion of the Bill which would authorize a municipality to enter into an agreement or association, including membership in a corporation, with any other municipality, the state, or federal agencies, for the purpose of exercising any power or function of the municipality. 29,35,010(15)

Page 96, beginning at line 5. Subsection (c) of this section makes subsections (a) and (b) applicable to all home rule municipalities. Actually, there appears to be little need to have this apply to any home rule municipality; however, because subsection (a) deals with the different disposition of a vacated public square depending on whether the square is within a city or outside a city but within the borough, it may be appropriate to make subsection (a) applicable only to home rule boroughs and general law municipalities. In addition, the last sentence of subsection (a) which begins in line 17 could lead to some very awkward situations. If, in the original plat, a lot is dedicated as a holding area for storm waters, or as a park or for some other non-street use and is later vacated because the lot is no longer needed for that purpose it may be very difficult to determine who is the "rightful" owner; and if this "rightful" owner is someone other than the abutting property owners, it may be impossible to locate the owner. I suggest deletion of the sentence which begins on line 17, and in line 14, just before the word "public" the insertion of the phrase "lot or".

Page 105, beginning at line 7. I don't think that the definition of "developed" clarifies anything. For example, when a native corporation subdivides some of its property and puts in roads and

(now)

A.S. 29,48,260 Copies for committed

Replaced by ~~Rs~~ 29,35,090

Cape Fox Corp
Sewell & Gallagher letter -
taxation

Developed definition: grossed up production present use -
change word or to and

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 28, 1983

SUBJECT: Mayor's veto power
(HB 172)

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

FROM: Tamara Brandt Cook
Legislative Counsel

TBC

You have asked for a comparison of the veto power of a mayor under HB 172 as compared to the veto power of a mayor under existing law.

Existing

Under AS 29.23.170, the mayor of a borough is authorized to veto ". . . any ordinance, resolution, motion or other action of the assembly and may, by veto, strike or reduce items in appropriation ordinances except for school budget items". However, the mayor may not veto an action of the assembly calling for an election on adopting or abandoning a manager plan (AS 29.23.240(d)), or an action of the board of equalization or board of adjustment. The assembly sits as the board of equalization and hears appeals from decisions of the borough assessor, or the assembly may delegate this authority to another board (AS 29.53.135). An action taken by the board of equalization may not be vetoed, whether the assembly sits as the board or whether other appointed members form the board. The assembly is the board of adjustment for purposes of hearing appeals from land use decisions, but the assembly may delegate this function to a city for the area within the city's boundaries (AS 29.33.110). An action taken by the board of adjustment may not be vetoed by the borough mayor, whether the assembly is sitting as the board or a city board is involved.

Existing

In addition to general limitations on the veto power of a borough mayor, with respect to a third class borough AS 29.41.020 provides in part:

The borough executive is the presiding officer of the borough assembly and president of the school board. The borough executive has all powers of a borough executive except for the veto power.

Under this language it appears that the mayor of a third class borough has no veto power, whether acting as presiding officer of the assembly or as president of the school board.

Existing
Under AS 29.23.270, the mayor of a first class city ". . . may veto any ordinance, resolution, motion, or other action of the council and may by veto strike or reduce items in appropriation ordinances except, in a city outside an organized borough, for school budget items". The mayor of a second class city may not veto any action. The section is silent as to whether the mayor of a first class city in a borough may veto an action of the council sitting as a board of equalization or adjustment pursuant to a delegation of authority by the borough assembly.

NEAR
The veto provision contained in sec. 29.20.270 of HB 172 applies to both cities and boroughs. Just as in existing law, a mayor is authorized to veto ". . . an ordinance, resolution, motion, or other action of the governing body and may strike or reduce appropriation items". As in existing law, the mayor may not veto items in a school budget or adoption or repeal of a manager plan of government, and the mayor of a second class city may not exercise a veto at all. In addition, the mayor of a city or borough may not veto ". . . actions of the governing body sitting as the board of equalization or board of adjustment . . ." Since the mayor is authorized to veto only actions of the governing body and not actions of other boards, the result of this provision is the same as the existing prohibition against veto of an action of the board of equalization or board of adjustment even if the governing body delegates the functions under sec. 29.40.050 or sec. 29.45.200. However, under HB 172 it is clear that neither the mayor of a city nor the mayor of a borough may veto actions of the board of adjustment or board of equalization.

While, in HB 172, the mayor of a third class borough continues to have no power to veto actions of the assembly sitting as a school board, under sec. 29.20.300(b) the mayor is not precluded from vetoing other actions of the assembly.

1 subsection is limited to

2 (1) an amount equal to two percent of the value of the
3 structure based on the assessment for 1981, if the fire protection
4 system is a fixture of the structure on January 1, 1981; or

5 (2) an amount equal to two percent of the value of the
6 structure based on the assessment as of January 1 of the year immedi-
7 ately following the installation of the fire protection system if the
8 fire protection system becomes a fixture of the structure after
9 January 1, 1981.

10 (m) The tax exemption required by 43 U.S.C. 1620(d), as amended,
11 shall be implemented according to the following conditions and inter-
12 pretations:

13 → (1) "developed" means a purposeful modification of the
14 property from its original state that effectuates a condition of
15 gainful or productive present use without further substantial modifi-
16 cation; surveying, construction of roads, providing utilities or other
17 similar actions normally considered to be component parts of the
18 development process, but which do not create the condition described
19 in this paragraph, do not constitute a developed state within the
20 meaning of this paragraph; developed property, in order to remove the
21 exemption, must be developed for purposes other than exploration, and
22 be limited to the smallest practicable tract of the property actually
23 used in the developed state;

24 (2) "exploration" means the examination and investigation
25 of undeveloped land to determine the existence of subsurface nonrenew-
26 able resources;

27 (3) "lease" means a grant of primary possession entered
28 into for gainful purposes with a determinable fee remaining in the
29 hands of the grantor; with respect to a lease that conveys rights of

1 exploration and development, this exemption shall continue with re-
2 spect to that portion of the leased tract that is used solely for the
3 purpose of exploration.

4 (n) If the property or interest in the property reverts to an
5 undeveloped state, or if the lease is terminated, the exemption shall
6 be reinstated, subject to the provisions of (m) of this section.

END
7 Sec. 29.45.040. PROPERTY TAX EQUIVALENCY PAYMENTS. (a) A

8 resident of the state 65 years of age or older who rents a permanent
9 place of abode is eligible for tax equivalency payments from the state
10 through the department.

11 (b) For purposes of determining payments to eligible persons,
12 the department shall calculate at the rate of one percent per mill a
13 property tax equivalent percentage for each municipality that levies a
14 property tax. The property tax equivalent percentage applied to the
15 annual rent charged to the applicant equals the property tax equiva-
16 lency payment payable under this section.

17 (c) To obtain tax equivalency payments the eligible resident
18 must apply to the department for payment for the preceding year by
19 January 15 of each year on forms and in the manner prescribed by the
20 department. Each applicant shall submit with the application rental
21 receipts or, if rental receipts are not available, other evidence
22 satisfactory to the department for determination of the fact of pay-
23 ment of rent and the amount paid.

24 (d) If two or more persons occupy a residence as tenants, not
25 all of whom are eligible for tax equivalency payments under this
26 section, the assessor shall determine equitable partial payments to be
27 made to the eligible tenants. However, tax equivalency payments to an
28 eligible applicant may not be reduced because the spouse is less than
29 65 years of age. If all occupants in a residence are eligible for tax

ALASKA ASSOCIATION OF ASSESSING OFFICERS

SENATE BILL NO. 260 (proposed substitute)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to exemption from municipal property

taxation of certain property exempt from taxation from federal law; and providing for effective date."

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

*Section 1. AS 29.53.020 (a) is amended by adding a new paragraph to read:

(9) real property or an interest in real property that is exempt from taxation under 43 U.S.C. 1620(d), as amended.

*Sec. 2. AS 20.53.020 is amended by adding new subsections to read:

(k) For the purpose of determining property exempt under (a)(9) of this section, the following definitions apply to terms used in 43 U.S.C. 1620(d) unless superseded by applicable federal law:

(1) "developed" means a purposeful modification of the property from its original state that affectuates a condition of productive present use or makes the property marketable for use or development in accordance with local ordinances and state statutes without further subdivision or substantial modification. Developed property, in order to remove the exemption, must be developed for purposes other than exploration and be limited to the smallest practicable tract of the property actually used in the developed state;

(2) "exploration" means the examination and investigation of undeveloped land to determine the existence of subsurface nonrenewable resources;

(3) "lease" means a grant of primary possession entered into for gainful purposes with a determinable fee remaining in the hands of the grantor; with respect to a lease that conveys rights of exploration and development, this exemption shall continue with respect to the portion of the leased tract that is used solely for the purpose of exploration.

(4) If property or an interest in property that is determined not to be exempt under (a)(9) of this section reverts to an undeveloped state, or if the lease is terminated, the exemption shall be granted, subject to the provisions of (a)(9) and (k) of this section

7 months?

talks all of it?

*Sec. 3. AS 209.53.060 is amended by adding a new subsection (c) reading.

(c) The assessment of property which has lost its exempt status under 43 U.S.C. 1620(d) because it is developed or leased shall be based on the full and true value of the improvements to the property and of so much of the property and/or natural resource as is used or useful in connection with the improvements.

*Sec. [3]4. This Act takes effect January 1, 1984

NOTE OF INTENTION

Attached is a proposed substitute for Senate Bill 260, which is an act relating to the exemption from municipal property taxation of certain property exempt from taxation under federal law; and providing for an effective date.

The proposal was drafted at a quarterly meeting of the Alaska Association of Assessing Officers held in Soldotna on May 23 and 24, 1983.

It was the opinion of the assessing officers that the original Senate Bill 260 was unfair, as it related to other persons in the State of Alaska who are involved in the subdividing and developing of property. The original bill allowed Native organizations to completely develop a subdivision, including survey, roads and utilities, and still not be obligated to pay local taxes until such time as the property was sold. We realized that it was probably the intent of the federal government in passing the Native Land Claim Settlement Act to allow a moratorium on local taxes so that the Native organizations could get their feet on the ground and not forfeit their property to taxes in the early years. We felt the original Senate Bill 260 allowed the corporations not only to get their feet on the ground, but to remain in a tax exempt status virtually in perpetuity, as far as purposeful modifications to their property are concerned.

Our proposed bill would allow a future subdivision in the state of being developed a tax exemption, but as such time as the subdivision is completed in conformance with the subdivision agreement, it would become taxable. This, in essence, gives the Native organizations developing subdivisions or natural resources a tax free period of time during the development process, but once the development criteria has been met it places the property on the tax roll of local taxing jurisdictions.

The proposal also provides in section 2(k)(1) for the taxation of only a small portion of a larger tract, if only that portion has been developed. It eliminates taxation as does the original Senate Bill 260 of land being used for exploration. It allows, as did the original bill, for property that has been leased to be taxed, but deletes this property from the tax roll should the lease be terminated. If the lease is terminated, and due to the lease, a portion of the property was developed, that portion would remain taxable to the Native corporation.

Our proposed bill would bestow an additional benefit on the Native corporations over what most of them have at the present time. Most of the assessing jurisdictions within the State begin to assess the property at the time it is surveyed, and continue through the development stage. As mentioned above, the proposed bill by our association would allow the development to take place prior to beginning the assessment procedures.

Should you have any questions concerning our position, please contact the undersigned.

Glenn M. "Pat" McKee, CRA *264-6595*
Chairman, Legislative Committee
Alaska Association of Assessing Officers
Pouch 6-650
Anchorage, Alaska 99502

Alaska State Legislature



House of Representatives

COMMITTEES

CHAIRMAN

HOUSE TRANSPORTATION

MEMBER

COALITION POLICY COMMITTEE
HOUSE HEALTH EDUCATION
AND
SOCIAL SERVICES

REPRESENTATIVE
BETTE CATO

DISTRICT 6
BOX 775

VALDEZ, ALASKA 99686
(907) 835-4568

WHILE IN JUNEAU
POUCH V

JUNEAU, ALASKA 99811
(907) 465-4858
(907) 586-2660

April 12, 1983

Lyman Hoffman, City Manager
CITY OF BETHEL
P.O. Box 388
Bethel, Alaska 99559

Dear Lyman:

Thank you for your recent letter requesting my support for SB 1. As I'm sure you know, HB 172 is the House version of the Municipal Code revision bill.

The bills in question are monolithic, and due to their size and impact there will be a considerable amount of time spent on them in committee. SB 1 has gone from Senate C&RA to Judiciary. At this time, hearing dates in Judiciary have not been set. Once the bill gets through Judiciary, it will then go to the Finance and Rules Committees respectively. On the House side, the C&RA Committee will be passing the bill out sometime near the end of April. HB 172 has the same committee referrals as SB 1. Obviously, unless we're here till August, it looks like the bills will be carried over to the second session.

Lyman, I believe that the majority of legislators, including myself, support the concept of revising and reorganizing Title 29. However, at this time I cannot make a commitment to the bill until I see how it is amended. I'm sure you understand. In any event, you can always feel free to contact me on this.

Thank you for writing. Please give my best to my friends in Bethel.

Most sincerely,

A handwritten signature in cursive script that reads "Bette Cato".

Bette Cato
Alaska State Representative
District 6

cc: Representative Barbara Lacher, Chairman ✓
HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Senator Bill Ray, Chairman
SENATE JUDICIARY COMMITTEE

BC:er

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
9C7-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 4, 1982

SUBJECT: Chapter summary of Municipal Code
Revision [CSHB 170] (Work Order
No. 12-2379)

TO: Representative Patrick M. O'Connell
Chairman, House Community and
Regional Affairs Committee

FROM: Tamara Brandt Cook
Legislative Counsel

You have requested a chapter summary of the municipal code revision (CSHB 170) highlighting significant changes to existing law. For your convenience, I have attached a table of contents by chapter and article to the revision. Corresponding chapter numbers in the existing Title 29 are included in parentheses.

Chapter 03. The Unorganized Borough. No significant change.

Chapter 04. Classification of Municipalities. No significant change.

Chapter 05. Incorporation. Does not authorize incorporation of a third class borough.

Chapter 06. Alteration of Municipalities. Does not authorize incorporation of a third class borough through merger or consolidation.

Chapter 10. Home Rule Municipalities. Authorizes a second class city to adopt a home rule charter if the city has at least 400 permanent residents. Requires home rule municipalities to provide land use regulation.

Chapter 14. Capital City. No significant change.

Chapter 20. Municipal Officers and Employees. Requires a municipality to adopt a conflict of interest ordinance that requires a member of the governing body to declare a substantial financial interest he has in an official action. The presiding officer must then determine whether to excuse him from a vote and this decision may be overturned by majority vote of the membership. Allows a special meeting to be called if a majority of the members are given at least 24 hours notice and reasonable efforts are made to notify all members. A special meeting may be conducted with less than 24 hours notice if 11 members are present or if absent members waive in writing the required notice. Requires the governing body to appoint within 7 days the number of members needed for a quorum if the membership is reduced to fewer than the number needed. Requires that a veto be overridden at the next regular meeting or within 21 days after exercise of the veto. Grants authority to a municipality to establish advisory, administrative, technical, or quasi-judicial boards and commissions. Allows the governing body to provide for a classified service and to designate positions that are wholly or partially exempt from the classified service.

Chapter 25. Municipal Enactments. A penalty not to exceed that imposed for a class B misdemeanor may be imposed for a violation of an ordinance. A mandatory, nonsuspendable term of imprisonment for 5 days may be imposed for violation of an ordinance. A civil action may be instituted against a person who violates an ordinance and a civil penalty of up to \$1,000 may be imposed for each violation. An action to enjoin a violation may be brought and the court must grant the injunction on finding a violation. Each day a violation continues is a separate violation.

Chapter 26. Elections. The judge of a precinct must be a voter of the precinct for which he is appointed unless no voter is willing to serve. Both general law and home rule municipalities are required to give at least 20 days notice of a regular or special election. A runoff election shall be held if no candidate receives over 40 percent of the votes cast for the office of mayor or member of the governing body or school board. There is no super majority requirement for other elected offices, and a municipality

Bad!

clarity at large elections

may change the requirement for mayor, member of the governing body, or member of the council by ordinance. The initiative and referendum process and the recall process have been substantially altered. An application must be filed with the clerk for a petition. The clerk prepares the petition and provides it to the voters who will sponsor the petition. When a petition is returned, the clerk certifies whether it is sufficient and notifies the sponsors. The petition may be supplemented with additional signatures obtained and filed within 10 days after the petition is first rejected, except that a recall petition may only be supplemented if it contains an adequate number of signatures, counting both valid and invalid. A person may not be recalled until after he has served 120 days and may not be recalled if there are only 180 days left in his term.

Chapter 35. Municipal Powers and Duties. The following have been included in the list of facilities that a municipality may provide outside its boundaries: solid and septic waste facilities, utility services, transportation facilities, wharves, harbors and other marine facilities. A municipality that provides a facility outside its boundaries may regulate its use only to the extent that the jurisdiction in which the facility is located does not. Extends eminent domain and declaration of taking power to second class cities as it may be exercised by other municipalities. Unless a grant of a franchise or permanent permit is made on a competitive basis, the grant of an exclusive right to use a public street or right-of-way for more than five years to a utility or transportation system that is not certified is valid only if approved by vote. (Under existing law no franchise is valid unless it is submitted to the voters for approval.) The governing body is required by ordinance to establish a formal procedure for acquisition and disposal of land, but is not otherwise limited in its ability to dispose of land. A first class borough is allowed to exercise on a nonareawide basis any power, and on an areawide basis any power that is acquired, so long as exercise of the power is not specifically prohibited by law. Allows a second class borough to exercise on a nonareawide basis any power approved by the voters living outside cities, unless the power is prohibited by law. Allows a second class borough to exercise an areawide power if it is approved by the voters or transferred by the cities in the borough, unless prohibited by law. A city may exercise any power not prohibited by law.

Chapter 40. Planning, Platting, and Land Use Regulation. A planning commission is authorized to utilize methods other than zoning to implement a comprehensive plan. The governing body must update the plan as necessary. Requires the assembly to provide for an appeal from the application of a land use regulation before a hearing officer or board of adjustment. The governing body must establish a platting authority, but the planning commission need not act as platting authority. Plat requirements may not be waived, but in certain cases a short plat procedure may be followed rather than the regular procedure. A person who violates a land use regulation or condition imposed by a platting authority is subject to the penalties that may be imposed for violation of an ordinance.

Chapter 45. Municipal Taxation. Allows a municipality to exempt by ordinance personal property from taxation. Extends the limit on assessing farm use land to greenhouses so that they are assessed at full and true value for farm use. A penalty not to exceed 20 percent of the tax due may be added to delinquent taxes, and interest not to exceed 15 percent shall accrue on unpaid taxes. The right to repurchase foreclosed property is cut off after 10 years. If, in the absence of a suit, it becomes obvious to the governing body that judgment for recovery of taxes would be obtained the municipality must refund the taxes. A petition for incorporation of a second class city may be combined with a sales and use tax proposal, so the incorporation proposition fails if the tax proposal fails.

OR
Chapter 46. Special Assessments. Costs that may be included in a special assessment are listed. These may not exceed actual costs, but may include reasonable estimates of the costs of issuing bonds. If an assessment is increased a new public hearing must be held unless all owners of property subject to the increase agree to the increase in writing. A municipality may issue notes for the costs of a local improvement project to be eventually paid from assessments for the improvement.

Chapter 47. Municipal Debt. The issuance of revenue bonds and use of proceeds from revenue bonds are not subject to the prohibition against a political subdivision making a subscription to the capital stock of a corporation, lending its credit for the use of a corporation, or borrowing money for the use of a corporation. Refunding bonds may be

exchanged at the discretion of the governing body and need not be exchanges at par for bonds being refunded. Revenue bonds may be issued to finance any project and to be secured solely from the revenue and property of that project. Bonds and notes may be sold in the manner and at the price determined by the municipality regardless of the par value. Allows the interest rate payable on bonds or notes to exceed the contract usury rate. Indebtedness of a service area remains a debt even though a court subsequently determines that the service area was not validly formed under law.

Chapter 55. Municipal Programs. No significant change.

Chapter 60. State Programs. No significant change.

Chapter 65. General Grant Land. No significant change.

Chapter 71. General Provisions. Dedication of streets, rights-of-way, easements of other areas for public use may not be construed to require the municipality to maintain, improve or provide for municipal services in the area dedicated.

TBC:ljb

Attachment

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HISTORY
TITLE 29 LEGISLATION
SB 180

CSSB 180(CRA)am

- 1) 600 Pop. requirement for reclassification
- 2) Temp. Law Sect. added for pending applications (relating to 600 pop.)
- 3) No change

PAGE # HOUSE CSSB 180(CRA)

2. & 3. 400 Pop. requirement for reclassification
- No change
60. notification of certification
65. of petitions/recall & initiative

SENATE FLOOR ACTIONS

- 4) Allow borough mayors to vote in event of a tie (2nd class w/mgr. govt)
- 5) Deleted language of mandatory, nonsuspendable imprisonment for violation of ordinance
- 6) Changed (may) to shall re/short plat procedure
- 7) Retained current law regarding tonnage taxation \$5 min/\$15 max
- 8) Retained Rates of Penalty & Interest at 10% - 8% - 10%

43. Adopted by (concurred) House CRA Committee
55. Adopted by House CRA (concurred)
86. Adopted "Abbreviated Plat or Waiver"
97. Deleted \$5 max & \$15 min tax on tonnage
110. Increased Penalty & Interest Rates 20% - 15% - 20%

CSSB 180(CRA)am

- 9) Amended definition of subdivision
- 10) No change

169. Retained current law definition of subdivision
175. Self-Insurance Amendment

=====

*PAGE NUMBER RELATED TO SPECIFIC VERSION OF BILL

HOUSE CSSB 180(Jud)

- | | |
|---|---|
| 11) No change | 71. 29.35.060 - Franchised & Permits lines 18 & 19. Inserted language |
| 12) No change | 81. Added new Article 8 to Chapter 35 Definition of "Powers" - 29.35.700 |
| 13) No change | 137. 29.47.390 - lines 25 & 26 Municipal Revenue bonds secured and payable from project only and not municipal revenues, including tax revenues |
| 14) Retained current language "Aid to Native Village Govts" - no change - | 149. 29.60.140 Rewritten: State Aid to Unincorporated Communities (language by Ted Bearnes) |

=====

CSSB 180(CRA)am

HOUSE CSSB 180(Fin)

- | | |
|--|---|
| 15) same (600 Pop) | 2-3-4 Reinserted 600 Pop. figure |
| 16) Temp. Law Sect. re/600 pop. for pending applications | no change |
| 17) No change | 10-12 Inserted SB 735 & 737 Home Rule & Organization Grants 29.05.180 FY 83 - 405,000 |
| 18) No change | 98. Inserted SB 314 CRA am - Motor Vehicle Exempt/Senior Citizens - 0 Fiscal |
| 19) No change | 96. Line 13 - added sub (7)(8) Exempt Forest Land as in 41.17.950 - 0 Fiscal ✓ |
| 20) No Change | 99. Inserted SB 802 Definitions of "developed", "exploration" and "lease" (m)(n) ANCSA Lands |
| 21) No Change | 146. Amended 29.60.020 amended "Determination of Population" for purposes of revenue sharing to include "isolated job sites" ✓ |
| 22) No Change - Retained current law "Aid to Native Village Governments" | 159. Inserted SB 830: Moves Municipal Assistance Program to Revenue and adds Dept. language to 29.60.140 "State Aid to Unincorporated Community (Different from (Jud) language) Fiscal - FY 83 38,000 |

CSSB 180(CRA)am

23) No Change

Page # House CSSB 180(Fin)

189-191 Inserted SB 240 Feasibility
Studies for Proposed Boroughs-
Added new Section 69 to Amend
Title 44 Fiscal FY 83 \$375,000

CSSB 180(CRA)

24) No Change

Page # 2nd House CSSB 180(Fin)

106 Line 21 "Determination of Population" ✓
for purposes of revenue sharing
to include "isolated job sites"

107 Line 23 "

108 line 1&2 "

146 Line 29 "

147 Line 1-9 "

153 Line 17-24 "

POSSIBLE FLOOR AMENDMENTS

By Bettisworth through House Finance Committee

Page 75- 29.35.120 "Firearms Amendment - No municipality may regulate firearms"

Rick Lauber/Roger Painter

By _____ to amend 29.45.050 Optional Exemptions and Exclusions -

(b)(1) Re-insert limit on tonnage fees to current language \$5 min. and \$15 max.

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

M E M O R A N D O M

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.



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

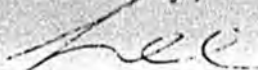
Gentlemen:

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
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Juneau, Alaska 99811

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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. (#9)

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.

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).