2439 HJ HB 172 - HB 200

2455

HB
172

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CSHB 172(C&RA) Page 1 of 2
Title "An Act Relating to Municipal Government"
Requested by Governor's Office Date 1/5/83

II. FISCAL DETAIL
Agency Affected Department of Community & Regional Affairs
Program Category Affected Development
BRU, Program, Or Subprogram(s) Affected Local Government Assistance Grants
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL				175.0	175.0	
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.		100	150	450.0	350.0	250.0
TOTAL		100.0	150.0	625.0	525.0	250.0

FUNDING (Thousands of Dollars)

GENERAL FUND		100.0	150.0	625.0	525.0	250.0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME		0	0	0	0	0
PART TIME						
TEMPORARY						

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

SEE ATTACHED

IV. DATE 1/5/83 PREPARED BY Terry Earley
AGENCY Community & Regional Affairs
PHONE 465-4730

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/82)

Article 3 of the Bill appears to be the only portion that has fiscal impact on this Division. That Article "TRANSITIONAL ASSISTANCE" provides for organizational grants to newly formed and newly reclassified cities. These grants are $50,000 the first year and $25,000 the second year.

Additionally, the bill provides for organization grants to newly formed Boroughs in the following amounts:

$300,000 for the first fiscal year
$200,000 for the second fiscal year
$100,000 for the third fiscal year

Finally, it provides for the department to establish an initial sales tax structure and an initial property tax structure.

Assumptions: In estimating the fiscal impact of the bill the following assumptions were made.

1. There would be two incorporations or reclassifications each year. This would produce an FY 84 cost of $100,000 and an annual cost of $150,000 from that point forward.

2. There will be one Borough Incorporation in 1986. This incorporation would necessitate expenditure of the 3 step organization grant in 1986, 1987, and 1988. Based on this assumption it is also estimated that contractual costs for setting up the two tax systems would be $350,000 in contractual costs spread over a 2 year period.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 03/26/84

REQUEST
Bill/Resolution No: CSHB 172 (C&RA)
Title: An act relating to municipal government.
Sponsor: C&RA Committee
Requestor: House Judiciary
Date of Request:

FISCAL DETAIL
Agency Affected: Revenue
Program Category Affected: General Government, Property Tax
BRU, Program of Subprogram(s) Affected: Administrative Services Division
Petroleum Revenue Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES	-	-0-	-	-	-	-
200 TRAVEL	-	-0-	-	-	-	-
300 CONTRACTUAL	-	-0-	-	-	-	-
400 SUPPLIES	-	-0-	-	-	-	-
500 EQUIPMENT	-	-0-	-	-	-	-
600 LANDS & STRUCTURES	-	-0-	-	-	-	-
700 GRANTS, CLAIMS	-	-0-	-	-	-	-
800 MISCELLANEOUS	-	-0-	-	-	-	-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-0-	-	-	-	-
FEDERAL FUNDS	-	-0-	-	-	-	-
OTHER	-	-0-	-	-	-	-
TOTAL	-	-0-	-	-	-	-

POSITIONS:

FULL-TIME	-	-0-	-	-	-	-
PART-TIME	-	-0-	-	-	-	-
TEMPORARY	-	-0-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: See attached.

Prepared By: Ervin B. Jones
Phone: 465-2313
Division: Administrative Services
Date: 03/29/84

Approved by Commissioner: Bruce McKellar
Date: 3/29/84
Agency: Revenue

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Analysis for CSHB 172 (C&RA):

Section 11, 29.45.080, is a restatement of Section 29.53.045, which is currently on the books. There is no change.

Section 64 of the bill makes a technical amendment to the language of the section which shares tax revenues collected from taxes levied by AS 43.75 (Fisheries Business Tax). This would appear to be a technical amendment made necessary by the new definitions section which defines "unified municipality".

Section 89 repeals, among other things, AS 43.20.016 (Municipal Assistance). Since Section 91 provides for a right or liability of a municipality existing on July 1, 1984 (e.g. the right to receive a distribution from the municipal assistance fund) there would appear to be no administrative or fiscal impact on the Department of Revenue in fiscal year 1985. However, starting with fiscal year 1986 the municipal assistance fund and the distributions made therefrom would cease. The administrative effect of repealing the municipal assistance and the related distribution would be insignificant, in that the total effort expended by the Department of Revenue in distributing those funds takes a maximum of three working days for one accounting technician during the entire fiscal year.

TITLE 29 FACT SHEET

SUMMARY OF HB 172/SB 1 - TITLE 29 (MUNICIPAL CODE)

HB 172 and SB 1 are comprehensive bills that reorganize and clarify Title 29 (Municipal Code), but do not substantially change that part of the state statutes that direct the operation of local government in Alaska.

History: The current Title 29, last revised in 1972, is a hodgepodge of 13 years worth of amendments. It is very difficult for the average citizen to read and understand.

Recognizing the problem, the Legislature adopted SCR 66 in 1980, directing the rewrite of Title 29. A broadly representative policy committee, with the assistance of a technical committee, prepared a revised code after an exhaustive series of meetings, hearings, and public presentations.

HB 170 and SB 180 were introduced in 1981. More hearings were held during the 1981 legislative session, during the interim, and continuing through the 1982 session. SB 180 passed the legislature, but because of controversial floor amendments, Governor Hammond vetoed the bill.

In 1983, SB 1 was introduced by Senators Sturgulewski and Gilman; HB 172, by Governor Sheffield. Both bills are basically the same as the bill that had passed the previous year minus the controversial amendments. More committee work was done in both the House and Senate on the 204 page bill.

Changes: For the most part, these bills reorganize and reword Title 29 for clarity and flexibility. Policy changes of any substance are very few. The main changes are:

Third Class Boroughs: The existing third class borough, Haines Borough, continues in existence, but there is no provision for incorporating new third class boroughs in the future.

Home Rule Status: Second class cities and unincorporated areas are authorized to adopt home rule charters, which must be ratified by a vote of the people.

Municipal Powers: A general grant of municipal powers is given to municipalities, instead of a long list of enumerated powers. The difference is more semantic than actual, since the list includes almost every conceivable municipal power. There is no change in the manner in which boroughs acquire powers.

Organizational Grants/Feasibility Studies: The organizational grants are increased and expanded, depending on the category of local government. Studies for the feasibility of local government are authorized.

Incorporation Requirements: The minimum number of people required for incorporation as either a first class or home rule city is increased from 400 to 600.

Ordinance Violation: Penalties for ordinance violations are increased from a maximum $500 and 30-days to class B misdemeanor penalties, which are a maximum of $1000 and 90-days.

Extraterritorial Jurisdiction: Solid and septic waste disposal, utility services, wharves, harbors, and other marine services are added to the list of powers that may be exercised outside the boundaries of the municipality, if the municipality has the authority to exercise the power inside its boundaries.

Economic Development: Allow economic development as a non-areawide power for second class

boroughs, without requiring a vote of the people to exercise it.

Franchise: Requires a vote on franchises of more than 5 years; current law requires a vote on all franchises.

Eminent Domain: Removes the requirement that second class cities get permission from the Department of Community and Regional Affairs and the voters before exercising the power of eminent domain.

Planning, Platting, and Land Use: Updates the language, changing "zoning" to "land use".

Run-Off Elections: Allows run-off election procedures and requirements to be changed by ordinance.

Personal Property: Allows exemption of personal property from taxation.

Taxation of Boats: Removes the $5 and $15 property tax limit on boats if assessed on the basis of net tonnage.

Penalties and Interest: Increases the maximum penalty on delinquent property and sales tax from 10% to 20% and interest from 8% to 15%.

Revenue Bonds: Authorizes revenue bonds to be payable solely from the revenue and property of the project.

Municipal Assistance Fund: Moves the administration of the Municipal Assistance Fund from the Department of Revenue to the Department of Community & Regional Affairs.

Municipal Property Disposal: Requires municipalities to adopt formal procedures by ordinance; current law sets out procedures including requiring an election on the disposal of any property valued at more than $25,000.

The substantive differences between SB 1 and HB 172 are:

Hospital Definition: Proposed CSHB 172 (CRA) adds "special" hospitals to the definition section for revenue sharing eligibility.

Farm Use Greenhouses: Senate CRA amendment to SB 1 provides for the assessing of farm use greenhouses on the basis of full and true value for farm use.

Annexation and Detachment: Senate CRA amendment to SB 1 adds detachment language to the annexation sections and establishes a time deadline for Local Boundary Commission action.

Education Powers: Senate CRA recommends amending the powers section to provide for a double majority vote before a second class city or an unincorporated area in an REAA can assume the education power when incorporating as a first class or home rule city. The vote would be both in the proposed incorporating area and the rest of the REAA.

Alaska Municipal League
Prepared February 23, 1984

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M March 1, 1984

SUBJECT: Proposed amendment to the municipal code revision bill (CSHB 172 C&RA))

TO: Representative Mike W. Miller
Chairman
House Community and Regional Affairs

FROM: Tamara Brandt Cook TBC
Deputy Director
Division of Legal Services

You have asked what the legal effect would be of adding language to Sec. 29.60.140(b) in CSHB 172 (C&RA) so that the subsection would read:

> (b) In this section "unincorporated community" means a place in the unorganized borough <u>or within an organized borough</u> that is not incorporated as a city and in which 25 or more persons reside as a social unit. (New language underlined)

That section provides for aid to unincorporated communities. It replaces the current program of aid to Native village governments contained in AS 29.89.050 to reflect the way the program has actually been administered. Under sec. 29.60.140 each unincorporated community in the unorganized borough may receive an annual entitlement of $25,000 if there is a qualified entity in the community to receive and spend the money. The amendment changes the definition of "unincorporated community" to include communities in boroughs as well as communities outside of boroughs. Under this amendment, an unincorporated community, no matter where it is located in the state, can qualify to receive a grant.

You have also asked whether this amendment would have any fiscal impact. Since under the section as it now appears, only certain communities may receive a grant (those in the unorganized borough), and since the amendment would have the effect of increasing the number of communities that would

qualify for a grant by including communities in all the organized boroughs, it seems that the number of grants awarded under the section could increase substantially. Assuming an effort is made to fully fund the program, the program as amended will probably be significantly more expensive than it would have been under the original section. I have no way to determine how much additional money would be needed to fully fund the program.

You have also asked whether this amendment will encourage the formation of municipalities. I can think of no legal reason that this amendment would have that effect. Granting money to communities would not remove the limitation on incorporation of a cities under sec. 29.05.020 of the bill. In addition, some communities that would qualify for a grant on the basis of population would not be able to incorporate as a city for lack of 25 voters required to sign an incorporation petition. This is the minimum number of voters necessary for incorporation of a city. (See 29.05.060 (12)). To receive a grant, all that is needed is 25 residents, including children and others who might not be voters.

TBC:ojb
J4/029

Alaska State Legislature

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

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

House of Representatives

MILO FRITZ

MEMORANDUM

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

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

DATE: January 17, 1984

SUBJ: HB 172 Problems

During the interim, my staff and I have studied HB-172 and its effects and implications. I have three changes to suggest that the Committee consider. I believe that current amendments #2 and #7 will not have the effect which is desired.

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

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

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

The report to the 13th State Legislature examining court decisions and opinions of the Attorney General construing Alaska Statutes showed a problem with the local preference law. AS 04.11.490 states that one or "several questions" can be placed before the voters. The succeeding paragraphs which have been updated specifically state that only one question can be placed before the voters at a time. Correcting this oversight will only take a short amendment removing the words "or several questions". This action was suggested on page 78 of the report.

BILL SHEFFIELD, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

225 CORDOVA STREET - BLDG B
ANCHORAGE, ALASKA 99501
PHONE: (907) 264-2294

February 27, 1984

POSITION PAPER

RE: HB 172
SPONSOR: Rules by Request of the Governor

PROGRAM EFFECTS:

HB 172 is a bill that reorganizes and clarifies Title 29 of the Alaska Statutes, which is the Municipal Code.

COMMENTS:

HB 172 is the product of the work of the Community and Regional Affairs Committees of both Houses of the Legislature, the Alaska Municipal League, many of the League's affiliate organizations, and the Department of Community and Regional Affairs.

This bill clarifies the Municipal Code, better organizes it, and eliminates ambiguities and conflicts from existing law.

The Department supports passage of this legislation, as well as considers it one of its highest priorities.

APPROVED: Emil Notti
Emil Notti, Commissioner

21-P1LH

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
(907) 586-6526

105 MUNICIPAL WAY, SUITE 301
JUNEAU ALASKA 99801

RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE

A RESOLUTION REQUESTING THE THIRTEENTH ALASKA STATE LEGISLATURE TO ADOPT THE REVISED TITLE 29

WHEREAS Title 29 of the Alaska Statutes deals with local governments and is badly in need of revision; and

WHEREAS a proposed revision of Title 29 has been prepared and was introduced during the First Session of the Thirteenth Alaska State Legislature; and

WHEREAS the North and Northwest Alaska Mayors' Conference has previously endorsed this revision on several occasions;

NOW, THEREFORE, BE IT RESOLVED that the Alaska State Legislature act on the proposed Title 29 as revised without controversial amendments.

Adopted November 5, 1983

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
(907) 586-6526

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

1984 POLICY PRIORITIES

New Title 29 Adoption: The League urges the Alaska State Legislature to pass legislation adopting the proposed Title 29 as revised without controversial amendments. The League encourages the Governor and the Legislature to recognize the significance of the effort to revise Title 29, the Municipal Code, and the importance of insuring that the legislation contain only the fundamental elements and guidelines for a basic municipal code. The League requests other proposals which would constitute major 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 basic code has been adopted.

Full Funding for Municipal Assistance at the Statutory Level: The League supports the funding of the FY 85 Municipal Assistance Fund at the statutory level of an amount equal to or greater than 30% of the FY 84 corporate income tax proceeds so that communities can continue to provide important needed services while holding down local taxes.

Funding for Revenue Sharing: The League urges the Legislature to provide a stable and predictable level of funding for Revenue Sharing, Chapter 88 - Municipal Tax Resource Equalization, with annual increases to reflect population and inflation changes so that local officials can maintain an orderly continuation of operations. The League also urges full funding for Revenue Sharing, Chapter 89 - State Aid for Miscellaneous Municipal Purposes, which establishes entitlements for road maintenance, hospital and health facility operations, volunteer fire departments in the unorganized borough, grants for unincorporated communities, and cost-of-living adjustments.

Consolidation of Municipal Assistance and State Revenue Sharing Programs: The League endorses consolidation of the administration of the Municipal Assistance and Revenue Sharing Programs with the Department of Community and Regional Affairs in order to simplify the program process for municipalities and the state.

Revenue Sharing Task Force: The League requests the Governor to form a high-level commission composed of members of the State Administration, the Legislature, local government elected and appointed officials, and the academic and private sectors to study and make recommendations on the following:

1. What are the basic services mandated by state constitution, state statutes, and local charter?

2. Which entity has responsibility for providing these services?

3. What plan or method would best finance the provision of those services in Alaska?

4. What process would best ensure equity in the distribution of state resources among all communities and citizens in the state?

Full Funding of the Senior Citizen Property Tax Exemption Program: The League urges the Alaska State Legislature to adopt legislation to provide a supplemental appropriation for the FY 84 shortfall in funding for the Senior Citizens Homeowners Property Tax Exemption Program. The League also requests full funding of the program in FY 85 so that the taxpayers of those municipalities not receiving entitlements will not have to bear the burden of the shortfall in program funds.

State Compliance with Local Subdivision 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 the state land disposal programs. The state should meet the same local requirements imposed on private citizens.

Local Prevailing Wage: The League urges the Legislature to adopt legislation to permit local governments the 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.

Adopted by the AML Board of Directors
January 31, 1984

ALASKA CONFERENCE OF MAYORS

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED, that the Alaska Conference of Mayors respectfully requests the Alaska State Legislature adopt this session the revised Title 29, as proposed, without any controversial amendments.

Adopted by the Alaska Conference of Mayors on March 5, 1984 in Juneau, Alaska.

Jon D. Halliwill, President

APPROVED
Date: 3-6-84

Requested by: Assemblywoman Maser
Prepared by: Municipal Clerk
For Reading: March 6, 1984

ANCHORAGE, ALASKA

AR NO. 84-65 (Amended)

A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY URGING THE STATE LEGISLATURE AND THE GOVERNOR TO PROCEED EXPEDITIOUSLY WITH THE PASSAGE OF TITLE 29 REWRITE.

WHEREAS, the current Title 29, last revised in 1972, is a hodgepodge of 13 years worth of amendments, and

WHEREAS, it is very difficult for the average citizen to read and understand, and

WHEREAS, recognizing the problem, the legislature adopted SCR 66 in 1980, directing the rewrite of Title 29, and

WHEREAS, a broadly representative policy committee, with the assistance of a technical committee, prepared a revised code after an exhaustive series of meetings, hearings, and public presentations, and

WHEREAS, SB 180, the original bill, was passed by the legislature in the 1982 session but because of controversial floor amendments, Governor Hammond vetoed the bill, and

WHEREAS, HB 172, the rewrite of Title 29, is a number one priority of the Alaska Municipal League.

BE IT, THEREFORE, RESOLVED, the Anchorage Municipal Assembly hereby requests the State Legislature and the Governor to proceed expeditiously with the passage of HB 172.

PASSED and APPROVED this 6th day of March, 1984.

MAR 1984
RECEIVED

Chairman

ATTEST:

Municipal Clerk

Presented by: The Manager
Introduced: 03/22/84
Drafted by: G.L.S.

RESOLUTION OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 1027

A RESOLUTION URGING THE ALASKA LEGISLATURE TO TAKE IMMEDIATE ACTION TO ADOPT THE REVISED MUNICIPAL CODE.

WHEREAS, the present municipal code (Title 29 of the Alaska Statutes) was adopted in 1972 and was a consolidation of the former Title 29 that dealt with cities and the former Title 7 that dealt with boroughs, and

WHEREAS, such consolidation was the first effort at integrating the codes applying to these two forms of local government in Alaska, and

WHEREAS, local governments in Alaska have matured substantially since 1972 and now face different problems, and

WHEREAS, the Twelfth Legislature adopted a comprehensive revision of the municipal code, but the bill was vetoed by the governor because of certain controversial floor amendments that were added, and

WHEREAS, "clean" versions of the municipal code revision were introduced in each house by the Thirteenth Legislature during its first session, and

WHEREAS, the proposed municipal code revision reorganizes and clarifies Title 29 without making major policy changes, and

WHEREAS, the municipalities in Alaska need the proposed revisions to Title 29 to eliminate the existing confusion that exists within Title 29 and to provide municipalities in Alaska with a legal framework more suited to the 1980's;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

That the Alaska State Legislature is urged to act immediately on the proposed Title 29 revision and to pass out a "clean" version without additional policy changes or controversial amendments.

Adopted this 22nd day of March, 1984.

Sam Ulmer
Mayor

Attest:

Peggy Garrison
Clerk

Suggested by: Mayor Tom Wagoner

CITY OF KENAI

RESOLUTION NO. 84-30

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA URGING THE 13TH ALASKA STATE LEGISLATURE TO ADOPT THE REVISED TITLE 29 AS PROPOSED PRIOR TO ADJOURNMENT OF THE 13TH ALASKA STATE LEGISLATIVE SESSION.

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

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

WHEREAS, the proposed revision of Title 29 reorganizes and clarifies the municipal code without making major policy changes, and

WHEREAS, major policy changes to Title 29 should be considered in separate legislation in order to keep the Title 29 revision a clear and understandable bill.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, that the Kenai City Council respectfully request the 13th Alaska State Legislature to adopt the proposed revision of Title 29 as submitted without any major or controversial amendments.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA this 21st day of MARCH, 1984.

Tom Wagoner
Tom Wagoner, Mayor

ATTEST:

Janet Whelan
Janet Whelan, City Clerk

KODIAK ISLAND BOROUGH
RESOLUTION NO. 84-20-R

A RESOLUTION OF THE KODIAK ISLAND BOROUGH ASSEMBLY SUPPORTING SENATE BILL 1 AND HOUSE BILL 172 WHICH REVISE AND REORGANIZE ALASKA STATUTES TITLE 29.

WHEREAS, Alaska Statutes Title 29 is that portion of State Law which governs municipal government within the State of Alaska, and

WHEREAS, Title 29 has been in need of revision and reorganization for many years, and

WHEREAS, Senate Bill 1 and House Bill 172 were filed during the First Session of the 13th Legislature, and

WHEREAS, either one of these bills would accomplish the needed revision and reorganization, and

WHEREAS, the bills do not contain any of the provisions which were criticized by Governor Hammond in his July 15, 1982 veto, and

WHEREAS, the bills make many non-controversial improvements that are long overdue and necessary for the smooth working of municipal government in our state

NOW, THEREFORE, BE IT RESOLVED by the Kodiak Island Borough Assembly that the Alaska State Legislature's urge to pass Senate Bill 1 and/or House Bill 172 during the Second Session of the Thirteenth Legislature.

BE IT FURTHER RESOLVED that the Legislature refrain from making controversial amendments to these bills.

AND BE IT FURTHER RESOLVED that copies of this resolution be sent to:

The Honorable Bob Mulcahy, State Senate

The Honorable Fred F. Zharoff, House of Representatives

The Honorable Bill Ray, Chairman, Senate Judiciary Committee

The Honorable Mike W. Miller, Chairman, House Community and Regional Affairs Committee

The Alaska Municipal League

PASSED AND APPROVED this 1st day of March, 1984.

KODIAK ISLAND BOROUGH

By Jerome M. Selby
Borough Mayor

ATTEST:

By Shirley Miller, CMC
Borough Clerk

City of Ketchikan

334 Front Street
Ketchikan, Alaska 99901
907 225-3111

March 19, 1984

Representative Charlie Bussell
Chairman, House Judiciary Committee
House of Representatives
Pouch V (MS3101)
Juneau, Alaska 99811

Dear Representative Bussell:

Enclosed is a copy of City of Ketchikan Resolution No. 1371 passed by the City Council March 15, 1984.

The Council supports the reorganization of Title 29 and urges the State Legislature to pass House Bill 172 (CSHB 172).

Your consideration of this resolution is appreciated.

Sincerely,

Karen Miles

Karen Miles
City Clerk

KM/kms

Enc. 1

CITY OF KETCHIKAN, ALASKA

RESOLUTION NO. 1371

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHIKAN, ALASKA, SUPPORTING THE REORGANIZATION OF TITLE 29 FOR CLARITY AND FLEXIBILITY AND URGING PASSAGE OF HOUSE BILL 172 (CSHB 172), AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, in 1980 the Legislature adopted SCR 66 which directed that Title 29 be reviewed and rewritten to provide clarity and readability; and

WHEREAS, a broadly representative policy committee representing rural and urban communities, with the assistance of a technical committee, prepared a revised code after an exhaustive series of meetings, hearing, and public presentations; and

WHEREAS, Title 29 as clarified was introduced as HB 170 and SB 180 in 1981; and

WHEREAS, more hearings were held during the First and Second Session of the Twelfth Alaska State Legislature and hearings were also held in the interim between sessions; and

WHEREAS, SB 180 passed the Legislature during the Second Session; and

WHEREAS, because of controversial floor amendments, the City of Ketchikan joined other local governments urging Governor Hammond to veto the bill; and

WHEREAS, Title 29 as clarified was again introduced as SB 1 and HB 172 during the First Session of the Thirteenth Alaska legislature; and

WHEREAS, both bills are basically a reorganization and rewording of Title 29 to enhance its clarity and flexibility; and

WHEREAS, the Council of the City of Ketchikan strongly feels that this clarification is in the best interests of all local governments in Alaska and that the content and intent of the bill is not controversial; and

WHEREAS, the City Council appreciates the hours of time and effort expended on this bill by Alaskans who harbor a great concern for the well-being of Alaska Local Government and believes those hours should not have been expended in vain.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Ketchikan, Alaska as follows:

Section 1: The Council of the City of Ketchikan supports the reorganization of Title 29 for clarity and flexibility and urges the State Legislature to pass House Bill 172 (CSHB 172).

Section 2: The City Council supports this bill in its basic form and requests other proposals which would constitute major policy revisions or innovations in the function of local government be considered in separate legislation.

Section 3: The Council further requests that all committees expeditiously consider House Bill 172 (CSHB 712) to assure action prior to adjournment of the Thirteenth Alaska Legislature.

Section 4: The City Clerk is hereby directed to send copies of this resolution to Representative McBride, Representative Wendte, Senator Ziegler, the House Community and Regional Affairs Committee, the House Judiciary Committee, and the House Rules Committee, the Senate Community and Regional Affairs Committee, the Senate Judiciary Committee, the Senate Finance Committee, the Senate Rules Committee, and the Alaska Municipal League.

Section 5: This resolution shall be effective immediately upon passage and approval.

PASSED AND APPROVED THIS 15 day of March, 1984.

Edward W. Zastrow

Edward W. Zastrow, Mayor

ATTEST:

Karen M. Sund

Karen M. Sund, Deputy Clerk

OFFICE OF THE MUNICIPAL ATTORNEY
KETCHIKAN GATEWAY BOROUGH
AND
CITY OF KETCHIKAN

334 FRONT STREET
KETCHIKAN, ALASKA 99901
(907) 225-3111, EX. 327

March 13, 1984

Representative Charley Bussell
Judiciary Committee Chairman
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Re: CS for HB 172 (CRA)

Dear Representative Bussell:

I am writing to urge a favorable vote and passage of HB 172.

As you may be aware, a number of members of both the House and the Senate, and also a wide spectrum of persons from many, if not most, of the rural and metropolitan communities, served on the joint legislative committee that devoted virtually hundreds of hours in reviewing and drafting language deemed necessary to clarify and reorganize existing Title 29 (government code) so as to be more understandable and workable for both the small as well as larger communities. In addition, a comprehensive technical committee, composed of bond, tax and other experts spent many hours reviewing and clarifying provisions to assure clarity and utility of the code.

We feel this clarifying bill is vitally needed and passage will greatly enhance the ability of local communities and municipalities to provide responsive local government.

We respectfully request a favorable vote and passage of this bill this session.

Yours very truly,

Russell W. Walker
Municipal Attorney

EG/1/29

HAINES BOROUGH
P.O. BOX H
HAINES, ALASKA 99827
(907) 766-2711

March 22, 1984

The Honorable Charles Bussell
Chairman
House Judiciary Committee
Pouch V
Juneau, AK 99811

Dear Chairman Bussell:

The Haines Borough, along with many other municipalities, has been working very closely with the Legislative committees re-writing the Municipal Code, Title 29.

We feel very strongly that this legislation (HB172 Rules) must be passed during the current legislative session. A new Legislature would require more public hearings going over the same material we've testified on so many times before.

We would appreciate any help that you could give us to get this bill out of committee and on to the floor of the House and then to the Senate.

Sincerely,

Bob Henderson

Bob Henderson, Mayor

REH:AMJ

cc/Rep. Peter Goll
Sen. Dick Eliason

HAINES BOROUGH

Resolution 222

A RESOLUTION REQUESTING THE ALASKA STATE LEGISLATURE TO ADOPT THIS SESSION THE REVISED TITLE 29 (HB 172 Rules), WITHOUT AMENDMENTS.

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

WHEREAS, many years of amendments of Title 29 have created a confusing, unclear and difficult to understand code; and

WHEREAS, committees of Alaska State Legislature have been working on revisions and holding hearings for four consecutive years; and have produced a clear, concise code; and

WHEREAS, a new Legislature would require several more years of work;

NOW, THEREFORE, BE IT RESOLVED, that the Haines Borough respectfully requests the Alaska State Legislature to adopt this session the revised Title 29 (such as HB 172 Rules);

BE IT FURTHER RESOLVED, that no new amendments be added to this bill, but instead be passed as separate bills and later added to the Code.

ADOPTED March 20, 1984

R E Henderson
R. E. Henderson, Mayor

ATTEST:

Frank M. Haas
Frank M. Haas, Assembly Clerk

RESOLUTION 84-1

A RESOLUTION OF THE CITY OF HOUSTON, ALASKA ENDORSING THE ADOPTION BY THE ALASKA STATE LEGISLATURE OF HB 172, A REVISION OF THE MUNICIPAL CODE.

WHEREAS, as a second class City, the operation of City functions is mandated by Title 29 of the Alaska Statutes, and

WHEREAS, proposed Legislatiion in HB 172 will provide clarification and continuity of said Statutes,

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Houston does endorse and encourage passage of HB 172 during the 1984 Legislative session.

ADOPTED THIS 9th DAY OF February 1984.

John J. Eder, Deputy Mayor

ATTEST:

Elsie M. O'Bryan, City Clerk

P.O. BOX 27 • HOUSTON, ALASKA 99694 • 892-6869

CITY OF UNALASKA
UNALASKA, ALASKA

RESOLUTION 84-16

A RESOLUTION SUPPORTING HOUSE BILL 172
WHICH AMENDS ALASKA STATUTES TITLE 29.

WHEREAS: Alaska Statutes 29 is the section of the statutes which deals with operation of local governments, and

WHEREAS: This title has been amended many times since statehood but not recodified in recent years, and

WHEREAS: That recodification is seriously needed to enable local government officials and citizens interested in local government to make more efficient use of the state law.

NOW, THEREFORE BE IT RESOLVED, that:

The City Council of the City of Unalaska supports the present recodification of Title 29 which is contained in HB 172 now under consideration by the Alaska Legislature.

Passed and approved this 8th day of March, 1984 by the City Council of the City of Unalaska, Alaska.

William Fisher
Mayor

Glenda Martin Currier
City Clerk

CITY OF FORT YUKON

INCORPORATED 1959

Post Office Box 269

Fort Yukon, Alaska 99740

Telephone (907) 662-2479 or 2379

RESOLUTION 84-07

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

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

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

WHEREAS, Major Policy changes to Title 29 should be considered in separate legislation in order to keep the Title 29 revision a "Clean" bill;

NOW THEREFORE BE IT RESOLVED, That the City of Fort Yukon, Inc. respectfully requests the Alaska State Legislature adopt this session the revised Title 29, as proposed, without any controversial amendments.

PASSED AND APPROVED by the City council of the City of Fort Yukon, Alaska this 20 day of March, 1984.

MAYOR

ATTEST:

City Clerk

Submitted By:
Mayor Rasmussen
Action Taken:
Yes /5/ No /0/

CITY OF NOME, ALASKA
RESOLUTION

R-84-3-2

"A RESOLUTION REQUESTING
THE ALASKA STATE LEGISLATURE
ADOPT THE REVISED TITLE 29."

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED by the Nome Common Council that the Alaska State Legislature adopt during this session the revised Title 29, as proposed, without any controversial amendments.

SIGNED and DATED this 12th day of March, 1984.

Leo B. Rasmussen, Mayor

ATTEST:

Linda E. Conley, City Clerk

City of Tenakee Springs

RESOLUTION 84-11

In the Council
March 22, 1984

Introduced by the
Council President

A RESOLUTION REQUESTING ADOPTION OF REVISED ALASKA TITLE 29

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

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

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

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

THEREFORE, BE IT RESOLVED, that the Council of the City of Tenakee Springs respectfully requests the Alaska State Legislature adopt this session the revised Title 29, as proposed, without any controversial amendments.

ADOPTED 5 YEA - 2 ABSENT THIS 22 DAY OF MARCH, 1984

Robert A. Pegues
City Council President
ex officio MAYOR

ATTEST:

Lawrence K. Hoare
City Clerk

HB 172 SUMMARY

HB 172 is a comprehensive bill to clean up the language and reorganize the contents of Title 29, the State Municipal Code. Its primary purpose is to make necessary language and format changes to Title 29 to achieve a more clearly organized, simplified and more readily useable set of statutes. Although the bill is lengthy, for the most part it involves moving existing provisions of Title 29 from one part of the code to another or making changes in wording to clarify current law.

The Department of Community and Regional Affairs has worked extensively over the past five years to achieve passage of the legislation. Because of years of patchwork amendments to Title 29, there now exists a confusing and often controversial mass of state law dealing with municipalities. Most of the changes in the bill are necessary for this reason and are supported by the department. They are also supported by the Alaska Municipal League and, except for some disagreement with certain isolated specific language, by all local governments.

The following analysis summarizes some of the major changes to Title 29 which are included in the bill and how these changes will make program administration easier for the Department of Community and Regional Affairs.

ORGANIZATION AND FORMAT OF TITLE 29

One of the most difficult problems of working with the current law is that it is not always easy to ascertain with any degree of certainty whether a particular statute applies to all classes of municipalities or whether certain classes are governed by language found elsewhere in Title 29. HB 172 resolves this problem by organizing most sections by class of municipality, making it much easier to refer to specific sections and determine which classes of municipalities are affected.

In addition, language within the revisions has been modified so that the terms of reference to municipalities, governing boards, etc., are held constant. The term "municipality" refers to all local governments with a subsequent distinction drawn between "home rule" and "general law." This consistency now makes it possible, by checking general references alone, to ascertain whether or not a particular class and type of municipality is affected by specific statutes.

These changes in the organization of the statutes and the use of consistent and more precise terminology mark these revisions to Title 29 as a great improvement over existing statutes.

Started
from Governor
Hay + Miller
Worley - C&RA
dept.

CHANGES TO THE EXISTING LAW

Aside from effecting a better organization of the contents of Title 29 and improved terminology, HB 172 also proposes some important improvements to the current body of municipal law.

Certain powers and responsibilities are clarified in HB 172, particularly in the areas of extraterritoriality and land disposal. Other portions of the bill create new flexibility for local communities, particularly in the areas of reclassification, home rule and zoning. Some changes are of great benefit to the department in its administration of programs, such as revenue sharing for unincorporated communities. These are all worthwhile changes that argue in favor of the bill.

Municipal Incorporation and Reclassification

- HB 172 provides for second class municipalities to reclassify directly to home rule governments. Existing statutes restrict this reclassification to municipalities of the first class.

Extraterritorial Powers

- Extraterritorial power for all municipalities has been expanded to allow for the operation of additional facilities outside of municipal boundaries, including solid and septic waste facilities, wharfs, harbors and other marine facilities.

- A municipality which provides a facility outside its boundaries may regulate its use to the extent that the jurisdiction in which the facility is located does not regulate it. Under existing statutes, no right to regulate was provided for the municipality within which the facility was located.

Eminent Domain

- The exercise of eminent domain and declaration of taking is extended to second class cities. Under current law, second class cities must first receive the approval of the Department of Community and Regional Affairs before they can exercise this power in a specific instance.

Land Disposal

- Municipal land disposal provisions have been simplified, requiring only that the local governing body establish a set of formal procedures by ordinance.

Planning and Zoning

- Zoning laws have been broadened to allow for "land use regulations," thus providing a wider range of options for local governments to implement their local plans and programs.

All of these modifications must be viewed as important, positive and long sought after improvements to Title 29.

Revenue Sharing

- HB 172 would combine the state's two most important programs of shared revenues with municipalities -- State Revenue Sharing and Municipal Assistance. The effects of this consolidation would include simplified program administration, a streamlined application procedure, and predictability of funding.

- Cleans up an existing provision of Title 29 which makes revenue sharing funds available to "Alaska Native Village" governments, which an Attorney General's opinion ruled was unconstitutional. HB 172 would resolve this problem by making revenue sharing available to all unincorporated communities in the unorganized borough, not just those with Native village governments.

Incorporation and Transition Grants

- Raises the organization grant paid by the state to newly formed cities from $10 per voter to a $50,000 in the first year and $25,000 in the second year. Boroughs would be eligible to receive a grant of $300,000 in the first year, $200,000 in the second, and $100,000 in the third year following incorporation. Boroughs now receive $25,000 on incorporation or $10 per voter, whichever is higher. The increased organizational grants will make it much easier for communities or regions of the state to organize as municipalities.

Municipal Property Taxation

In the sections which deal with local property taxation, the bill clarifies several points which are confusing under current law. In addition, it allows municipalities more flexibility in the area of asssessment policy.

In the past, property taxes were required to be levied equally against both real and personal property. HB 172 allows municipalities to exempt property in either category if it wishes to do so, an option which has been badly needed in some communities.

In addition, the Office of the State Assessor responds to numerous questions each year which are caused by the inferior organization of assessment and taxation laws under the current Title 29. The improved arrangement of these laws in HB 172 will be helpful in reducing the number of inquiries that the office currently addresses.

Second Class Borough Powers

Mandatory Powers

1. Assessment and collection of taxes. AS 29.33.030.
2. Education. AS 29.33.050.
3. Planning, platting, and zoning. AS 29.33.070-245.

Optional Areawide Powers (by ordinance, without a vote of the people)

1. Transportation systems. AS 29.48.030(b).
2. Licensing, impounding, and disposal of animals. AS 29.48.035(a)(5).
3. Water pollution control. AS 29.48.035(a)(17).
4. Air pollution control. AS 29.48.035(a)(18).
5. Licensing of day care facilities. AS 29.48.035(a)(20).

Optional Non-areawide Powers (by ordinance, without a vote of the people)

1. Fireworks. AS 29.48.020(1).
2. Animal control. AS 29.48.020(2) & AS 29.48.035(a)(5).
3. Licensing & operation of motor vehicles & operators. AS 29.48.020(3) & Title 28.
4. Snow vehicles. AS 29.48.020(4) & AS 05.30.070.
5. Garbage & solid waste collection and disposal. AS 29.48.020(5).
6. Water pollution control. AS 29.48.020(6) & AS 29.48.035(a)(17).
7. Housing rehabilitation for energy conservation. AS 29.48.020(7).
8. Local service roads & trails. AS 29.48.020(8).
9. Emergency communications centers. AS 29.48.020(9).
10. Transportation systems. AS 29.030(b).
11. Licensing of day care facilities. AS 29.48.035(a)(20).

Changes in HB 172

1. Economic development. New nonareawide power authorized in HB 172.
2. Air pollution control. In current law, authorized just areawide; in HB 172, both areawide and nonareawide.
3. Day care facilities. In current law, authorized both areawide and nonareawide; HB 172, just nonareawide.
4. Snow vehicles. HB 172 deletes reference, but power remains the same because of authority in Title 5.
5. Motor vehicles. HB 172 deletes reference; grant of power remains in Title 28, but not as clearly as in current Title 29.

Prepared by the Alaska Municipal League
February 27, 1984

Existing Title 29

Chapter 29.03 Unorganized Borough

Chapter 29.08 Classification of Municipalities
- Reclassification 29.08.040

Chapter 29.13 Home rule municipalities
- Charter procedures
- List of Title 29 sections which apply to home rule

Chapter 29.18 Incorporation of municipalities

Chapter 29.23 Officers and employees
- Reapportionment 29.23.021-.033
- Assembly and city council
- Mayor
- Borough and city administrator
- Other officers, municipal clerk 29.23.360-.390
- Boards and commissions 29.23.401
- Manager plan 29.23.410-.480
- Oaths of office 29.23.500
- Discrimination 29.23.540
- Conflict of interests 29.23.555
- Vacancies in office 29.23.570
- Public meetings 29.23.580

Chapter 29.28 Elections
- Election contests 29.28.050
- Initiative and referendum
- Recall

Chapter 29.33 Areawide borough powers

Chapter 29.38 Nonareawide borough powers

Chapter 29.41 Third class boroughs (Haines only)

Chapter 29.43 Cities outside boroughs powers

Chapter 29.48 Additional powers of municipalities
- City powers
- Procedures for boroughs to acquire other powers
- Acts required to be by ordinance, 29.48.130
- Ordinance procedures 29.48.140-.180
- Budget 29.48.190
- Maximum criminal penalties 29.48.200
- Sale of public land 29.48.260

Chapter 29.53 Assessment and taxation
- Tax exemptions
- Assessment, board of equalization
- Tax foreclosure and sales

City proprty tax 29.53.400
Sales tax 29.53.414-.460

Chapter 29.58 Municipal debt
General obligation bonds
Revenue bonds

Chapter 29.63 Special Assessments and service areas
Local improvement districts - city or borough
Service areas - local exercise of borough powers

Chapter 29.68 Boundaries
Annexation
Detachment
Unification

Chapters 29.73 and 29.78 Miscellaneous
Condemnation (eminent domain)
Municipal name change
Definitions

Chapter 29.88 Municipal tax resource equalization entitlement

Chapter 29.89 State aid
Revenue sharing

Proposed Title 29

Chapter 29.03 Unorganized borough

Chapter 29.04 Classification of municipalities
Reclassification 29.04.040-.060

Chapter 29.05 Incorporation

Chapter 29.06 Boundaries
Name change
Annexation and detachment
Unification

Chapter 29.10 Home rule
Charter procedures
List of limitations on powers

Chapter 29.20 Officers and employees
Conflict of interest 29.10.010
Public meetings 29.20.020
Reapportionment
Assembly and city council
Vacancies 29.20.170, .180, .280
Administrator
Mayor
Boards and commissions
Other officers
Manager plan 29.20.470-.520
Oaths of office 29.20.600

Chapter 29.25 Ordinances
Acts required to be by ordinance 29.25.010
Ordinance procedures 29.25.020-.050
Maximum criminal penalties 29.25.070

Chapter 29.26 Elections
Procedures
Contest 29.26.070
Initiative and referencum 29.26.100-.190
Recall 29.26.240-.360

Chapter 29.35 Municipal powers
General powers 29.35.010
Borough areawide powers 29.35.150-.180
First class borough 29.35.200
Second class borough 29.35.210
Third class borough (Haines only) 29.35.220
Cities inside boroughs 29.35.250
Cities outside boroughs 29.35.260
Additional powers procedures 29.35.300-.340
Service areas 29.35.450-.490

Chapter 29.40 Planning and platting

Chapter 29.45 Taxation
- Tax exemptions 29.45.030-.050
- Assessment, board of equalization
- Tax foreclosures and sales
- City property tax 29.45.550-.600
- Sales tax 29.45.650-.710

Chapter 29.46 Special assessments
- Local improvement districts

Chapter 29.47 Municipal debt
- General obligation bonds
- Revenue bonds

Chapter 29.55 Municipal programs
- Historical preservation 29.55.010-.020

Chapter 29.60 State programs
- Municipal tax residence equalization entitlements 29.60.010-.080
- Revenue sharing 29.60.100-.180
- Municipal assistance 29.60.350-.360

Chapter 29.60 Land grant
- Land selections

Chapter 29.71 Miscellaneous
- Definitions

HB

188

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M

February 25, 1983

SUBJECT: Big game hunting by nonresidents (HB 188)

TO: Representative John Ringstad
Chairman, House Resources Committee

FROM: Edward H. Hein
Legislative Counsel

You have asked whether HB 188 raises any additional constitutional issues or problems not present in the existing law that the bill amends.

HB 188 repeals and reenacts AS 16.05.407. The only substantive change the bill makes is to allow an Alaska resident over 19 years of age to accompany his or her nonresident in-laws without a guide while hunting brown bear, grizzly bear, polar bear or sheep. Under existing law, the nonresident must be related to the resident by blood within the second degree of kinship in order to hunt without a guide. Under this bill, the relationship between the resident and the nonresident, whether by blood or marriage, would still have to be within the second degree of kinship. This includes the parents, grandparents, brothers and sisters, children and grandchildren of the resident or the resident's spouse.

The change proposed by this bill does not affect the constitutionality or unconstitutionality of AS 16.05.407.

EHH:ljb

Bill Analysis

HB 188

Under current law, blood relatives of resident Alaskans can hunt brown bear, grizzly bear, polar bear, or sheep without a guide if they are within and including second degree of kindred and are personally accompanied by their Alaska relative.

HB 188 would allow the same criteria to also apply to persons related by marriage.

Example: Your brother comes to Alaska to hunt Dall Sheep. You may legally take him without a guide.

However, you cannot legally take your brother-in-law on the same hunt.

HB 188: Under the changes proposed in this law, your brother-in-law would legally be able to participate in the hunt.

Second Degree of kindred includes, under present law:

1) Son, Daughter
2) Father, Mother
3) Grandfather, Grandmother
4) Grandchildren
5) Brother, Sister - their children

In addition, under HB 188, the following relatives would be included:

1) Son, Daughter of Spouse
2) Father-in-law, Mother-in-law
3) Grandfather, Grandmother of Spouse
4) Grandchildren of Spouse
5) Brother-in-law, Sister-in-law - their children

(B) Subunit 26(B) – that portion of Unit 26 lying east of Subunit 26(A) and west of the west banks of the Canning River and Marsh Fork of the Canning River between the Arctic Ocean and Carter Pass;

(C) Subunit 26(C) – that portion of Unit 26 lying east of Subunit 26(B). (In effect before 1980; am 7/4/80, Reg. 75; am 4/5/81, Reg. 78; am 9/3/81 – 9/12/81, Reg. 80; am 9/30/81, Reg. 79)
Authority: AS 16.05.255(a)(1),(2) and (7)

5 AAC 90.020. DEFINITIONS. In 5 AAC 81 – 5 AAC 90

(1) "airport" means an Alaska airport listed in the Federal Aviation Agency Alaska Airman's Guide and chart supplement;

(2) "bag limit" means the greatest number of game species permitted to be taken by any one person in the unit or portion of a unit in which the taking occurs; however, additional numbers of a species may be taken in another designated open unit or portion of a unit where a greater limit on that species is prescribed; in no case may the total or cumulative bag for one person exceed the limit set for the unit or portion of a unit in which the additional game was taken;

(3) "big game animals" includes black bear, brown and grizzly bear, polar bear, bison, caribou, Sitka blacktail deer, elk, mountain goat, moose, muskoxen, mountain or Dall sheep, wolf and wolverine;

(4) "camp" means a structure erected for the purpose of providing overnight shelter and equipped with bedding and eating facilities for occupants;

(5) "closed season" means the time during which game may not be taken;

(6) repealed 7/2/75;

(7) "cub bear" means a brown, grizzly or polar bear in its first or second year of life, or a black bear (including the cinnamon and blue color phases) in its first year of life;

(8) "fur animals" includes beaver, coyote, arctic fox, red fox, lynx, marten, mink and weasel, muskrat, land otter, sea otter, raccoon, red squirrel, flying squirrel, ground squirrel and marmot, wolf and wolverine, excepting domestically raised fur animals;

(9) "highway" means the driveable surface of any constructed road;

(10) repealed 7/2/75;

(11) "motorized vehicle" means a motor-driven land, water or air conveyance;

(12) "open season" means the time during which game may lawfully be taken; each period of time prescribed as an open season includes the first and last days of the period prescribed;

(13) "poison" means any substance which is toxic or poisonous upon contact or ingestion;

(14) "raw ivory" means a walrus tusk (upper canine tooth) which has not been endowed with functional, cultural or aesthetic qualities by altering its natural form or surface through carving, drilling, cutting, filing, or engraving; raw ivory is not altered, in the connotation of this definition, by surface polishing or for a head mount; the latter consisting of ivory (tusks) in a skull or part of a skull;

(15) "regulatory year" means July 1 to June 30, inclusive;

(16) "seal pup" means a seal that weighs less than 50 pounds;

(17) "second degree of kindred" means the relatives who are parents, grandparents, children, grandchildren and sisters or brothers of the person acting as a guide;

(18) "small game" means all species of grouse, hares, rabbits, ptarmigan and waterfowl, and Wilson or jacksnipe;

(19) "three-quarter curl horn" means the horn of a mature mountain sheep, the tip of which has grown through three-quarters of a circle (270°) described by the outer surface of the horn, as viewed from the side;

(20) "transport" means shipping, carrying, importing, exporting, or receiving or delivering for shipment, carriage or export;

(B) Subunit 26(B) – that portion of Unit 26 lying east of Subunit 26(A) and west of the west banks of the Canning River and Marsh Fork of the Canning River between the Arctic Ocean and Carter Pass;

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(3) "big game animals" includes black bear, brown and grizzly bear, polar bear, bison, caribou, Sitka blacktail deer, elk, mountain goat, moose, muskoxen, mountain or Dall sheep, wolf and wolverine;

(4) "camp" means a structure erected for the purpose of providing overnight shelter and equipped with bedding and eating facilities for occupants;

(5) "closed season" means the time during which game may not be taken;

(6) repealed 7/2/75;

(7) "cub bear" means a brown, grizzly or polar bear in its first or second year of life, or a black bear (including the cinnamon and blue color phases) in its first year of life;

(8) "fur animals" includes beaver, coyote, arctic fox, red fox, lynx, marten, mink and weasel, muskrat, land otter, sea otter, raccoon, red squirrel, flying squirrel, ground squirrel and marmot, wolf and wolverine, excepting domestically raised fur animals;

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(19) "three-quarter curl horn" means the horn of a mature mountain sheep, the tip of which has grown through three-quarters of a circle (270°) described by the outer surface of the horn, as viewed from the side;

(20) "transport" means shipping, carrying, importing, exporting, or receiving or delivering for shipment, carriage or export;

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 188
Title: "Big Game Hunting by Nonresidents"
Sponsor: Representative Ringstad
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: F&WP
BRU, Program of Subprogram(s) Affected: Fish & Wildlife Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis No fiscal impact anticipated

Prepared By: Paul A. Conger
Phone: 465-4338
Division: Administrative Services
Date: 3/22/83

Approved by Commissioner:
Date: 3/22/83
Department: Public Safety

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

3/8/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 188 Date on Bill: Introduced 2/11/83
Title: Relating to big game hunting by nonresidents
Sponsor: Ringstad
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			-0-	-0-	-0-	-0-		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

No Fiscal Impact

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Col. Robert J Stickles Phone: 269-5532
Division: Fish & Wildlife Protection Date: 2-18-83

Approved by Commissioner: [signature] Date: 2/25/83
Department: Public Safety

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 188
Title An Act relating to big game hunting by nonresidents
Requested by Ringstad Date 2/25/83

II. FISCAL DETAIL
Agency Affected Department of Fish and Game
Program Category Affected
BRU, Program, Or Subprogram(s) Affected Game
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
	Ø	Ø	Ø	Ø	Ø	Ø

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						
	Ø	Ø	Ø	Ø	Ø	Ø

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

IV. DATE 2/25/83 PREPARED BY Robert A. Hinman
AGENCY Department of Fish and Game
PHONE 465-4190

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/82)

HOUSE RESOURCES COMMITTEE
February 25, 1983
3:05 p.m.

Members Present: Rep. Shultz, Chair
Rep. Ringstad
Rep. Bussell
Rep. Cowdery
Rep. Goll
Rep. Liska
Rep. Uehling

Members Absent: Rep. Vaska

COMMITTEE CALENDAR

HB 187 "An Act relating to regulation, licensing, and fee for fur farming."

HB 188 "An Act to big game hunting by non-residents."

WITNESS REGISTER

Bob Hinman, Dep. Director
AK. Dept. of Fish & Game
Juneau, Alaska 99811
465-4190
Position Statement: In favor of HB 187; neutral position on HB 188 (gave no testimony on HB 188-open for questions)

Ron Somerville
Interior Wildlife
Juneau
789-3450
Position Statement: Testified on HB 188.

PREVIOUS ACTION

HB 187 No previous action to record.

HB 188 No previous action to record.

ACTION NARRATIVE

TAPE #7, SIDE A
Number 006 Meeting called to order by Rep. Dick Shultz, Chairman for today's meeting.

Number 018 HB 188 was brought before the committee.

Number 021 Rep. John Ringstad, sponsor of HB 188: Basically, the intent of this legislation is

just to do some clean up of what a lot of people have assumed was already on the books. Currently, in order for a non-resident to hunt brown bear, grizzly bear and polar bear and sheep, they need to be accompanied by a guide or a relative of the second degree of kindred who is an Alaskan resident. The part that was left out on a lot of these was a second degree of kindred and it was suggested that we change it and put it as second degree of kindred by blood or marriage. The "or marriage" part would include the in-laws so that, on the sheet that is in your file, you can have your in-laws going hunting without requiring the guide.

The bill, the way it is physically written, is to repeal and re-enact and what our legal people did is restructure the (d), (b), (c) and the 1, 2, 3 part but the only real change is where it says "by marriage" on line 19, in the existing statute. There has been a question posted in our listing of which relatives are included. We had asked our legal people across the street to give us a list of who is included currently, and who would be included under the law if this bill is passed. They gave us the list on the bill analysis sheet before you. However, Rep. Larson was just pointing out that in the State Affairs Committee they were giving a different definition or giving different options for that definition. So, at this point, I am questioning what there actual definition is and maybe we should take a further look into that. Most of the people that I've spoken with have been under the assumption that that was the intent of the law all along and you could legally do that. My guess is that most of the in-laws that wanted to come up and go hunting have gone out and done it anyway, assuming that it was legal.

Number 063 Rep. Uehling made a point of clarification.

Number 067 Rep. Ringstad confirmed Uehling's statement.

Number 079 Bob Hinman, Deputy Director from the Division of Game: The Department's position on this bill is neutral and my only comments or reason for showing up here is just to answer questions. I certainly have no objection to this legislation.

Number 084 Rep. Ringstad: Mr. Hinman, do you have with you, a list of how the Fish and Game Regulations now lists second degree kindred? Is there a definition in there that would differ from what our attorneys gave us?

Number 089 Hinman: I'd have to try to recite it from memory. We do have it in regulations...of the person you're talking about; his father, mother, his son or daughter, grandfather, grandmother, grandson, granddaughter relationship would not include under the present definition in being related by marriage.

Number 097 Rep. Liska: Bob, I think you can recall several years ago, Ron Somerville was in Fish & Game self-central district at that time, why sheep got on there in the first place was because, if you recall we had a estimate in the Wrangell Mountains, we had a non-resident running around up in the mountains and was lost. The way this pertains to us in this particular issue, Mr. Chairman, is that most of us have hunted in Alaska, we've been up here a few years, and we know of the dangers experienced up here. I'm sure that most of us could guide our next of kin just about as good as a guide could. I think that's a good section to have in this, that at least gives us an opportunity to hunt with our kin, and give the Alaskans a break.

Number 122 Bob Hinman was excused.

Number 125 Ron Somerville, representing the Interior Wildlife Association (a trappers and sportsmen group in Fairbanks), also as Legislative Chairman for the Alaska Sportsmen Council: I haven't taken a position for or against it, I would like to comment briefly, pretty well pointing out the misconceptions as Rep. Ringstad has indicated of people feeling that they could probably do that anyway has been occurring. One thing they wanted me to point out was there was some concern for how many additional non-residents might be allowed to hunt.

Number 158 Rep. Cowdery: If they were a non-resident it would still require licensing.

Number 164 Rep. Liska made a point of clarification - it would still require the purchasing of a

license, but he wouldn't have to pay the expense of a guide.

Number 171 Ron Somerville was excused.

Number 173 Rep. Cowdery: In State Affairs they were addressing nepatism and we got a ruling that we might like to review before going on.

Number 178 Rep. Ringstad referred to the memo to the Chairman of the State Affairs Committee from our Committee Council, Lynn Asper. It says that "first degree of kindred to a person includes the parents and children of that person. Second degree includes brothers, sisters, grandparents and grandchildren. Third degree includes nephews, nieces, aunts and uncles. It says in the proposed CSHB 49 which is the nepatism bill which the committee was referring to; aunts and uncles are included within the definition of second degree of kindred, although they would normally be considered to be third degree of kindred. So, in this one condition, it would appear to me that they're being put into a different category. At this point I'm not sure what the intent of the other committee is to do. It should be pointed out since the definition of second degree of kindred is the proposed CSHB 49 only applies to the section in which it appears. So, it would not necessarily apply here. From that, my understanding would be that this definition that they provided us earlier would be proper.

Number 208 Rep. Ringstad: This is in our Fish & Game Regulations here; second degree of kindred is defined as "means of relatives who are parents, grandparents, children or grandchildren, sisters, or brothers of a person acting as the guide. What "by marriage" would do is to allow the in-laws there. What I might suggest that we do would be with the other idea here, go back and answer some of the questions on legal position, if we want to adjust that the way they are adjusting it here.

Number 226 Rep. Shultz: We will be holding this bill over for additional clarification.

HOUSE RESOURCES COMMITTEE
March 7, 1983
3:08pm

Members Present: Rep. Shultz, Chair
Rep. Cowdery
Rep. Goll
Rep. Larson
Rep. Liska
Rep. Ringstad
Rep. Vaska

Members Absent: Rep. Bussell
Rep. Uehling

COMMITTEE CALENDAR

HB 188 "An Act related to big game hunting by non-residents."

WITNESS REGISTER

HB 188 No witnesses to record.

PREVIOUS ACTION

HB 188 See minutes from 2/25/83.

ACTION NARRATIVE

TAPE #11, Side A
Number 006 Rep. Shultz, Chair, called the meeting to order at 3:08pm.

Number 011 HB 187 cancelled from today's meeting.

Number 012 Reason for cancellation: the two commissioners from DNR and DEC, who were to testify, but were not prepared at that time.

Number 019 Shultz: At this time we will hear testimony on HB 188.

Number 025 Ringstad: Last time we had this up, Rep Larson had mentioned that they were working in State Affairs; there was a memo sent to the State Affairs Committee dealing with the definition of kindred. In the last paragraph they point out that in defining in HB 49, that definition only applies to the section that that bill applied to. We have also been told, basically that there is nowhere in the statutes that's generally defined how it applies all the way across the board. In Fish & Game matters it's basically set up in regulation. It does not appear that there is a real problem with conflicting definitions. Our original analysis of who would be added to the list was

accurate, and that basically, would include your in-laws. The change is not necessarily defining anything in statute; what it is doing is changing or adding to the guidelines under which the definition is made in regulation.

Number 052 Ringstad: Basically, we have a guideline at this point, (second degree of kindred by blood), and have a regulation set out under that guideline and all this does is expand it by marriage to allow the in-laws.

Number 061 Shultz: If there are no additional questions, it is the intention of the Chair to move this out of committee today.

Number 063 Cowdery made a motion that HB 188 be moved out of committee with individual recommendations.

Number 065 Shultz: No objections,..it is so ordered.

Number 069 Ringstad: Rep. Shultz and I have been discussing the subject of confirmations. We have a list of commissioners and boards of commissions that the committee will be addressing for confirmation. We're hoping to get the subject on the table and working with it. We will have some more information; given resumes, names, etc. We're hoping to take the first look on Friday. Commissioner Wunnicke, Commissioner Neve and Commissioner Collinsworth will be coming up for that.

Number 107 Ringstad: I will get a list of who this committee confirms to all of the committee members in the next day or two.

Number 110 Vaska: Basically, we make recommendation to the full body.

Number 117 Larson: I think this, for further clarification, is the full body in joint session.....

Number 120 Ringstad: We will have a joint session, specifically to deal with confirmations at a date sometime in the future.

Number 129 Shultz: The work session on wednesday on the homestead bills..... As a result of the teleconference we had last Friday...we're going to go over some of the concerns that were raised.

Number 141 Ringstad: It is our intent, on Wednesday, to get different ideas on what is and isn't homesteading.

Number 148 Cowdery: Will it be your intention, before the next meeting on the homestead bill to do a one page summary

of the teleconference on the points, to refresh our minds?

Number 157 Shultz: We will have some of the major points itemized.

Number 162 Ringstad: There will be a committee substitute coming out.

Number 168 Shultz adjourned the meeting at 3:20p.m.

END OF TAPE #11, Side A

HB

195

MSG 03-00002446 PRTY 1 03/22/83 13:55:45 ORIG: LA01 IN= 0009 OUT= 0289
FROM: JUNE, ANC LIO TO: POM, JNU INFO
TARGET: LJHL SUBJ: POM

3/22/83, JUNE, ANC LIO, MSG 2446

JR

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: SUSAN RICHARDSON
9.9 MILE EAST END ROAD
HOMER, AK

STAR ROUTE A BOX 63
HOMER, AK 99603 (H) 235-7380 (W) 235-8141

I AM IN FAVOR OF HB 195. I WOULD LIKE YOU TO WORK TOWARDS PASSING THIS BILL. THANK YOU VERY MUCH.

****

MSG 83-00002356 PRTY 1 03/22/83 11:40:15 ORIG: LA01 IN= 0007 OUT= 0048
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

3/22/83, SHIRLEE ANC LIO, 2356

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: HENRY POTOPOWITZ, 3800 ROBIN ST., ANCHORAGE 99504
H 333-7857 W 333-6516

REGARDING HOUSE BILL 195, I WOULD APPRECIATE A FAVORABLE VOTE FOR THIS BILL.

****

MSG 83-00002343 PRTY 1 03/22/83 11:28.55 ORIG: LA01 IN= 0005 OUT= 0043
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

3/22/83, SHIRLEE ANC LIO, 2343

TO ALL MEMBERS, ALASKA LEGISLATURE

FROM: BILL RICHARDSON, SRA BOX 63, HOMER 99563
H 235-7380

I SUPPORT HOUSE BILL 195.

****

MSG 03-00002372 PRTY 1 03/22/83 12:16:30 ORIG: LA05 IN= 0004 OUT= 0060
FROM: MARCIE, ANC INFO TO: POM, JUNEAU INFO
TARGET: LJHL SUBJ: P O M

TO: REPRESENTATIVES RUSSELL, LISKA HAYES, BARNES, MALONE, CLOCKSIN AND WENDTE

JR

FROM: MARGARET M. COOK, 2500 RASBERRY
MAIL: BOX 8918, ANCHORAGE 99508 243-1616 H 552-5317 W

PLEASE CONSIDER HB 195 NECESSARY FOR EXPANSION AND REPLACEMENT OF THE CIVIL AIR PATROL AIR FLEET TO FURTHER AND ENHANCE OUR SEARCH AND RESCUE EFFORT.

EOM

MSG 83-00011125 PRTY 1 04/21/83 18:01:26 ORIG: LA01 IN= 0w48 OUT= 0232
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

TO: ALL MEMBERS, ALASKA HOUSE OF REPRESENTATIVES

FROM: JOSEPH KOSS, JR., 9321 ARLENE STREET, NO. 2, ANCH 99502
H 243-0462 W 272-5508

I SUPPORT HOUSE BILL 195 AND I WOULD APPRECIATE YOUR SUPPORT AS WELL.

Judiciary Referral

1/26/83, JUNE, ANC LIC, MSG 12900

TO: ALL REPRESENTATIVES

JR

FROM: JIM CLINE, P. O. BOX 3-069, ANCHORAGE, AK 99501
(RES) 835 NORTH LANE, ANCHORAGE, AK
(H) 272-3184 (W) 279-5326

I URGE YOUR SUPPORT OF HB 195 WHICH ALLOWS CIVIL AIR PATROL TO RECEIVE CONFISCATED AIRCRAFT FOR SEARCH AND RESCUE SERVICES. THOUGH THE CONFISCATION PROGRAM IS NOTHING MORE THAN LEGALIZED THEFT, I FEEL THE BEST USE OF THESE AIRCRAFT SHOULD BENEFIT THE PILOTS AND PASSENGERS FLYING PRIVATELY AND COMMERCIALLY IN ALASKA.

ALASKA STATE LEGISLATURE

INTERIM OFFICE:
P.O. BOX 81435
FAIRBANKS, ALASKA 99708

IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4930/4941

CHAIRMAN
1983 INTERIOR DELEGATION

MEMBER
TRANSPORTATION
HEALTH, EDUCATION AND SOCIAL SERVICES
LABOR SUBCOMMITTEE
JOINT OIL AND GAS
RURAL EDUCATION ATTENDANCE AREAS

Representative Mike Davis
House District 19

MEMORANDUM

To: Rep. McBride, Rep. Abood, Rep. Hurlbert, Rep. Bussell
Bob Head, Department of Administration
Dick Rountree, Department of Military Affairs

From: Rep. Mike Davis Mike

Date: April 8, 1983

Re: House Bill 195

Attached is a substitute version of House Bill 195 which will be brought up before the House Judiciary Committee on Friday, April 15. The purpose of this substitute is to further clarify the original legislative intent of HB 195.

(c) A person who, either by himself or with another, wilfully deprives a member of the National Guard or Naval Militia of his employment or prevents his being employed by himself or another, or obstructs or annoys the member of the National Guard or Naval Militia or his employer in respect of his trade, business or employment, because the member of the National Guard or Naval Militia is a member, or in any way dissuades any person from enlisting in the National Guard or Naval Militia by threat or injury to him in respect of his employment, trade or business, if he so enlists, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $100.

(d) All matters relating to the organization, discipline and government of the National Guard or Naval Militia, not otherwise provided for by the laws of the United States, this chapter, or regulations issued by the president shall be governed by regulations issued by the adjutant general and approved by the governor, and the regulations when adopted, have the same force and effect as though enacted in this chapter. (§ 36 ch 150 SLA 1955; am §§ 18 — 20 ch 34 SLA 1973)

Sec. 26.05.345. Civil Air Patrol. The adjutant general shall make the necessary administrative arrangements for maintaining liaison between the state and the Civil Air Patrol and the expenditure of funds appropriated to the department for the state contribution toward the support of the authorized activities of the Alaska Wing, Civil Air Patrol, under its charter. (§ 3 ch 70 SLA 1965; Executive Order No. 33 (1968))

Revisor's note. — The following executive order, signed by Governor Walter J. Hickel, was transmitted to the legislature on January 23, 1968. It was not disapproved by the legislature during the 1968 session and therefore became law under the provisions of sec. 23, art. III of the Alaska Constitution and AS 24.30.130.

"EXECUTIVE ORDER NO. 33. Pursuant to the authority vested in me by Sec. 23, Art. III, Constitution of the State of Alaska, the State's responsibilities toward the Alaska Wing, Civil Air Patrol, as set forth in AS 44.33.110, are hereby transferred from the Department of Commerce to the Department of Military Affairs. The effective date of such transfer shall be July 1, 1968.

"Dated at Juneau, Alaska this 22nd day of January, 1968."

This section, except for the designation of the responsible official, formerly was AS 44.33.110.

Editor's note. — Chapter 70, SLA 1965, included the following: "Sec. 1. Purpose. The Civil Air Patrol is an auxiliary of the United States Air Force operating under charter from Congress, and it operates in all states and the District of Columbia and the Commonwealth of Puerto Rico. The Civil Air Patrol has as its purpose the organizing of public-spirited citizens in civil aviation into a volunteer semi-military organization to assist in civil defense efforts, train teen-age cadets in pre-flight instruction, conduct missing-aircraft search service, and assist in search and rescue missions, and special missions for state and federal agencies. It is the purpose of this Act to make formal provision for the administration of the financial support of the state's participation in the program of the Civil Air Patrol."

Sec. 26.05.350. Short title. This chapter may be cited as the Military Code of Alaska. (§ 1 ch 150 SLA 1955)

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

ROBERT J. SUNDBERG
COMMISSIONER

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF FISH & WILDLIFE PROTECTION

P. O. BOX 6188, ANNEX
ANCHORAGE, ALASKA 99502

February 18, 1983

Representative Mike Davis
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Davis:

The Division of Fish and Wildlife Protection is the primary agency within the Department of Public Safety that becomes involved in the seizure and subsequent forfeiture of aircraft. Neither the Division nor I see any problem with HB 195.

Sincerely,

Robert J. Sundberg
Commissioner

2-L12LH

MAR 2 1983

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

ROBERT J. SUNDBERG
COMMISSIONER

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF FISH & WILDLIFE PROTECTION

P. O. BOX 6188, ANNEX
ANCHORAGE, ALASKA 99502

February 18, 1983

Representative John Ringstad
Chairman, House Resources Committee
State Capitol
Pouch V
Juneau, Alaska 99811

Dear Representative Ringstad:

I would like to present the following position which the Division of Fish and Wildlife Protection, Department of Public Safety holds with regard to the subsequent House Bill under proposal:

HB 195 - Neutral

This Bill should be carefully researched to insure Alaska constitutional provisions and procedures are not by-passed in the transfer of State property.

The majority of aircraft forfeited to the State are in the cub class, which may not be the appropriate plane for civil air patrol. Most aircraft that have been forfeited to the State in the past have needed extensive repair in order to be airworthy. This would require facilities or funds for putting an aircraft in an airworthy condition. The State should not be held liable for the condition of the aircraft at the time of transfer of ownership.

Sincerely,

Robert J. Sundberg
Commissioner

2-L12LH

Alaska State Legislature

INTERIM OFFICE:
1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 274-2843
HOME (907) 274-3102

IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4947

HOUSE MAJORITY WHIP
CHAIRMAN
STATE AFFAIRS
MEMBER
TRANSPORTATION
LEGISLATIVE COUNCIL

Representative Mitch Abood
HOUSE DISTRICT 11

MEMORANDUM

TO: Representative John Ringstad, Co-Chairman
Representative Richard Shultz, Co-Chairman
House Resources Committee

FROM: Representative Mitch Abood *Mitch*

DATE: March 1, 1983

RE: HB 195
"An Act permitting transfer of forfeited aircraft to the Alaska Wing, Civil Air Patrol"

The Civil Air Patrol is providing a great service to the public in its search and rescue efforts, and the transfer of confiscated aircraft to the Civil Air Patrol would tremendously benefit this outstanding operation.

The Civil Air Patrol provides emergency search and rescue services to those individuals who wind up in trouble in the vast outlying areas of Alaska. Because of the age of the aircraft and the great number of hours the CAP spends on search and rescue efforts, it is imperative that the aircraft and equipment used in service be replaced periodically to insure the utmost in safety of the operations. The CAP is currently replacing its aircraft with funds of their own, and the process is quite lengthy in their efforts to procure new aircraft from Outside.

It is with this in mind that I highly recommend the passage of HB 195, "An Act permitting transfer of forfeited aircraft to the Alaska Wing, Civil Air Patrol".

cc: Representative Mike Davis

STATE OF ALASKA
FISCAL NOTE

Revision Date (, 1983

I. REQUEST

Bill/Resolution No.: CSHB 195 (JUD)
Title: An Act Permitting Transfer Of....
Sponsor: House Judiciary
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: FWP
BRU, Program of Subprogram(s) Affected: Fish & Wildlife Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis : No Fiscal Impact Anticipated

Prepared By: Paul Conger
Phone: 465-4338
Division: Administrative Services
Date: 4/14/83

Approved by Commissioner: [signature]
Date: 4/14/83
Department: Public Safety

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

3/8/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: House Bill 195 Date on Bill: 2/14/83
Title: Transfer of Forfeited Aircraft to CAP
Sponsor: Davis, Hurlbert, and McBride
Requestor: Rep. Hurlbert

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital			-0-	-0-	-0-	-0-		
Operating			-0-	-0-	-0-	-0-		
Total			-0-	-0-	-0-	-0-		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

No apparent fiscal impact.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Richard L. Rountree Phone: 465-4601
Division: Administrative Services Date: 2/16/83
Approved by Commissioner: Major General Edward G. Pagano Date: 2/16/83
Department: Military Affairs

Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/8/83

MAR 2 1983

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 195 Date on Bill: 2/14/83
Title: an act permitting transfer of forfeited aircraft to the Alaska wing, Civil Air Patrol
Sponsor: Davis, Hurlbert & McBride
Requestor: HOUSE RESOURCES

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			0	0	0	0		

b. Revenues:

Revenue			0	0	0	0		

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

No fiscal impact

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Colonel Robert J. Stickles Phone: 269-5532
Division: Fish & Wildlife Protection Date: Feb. 18, 1983

Approved by Commissioner: [signature] Date: 2/26/83
Department: PUBLIC SAFETY

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

(9)

3/4

COMMITTEE REPORT

HOUSE

FURTHER: JUDICIARY

Date: MARCH 2, 1983

2/14/83
Mr. Speaker:

The Committee on RESOURCES has had HB 195

An Act permitting transfer of forfeited aircraft to the Alaska Wing, Civil Air Patrol.

under consideration and reports it back as follows:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [X] Zero Fiscal Notes Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

HULTS
KINGSTAD
RUSSELL
ISKA
EHLING
WOERY

MEMBERS HAVING OTHER RECOMMENDATIONS:

CO-CHAIRMAN

H 60

AMENDED TITLE:
AN ACT PERMITTING TRANSFER OF FORFEITED AIRCRAFT TO THE
ALASKA WING, CIVIL AIR PATROL

PRIME SPONSOR: DAVIS.
CO-SPONSORS: HURLBERT, MCBRIDE, ABOOD.
CURRENT STATUS: 3/04/83 IN (H) JUDICIARY

DATE	SEQ	PAGE	LEGISLATIVE ACTION
02/14/83	01	0246	FIRST READING -- COMMITTEE REPORTS
03/04/83	02	0399	RES --- DP06
03/04/83	03	0399	RES CMTE F/NOTE EQUALS ZERO
			JUDICIARY
			RULES
****	**	**	*** *** ***

HB

200

TESTIMONY OF DEAN GUANELI
MARCH 3, 1983

My name is Dean Guaneli, Assistant Attorney General with the Department of law. My initial reaction in listening to the brief overview was that there was some problems with the way the bill was described. I think what I heard was that other states have laws that give peace officers similar rights to other persons and I guess that the suggestion is that this bill does that. I would take strong exception to that. I my view this bill gives peace officers a lot more protection than ordinary citizens have in ways that are completely unappropriate. This bill addresses a number of situations and addresses the situation of when a peace officer is accused of committing a crime, accused of taking some action that might subject him to some putative action, disciplinary action or done something that might subject him to civil liability. Under those circumstances, this bill gives peace officers a lot more rights than the ordinary citizens would have. Particularly as it relates to criminal investigations. There are eleven rights that this bill sets out that gives a peace officer accused of a crime, that ordinary citizens do not have.

The first I suppose would be the written notice of the charges. No defendant is entitled to written notice of the charges before he is interviewed. This gives the peace officer a right to have a witness participate in the interview. Ordinary citizens can have an attorney if they are in custody and other witnesses then can be present at the interview but they cannot participate in the interview. It limits the interviews to reasonable hours. It gives peace officers pay during the time of their interviews. It goes on and on and on. It in fact limits the way in which criminal investigation can be conducted when the subject of that investigation is a peace officer. And I really question whether that was the committee's intent in this legislation. It is completely inappropriate for peace officers to have greater rights as criminal suspects than anybody else in our society and I could invision a criminal defendant coming before a court and saying that I have been denied equal protection of the law, if I was a peace officer this kind of statement wouldn't have been taken from me without being given all these rights. It goes far beyond what ordinary citizens have and it is going to hamstring investigations. Peace officers are in a peculiar situation in our society. They are in a position of trust. They carry weapons, they carry concealed weapons. They are entitled to effect arrests and in some circumstances shoot people when ordinary citizens would not be able to. Under those circumstances, when they are accused of a crime, it's inappropriate to limit the investigation of that crime.

As for the other parts of the bill that relate to internal disciplinary matters. These rights that peace officers would be given, seems to me and I've discussed the matter with the Division of Labor Relations and also the Department of Public Safety, would inappropriately tie the hands of administrators in managing the internal affairs of their police department. In effect it would drive a wedge between employees, peace officers and the chiefs of police in local police departments. In many cases it would put prosecutors in the middle of some kind of dispute between policemen and their managers. Under state personnel rules, if

something goes in a personnel file that is grievable under the contract. But to give a person a right to have all these rights in an internal disciplinary matter, I think is going beyond what ought to be legitimate concern of this legislature. I understand that the Association of Alaska Chiefs of Police has reviewed the bill and is opposed to it. That's understandable, they are managers. They feel that as managers of police departments they have to have control over their officers. They have to be able to take disciplinary action and do it quickly without having to jump through a lot of hoops. For a number of reasons peace departments function as paramilitary organizations. The officers are given orders and they take orders. And like a paramilitary organization they seem to function better that way. And I think that a bill of this sort goes along way towards changing the way a police department functions and for those reasons we strongly oppose this legislation. We being, as far as I know, the Administration, the Department of Law, the Division of Personnel, the Division of Labor Relations and the Department of Public Safety and from that stand point I am not certain what other aspects the Administration would be interested.

PUBLIC EMPLOYEE POLITICAL RIGHTS

CALIFORNIA GOVERNMENT CODE

§ 3201. Legislative finding

The Legislature finds that political activities of public employees are of significant statewide concern. The provisions of this chapter shall supersede all provisions on this subject in the general law of this state or any city, county, or city and county charter except as provided in Section 3207.

§ 3202. Application of chapter; Definitions

This chapter applies to all officers and employees of a state or local agency.

(a) "Local agency" means a county, city, city and county, political subdivision, district other than a school district, or municipal corporation. Officers and employees of a given local agency include officers and employees of any other local agency whose principal duties consist of providing services to the given local agency.

(b) "State agency" means every state office, department, division, bureau, board, commission, superior court, court of appeal, the Supreme Court, the California State University and Colleges, the University of California, and the Legislature.

§ 3203. Restriction of political activities prohibited

Except as otherwise provided in this chapter, or as necessary to meet requirements of federal law as it pertains to a particular employee or employees, no restriction shall be placed on the political activities of any officer or employee of a state or local agency.

§ 3204. Unlawful use of influence

No one who holds, or who is seeking election or appointment to, any office or employment in a state or local agency shall, directly or indirectly, use, promise, threaten or attempt to use, any office, authority, or influence, whether then possessed or merely anticipated, to confer upon or secure for any individual preferment, or to aid or obstruct any individual person in securing, or to prevent any individual person from securing, any position, nomination, confirmation, promotion, or change in compensation or position, within the state or local agency, upon consideration or condition that the vote or political influence or action of such person or another shall be given or used in behalf of, or withheld from, any candidate, officer, or party, or upon any other corrupt condition or consideration. This prohibition shall apply to urging or discouraging the individual employee's action.

§ 3205. Solicitation from other officers or employees

An officer or employee of a local agency shall not, directly or indirectly, solicit political funds or contributions, knowingly, from other officers or employees of the local agency or from persons on the employment lists of the local agency. Nothing in this section prohibits an officer or employee of a local agency from communicating through the mail or by other means requests for political funds or contributions to a significant segment of the public which may include officers or employees of the local agency.

§ 3206. Participation in political activities while in uniform

No officer or employee of a local agency shall participate in political activities of any kind while in uniform.

§ 3207. Local rules and regulations

Any city, county, or city and county charter or, in the absence of a charter provision, the governing body of any local agency and any agency not subject to Section 19251 by establishing rules and regulations, may prohibit or otherwise restrict the following:

(a) Officers and employees engaging in political activity during working hours.

(b) Political activities on the premises of the local agency.

§ 3208. Further limitations prohibited

Except as provided in Section 19251, the limitations set forth in this chapter shall be the only restrictions on the political activities of state employees.

§ 3209. Solicitation or receipt of funds to promote passage or defeat of ballot measures

Nothing in this chapter prevents an officer or employee of a state or local agency from soliciting or receiving political funds or contributions to promote the passage or defeat of a ballot measure which would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of officers or employees of such state or local agency, except that a state or local agency may prohibit or limit such activities by its employees during their working hours and may prohibit or limit entry into governmental offices for such purposes during working hours.

§ 3304. Protection of procedural rights

(a) No public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure.

Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If an officer fails to comply with such an order, the agency may officially charge him with insubordination.

(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal.

§ 3305. Filing of adverse comments in personnel file

No public safety officer shall have any comment adverse to his interest entered in his personnel file, or any other file used for any personnel purposes by his employer, without the public safety officer having first read and signed the instrument containing the adverse comment indicating he is aware of such comment, except that such entry may be made if after reading such instrument the public safety officer refuses to sign it. Should a public safety officer refuse to sign, that fact shall be noted on that document, and signed or initialed by such officer.

§ 3306. Time for filing response to adverse comment

A public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany, the adverse comment.

§ 3307. Polygraph examination

No public safety officer shall be compelled to submit to a polygraph examination against his will. No disciplinary action or other recrimination shall be taken against a public safety officer refusing to submit to a polygraph examination, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to take a polygraph examination, nor shall any testimony or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to the effect that the public safety officer refused to take a polygraph examination.

§ 3308. Disclosure of financial status

No public safety officer shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his property, income, assets, source of income, debts or personal or domestic expenditures (including those of any member of his family or household) unless such information is obtained or required under state law or proper legal procedure, tends to indicate a conflict of interest with respect to the performance of his official duties, or is necessry for the employing agency to ascertain the desirability of assigning the public safety officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.

§ 3309. Search of locker

No public safety officer shall have his locker, or other space for storage that may be assigned to him searched except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the employing agency.

§ 3309.5. Proceeding for violations of rights and protections

(a) It shall be unlawful for any local public safety department to deny or refuse to any local public safety officer the rights and protections guaranteed to them by this chapter.

(b) The superior court shall have initial jurisdiction over any proceeding brought by any local public safety officer against any local public safety department for alleged violations of this section.

(c) In any case where the superior court finds that a local public safety department has violated any of the provisions of this chapter, the court shall tender appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the local public safety department from taking any punitive action against the local public safety officer.

(d) This section shall apply only to local public safety officers who are peace officers as defined in Section 830.1 of the Penal Code, and shall not apply to public safety officers who are peace officers as defined in subdivisions (a) and (b) of Section 830.2 of the Penal Code.

§ 3310. Exception as to public agencies providing protections of rights

Any public agency which has adopted, through action of its governing body or its official designee, any procedure which at a minimum provides to peace officers the same rights or protections as provided pursuant to this chapter shall not be subject to this chapter with regard to such a procedure.

§ 3311. Mutual aid agreements

Nothing in this chapter shall in any way be construed to limit the use of any public safety agency or any public safety officer in the fulfilling of mutual aid agreements with other jurisdictions or agencies, nor shall this chapter be construed in any way to limit any jurisdictional or interagency cooperation under any circumstances where such activity is deemed necessary or desirable by the jurisdictions or the agencies involved.

PUBLIC SAFETY OFFICERS BILL OF RIGHTS

CALIFORNIA GOVERNMENT CODE

§ 3300. Short title

This chapter is known and may be cited as the Public Safety Officers Procedural Bill of Rights Act.

§ 3301. Definition: Legislative finding and declaration

For purposes of this chapter, the term public safety officer means all peace officers, as defined in Section 830.1 and subdivisions (a) and (b) of Section 830.2 of the Penal Code, including peace officers who are employees of a charter city or county. The term public safety officer also means all persons employed by the State of California and designated by law as peace officers.

The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that such stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California.

§ 3302. Political activity

(a) Except as otherwise provided by law, or whenever on duty or in uniform, no public safety officer shall be prohibited from engaging, or be coerced or required to engage, in political activity.

(b) No public safety officer shall be prohibited from seeking election to, or serving as a member of, the governing board of a school district.

§ 3303. Subjection to interrogation: Temporary reassignment

When any public safety officer is under investigation and subjected to interrogation by his commanding officer, or any other member of the employing public safety department, which could lead to punitive action, such interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action is defined as any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If such interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for such off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

(b) The public safety officer under investigation shall be informed prior to such interrogation of the rank, name and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

(c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

(d) The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his own personal physical necessities.

(e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his express consent nor shall his home address or photograph be given to the press or news media without his express consent.

(f) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. DEFICIT CONFIDENTIAL

No notes or reports which are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his own recording device and record any and all aspects of the interrogation.

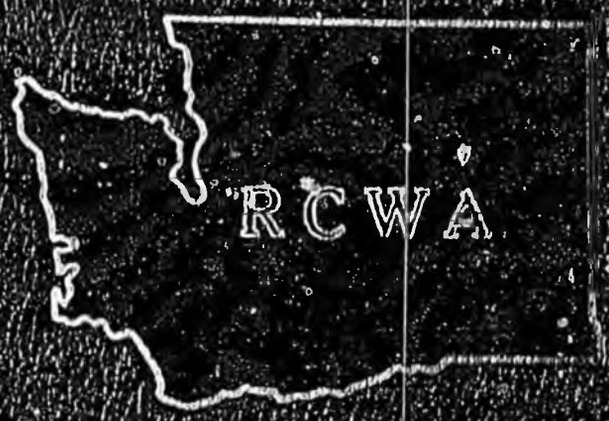
(g) If prior to or during the interrogation of a public safety officer it is deemed that he may be charged with a criminal offense, he shall be immediately informed of his constitutional rights.

(h) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters which are likely to result in punitive action against any public safety officer, that officer, at his request, shall have the right to be represented by a representative of his choice who may be present at all times during such interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters.

This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

(i) No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

Revised Code of Washington Annotated



Titles 39 to 40

Title 41—Ch. 41.01 to 41.27

unfit person to be employed in the public

GISLATIVE HISTORY

§ S p 29.

ROSS REFERENCES

ss cities: RCWA Chapter 41.20.
WA 41.12.090.
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ATERAL REFERENCES

e §§ 28, 31, 37.
ns §§ 576-585.

2d, Civil Service, § 57:13 (notice of claim of illegal removal).

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police department, but with longer combined period of service in same position in police and fire departments. State ex rel. George v Seattle (1936) 184 Wn 560, 52 P2d 360.

In cases of tenure under civil service where policeman shall hold office until removed or retired, it is implied that he can be removed for cause only and then only after due notice and hearing or opportunity to be heard. Luellen v Aberdeen (1944) 20 Wn 2d 594, 148 P2d 849.

Aberdeen civil service ordinance contemplated that person was to

be removed for cause, and was common rule that accused policeman was entitled to hearing on charges made against him after reasonable notice thereof had been given notwithstanding that ordinance was silent as to hearing, notice, or opportunity to be heard. Luellen v Aberdeen (1944) 20 Wn 2d 594, 148 P2d 849.

41.12.090 Procedure for removal, suspension, demotion or discharge—Investigation—Hearing—Appeal. No person in the classified civil service who shall have been permanently appointed or inducted into civil service under provisions of this chapter, shall be removed, suspended, demoted or discharged except for cause, and only upon written accusation of the appointing power, or any citizen or taxpayer; a written statement of which accusation, in general terms, shall be served upon the accused, and a duplicate filed with the commission. Any person so removed, suspended, demoted or discharged may within ten days from the time of his removal, suspension, demotion or discharge, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The investigation shall be confined to the determination of the question of whether such removal, suspension, demotion or discharge was or was not made for political or religious reasons and was or was not made in good faith [f]or cause. After such investigation the commission may affirm the removal, or if it shall find that the removal, suspension, or demotion was made for political or religious reasons, or was not made in good faith for cause, shall order the immediate reinstatement of [or] reemployment of such person* in the office, place, position or employment from which such person was removed, suspended, demoted or discharged, which reinstatement shall, if the commission so provides in its discretion, be retroactive, and entitle such person to pay or compensation from the time of such removal, suspension, demotion or discharge. The commission upon such investigation, [in] lieu of affirming the removal, suspension, demotion or discharge may modify the order of removal, suspension, demotion or discharge by directing a suspension, without pay, for a given period, and subsequent restoration to duty, or demotion in classification, grade, or pay; the findings of the commission shall be certified, in writing to the appointing power, and shall be forthwith enforced by such officer.

All investigations made by the commission pursuant to the provisions of this section shall be had by public hearing, after reasonable notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an op-

portunity of appearing in person and by counsel, and presenting his defense. If such judgment or order be concurred in by the commission or a majority thereof, the accused may appeal therefrom to the court of original and unlimited jurisdiction in civil suits of the county wherein he resides. Such appeal shall be taken by serving the commission, within thirty days after the entry of such judgment or order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within ten days after the filing of such notice, make, certify and file such transcript with such court. The court of original and unlimited jurisdiction in civil suits shall thereupon proceed to hear and determine such appeal in a summary manner: *Provided, however*, That such hearing shall be confined to the determination of whether the judgment or order of removal, discharge, demotion or suspension made by the commission, was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds.

LEGISLATIVE HISTORY

Enacted Laws 1937 ch 13 § 9 p 30.
See RRS § 9558a-9.

REVISER'S NOTE

* The enrolled bill is paragraphed at this point.

COLLATERAL REFERENCES

15 Am Jur 2d Civil Service §§ 45 et seq.
CJS Municipal Corporations §§ 579, 580.

Forms:

4 Am Jur Legal Forms 2d, Civil Service, § 57:13 (notice of claim of civil service employee after illegal removal).

5 Am Jur Pl & Pr Forms (Rev ed), Civil Service, Forms 11 et seq. (removal, suspension, demotion or discharge of civil service city police).

16 Am Jur Pl & Pr Forms, Public Officers, Forms 16:577 et seq. (review of board's discharge of civil service city police).

Modern Legal Forms, § 6181 (preliminary notice of suspension).

See also forms set out below, following Notes of Decisions.

Law Review Articles:

35 Wn LR 220 (due process requirements in suspension of civil service employee).

Annotations:

125 ALR 263 (constitutionality of statute pr review by court of com nission's order).

145 ALR 767 (acquiescence or delay as affec ployee illegally discharged or suspended).

171 ALR 175 (validity of removal or dischar cer or employee as affected by absence of mem sion from hearing).

16 ALR2d 1126 (power of civil service body o out notice or hearing to reconsider or set aside sal of employee).

Key Number Digests:

Municipal Corporations ⟹185(3-13).

NOTES OF DECISIONS

1. IN GENERAL

Provision for removals, suspensions, demotions, and discharges is not applicable to cities and towns which prior to date statute was adopted, established civil service in police departments. Yantsin v Aberdeen (1959) 54 Wn 2d 787, 345 P2d 178.

Though police officer has no property rights in public employment which are protected by constitutional requirement of due process, his rights as civil service employee include, at least, procedure, prerequisites, and conditions set forth in applicable charter, statute or ordinance. Reynolds v Kirkland Police Com. (1963) 62 Wn 2d 720, 384 P2d 819.

Local ordinance attempting to implement provisions of this chapter failed to accomplish its purpose where it established single commission with inconsistent func-

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g in person and by counsel, and presenting judgment or order be concurred in by the rity thereof, the accused may appeal there- original and unlimited jurisdiction in civil herein he resides. Such appeal shall be commission, within thirty days after the en- or order, a written notice of appeal, stating nd demanding that a certified transcript of papers on file in the office of the commis- ing to such judgment or order, be filed by such court. The commission shall, within ing of such notice, make, certify and file such court. The court of original and un- civil suits shall thereupon proceed to hear appeal in a summary manner: *Provided,* earing shall be confined to the determina- dgment or order of removal, discharge, de- made by the commission, was or was not r cause, and no appeal to such court shall such ground or grounds.

EGISLATIVE HISTORY

3 § 9 p 30.

REVISER'S NOTE

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LATERAL REFERENCES

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Annotations:

125 ALR 263 (constitutionality of statute providing for appeal to or review by court of commission's order).

145 ALR 767 (acquiescence or delay as affecting rights of public employee illegally discharged or suspended).

171 ALR 175 (validity of removal or discharge of governmental officer or employee as affected by absence of member of board or commission from hearing).

16 ALR2d 1126 (power of civil service body on own motion and without notice or hearing to reconsider or set aside order relating to dismissal of employee).

Key Number Digests:

Municipal Corporations ⟹185(3-13).

NOTES OF DECISIONS

1. In General

Provision for removals, suspensions, demotions, and discharges is not applicable to cities and towns which prior to date statute was adopted, established civil service in police departments. Yantsin v Aberdeen (1959) 54 Wn 2d 787, 345 P2d 178.

Though police officer has no property rights in public employment which are protected by constitutional requirement of due process, his rights as civil service employee include, at least, procedure, prerequisites, and conditions set forth in applicable charter, statute or ordinance. Reynolds v Kirkland Police Com. (1963) 62 Wn 2d 720, 384 P2d 819.

Local ordinance attempting to implement provisions of this chapter failed to accomplish its purpose where it established single commission with inconsistent functions, namely, appointive, accusatory, investigative, and adjudicative functions with no separation within commission. Reynolds v Kirkland Police Com. (1963) 62 Wn 2d 720, 384 P2d 819.

2. Power to Remove, Suspend, Demote, or Discharge; Grounds

Power to remove or suspend municipal officer rests with governing body of municipality, and cannot be exercised by individual or inferior board unless specifically granted, and hence, under Spokane city charter, providing that police officers may be removed by board of police in certain cases, such board has no power to suspend. Bringgold v Spokane (1902) 27 Wn 202, 67 P 612.

Where police board, having power to suspend public officers, passed rule providing that any member of police force might be suspended by chief of police with approval of board, suspension by board without consent of chief was invalid. Bringgold v Spokane (1902) 27 Wn 202, 67 P 612.

In cases of tenure under civil service where policeman shall hold office until removed or retired, it

is implied that he can be removed for cause only and then only after due notice and hearing or opportunity to be heard. Luellen v Aberdeen (1944) 20 Wn 2d 594, 148 P2d 849.

Under Seattle Charter, art 16 § 12, permitting removal of officer or employee only on filing with civil service commission of statement of reasons therefor, and providing for review of removal on demand, order of commission, finding that patrolman was not guilty of charge on which he was removed by chief of police ("conduct unbecoming an officer, being in a compromising position with a respectable married woman"), but sustaining removal on ground that patrolman was guilty of conduct unbecoming an officer in cultivating acquaintance of woman, was not improper, as sustaining removal on ground not specified by chief of police. State v Seattle (1911) 65 Wn 645, 118 P 821.

3. Administrative Proceedings

Any defects as to sufficiency or timeliness of policeman's protest against discharge were waived when civil service commission proceeded to investigate charges made. Luellen v Aberdeen (1944) 20 Wn 2d 594, 148 P2d 849.

Chief of police and another member of police department, who served city manager's written accusation on certain other police officers who were being discharged by city manager, were not "plaintiffs" in the discharge proceeding as the term is used in RCWA 4.28.-070 and civil service statutes and ordinances which require service of process to be made by person other than plaintiff, where persons making service had no right to claim, and did not seek, legal redress from officers being charged for any reasons stated in the written accusation. Vancouver v Jarvis (1969) 76 Wn 2d 110, 455 P2d 591.

4. — Notice and Opportunity to be Heard

Where member of city police force was discharged by commissioner of public safety, written notice of discharge signed by chief of police, though irregular in some respects, did not invalidate order of discharge. State ex rel. Miller v Tacoma (1934) 177 Wn 689, 33 P2d 88.

"Opportunity to be heard" required to be given civil service employee sought to be discharged consists of right to know seasonably charges preferred, right to meet charges with witnesses and evidence, and right to have aid of counsel. Luellen v Aberdeen (1944) 20 Wn 2d 594, 148 P2d 849.

If no statement of charges made against police officer are given him, nor any notice of any hearing having been given are accorded him, his removal is illegal and of no force or effect. Luellen v Aberdeen (1944) 20 Wn 2d 594, 148 P2d 849.

Where mayor wrote registered letter to police officer enclosing accusation and advising him he was suspended, and officer signed delivery receipt therefor, officer was not properly "served" within rules of civil service commission requiring service in manner prescribed for service of civil process. Schultz v Pasco (1951) 39 Wn 2d 262, 235 P2d 168.

Special appearance in which accused police officer objects to jurisdiction of civil service commission on ground that there has been no service of accusation of him, is not waived by subsequent defense on merits. Schultz v Pasco (1951) 39 Wn 2d 262, 255 P2d 168.

5. Judicial Review

Where there is some competent evidence to sustain action of civil service commissioners in discharging policeman, its weight and sufficiency cannot be inquired into on appeal. State ex rel. Boltin v Cotterill (1923) 125 Wn 533, 216 P 851.

Where civil service commission exonerates police officer from charge given by chief of police for his discharge, but sustains his dismissal "for the good of the service," courts cannot review action, where there was no arbitrary action in receiving or refusing to receive evidence. Bridges v Patterson (1925) 135 Wn 436, 237 P 998.

On removal of police officer within classified civil service, in which appointing power has filed written statement of reasons for removal, on charges that cannot be said to be utterly frivolous, after full opportunity to be heard, and in which there was competent evidence tending to prove charges, courts will not inquire into weight or sufficiency of evidence. State ex rel. Price v Seattle (1944) 20 Wn 2d 17, 145 P2d 286.

Neither trial court nor supreme court can substitute its judgment for independent judgment of civil service commission in dismissing policeman. State ex rel. Perry v Seattle (1966) 69 Wn 2d 816, 420 P2d 704.

6. — Specific Instances

Sufficiency of evidence on which chief of police of city discharged police officer for stated offense of offering to release from custody certain persons, whom he had arrested for gambling, on payment to him of certain sum of money, and evidence on which civil service

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for any reasons stated in the written accusation. Vancouver v Jarvis (1969) 76 Wn 2d 110, 455 P2d 591.

4. — Notice and Opportunity to be Heard

Where member of city police force was discharged by commissioner of public safety, written notice of discharge signed by chief of police, though irregular in some respects, did not invalidate order of discharge. State ex rel. Miller v Tacoma (1934) 177 Wn 689, 33 P2d 88.

"Opportunity to be heard" required to be given civil service employee sought to be discharged consists of right to know seasonably charges preferred, right to meet charges with witnesses and evidence, and right to have aid of counsel. Luellen v Aberdeen (1944) 20 Wn 2d 594, 148 P2d 849.

If no statement of charges made against police officer are given him, nor any notice of any hearing having been given are accorded him, his removal is illegal and of no force or effect. Luellen v Aberdeen (1944) 20 Wn 2d 594, 148 P2d 849.

Where mayor wrote registered letter to police officer enclosing accusation and advising him he was suspended, and officer signed delivery receipt therefor, officer was not properly "served" within rules of civil service commission requiring service in manner prescribed for service of civil process. Schultz v Pasco (1951) 39 Wn 2d 262, 235 P2d 168.

Special appearance in which accused police officer objects to jurisdiction of civil service commission on ground that there has been no service of accusation on him, is not waived by subsequent defense on merits. Schultz v Pasco (1951) 39 Wn 2d 262, 255 P2d 168.

5. Judicial Review

Where there is some competent evidence to sustain action of civil service commissioners in discharging policeman, its weight and sufficiency cannot be inquired into on appeal. State ex rel. Boltin v Cotterill (1923) 125 Wn 533, 216 P 851.

Where civil service commission exonerates police officer from charge given by chief of police for his discharge, but sustains his dismissal "for the good of the service," courts cannot review action, where there was no arbitrary action in receiving or refusing to receive evidence. Bridges v Patterson (1925) 135 Wn 436, 237 P 998.

On removal of police officer within classified civil service, in which appointing power has filed written statement of reasons for removal, on charges that cannot be said to be utterly frivolous, after full opportunity to be heard, and in which there was competent evidence tending to prove charges, courts will not inquire into weight or sufficiency of evidence. State ex rel. Price v Seattle (1944) 20 Wn 2d 17, 145 P2d 286.

Neither trial court nor supreme court can substitute its judgment for independent judgment of civil service commission in dismissing policeman. State ex rel. Perry v Seattle (1966) 69 Wn 2d 816, 420 P2d 701.

6. — Specific Instances

Sufficiency of evidence on which chief of police of city discharged police officer for stated offense of offering to release from custody certain persons, whom he had arrested for gambling, on payment to him of certain sum of money, and evidence on which civil service commission confirmed act of chief of police, will not be reviewed by court on writ of error, where city vested in such officers exclusive authority to discharge employees, and reason for discharge being sufficient. Ford v Seattle (1921) 117 Wn 55, 200 P 568.

On certiorari to review discharge of patrolman by civil service commission of city, superior court had power to reverse discharge for offenses of supplying information to federal secret service agent concerning conduct of federal employee and of violation of rule of police department for which patrolman had been suspended, where record showed that commission acted arbitrarily, though city charter provided that its decision should be final. State ex rel. Mowre v Civil Service Com. (1934) 178 Wn 325, 34 P2d 873.

Judgment sustaining action of civil service commission in dismissing police officer will be affirmed, where it appears that he was charged with insubordination and offensive conduct toward his superior officers, he was granted hearing before commission at which time he was represented by counsel, he heard witnesses testify against him and introduced evidence on his own behalf, and evidence sustained charges and justified action of commission in dismissing him. State ex rel. Schussler v Matthiesen (1946) 24 Wn 2d 590, 166 P2d 839.

City police officer refusing to take advantage of offer by city's attorney to continue hearing before city civil service commission on charges against officer, so that he could meet new evidence of misconduct not referred to in bill of particulars furnished by city public safety commissioner, waived right to complain of intro-

duction of such evidence on appeal from judgment sustaining his dismissal by commission. State ex rel. Schussler v Matthiesen (1946) 24 Wn 2d 590, 166 P2d 839.

FORMS

Complaint to Civil Service Commission Regarding Conduct of Police Department Employee

[*Caption*]

To: Civil Service Commission, City of ....1....., State of Washington.

The undersigned, ...2....., hereby files a complaint with the above entitled Civil Service Commission, regarding the conduct of one ....3....., a duly appointed member of the police department of the City of ....4....., State of Washington, in that said ....5....., on ....6....., 19..7.., committed the following acts: ....8.....

Dated ....9....., 19..10...

....11.....

Notice by Civil Service Commission to Police Department Employee as to His Removal or Suspension from Service

[*Caption*]

To: ....1.....

A complaint having been filed against you with this commission on ....2....., 19..3.., by ....4....., wherein the said ....5..... accused you of performing the following acts on or about ....6....., 19..7.. ....8..... ;

And it appearing that such conduct constitutes a violation of Revised Code of Washington Section 41.12.080 in that ....9.....,

You are hereby notified that you are ....10..... [removed *or as the case may be*] from the service of the police department of the City of ....11....., State of Washington.

Dated ...12....., 19..13...

....14.....
Chairman

Demand by Police Department Employee Charges Filed Agains

[*Caption*]

To: Civil Service Commission, City of ....1.. ton.

The undersigned, having been removed fr with the police department of the City of ... ington, pursuant to an order of the Civil Se on ....4....., 19..5.., hereby, pursuant to t Code of Washington Section 41.12.090, de circumstances relative to a complaint filed a by one ....7.....

Dated ....8....., 19..9...

Notice of Hearing on Charges Filed A

[*Caption*]

To: ....1.....

You are hereby notified that pursuant to vestigation of the charges filed against you w ....2....., 19..3.., a public hearing will be h ....4..... o'clock ....5..... m., in the offices of t mission on ....6....., 19..7...

Dated ....8....., 19..9...

Order of Commission Affirming or Disaffir of Police Department Empl

[*Caption*]

This Commission, after due and proper notic investigation by public hearing held on ...1..... filed against one ....2....., a member of the p City of ....4....., State of Washington, by one 19..7.., alleging that the said ....8..... commit namely: ....9....., and said Commission havin sented by complainant and having heard testim ....10....., and having heard argument of ....11.

NEW MEXICO STATUTES 1978

ANNOTATED

Chapter 29: Law Enforcement

Pamphlet 49: 29-1-1 through 29-12-4

1979 REPLACEMENT PAMPHLET

Pamphlet 49 includes laws enacted through the First Regular Session of the Thirty-Fourth Legislature (1979) and annotations through 590 P.2d 1391, 438 U.S. 421, 591 F.2d 1346, 464 F. Supp. 393, 80 F.R.D. 751 and 1979 Op. Att'y Gen. No. 79-13.

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