ALASKA LEGISLATURE COMMITTEE FILE 1985-1986 8672

3214.20 HCRA HB 258 - HB 293

contains an exception however, as regards a State's proprietary powers and rights as the owner or operator of an airport. As an owner, the state exercises proprietary rights in charging the air carriers fees for landing, parking, terminal space and fuel. The two places in which Alaska exercises such rights are Anchorage and Fairbanks, through the Department of Transportation and Public Facilities.
It is possible that the state could use it's proprietary powers to advance a consumer interest, such as lower airfares. Assuming that the state is legitimately charging for the use of it's facilities through the use of landing, parking, space and fuel fees, the state could give a credit against those charges to those air carriers who maintain a particular airfare. This would be intended to encourage lower airfares for customers, at no cost to the air carrier. To be a permissible law, it is important that the credit be a function of the State's proprietary powers, and not an effort to require air carriers to set specific airfares. Although an air carrier could still argue that the state is attempting to regulate air fares, and hence is violating federal law, this approach would appear to have a good chance of surviving a court challenge. Assuming that the credit would be entirely optional with the air carrier, it would seem difficult to argue that the state is imposing a burden on interstate commerce, or violating federal preemption of the control of airfares.

It is also possible that a close examination of the charges made for the use of Alaska's airports would reveal an additional tax or fee could legitimately be charged that is not being collected at present. If so, the state would not be losing any revenues currently going into the general fund. The amount of revenue that could be collected is governed by federal law, 49 U.S.C. 1513.

I have contacted the state D.O.T.P.F. and requested further information on the calculation of the particular fees being collected for the use of airport facilities. I have also spoken to the federal D.O.T. concerning calculation of airline tariffs. I will also be receiving information on the methodology of determining costs per airline mile. Assuming that a credit system is implemented, it will be necessary to develop a method for comparing costs between particular air routes.

All of the above also assumes that the state is willing to forego revenue from airport fees in order to promote

consumer interests in lower airfares. I have also placed a research request with the National Conference of State Legislatures. If they have any pertinent information they will forward it to me.

Providing a credit for state airport fees might also have the effect of attracting additional air carriers into the market, with resulting increased competition and lower fares. The amount of the credit would need to be determined before any accurate effect on the market could be predicted.

The complexity of this project would seem to dictate that it will require considerable time to prepare legislation. The concept of a credit for airport charges based on existing airline tariffs has not to my knowledge been implemented in any other state. Please let me know if you wish to proceed with this idea, or if I can be of further assistance.

MFF:lmb
L4/051

STATE OF ALASKA
Bill Sheffield, Governor

DEPARTMENT OF TRANSPORTATION
and PUBLIC FACILITIES

DEPUTY COMMISSIONER

4111 AVIATION AVENUE, POUCH 6900
ANCHORAGE 99502 (TELEX 25-185)
PHONE: 266-1440

February 22, 1985

The Honorable Max Gruenberg
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Gruenberg:

Your staff requested information and a Department of Transportation and Public Facilities (DOT&PF) opinion regarding two aviation-related items:

1) Using some of the Division of Tourism budget to attract new carriers to Alaska;

2) Whether airport lease costs could be lowered if airlines kept their passenger fares below a certain level.

These are interesting ideas. I'll simply offer some thoughts you may wish to consider based on DOT&PF experience in dealing with airlines and setting rates and fees at airports.

Attracting New Carriers to Alaska: Our work with air carriers indicates that the crucial element a new airline is looking for before entering a new market is passengers. Certainly anything the State can do to promote more aviation traffic to and from the State will make the market conducive to new entrants. However, I am not aware of any mechanism through which money from the Division of Tourism budget could directly attract new carriers -- those dollars can best enhance the aviation market by motivating more travel to the State.

Lease Costs vs. Airline Fares: The Anchorage and Fairbanks Airport rates and fees were recently adjusted based on costs of providing the facilities to the airlines. Since the International Airport Revenue Fund is set up statutorily to be self-supporting, our rates and fees must be structured to allow us to recover operating costs and finance our capital improvement costs. Lease costs or airline fees could not be lowered significantly and still allow the International Airport Revenue Fund to be self-supporting. One option mentioned was charging a premium to air carriers that do not comply with whatever fare limits the State set. Under this plan we may be vulnerable to charges of anti-trust and discrimination. Legislative attorneys would need to evaluate that.

As far as I know, airports are able to charge differential rates and fees only if they can prove higher costs to justify the different fees. By essentially imposing a penalty on the carriers not complying with the State's fare limits, Alaska would be attempting de facto to economically regulate the aviation industry in the State.

Another item for consideration is that in general, an airline's airport costs are less than 3% of their annual budget. Adjusting their airport costs may provide very little incentive for them to keep fares low. If, on the other hand, the State were able to affect their fuel or labor costs, the incentive could be much greater.

In summary, the greatest factor in airline fares in [illegible]-regulated environment is the typical market forces of travel demand and [illegible]tion to meet the demand. The recent "price war" seems to support this. I believe anything the State can do to increase the travel demand is the best approach to attracting new carriers, thereby increasing the competition and inviting lower fares.

Please let me know if there is any further information you need.

Sincerely,

William R. Snell
Director

GML/cn

cc: Susan Fleischhauer, Legislative Laision, Commissioner's Office
Ray Gillispie, Director of Legislative Relations, Governor's Office
Ginger Johnson, Special Assistant, Commissioner's Office
Don Dickey, Division of Tourism, Department of Commerce & Economic Development

M E M O R A N D U M

TO: Vince O'Reilly, Deputy Commissioner

DATE: February 12, 1985

FROM: Orhan M.Yildiz
Economic Analysis Section

SUBJECT: Airline Industry

THROUGH: Committee of Directors, Economic Analysis Section

In response to your request concerning determinants of airline travel demand we performed a literature search on the subject. Not surpisingly, there is no relevant information specifically for the Alaska market. However, from the limited literature that is available locally I have put together the following discussion, which may shed some light on the questions raised by Senator Josephson.

The 1978 Airline Deregulation Act has increased competition in most of the U.S. airline markets. Consequently, consumers have, in general, benefited from lower fares. In the Alaska market, however, steady price increases in recent years above the inflation rate indicate that Alaskans might not have benefited from the industry deregulation equally. Finding the reasons behind this would require an analysis of the local market characteristics and the airline industry structure in Alaska.

In spite of the increase in competition in the U.S. air travel market, the industry earnings in the post deregulation years have been good, except around the 1980 recession period, and were exceptionally good in 1984. Earnings are expected to increase in 1985. (This information was given by Albert Khan, the man responsible for the deregulation of the airline industry, on the KTOO TV show "Firing Line" on Feb. 9, 1985.) This may imply a price elastic (or price responsive) demand for air travel — i.e., a decrease in fares is more than offset by an increase in demand so that the industry revenues in fact increase. Why, then, is this experience in the lower 48 not transferable to Alaska?

First, the Alaska market has little competition compared to markets elsewhere in the U.S. Even the national market is not entirely competitive, since it is still dominated by the large Trunks, although their market share decreased considerably after the deregulation. In Alaska not only are the alternative modes of travel practically absent, but few airlines operate within the state boundaries. The existence of a small number of operators with similar cost structures and nearly identical products makes

the disadvantage of rivalry clear. This does not necessarily imply collusion. When the market is dominated by one large airline that airline could act as the leader and set the market price, which would be adapted immediately by the smaller airlines. Thus, it is likely that the Alaska market gravitates toward a monopolistic structure or toward an oligopoly with joint profit-maximizing behavior.

Where the air fares are set depends on how easy it is for other airlines to enter the market and the elasticity of demand for air travel. If barriers to entry were low, fares would not be much above those found in a "competitive market," for otherwise new airlines would enter the market to share profits. Thus, one question to be answered is how difficult it is to open the Alaska market to further competition.

If demand for air travel is not responsive to price changes the industry can pass most of the general operating cost increases on to the customers. The existence of monopoly conditions would further exacerbate the situation, because costs due to inefficiencies would be added to the overall costs -- while in a competitive market the inefficient airline would be forced to drop from the market. If the demand responds elastically to price changes cost increases would be born mostly by the industry. Hence, any price increase due to increasing costs would cut revenues drastically. Conversely, a decrease in price would increase revenues but not necessarily the profits of a monopolist. Therefore, the second question that would need to be answered is whether the demand for airline travel in Alaska is responsive to changes in prices.

Whether the Alaska market can become more competitive depends on several factors. Entering into the Trunk business involves economies of scale. Literature indicates that "... a carrier would have to supply at least two billion available ton miles ... in order to achieve unit costs comparable to those of the typical Trunk;" beyond this level of operation economies of scale disappear.1/ In this situation the economical alternative would be the entry of an existing airline company, not a new carrier, to the Alaska market. This way the airline would pick the revenue

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1/ Paul Biederman, "The U.S. Airline Industry: End of an Era," Praeger Special Studies, 1982.

Ton miles is the available tons multiplied by mileage flown.

passenger miles of travelers destined to other locations within the U.S. The market share of a carrier also depends on the frequency of service (number of flights per day), although as length of trip increases this becomes less of a factor.2/ In Alaska, trip lengths between Anchorage and Seattle, Southeast and Seattle, and Southeast and Anchorage would make it feasible to capture a reasonable share of the market with few flights per day.

. . . . . Obviously, each carrier does not have the same cost structure, since there are other determinants of cost than size. One indicator of carrier efficiency is employee productivity, which could be measured as revenue ton miles per employee.3/ Total operating expenses of a carrier depends on total employment, age of aircraft fleet (affects maintenance), type of aircraft (technology) and cargo revenue. Since the two major airlines operating in Alaska are lower 48 based their employee costs in routes between Alaska and Seattle are probably not much higher than an average U.S. carrier. Of course, airlines have to maintain ground crews (for maintenance and service) at every airport. In addition, the cost of providing service within Alaska would be higher. One factor of great importance for the Alaska market is the cargo revenues of carriers. These work to reduce operating costs considerably. In all likelihood airlines in Alaska receive considerable cargo revenues, which lower operating costs and increase total revenues. Consequently, it is not clear whether operating cost of air carrier service to Alaskans is overall costlier than elsewhere. If further work in the airline cost area is sought, financial data for Alaska carriers could be obtained from the Federal Aviation Administration (FAA). Such reporting is a requirement of FAA.

In addition to operating costs, a major obstacle to entry into the Alaska market would be fixed depreciation and amortizations costs of investment. Airlines with the monopoly power could easily undercut the prices, even below the level of a competitive market, to drive out a new entrant to the market. A carrier with high financing costs might not survive such rivalry unless it is protected by a parent corporation.

2/ Geaorge C. Eads, "The Local Service Airline Experiment," The Brookings Institute.

3/ A revenue ton mile is the revenue generated from carrying one ton a distance of one mile.

passenger. For a new carrier to enter the Alaska market it is important to know whether Alaska travelers are sensitive to price reductions. If they are not, utilization of additional carrier capacity offered by the new carrier may require deep price cuts, which would also reduce the total revenue earnings of the industry. On the other hand, if there are barriers to entry into a market, companies with the monopoly advantage benefit from inelastic demand. When demand is not responsive to price the reduction in demand would be proportionately less than the price increase, resulting in an increase in revenues.

The results of demand elasticity analysis in the U carrier market has mixed results. In general, demand for business travel is relatively insensitive to price, whereas the reverse is true for vacation travel. Nevertheless, it is not clear that these conclusions apply to the Alaska market. It is possible that even the vacation travel might be inelastic, considering that few substitutes for air travel exist. Besides, demand for travel is derived from demand for other things, such as business, vacation, visiting family or friends. It is generally acknowledged that the geographical conditions here necessitate occasional vacations to outside. Also few Alaskans may spend their annual leaves at a touristic location of Alaska. There is also the fact that most people here have relatives in the lower 48, whom they may need to visit occasionally. Without specific analysis of the market we can not draw definitive conclusions, although these arguments point to a market with low price responsiveness to air travel. However, acknowledging the price sensitivity of vacation travelers, air carriers offer price discounts. Thus, the existence of different fare categories in Alaska indicate that nonbusiness travelers still have a more price elastic demand curve, but chis is likely to be a matter of degrees.

A study for the airline travel in the North Atlantic market seems to give some, albeit shaky, evidence to the hypothesis of inelastic demand in Alaska. Cigliano has analyzed the effect of price and income elasticity of airline travel between the U.S. and Europe, and also between Canada and Europe.4/ The total demand (aggregate of different fare classes) was responsive to personal income in both markets, responsive to price in the U.S. market but unresponsive to price in the Canada market. The author attributes

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4/ J. M. Cigliano, "price and Income Elasticities for Airline Travel; The North Atlantic Market," Business Economics, 1980.

the price inelastic demand in Canada to a different mix of travelers — e.g., more first class or business travelers. It is also possible that the special relationship of Canada to England requires a level of governmental and business interaction which is less sensitive to price. Alaska's remote geographical location to the mainland U.S. could easily be likened to the Canadian situation. Cherington, who did the first comprehensive, but subjective, review of airline pricing concluded that price changes of less than 10 percent produced an inelastic response.5/ This study is now out dated, but for a new entrant to the market this figure gives an idea of the type of strategy required in order to be competitive.

In conclusion, the position of the State of Alaska should be the encouragement of competition in the Airline industry by making entry to the market easier. This can take the form of low interest business loans, tax legislation, or contract bidding. By opening the fiscal year air travel to a bidding process the government would be acting as a monopsonist (a monopolist of the user of services). If the size of government related travel is large the bidding process may prove to be very effective and may even lure a new carrier to enter the Alaska market.

[illegible] tourist location of Alaska. [illegible]

5/ Paul Biederman, op. cit. [illegible]

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION
and PUBLIC FACILITIES

DEPUTY COMMISSIONER

Bill Sheffield, Governor

4111 AVIATION AVENUE, POUCH 6900
ANCHORAGE 99502 (TELEX 25-185)
PHONE: 266-1440

February 22, 1985

The Honorable Max Gruenberg
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Gruenberg:

Your staff requested information and a Department of Transportation and Public Facilities (DOT&PF) opinion regarding two aviation-related items:

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Please let me know if there is any further information you need.

Sincerely,

William R. Snell

William R. Snell
Director

GML/cn

cc: Susan Fleischhauer, Legislative Laision, Commissioner's Office
Ray Gillispie, Director of Legislative Relations, Governor's Office
Ginger Johnson, Special Assistant, Commissioner's Office
Don Dickey, Division of Tourism, Department of Commerce & Economic Development

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James A. Smith
Signature of Camera Operator

7/25/89
Date

02-519 (REV 8/78)

HB
270

Alaska State Legislature

House of Representatives

Committee on
Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 9981[illegible]
(907) 465-4833

HB 177
HB 270

HEARING DATE: March 20, 1985

NAME (Please Print)	ADDRESS	REPRESENTING	TESTIFY (Yes or No)	PHONE NUMBER
J. Fate	Pouch B	DCRA	NO	4700
J. RLASMAN	Pouch B	DCRA	NO	4707
LINDA EDGEWORTH	POUCH AF Juneau	ELECTIONS	Respond to Questions	4611
Chris Seagraves	Box B Palmer, AK	Mat-Su Borough	yes	745-4801
BOB GREENE	326 4TH St. JNU	AASB	YES	586-1083
Seth A Burgess	105 Municipal Way	AML	yes	6-1325
Joyce A. Wolf	Pouch AF	Elections	no	6-6181
Sharon Graipman	526 Main	DEC. Midget	NO	63118
Linda Henderson	130 Seward Juneau	Folks. No Star Bx.	NO	6-1608
LINDA CONLEY	BOX 281 - NOME	CITY OF NOME	NO	443-5[illegible]

M E M O R A N D U M

DATE: February 8, 1985

FROM: Chris Seagraves, Member of the Legislative Committee of AAMC,
Clerk of the Matanuska-Susitna Borough
P.O. Box B, Palmer, Alaska 99645

Chris Seagraves

TO: W'om It May Concern

SUBJ: Technical Revisions to Alaska Statutes Titles 15 & 29, Relating to Voter Qualification and Elections

I have reviewed several of the comments made on the proposed Title 29 and Title 15 revisions relating to elections and would like to respond to them.

Under the new recall provision in Title 29, a concern has been expressed about the municipal clerk having to prepare the recall petition on one of her bosses. While this may be true, it would in no way place the burden of responsibility for the contents of the petition on the clerk. The petition is made up of the allegations in the application which are sworn to by ten sponsors and the official's rebuttal statement. The petition would also contain spaces for all the legal requirements that must be met (residence address, date of circulation, date of signatures, etc.). This is all done prior to the petition being circulated among the public and ensures that only sufficient allegations are circulated rather than wild, unsupported, possibly libeless statements which could cause damage to the reputation of the official. You can not ask the sponsors of the recall petition to place the rebuttal of the official on the petition and you certainly can't ask the official to prepare the petition. You need a non-bias party to prepare the petition, who would be the clerk, who answers both to the public and the assembly or council.

Another concern expressed was that the revisions to Title 29 should come from the attorney's association rather than the clerks. I disagree in part. Most attorneys disagree with each other and everything is always gray and nothing is black and white. The clerks are the ones who must work daily with Title 29 and use it as their "bible" of sorts. They know from experience which sections require consultation with an attorney. If Title 29 is confusing to experienced clerks, then what is it like for the general public. I think it is the clerks' duty and responsibility to gather together all the confusing sections and suggest wording that they could better understand and then contact the attorney's for reviewing any legal ramifications or inconsistencies. Many municipal clerks don't have attorneys on staff to interpret the law if it is unclear and could possibly break the law unknowingly. The attorneys only deal with Title 29 after the law is supposedly broken.

Another concern expressed was that HB 172 requires a petition to be signed by 25% of the total number of registered voters. My particular changes decreases that figure to 25% of the number of persons who voted at the last regular municipal election, which is still 10% more than what is currently required in the statutes for municipalities over 7500 population.

A concern expressed by an attorney was the use of the word "eligible" as opposed to "registered" and "qualified" in Title 15. It was felt the word "eligible" is more confusing instead of less confusing. I disagree. Throughout Title 15 relating to Voter registration, the words "registered" and "qualified" are used in such a way as to totally disregard the real meaning of each word as they should be used since they are two different things. A registered voter is someone who has properly completed the registration form. A qualified voter being someone who has not only registered but has been registered for 30 days and who can vote. Simply completing the form does not make a person a qualified voter. The word "eligible" was used in replace of "registered" and "qualified" where ever the title was discussing the criteria or eligibility requirements. In order to be eligible to vote you must meet not only the eligibility requirements of a registered voter, you must meet the eligibility requirements of a qualified voter. The term "eligible" as used to define "registered" and "qualified" means the same thing in both sections where as "registered" and "qualified" do not mean the same thing.

The last concern I would like to address is one regarding the decrease from 40% to 20% for the number of votes a candidate must receive in order to win an election. This change was made due to the large number of and the high cost of run-off elections required. If a municipality has more than two candidates running for one seat, 40% of the vote is very close to 50% of the vote and requires the candidate to get an overwhelming majority of all votes. As the number of candidates running for a particular seat increases, it lessens the liklihood of anyone getting 40% the first time round. This 40% requirement in effect, discourages more people from running for office. An example of the necessity for an expensive run-off election under the 40% rule which usually has a low turn-out anyway is the case of where you have three popular candidates running for a vacancy on a service area board in an area of maybe only 50 individuals (the Matanuska-Susitna Borough has had to have run-off elections in an area of only about 30 individuals). The votes come in, each candidate is about five votes apart. A run-off election is required which means advertising, posting notices, hiring three election judges for a minimum of 14 hours work plus a canvass board, and at the run-off election, only 15 people turn out to vote, because there has only been five days notice given. The law has been adhered to, but has the public really been served? Or, has the government just wasted thousands of dollars of taxpayers money? Would not a 20% requirement show a clear majority vote, serve the same purpose to elect the person the majority of the voters wanted? The 20% figure would reduce the number of run-off elections required but still serve the taxpayers and voters.

If you have any other concerns or would like to discuss any of the above issues in more detail, please feel free to contact me at 745-9685 or write me in care of the Matanuska-Susitna Borough, P.O. Box B, Palmer, Alaska 99645.

ION 9

endum. (a) When a petition
or resolution, the clerk shall
e municipality at the next
r or special election occurs
petition with the clerk, the
election within 75 days of

n is filed within 30 days after
re the effective date of the
the petition is filed shall be
ordinance. During the period
nay not enact an ordinance
rdinance but may repeal the

he referendum legislation, it
legislation, it is repealed. A
provided in the charter or by
AS 29.28.060 — 29.28.110.
LA 1972)

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against which a referendum
bly or council after a petition
the council or assembly may
for a period of one year after

endum precludes the filing of
r than six months after voter
m. (§ 2 ch 118 SLA 1972)

all.

on
Election
Form of recall ballots
Election procedure
Majority required
Effect of failure to recall
Election of successor

Sec. 29.28.130. Recall. An elected official of a home rule or gene
law municipality may be recalled by the voters after the official l
served six months in office. (§ 2 ch 118 SLA 1972)

NOTES TO DECISIONS

Section applies to city school board member. — A member of a city school board was an elected public official of an incorporated municipality, within the meaning of a former, similar provision, to the same extent as a city councilman, thus was subject to the recall provis contained in that section. Blue v. Stock Sup. Ct. Op. No. 7 (File No. [illegible], 355 P 395 (1960).

Sec. 29.28.140. Grounds. Grounds for recall are misconduct [i office] incompetence, or failure to perform prescribed duties. (§ 2 c .118 SLA 1972)

Sec. 29.28.150. Petition. (a) A petition seeking recall of one o more municipal officials is filed with the municipal clerk. The petition shall contain

(1) the signatures and resident addresses of a number of voters as prescribed in AS 29.28.070 (b) for initiative and referendum;

(2) the date each voter signed the petition; and

(3) a statement of the grounds of the recall stated with particularity as to specific instances.

(b) A petition for recall must be filed with the clerk within 60 days after the date of the earliest signature on the petition. (§ 2 ch 118 SLA 1972)

Sec. 29.28.160. Examination for sufficiency. The municipal clerk shall review the petition for content and signatures and shall certify on the petition within 10 days of the filing date whether it is accepted or rejected. Until the petition is accepted, a petition signer may withdraw the signer's signature upon written application to the clerk. (§ 2 ch 118 SLA 1972)

Sec. 29.28.170. Supplemental petition. (a) If the petition is rejected because of insufficient signatures, it may be supplemented by additional signatures within 10 days after the date of rejection. If the petition is insufficient for any other reason, it shall be rejected and filed as a public record.

(b) Within 10 days after supplementary filing, the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record. (§ 2 ch 118 SLA 1972)

Sec. 29.28.180. New petition. Failure to secure sufficient signatures does not preclude the filing of a new recall petition. However, a new petition may not be filed sooner than six months after a petition is rejected. (§ 2 ch 118 SLA 1972)

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

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

☐ 949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508
PHONE: (907) 563-1073

March 20, 1985

POSITION PAPER

RE: House Bill 270

SPONSOR: Representative Larson

Program Effects of Bill

This bill proposes changes in municipal initiative, referendum, and recall procedures. It would not affect Departmental programs.

Comments

The Department does not oppose this bill. It basically adopts language from the Governor's Municipal code revision bill (HB 72, SB 142) in regard to municipal initiative, referendum, and recall procedures. There are some substantive changes from HB 72 which would have the following effects:

- set out in greater detail the procedures and steps for municipal clerks to follow in the process, and

- establish more elaborate safeguards for officials subject to recall.

Emil Notti, Commissioner

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 270

Title: Municipal recalls, referendums, initiatives, & elections.

Sponsor: Rep. Larson

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Community & Regional Affairs

Program Category Affected:

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-		
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Doug Griffin, Deputy Director Phone: 465-4750

Division: Municipal & Regional Assistance Date: 3/19/85

Approved by Commissioner: Emil Notti Date: 3/19/85

Agency: Community & Regional Affairs

Distribution (by Agency preparing fiscal note):

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

7/1/84

Introduced: 3/6/85
Referred: Community & Regional
Affairs and Judiciary

IN THE HOUSE BY LARSON

HOUSE BILL NO. 270

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to municipal recalls, referendums, initiatives, and elections."

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

* Section 1. AS 29.13.100(8) is amended to read:

(8) AS 29.28.010, 29.28.022, 29.28.030 [29.28.020(b) - 29.28.030] (municipal elections)

* Sec. 2. AS 29.28.020(b) is amended to read:

(b) The assembly or council may call a special election at any time [UPON AT LEAST 20 DAYS NOTICE].

* Sec. 3. AS 29.28 is amended by adding a new section to read:

Sec. 29.28.022. NOTICE OF ELECTIONS. (a) Unless provided otherwise by law, a municipality shall give at least 30 days notice of an election.

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

* Sec. 4. AS 29.28.030 is amended to read:

Sec. 29.28.030. VOTER QUALIFICATION. (a) A person may vote in a municipal election only if the person

(1) is a United States citizen who is qualified to vote in state elections; [AND]

(2) has been a resident of the municipality for 30 days immediately preceding the election; [AND WHO]

(3) is registered to vote in state elections; and

(4) is not disqualified under art. V of the state

constitution.

(b) Voter registration by the municipality may not be required. However, a municipality may by ordinance require that a person be registered to vote in state elections in the precinct in which that person seeks to vote in municipal elections.

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

* Sec. 5. AS 29.28.040 is repealed and reenacted to read:

Sec. 29.28.040. RUNOFF ELECTIONS. (a) Unless otherwise provided by ordinance, a runoff election shall be held if no candidate receives over 40 percent of the votes cast for the office of

(1) mayor; or

(2) member of the assembly, council, or school board if candidates run for a designated seat.

(b) Unless otherwise provided by ordinance, if candidates for the assembly, council, or school board run at large, a runoff election for a seat shall be held if no candidate receives a number of votes greater than 40 percent of the total votes cast for all candidates divided by the number of seats to be filled.

(c) Unless otherwise provided by ordinance, a runoff election shall be held within three weeks after the date of certification of the election for which a runoff is required, and notice of the runoff election shall be published at least five days before the election date. The runoff election shall be between the two candidates receiving the greatest number of votes for the seat. The ballot may not contain space for a voter to write in the name of another candidate.

* Sec. 6. AS 29.28 is amended by adding new sections to read:

Sec. 29.28.061. APPLICATION FOR PETITION. (a) An initiative or referendum is proposed by filing an application with the municipal

clerk containing the ordinance or resolution to be initiated or the ordinance or resolution to be referred and the address to which all correspondence relating to the petition may be sent. An application shall be signed by at least 10 voters who will sponsor the petition. An additional sponsor may be added at any time before the petition is filed by submitting the name of the sponsor to the clerk. Within two weeks the clerk shall certify the application if the clerk finds that it is in proper form and, for an initiative petition, that the matter

(1) is not restricted by AS 29.28.060;

(2) includes only a single subject;

(3) relates to a legislative rather than to an administrative matter; and

(4) would be enforceable as a matter of law.

(b) A decision by the clerk on an application for petition is subject to judicial review.

Sec. 29.28.063. CONTENTS OF PETITION. (a) Within two weeks after certification of an application for an initiative or referendum petition, a petition shall be prepared by the municipal clerk. Each copy of the petition shall contain

(1) a summary of the ordinance or resolution to be initiated or the ordinance or resolution to be referred;

(2) the complete ordinance or resolution sought to be initiated or referred as submitted by the sponsors;

(3) the date on which the petition is issued by the clerk;

(4) notice that signatures must be secured within 60 days after the date the petition is issued;

(5) spaces for each signature, the printed name of each signer, the date each signature is affixed, and the residence and mailing addresses of each signer;

(6) a statement, with space for the sponsor's sworn signature and date of signing, that the sponsor personally circulated the petition, that all signatures were affixed in the presence of the sponsor, and that the sponsor believes the signatures to be those of the persons whose names they purport to be; and

(7) space for indicating the total number of signatures on the petition.

(b) If a petition consists of more than one page, each page shall contain the summary of the ordinance or resolution to be initiated or the ordinance or resolution to be referred.

(c) Copies of the petition shall be provided to each sponsor by the clerk.

* Sec. 7. AS 29.28.070 is amended to read:

Sec. 29.28.070. SIGNATURE REQUIREMENTS [REQUIRED SIGNATURES]. (a) The [NECESSARY] signatures on an initiative or referendum [A] petition shall be secured within 60 [90] days after the clerk issues [FROM THE DATE OF THE FIRST CIRCULATION OF] the petition. The statement provided under AS 29.28.063(a)(6) shall be signed and dated by the sponsor. The petition shall be signed in ink or indelible pencil.

(b) Every petition for either the initiative or referendum in the government of a municipality shall be signed by a number of [QUALIFIED] voters residing within the territorial limits of the municipality, or, if the act sought to be initiated or referred pertains exclusively to the area outside cities or to a service area, by a number of [QUALIFIED] voters residing within the area outside cities or within the service area. The clerk shall determine the number of signatures required on a petition and inform each sponsor. A petition shall be signed by a number of voters based on the number of votes cast at the last regular election held before the date the petition

was issued equal to 25 percent of the votes cast in the area concerned [, AS THE CASE MAY BE, EQUAL TO THE FOLLOWING PER CENT OF THE TOTAL NUMBER OF VOTES CAST AT THE LAST GENERAL ELECTION IN THE CITY OR BOROUGH OR BOROUGH AREA CONCERNED, OR SPECIAL ELECTION CALLED FOR THE PURPOSE OF ELECTING CITY OR BOROUGH OFFICERS:

(1) 25 PER CENT, WHEN A CITY OR BOROUGH HAS FEWER THAN 7,500 PERSONS, OR

(2) 15 PER CENT, WHEN A CITY OR BOROUGH HAS 7,500 PERSONS OR MORE].

(c) When signing a petition each voter shall write or print after the signature the date of signing the petition and the voter's resident address.

(d) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected [MAY BE REJECTED BY THE MUNICIPAL CLERK].

(e) A petition signer may withdraw the signer's signature upon written application to the clerk before certification of the petition [WITHIN SEVEN DAYS AFTER THE PETITION HAS BEEN FILED WITH THE CLERK].

* Sec. 8. AS 29.28.073 is repealed and reenacted to read:

Sec. 29.28.073. SUFFICIENCY OF PETITION. (a) All copies of an initiative or referendum petition shall be assembled and filed as a single instrument. Within 10 days after the date the petition is filed, the municipal clerk shall

(1) certify on the petition whether it is sufficient; and

(2) if the petition is insufficient, identify the insufficiency and notify the sponsors at the address provided under AS 29.-28.061(a) by certified mail.

(b) A petition that is insufficient may be supplemented with

additional signatures obtained and filed within 10 days after the date on which the petition is rejected.

(c) A petition that is insufficient shall be rejected and filed as a public record unless it is supplemented under (b) of this section. Within 10 days after a supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

* Sec. 9. AS 29.28.075 is amended to read:

Sec. 29.28.075. PROTEST. If the municipal clerk certifies an initiative or referendum application or [THE] petition is insufficient, a sponsor or signer of the application or petition may file a written protest with the clerk [MUNICIPAL EXECUTIVE] within seven days after the certification. The clerk [AND THE MUNICIPAL EXECUTIVE] shall present the protest at the next regular meeting of [TO] the assembly or council which shall hear and decide the protest.

* Sec. 10. AS 29.28.077 is amended to read:

Sec. 29.28.077. NEW PETITION. Failure to secure sufficient signatures does not preclude the filing of a new application for an initiative or referendum petition. However, a new application for a petition on substantially the same matter may not be filed sooner than 180 days [SIX MONTHS] after the date a petition is rejected as insufficient.

* Sec. 11. AS 29.28.080 is repealed and reenacted to read:

Sec. 29.28.080. INITIATIVE ELECTION. (a) Unless substantially the same measure is adopted, when a petition seeks an initiative vote the clerk shall submit the matter to the voters at the next regular election occurring no sooner than 45 days after certification of the petition. If no regular election occurs within 75 days after the certification of a petition, the assembly or council shall hold a

special election within 75 days, but not sooner than 45 days after certification.

(b) If the assembly or council adopts substantially the same measure, the petition is void and the matter initiated may not be placed before the voters.

(c) The ordinance or resolution initiated shall be published in full in the notice of the election, but may be summarized on the ballot to indicate clearly the proposal submitted.

(d) If a majority vote favors the ordinance or resolution, it becomes effective upon certification of the election, unless a different effective date is provided in the ordinance or resolution.

* Sec. 12. AS 29.28.090 is repealed and reenacted to read:

Sec. 29.28.090. REFERENDUM ELECTION. (a) Unless the ordinance or resolution is repealed, when a petition seeks a referendum vote the clerk shall submit the matter to the voters at the next election occurring no sooner than 45 days after certification of the petition. If no election occurs within 75 days of certification of a petition, the assembly or council shall hold a special election within 75 days, but not sooner than 45 days after certification.

(b) If a petition is certified before the effective date of the matter referred, the ordinance or resolution against which the petition is filed shall be suspended pending the referendum vote. During the period of suspension, the assembly or council may not enact an ordinance or resolution substantially similar to the suspended measure.

(c) If the assembly or council repeals the ordinance or resolution before the referendum election, the petition is void and the matter referred shall not be placed before the voters.

(d) If a majority vote favors the repeal of the matter referred,

it is repealed. Otherwise, the matter referred remains in effect or, if it has been suspended, becomes effective on certification of the election.

* Sec. 13. AS 29.28.110 is repealed and reenacted to read:

Sec. 29.28.110. EFFECT. (a) An ordinance or resolution may not be repealed or amended within one year after its effective date if adopted in an initiative election or if adopted after a petition that contains substantially the same measure has been filed.

(b) If an ordinance or resolution is repealed in a referendum election or by the assembly or council after a petition that contains substantially the same measure has been filed, substantially similar legislation may not be enacted for a period of one year.

(c) If an initiative or referendum measure fails to receive voter approval, a new petition application for substantially the same measure may not be filed sooner than 180 days after the election results are certified.

* Sec. 14. AS 29.28.130 is amended to read:

Sec. 29.28.130. RECALL. An [ELECTED] official <u>who is elected or appointed to an elective municipal office</u> [OF A HOME RULE OR GENERAL LAW MUNICIPALITY] may be recalled by the voters after the official has served <u>the first 120 days of the term for which elected or appointed</u> [SIX MONTHS IN OFFICE].

* Sec. 15. AS 29.28.140 is amended to read:

Sec. 29.28.140. GROUNDS. Grounds for recall are misconduct in office, incompetence, or failure to perform prescribed duties <u>during the term of office the official is presently serving. An official may not be recalled for performance of or failure to perform a discretionary act</u>.

* Sec. 16. AS 29.28.140 is amended by adding a new subsection to read:

(b) For purposes of this section

(1) "failure to perform prescribed duties" means the wilful neglect or failure to perform faithfully a duty imposed by statute;

(2) "incompetence" means mental or physical incapacity to perform the duties of office for a continuous period of at least 60 days; and

(3) "misconduct in office" means an unlawful act committed wilfully.

* Sec. 17. AS 29.28 is amended by adding new sections to read:

Sec. 29.28.144. APPLICATION FOR RECALL PETITION. (a) An application for a recall petition shall be filed with the municipal clerk and shall contain

(1) the signatures and residence addresses of at least 10 municipal voters who will sponsor the petition;

(2) the address to which all correspondence relating to the petition may be sent;

(3) a statement in 200 words or less of the grounds for recall stated with particularity.

(b) An additional sponsor may be added at any time before the petition is filed by submitting the name of the sponsor to the clerk.

(c) Each sponsor shall certify that the sponsor believes the grounds for recall stated in the application are true. Knowingly making a false statement on an application is a class A misdemeanor.

(d) The clerk shall review an application for a recall petition and accept only those grounds that meet the requirements of AS 29.28.-140. The clerk shall immediately notify the sponsors by certified mail at the address provided under (a)(2) of this section of any grounds for recall in the application that are rejected and the reasons for the rejection.

Sec. 29.28.146. REBUTTAL STATEMENTS. Upon receipt of an application for recall petition that meets the requirements of AS 29.28.144, the clerk shall send by certified mail a copy of the application to the official sought to be recalled with a notice that the official may submit to the clerk a rebuttal statement of 200 words or less within 10 days after receipt of the application.

* Sec. 18. AS 29.28.150 is repealed and reenacted to read:

Sec. 29.28.150. RECALL PETITION. (a) After the period during which a rebuttal statement may be submitted has elapsed, the clerk shall prepare a recall petition. All copies of the petition shall contain

(1) the name of the official sought to be recalled;

(2) the statement of the grounds for recall as set out in the application for the petition;

(3) a rebuttal statement if one has been submitted under AS 29.28.146;

(4) the date the petition is issued by the clerk;

(5) notice that signatures must be secured within 60 days after the date the petition is issued;

(6) spaces for each signature, the printed name of each signer, the date of each signature, and the residence and mailing addresses of each signer;

(7) a statement, with space for the sponsor's sworn signature and date of signing, that the sponsor personally circulated the petition, that all signatures were affixed in the presence of the sponsor, and that the sponsor believes the signatures to be those of the persons whose names they purport to be; and

(8) space for indicating the number of signatures on the petition.

(b) Copies of the petition shall be provided to each sponsor by the clerk.

* Sec. 19. AS 29.28 is amended by adding a new section to read:

Sec. 29.28.155. SIGNATURE REQUIREMENTS. (a) The signatures on a recall petition shall be secured within 60 days after the date the clerk issues the petition. The statement provided under AS 29.28.-150(a)(7) shall be completed and signed by the sponsor. Signatures shall be in ink or indelible pencil.

(b) The clerk shall determine the number of signatures required on a petition and inform each sponsor. If a petition seeks to recall an official who represents the municipality at large, the petition shall be signed by a number of voters equal to 25 percent of the number of votes cast at the last regular election held before the date the petition was issued. If a petition seeks to recall an official who represents a district, the petition shall be signed by a number of the voters residing in the district equal to 25 percent of the number of votes cast in the district at the last regular election held before the date the petition was issued.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw the signer's signature upon written application to the clerk before certification of the petition.

* Sec. 20. AS 29.28.160 is repealed and reenacted to read:

Sec. 29.28.160. SUFFICIENCY OF PETITION. (a) The copies of a recall petition shall be assembled and filed as a single instrument. A petition may not be filed within 180 days before the end of the term of office of the official sought to be recalled. Within 10 days after the date a petition is filed, the municipal clerk shall

(1) certify on the petition whether it is sufficient; and

(2) if the petition is insufficient, identify the insufficiency and notify the sponsors at the address provided under AS 29.28.144(a)(2) by certified mail.

(b) A petition that is insufficient may be supplemented with additional signatures obtained and filed within 10 days after the date on which the petition is rejected if the supplementary petition is filed more than 180 days before the end of the term of office of the official sought to be recalled.

(c) A petition that is insufficient shall be rejected and filed as a public record unless it is supplemented under (b) of this section. Within 10 days after the supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

* Sec. 21. AS 29.28.180 is repealed and reenacted to read:

Sec. 29.28.180. NEW RECALL PETITION APPLICATION. A new application for a petition to recall the same official may not be filed sooner than 180 days after a petition is rejected as insufficient.

* Sec. 22. AS 29.28.190 is amended to read:

Sec. 29.28.190. SUBMISSION. If a recall petition is sufficient, the clerk shall [IMMEDIATELY] submit it to the assembly or council at the next regular meeting.

* Sec. 23. AS 29.28.200 is amended to read:

Sec. 29.28.200. ELECTION. (a) If a regular election occurs within 75 but not sooner than 45 days after [OF THE] submission of the petition to the assembly or council, the assembly or council shall submit the recall at that election.

(b) If no regular election occurs [WILL OCCUR] within 75 days, the assembly or council shall hold a special election on the recall

(b) If a member of the school board is recalled, the office of that member is filled in accordance with AS 14.12.070. If all members are recalled from a school board, the assembly or council shall appoint qualified voters to fill the vacancies until the next regular election.

(c) A person appointed under (a) or (b) of this section serves until a successor is elected and takes office.

(d) If an official other than a member of the assembly or council or school board is recalled, a successor shall be elected to fill the unexpired portion of the term. The election shall be held not more than 60 days after the date the recall election is certified, except that if a regular election occurs within 75 days after certification the successor shall be chosen at that election.

(e) Nominations for a successor may be filed until seven days before the last date on which a first notice of the election must be given. Nominations may not be filed before the certification of the recall election.

Sec. 29.28.246. APPEAL. (a) A person aggrieved by the filing of a recall petition or an application for a petition or by the failure of an elected official to perform duties involving a recall may file an action in the superior court. The court may

(1) consider the statutory sufficiency or specificity of the grounds for recall;

(2) issue an injunction to compel or prevent the performance of an act relating to the recall;

(3) determine whether the stated grounds for recall are true; the person challenging the truthfulness of the grounds is required to prove their falsity by a preponderance of the evidence.

(b) An action seeking relief under (a)(1) or (3) of this section

question within 75 days but not sooner than 45 days after a petition is submitted to the assembly or council [OF SUBMISSION].

(c) If a vacancy occurs in the office after a sufficient recall petition is filed with the clerk, the recall question [PETITION] shall not be submitted to the voters. An official who resigns after a sufficient recall petition is filed naming that official may not be appointed to the same office.

* Sec. 24. AS 29.28.210 is amended to read:

Sec. 29.28.210. FORM OF RECALL BALLOTS. A recall ballot shall contain [CONTAINS:]

(1) the grounds as stated in the recall petition;

(2) a [THE OFFICER'S] statement by the official named on the recall petition of 200 words or less, if the statement is filed with the clerk in accordance with AS 29.28.146 [FOR PUBLICATION AND PUBLIC INSPECTION WITHIN 20 DAYS BEFORE THE ELECTION];

(3) the following question: "Shall (name of person) be recalled from the office of (name of office)? Yes [ ] No [ ]".

* Sec. 25. AS 29.28.240 is repealed and reenacted to read:

Sec. 29.28.240. EFFECT. (a) If a majority vote favors recall, the office becomes vacant upon certification of the recall election.

(b) If an official is not recalled at the election, an application for a petition to recall the same official may not be filed sooner than 180 days after the election.

* Sec. 26. AS 29.28 is amended by adding new sections to read:

Sec. 29.28.242. SUCCESSORS. (a) If an official is recalled from the assembly or council, the office of that official is filled in accordance with AS 29.23.080 or 29.23.280. If all members of the assembly or council are recalled, the governor shall appoint qualified voters to fill the vacancies until the next regular election.

(b) If a member of the school board is recalled, the office of that member is filled in accordance with AS 14.12.070. If all members are recalled from a school board, the assembly or council shall appoint qualified voters to fill the vacancies until the next regular election.

(c) A person appointed under (a) or (b) of this section serves until a successor is elected and takes office.

(d) If an official other than a member of the assembly or council or school board is recalled, a successor shall be elected to fill the unexpired portion of the term. The election shall be held not more than 60 days after the date the recall election is certified, except that if a regular election occurs within 75 days after certification the successor shall be chosen at that election.

(e) Nominations for a successor may be filed until seven days before the last date on which a first notice of the election must be given. Nominations may not be filed before the certification of the recall election.

Sec. 29.28.246. APPEAL. (a) A person aggrieved by the filing of a recall petition or an application for a petition or by the failure of an elected official to perform duties involving a recall may file an action in the superior court. The court may

(1) consider the statutory sufficiency or specificity of the grounds for recall;

(2) issue an injunction to compel or prevent the performance of an act relating to the recall;

(3) determine whether the stated grounds for recall are true; the person challenging the truthfulness of the grounds is required to prove their falsity by a preponderance of the evidence.

(b) An action seeking relief under (a)(1) or (3) of this section

must be commenced within 15 days after the date the official sought to be recalled received a copy of the application for a recall petition from the clerk. An action seeking relief under (a)(3) of this section must be commenced within 15 days after the act or failure to act occurs.

* Sec. 27. AS 29.28.250 is repealed and reenacted to read:

Sec. 29.28.250. APPLICATION. AS 29.28.130 - 29.28.250 apply to home rule and general law municipalities.

* Sec. 28. AS 29.78.010(19) is amended to read:

(19) "voter" means a United States citizen who is qualified to vote in state elections, [AND] has been a resident of the municipality for 30 days immediately preceding the election, [AND WHO] is registered to vote in state elections and, if required by ordinance, is registered in the precinct in which the person seeks to vote in municipal elections, and is not disqualified under art. V of the state constitution.

* Sec. 29. AS 29.78.010 is amended by adding a new paragraph to read:

(20) "residence address" means a physical location such as a street name and number, subdivision name, highway name and mile marker, or public road name, but does not include a post office box number or rural route number.

* Sec. 30. AS 29.28.062, 29.28.065, 29.28.220, and 29.28.230 are repealed.

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
POUCH AF
JUNEAU, ALASKA 99811-9974

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POSITION PAPER
HOUSE BILL NO. 270
March 19, 1985

The Division of Elections has reviewed House Bill No. 270, "An Act relating to municipal recalls, referendums, initiatives, and elections", and raises no major objections to its intent or content.

Most of the provisions of this bill relate specifically to incorporated communities over which the division has no jurisdiction, however, the division notes that the suggested amendments and additions concerning initiatives and referendum do make the provisions of Title 29 more consistent with Title 15 statutes governing statewide petitions and referendum procedures. The division supports the distinction outlined by the addition of AS 29.28.061 between the application for petition, and its actual circulation. The application process is helpful in assuring the sponsor, based on review by the clerk, and subject to judicial review, that the petition, is on its face, in proper form and sufficient to be favorably certified before energy is expended in securing the required number of signatures. Based on the division's experience in preparing and distributing petition booklets to sponsors supporting statewide petitions and referendum, we would suggest it advisable to require that for any type of petition, each sponsor's name be accompanied by that sponsor's signature to confirm their interest in circulating the petition. Periodically, sponsors' names have been submitted to the division who have not given their consent.

Pursuant to AS 14.08.071 and AS 14.08.081, the body of law governing the division's administration of Rural Education Attendance Area School Board elections is AS 29.28. Therefore, the amendments suggested by the bill regarding recall petitions are those that most greatly impact the division directly. Not withstanding the reservations noted in this position paper, the division supports the provisions of this bill with regard to recall petitions.

The division favors the amendment to AS 29.28.130 clarifying the statutes by providing that elected as well as appointed officials are subject to recall. It is the division's

opinion that while this Section stipulates that an official may be recalled after the official has served the first 120 days of the term for which elected or appointed, it remains unclear as to the intended definition of "recalled" in this context. The statute is unclear as to whether the 120 day provision applies to the initiation of a petition, or to the actual election resulting from the successful certification of the circulated petition. Without clarification, there is some confusion as to whether or not a recall petition can be initiated before the official has served 120 days.

We support the changes suggested under AS 29.28.140 which specify that failure to perform prescribed duties as grounds for recall must relate to the term of office the official is presently serving. Confusion can occur when officials sought to be recalled have also served in previous terms.

As with the amendments included in this bill of initiatives and referendum, the division also supports the separation of the application process from actual circulation of recall petitions. These provisions again make the conditions involving local recalls more consistent with those in Title 15 impacting statewide recalls.

With regard to AS 29.28.150 (3), providing that a rebuttal statement shall be included in the prepared recall petition, we would express concern that the appearance of opposing points of view on the same petition may violate the basic assumptions inherent in the petition process. A petition is usually assumed to express a single point of view or command a subsequent action with which the sponsors and subscribers uniformly concur. By providing conflicting positions on the same issue , there may be some confusion as to which the signer subscribes. Under AS 29.28.210, provision is made that the rebuttal statement of the official will appear on the ballot which goes before the voters. The division suggests that this is a more appropriate placement of the rebuttal rather than on the sponsored petition. The division suggests that the deletion of the provision mandating that the ballot be made available 20 days before the election may be a detrimental deletion. While constricting timeframes frequently make it difficult to have the actual ballots published by that time, samples of the ballot language could be made available.

With regard to Sec. 29.28.242 providing for the appointment of successors to fill vacant seats resulting from the recall of an official, the division can offer no opinion as to the provision that the governor appoint municipal or other local officials in the event that entire councils or assemblies

are recalled. This amendment makes no reference to appointment authority under similar circumstances for school boards where there are no city councils or assemblies.

The division notes that the bill does not address the issue as to the recalled official's eligibility to run for re-election for the same office or for any other, and suggests that this clarification might be something the legislature may want to include in their review of this bill.

Finally, the division notes the amended definition of "voter" allowing municipalities by ordinance to require a voter to be registered in the precinct in which the persons seeks to vote in the municipal election. The division raises no objections to this amendment.

Sandra J. Stout
Director

Section 29.28.030 Voter Qualification

Page 1, Line 24 (a)(1) is a United States Citizen;

~~Base~~ Line 26 ✓(2) has been a resident of and registered to vote in the municipality for 30 days;

Line 28 ✓(3) is 18 years of age or older

✓(4) Same

Page 2 Section 29.28.040 Runoff election.

Line 25 ✓(c) Line 25 The ballot shall not contain

Page 6 Section 29.28.077 New Petition. Failure to

Line 19 secure sufficient signatures or contents does not...

page 10 Section 29.28.150 recall Petition

Line 22 (a)(6) Line 22 ... addresses of each signer, provided by the signer.

Change to Gov't.

page 11 Section 29.28.155 Signature Requirements

Clerk's recommendation (b) Line 13 number of votes cast at the last election in which the seat was filled or the official elected held before the date...

Runoff Elections

Line 13

Line 17 of votes cast in the district at the last election in which the seat was filled (in case of appt.) or the official elected held before...

page 14 Section 29.28.242 Successors

~~Unless otherwise provided by ordinance~~

(a) Line 8 If the mayor of a municipality is recalled, a successor shall be elected to fill

Add (f) Unless otherwise prouded by ordinance, If an official other than the mayor, member of Assembly or Council or school board is recalled, a successor shall be appointed by the ~~governing~~ Assembly or council ~~body~~ to serve until the next regular election.

I, JUDY GILBERT, Deputy Clerk for the Matanuska-Susitna Borough do hereby certify that the following transcript of the decision rendered by Judge Souter, in Judge Souter's Court on May 23, 1984 regarding case #3PA-84-426 Cir, to be a true and accurate transcript to the best of my ability.

Judy G. Clerk

Judy Gilbert, Deputy Clerk
Matanuska-Susitna Borough

5-25-84
Date

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SOUTER: I am going to place on the record right now will constitute the decision in this case. Mr. Morrissett has reminded me that one of the questions that I must address is, what is the current standard of review by the court, of the municipal clerk's decision in this case. I am persuaded that the proper standard of review is that of substitution and judgement by the court. What are involved here in this case, are questions of law, questions of legal interpretation of the statutes, and on those sorts of questions, the courts are deemed to be at least as well qualified as the administrative body of the Borough to answer, therefore, I am utilizing the substitution of judgement standard of review. With respect to the contention Mr. Fossey has made that the recall election should not go forward because the allegations made in the second paragraph of this recall petition are as a matter of empirical fact, untrue. I have already indicated at the start of the hearing today that I regard that argument as being invalid. I think the underlying philosophy of the recall statutes is very clear. That is, that on questions of fact, such as that, it is the judgement of the voters, not the judgement of any particular court that counts, and therefore, I do not intend to examine the question of truth or falsity of the allegations themselves. I will, however, determine whether the allegations even if true, satisfy the requirements, the legal requirements of the statute. It is clear to me that on that question, the courts are permitted to exercise overall supervisorial review. Another of the issues raised by the plaintiff here, has to do with whether or not the Borough Clerk has an obligation to authenticate the signatures on the petition. It's tempting to say that the Clerk ought to do that, but I'm not sitting up here as some sort of super legislature, the courts are not supposed to be in the business of legislating, except to an interstitial extent. The legislature has not expressed itself on this particular question, and arguments can be made both ways.

I mean after all, it seems to me the great majority of signatures on a petition, are not going to be subject to any authentication questions to start with. The forged signature on a great majority of petitions, is likely to be a rarity. Surely every petition that has a couple of hundred signatures or so, is going to have a forged one, I wasn't born yesterday, but the odds on chances are, that the great majority of signatures are going to be authentic signatures. Now why am I even talking about that when there isn't any evidence on it? Well, because I think it bears on the question of public policy here. Who should have the burden? Should the burden be on the municipal clerk's office, which is typically understaffed and overworked? Or should it be on the, should the burden be on the party who is challenging the validity of the recall petition? I think in the absence of any statutory law, I would place it on the latter. I would place it on the party challenging the recall petition. To come forward and show that the unusual exists, that is, that forged signatures do appear in substantial or significant percentage on the recall petition. That is the way I construe the law in the absence of any specific statutory directive, and we don't have a specific statutory directive here. So I would not require the Borough Clerk's office to go down to the State Elections office, get the voter registrations, and check visually herself, the authentic, the authenticity of the signatures on the petition. I leave that burden on the challenger to the petition here, that would be Ms. Siry's burden. The next point raised by plaintiff in this case, has to do with the obvious fact that many of the residence, residence addresses that appear on the petition in this case, were put on there by someone other than the person who signed the petition, and it's obvious, all you have to do is look at it. The addresses in numerous instances, are obviously in a different hand that that which did the rest of the writing on the petition entries. And it's clear that some third party, probably with the best of intentions, without intending to defraud anybody, or to commit any legal violation of any sort, or to mislead anybody, somebody went and found out the addresses, or at least the last recorded addresses of the people signing the petition. Even though that was probably in the best of good faith, even though it was not intended to have any improper effect whatsoever, I find that to be a flat, clear violation of state law. The State statute clearly states that it is the signatory voter, who must place his or her residence address on the petition, not somebody else, and I think that's important. Because people do move around, this is a geographically mobile society that we live in. People live in Anchorage for a while, they move to the Valley, and they move on to Glennallen, or who knows where, and perhaps they don't stay very long either. But, in any

event, it's no guarantee that because you come across a recorded address for somebody that has signed a petition in one of the Boroughs of Alaska, that that person still is a residence voter at the time that signature is put on there. And the recall statutes do require that the signatories on a petition be resident in the municipality in which the recall is being attempted. So I do find it to be a, not only a clear violation of the state statute, but I find it to be an important, a consequential, a consequental, violation of state law and I would invalidate this petition and require an additional 10 days be allowed for additional signatures to be obtained. If that were the only defect which I find with this petition. It is not. Another point raised by plaintiff has to do with whether or not Sections 15.30.010 and following, that is to say Chapter 30 of Title 15 of the Alaska Statutes, apply to recall elections. Plaintiff contends that those provisions do apply to recall elections. Defendant contends that they do not. I'm going to address myself narrowly only to the specific points raised. It appears to me quite clear, that AS 15.30.010, especially part B of it, and AS 15.30.090, do apply to recall elections. I think that's plain language of those sections. But I think one has to be careful in articulating what extent they apply. It appears to me clear beyond any doubt, that AS 15.30.010 and 15.30.090 require that individuals and groups identify themselves on campaign circulars and those mass media presentations, whether they be newspaper, radio, or TV. It appears to me clear that once the campaigning begins on the question of whether the petition should or should not be passed by the voters, that the individuals and groups who are campaigning must identify themselves on their campaign literature. It is equally clear to me, however, that prior to that point in time, before the campaign begins on whether or not the recall petition should succeed, that the election code does not apply. Let me put it in a slightly different way. There are two stages to this process, stage one is getting enough signatures on the petition so the issue can be put to the voters. On that first stage ie: getting enough signatures on a petition, it's clear to me that AS 15.30.010 and 15.30.090 do not apply. The people that are pushing the petition, trying to get enough signatures, do not have to identify themselves and t

they don't have to make public financial filings. But once the campaign begins to, to adopt or to, not to adopt, the recall petition, from that point on, the election code does apply. That's not an easy distinction to draw, and the legislature might well have gone the other way on it. But, it appears to me very clear that the legislature did not, the legislature speaks very clearly in the statutes as to the point at which the duty to disclose financially and from the stand

point of identity begins. And it has to do with whether or not a proposition is to be adopted, or a candidate is to be elected. It does not have to do with whether the issue should be or should not be put to the voters. Maybe the legislature ought to take another look at that. Because it's a difficult distinction, it's a muddy one, in practice. It's very easy really to talk about it. It's very easy to point to the distinction between the two processes that go on. The problem in practice is they tend to overlap, sure, they tend to overlap. Somebody may well campaign for adoption of initiative, referendum or recall petition, at the very same time that they're striving to get signatures on it. In fact, I would think typically, that's the situation. People get all inflamed, they start carrying around a petition, and at the time the petition is being brought around, they're actively campaigning in favor of it's passage. Well, I would think that to the extent that the issue might be reasonably arguable, the individuals and groups participating in that process should err on the side of disclosure because I think that is clearly the policy of the law. But if push comes to shove, I think that the law is clear, that they are required to disclose and to identify themselves, only with respect to the campaign with regard to whether or not any petition should or should not be enacted. Incidentally, part of the, part of the reasoning or part of the language, that really has a bearing on that also comes directly from Section 130, that's the closing section of Chapter 30 of Title 15. It defines contribution and expenditure right in that section, and when you examine the definition of contribution and expenditure, you run across verbiage that makes it very clear that it is only at the point at which the enactment of a proposition is a question, that the election code comes into effect. I think it might be worthwhile to just read one of those right now. Let's see we've got... If I've been saying 15.30, and I think I have, you should delete the 30 and insert 13. It's not 15.30, it's 15.13.010, 090, and 130, that I have been intending to refer to. Now for example, in AS 15.13.130, subparagraph 4, I'll quote, "Expenditure means a purchase or a transfer of money or anything of value, or promise or agreement to purchase, or transfer of money or anything of value, incurred or made for the purpose of, a) influencing the nomination of or election of a candidate, or of any individual who files for nomination at a later date and becomes a candidate." B and c I'm not going to read. D is the one that really applies, "Influencing the outcome of a ballot proposition or question." You see, it's the point at which the outcome of the proposition is what is being campaigned on, when the election code requirements of disclosure of identity and of financing and of contributions come into play. That's where I come from with that ruling, it's tied

directly to the language of the statute. And if you look elsewhere in the statute, you'll find that sort of indication very clear in other sections as well. Another of the points raised by the plaintiff here, deals with the proper interpretation of the word gen, of the words general election in section 29.28.170b of the Alaska Statutes. It is my view, and I do hold, that the legislature inadvertently used the words general election, instead of regular election, in that section. That that was inadvertent appears clear to me from the fact that the final verbiage in AS 20.28.170b permits special elections to be used as the basis for determining the number of voter signatures necessary to qualify a recall petition. Special elections of course, are either less general in their scope than regular elections, and it appears nonsensical to me, that the legislature could truly have intended to use only general elections on one end of the spectrum, or special elections at the other end of the spectrum. As a basis on which to determine on whether or not there is sufficient voter interest in a petition to justify putting it on a ballot. I know that Judge Schultz has held the other way, and I respect Judge Schultz, but I think he's wrong. I think he's clearly wrong. It seems to me, very clear that the legislature used the term general election in contradistinction to the term special election. And that it therefore, clearly intended regular election when it inadvertently used the term general election. The conclusion is bolstered by the fact that recall elections within boroughs deal with borough officers and borough issues, not state officers and state issues. And it seems clear that the voter basis for borough recall elections should deal with the number of voters who participated in borough elections, not statewide general elections. Accordingly, I would conclude that the Borough Clerk did use the proper election when she used the regular borough election of October, 1983 here. And again, I think the legislature, if it's going to redo these recall statutes, ought to take a good hard look at that one, because I think it's rather obvious that if the exact words were used, you reach a nonsensical result. I really don't think they intended what the exact words say. Now then, the real issues, I think in this case, I haven't yet addressed. And that has to do with whether or not the petition allegations are sufficient to require this petition to go to the voters for them to express their approval or disapproval of the recall of the plaintiff. Mr. Morrissett, in typical fashion for him, I wish it were more typical for everyone else, has conceded on several points, and I think he really had to in good faith. He says that on the third of the allegations of the recall petition, that allegation does not constitute a proper allegation under state law. I appreciate the concession, even if you had not made the concession, Mr.

Morrissett, I would have held that way. The third allegation in the recall petition, alleges that the, that Mrs. Siry has not paid attention to, has not listened to her constituents. And that she has therefore, failed to perform her prescribed duties. Well, even if the allegations of the, of that part of the petition are true, and I'm not passing on the truth or falsity of it, but even if they were, it's absolutely clear that they would not constitute a failure by Mrs. Siry to perform her prescribed duties. A school board member does not have any statutory or any common law duty to talk to, or to listen to the people in the municipality. Of course, she might not get reelected, you know, that's really what it's all about in a democracy, if you, there's a real tension between whether you ought to be constantly taking a poll of your constituents, as Lyndon Johnson tried to get people to believe he was always doing, or whether you ought to utilize your own wisdom and discretion, whether that's in fact what the voters are electing you to do, and pass independent judgement on the public issues presented to you, as many people believe Lyndon Johnson did. Whether rightly or wrongly. He's a, he is a case in point on that because he certainly held himself out as constantly trying to run the government by consensus, and yet his administration saw the huge buildup of forces in Vietnam and the most unpopular war we've ever seen. In any event, the statutes on this are not terribly clear, but there is one statute that gives us some help. Judge Schultz cited it in his Bering Straits opinion, I think it's AS 14.08.111, dealing with regional school board duties, and I realize Mrs. Siry does not sit on a regional school board, but I looked for local school boar[illegible]ties, and I couldn't find them anywhere. But regio[illegible] school board duties, if you look at them in 14.08.111, provide, I think, excellent guidance as to what a school board member's duties are. Well, you have to provide an educational program for each school child, you have to develop a philosophy of education principal and goal, you have to employ a chief school administrator, and teachers and so on. You have to establish salaries, you have to designate authorized employees to direct disbursement of school funds, you have to submit reports prescribed to all school districts, you have to provide for an annual audit, you have to provide for custodial services and maintenance, you have to establish procedures for the review and selection of text books and instructional materials and so on. It doesn't say anywhere in there you have to go around and talk to the people and listen to their views, it doesn't say that at all. And I think it doesn't need saying, because you're elected, if you don't listen to enough people or at least have them believe you are looking out for their interests, you won't be reelected. But that's no ground to be recalled. Once you're

elected, you're in office to perform prescribed duties. And what is alleged in the third paragraph of this recall petition does not allege failure to perform what truly amount to prescribed duties. And that allegation is, is clearly insufficient. Unfortunately, it's clearly very inflammatory, too. It's the very sort of thing, that if you take around to people to read, they're very apt to get inflamed, and not even pay attention to anything else in the petition and sign it just because of that. What it's doing is charging an elected representative of paying no heed to the electorate's desires. And that's something that's very inflammatory to people who cast votes in elections in democratic societies. So it's the sort of thing that does not qualify for as a basis for recall, but predictably, is such as to inflame people to sign the petition. The first allegation on the petition, I believe Mr. Morrissett has indicated, it could not stand alone as a sufficient ground for, for the recall petition. And I certainly agree. In the first place, assuming the truth of it, that in the spring of 1983 and again on July 25, 1983, that Ms. Siry approached parents in Wasilla to solicit written letters supporting the removal of Mr. Ray Carter from his position as principal from Iditarod an elementary school, does not allege any impropriety at all, none whatsoever. In fact, it's sort of interesting to compare the first allegation with the third one. Because the first one makes it sound as though Mrs. Siry is soliciting the views of the constituents whereas, the last says she doesn't do it. A certain tension, a certain inconsistency between the first and the third allegations in that respect. But in any event, the first allegation certainly cannot stand on it's own as an allegation of any misfeasance, nonfeasance, or incompetence on the part of Mrs. Siry. That leaves the middle one, the middle allegation. I think the middle allegation is legally sufficient. If it were the only allegation, or if it were not intermingled with what I consider to be clearly an inflammatory and disqualifying allegation, I would send this petition to the voters in the Matanuska Valley to vote whether or not to recall Mrs. Siry. It seems to me rather clear that the middle paragraph alleges incompetence. I mean, you could disagree with whether or not these things reached the point of seriousness, to constitute incompetence. I'm not saying they do, I'm not saying they don't, that's not for me to decide. That would be for the voters to decide. But they do allege, with sufficient specificity, in my view, to allow Mrs. Siry to identify what the issues are and to make her defense to the voters. Items of conduct which arguably, could constitute incompetancy, they arguably could not constitute incompetancy, too. I think they are within the area of fair public debate. And that's all that's required in order for the recall petition to be sent to the voters. However, it appears

clear to me that to send this petition to the voters to vote on, would violate the clear policy that underlies the recall statutes in this state. It seems obvious to me that the recall statutes require a specified percentage of voters to approve a recall petition on narrow statutory grounds, in order to insure that we don't just have re-elections being held again and again and again. Mrs. Siry, like any other elected official, is called upon from time to time to make unpopular decisions. In fact, on this one here if she'd have gone the other way, there would probably be a recall petition out from another group, to recall her because she did not vote to give Mr. Carter the heave-ho. This is an area that we have to be very careful about. We certainly don't want to discourage public officials, elected officials, from making those difficult decisions. You know, the United States has seen the Congress of this country for many years, refuse to face many, many of the devisive issues in the country. And the courts have increasingly had to take that over. That's unfortunate because many of those issues, indeed, should have been decided by elected representatives so that they could have received the approval or the disapproval of the electorate at the elections held every two or four years and we should not allow ourselves to begin using the recall petition devise for the purpose of giving people the heave-ho just because they've taken a stand on a difficult public issue. Furthermore, we have to recognize that many people that are brought before the electorate on a recall petition win, and what happens is that a person gets subjected to a recall petition because they take a position on a difficult public issue, then they are put to the burden of either giving up their public office, or of, or of spending substantial campaign monies to keep the office. This is not the purpose of the recall statutes at all. The purpose is to weed people out of public office whose conduct falls within very narrowly defined standards of impropriety or insufficiency. And we want to be careful that the manner in which that is done, does not allow other improper factors to have any significant effect on the process. What we're looking at in this case, is a final paragraph in this petition that is not a proper allegation for, or not a proper basis for recall. And it's an inflammatory one, that is very apt to incite numerous people that wouldn't sign the petition for the other reasons asserted, to sign it just because of this one. And to allow therefore, for the recall election of a public official to take place, because a number of voters thought a new election should be held, even though the recall statute was not satisfied with respect to this third and final inflammatory allegation. I think it infests the whole process with illegitimacy, and for that [illegible] of this is inflammatory

and non-qualifying, it's clear to me that the entire petition must fail. And that the motion for the issuance of the injunction must be granted, is granted, the Borough may not hold it's election on this recall petition, the petition is non-qualifying. It does not comply with the law. This is regarded as the final decision in the case. I don't believe there are any other issues left to resolve. My comments have been intended to constitute a memorandum of decision, you need not prepare any formal document, Mr. Fossey, except a very briefly worded injunction, stating that for the reasons placed on the record in open court, on the afternoon of May 23, 1984, the Matanuska-Susitna Borough is enjoined from conducting a recall election on the petition to recall Karen Siry. And you may present you motion for costs and attorneys fees. I realize this is a matter of some public importance, I said that at the outset, and it is my intention that the injunction that I just announced will take effect immediately and that the time to appeal shall begin to run immediately also, even though it's not in writing yet. I will enter it nunc pro tunc when you bring it in, Mr. Fossey. So the time to appeal it starts to run now, Mr. Morrissett, I'm not doing that to put you under the gun, I'm doing it to help you so that you can move it on to the Supreme Court as quickly as possible, if you should wish to take it there. Is there anything further?

MORRISSETT: Just one clarification on your decision. If I understand. And the reason I'm concerned on this is because, regardless, we are, we have two other petitions which are not identical to this, and the wording of your ruling will, will be a determining on how those are treated. With regard to the second allegation, are you stating that if the third allegation were not there, but that the first allegation were there, there would not be an inflammatory statement, thereby the petition would go forward? With sufficient signatures?

SOUTER: That's what I intended to say, yes. It is the third allegation which disqualifies the petition. I did not address the question, and I would not address it, Mr. Morrissett, of what would happen if just the first and the second allegations were there.

MORRISSETT: That's I guess, is what I am asking you. Is whether or not if the third allegation were not there, and the first and the second were,...

SOUTER: I won't decide it because I, I mean, in my view, the inflammatoryness of the third allegation here, makes this a very clear case. With respect to the proposition that if part of the petition is bad, all of it must fail. It's not clear to me that the first allegation, although

it's not a qualified one, although it doesn't qualify under the statute, it's not clear to me that that clear fact, in the absence of inflammatoryness, which I don't see eminating from the first of these allegations, should disqualify the entire petition. And I'm reluctant to, you know, I would love to give the borough all the guidance possible, but I don't want to give it some guidance that's not worth anything. I think that issue needs to be argued by people in a setting that have the sort of stake in it that Ms. Siry had here. And she doesn't have a stake in that particular argument. I think the point is made here that the inflammatoryness and the non-qualifying aspect together of the third paragraph, that requires that this petition be thrown out. I simply don't feel comfortable in ruling on the other closely connected, but nevertheless different, question. Anything further?

MORRISSETT: No, thanks.

SOUTER: O.K., then I will be in recess.

Cross references. — For voter qualifications generally, see AS 15.05.

Opinions of attorney general. — A first or second class borough had no authority under a former, similar provision to require that voters preregister as a condition to voting in a borough election. 1965 Op. Att'y Gen., No. 9.

Sec. 29.28.040. Majority elections. If in a municipal election no candidate receives in excess of 40 per cent of the votes cast for that office, the assembly or council shall hold a runoff election within two weeks from the date of certification of the election between the two candidates receiving the greatest number of votes for the office. Notice of a runoff election shall be published at least five days before the election. The assembly or council may by ordinance require a majority vote for election of officials. A runoff election or other means of obtaining a majority may be used. (§ 2 ch 118 SLA 1972)

Sec. 29.28.050. Election contest and appeal. (a) The assembly or council may provide by ordinance the time and procedure for the contest of an election.

(b) Unless otherwise provided by ordinance, an election may be contested only upon the filing, before or at the time of the first canvass of ballots by the assembly or council, by a person qualified to vote in the municipality of a written affidavit of the person specifying with particularity the grounds for the contest or invalidity of the election.

(c) Unless otherwise provided by ordinance, the assembly or council shall declare the election results at the first meeting to canvass the election and record the results in the minutes of that meeting.

(d) The contestant shall pay all costs and expenses incurred in a recount of an election demanded by the contestant if the recount fails to reverse any result of the election or the difference between the winning and a losing vote on the result contested is more than two per cent.

(e) A person may not appeal or seek judicial review of a city or borough election for any cause or reason unless the person is qualified to vote in the municipality, has exhausted the administrative remedies before the assembly or council and has commenced, within 10 days after the assembly or council has finally declared the election results, an action in the superior court in the judicial district in which the municipality is located. If an action under this subsection is not commenced within the 10-day period, the election and election results shall be conclusive, final and valid in all respects.

(f) Notwithstanding the provisions of (e) of this section, the expulsion of a member of a borough assembly under AS 29.23.060(c), of a member of a city council under AS 29.23.210(b), of a borough mayor under AS 29.23.130(f), or of a city mayor under AS 29.23.255 is final and is not subject to judicial review. (§ 2 ch 118 SLA 1972; am § 213 ch 100 SLA 1980)

statutes fixing term of office
for removal without cause,
7.
public officer for misconduct
us term, 42 ALR3d 691.
retirement of public officer
based on age, 81 ALR3d 811.

of all municipal bodies
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law municipalities.

Opinions of attorney general. — A former, similar provision did not authorize a borough to provide, as a condition to voting, a preregistration requirement. 1965 Op. Att'y Gen., No. 9.

NOTES TO DECISIONS

Legislative grant of power to regulate elections. — The legislature, by a former, similar provision, conferred on cities the power to make suitable provision for municipal and other elections. United States v. Bowden, 11 Alaska 503, 166 F.2d 701 (9th Cir. 1948).

Council can act by ordinance only. — Under a former, similar provision, the council could only provide for calling elections, appointing election officers, canvassing the returns, and declaring the result by ordinances, either general or special. Bates v. Mayor & Council, 1 Alaska 208 (1901).

And action of a mayor in calling an election without the sanction of any ordinance is void. Bates v. Mayor & Council, 1 Alaska 208 (1901), decided under former, similar law.

Collateral references. — 25 Am. Jur. 2d, Elections § 1 et seq.
29 C.J.S., Elections, § 1 et seq.

Sec. 29.28.015. Nominations. (a) The assembly or council shall provide by ordinance for nominations of elected officers by providing for declaration of candidacy, or petition requiring the signatures of not more than 10 voters, or both.

(b) A person may be nominated for and occupy more than one office, but a person may not serve simultaneously as borough mayor and as a member of the borough assembly or as mayor and as a member of the council of a first class city. (§ 2 ch 118 SLA 1972)

Opinions of attorney general. — The intention of a former, similar provision was to provide for the preparation of the ballot with the printed names of candidates. 1963 Op. Att'y Gen., No. 30.

A former, similar provision did not prohibit write-in votes and a qualified person who received a sufficient number of votes was elected whether his name was printed on the ballot or not. 1963 Op. Att'y Gen., No. 30.

Sec. 29.28.020. Election dates. (a) The date of a regular municipal election is the first Tuesday of October annually, or on a date of election or at an interval of years provided by ordinance.

(b) The assembly or council may call a special election upon at least 20 days notice. (§ 2 ch 118 SLA 1972)

Sec. 29.28.030. Voter qualification. A person may vote only if the person is a United States citizen who is qualified to vote in state elections and has been a resident of the municipality for 30 days immediately preceding the election and who is registered to vote in state elections and is not disqualified under art. V of the state constitution. Voter registration by the municipality may not be required. This section applies to home rule and general law municipalities. (§ 2 ch 118 SLA 1972)

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

7/25/89
Date

02-519 (REV 8/78)

HB
293

COMMITTEE REPORT

HOUSE

4/14

JUDICIARY

(7)

FURTHER: FINANCE

3/15/85

Date: 4-14-86

The Committee on COMMUNITY & REGIONAL AFFAIRS has had HB 293

"An Act relating to municipal default on bonded indebtedness; establishing the Municipal Financial Emergency Commission; and providing for an effective date."

under consideration and recommends:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB293 (CRA) [ ] same title [ ] new title

and recommends DO PASS

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

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

w/ Further Reference
A.M. Masters Do Not Pass
UNCONSTITUTIONAL, UNNECESSARY AND UNWORKABLE

Pete Goll
CHAIRMAN

Offered: 4/14/86
Referred: Judiciary and Finance

Original sponsor: Rules/Governor

IN THE HOUSE BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CS FOR HOUSE BILL NO. 293 (C&RA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to municipal default on bonded indebtedness; establishing the Municipal Financial Emergency Commission; and providing for an effective date."

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

* Section 1. LEGISLATIVE FINDINGS. The legislature finds that

(1) while the power of municipalities to contract debt for capital improvements is granted by the Alaska Constitution, revenue that may be raised to repay the debt are limited by the extent to which the state has delegated taxing authority to the municipalities under art. X, sec. 2 of the Alaska Constitution;

(2) the state has a strong interest in debt issuance by municipalities because of the impact on state revenue as a result of municipal assessment to repay debt and because of the effect on the marketability of bonds issued by the state and its agencies, by public corporations of the state, by other municipalities, and by the Alaska Municipal Bond Bank Authority;

(3) bonds issued by municipalities are not legal obligations of the state, nor are the bonds supported by the moral obligation of the state; and

(4) it is in the public interest, and is declared to be a public purpose, to promote the prosperity and general welfare of all the people of the state by assisting in the development and implementation of refinancing

plans for municipalities that have defaulted on outstanding debt.

* Sec. 2. AS 29.10.200 is amended by adding a new paragraph to read:

(47) AS 29.47.500 - 29.47.590 (default on bonded indebtedness)

* Sec. 3. AS 29.47 is amended by adding new sections to read:

ARTICLE 7. DEFAULT ON BONDED INDEBTEDNESS.

Sec. 29.47.500. MUNICIPAL FINANCIAL EMERGENCY COMMISSION. (a) The Municipal Financial Emergency Commission is established in the Department of Community and Regional Affairs.

(b) The members of the commission consist of the commissioner of community and regional affairs, the commissioner of revenue, and the commissioner of administration. Members of the commission may appoint designees to serve on the commission.

(c) The commissioner of community and regional affairs shall chair the commission. A quorum of the commission consists of two members.

(d) The commission may employ staff as is necessary to accomplish the purposes of the commission.

Sec. 29.47.510. DUTIES AND POWERS OF THE COMMISSION. (a) Upon receipt of a written notice of a default by a municipality, as provided in AS 29.47.520, and after consulting with the state bond committee the commission may

(1) investigate the defaulting municipality's fiscal affairs, consult with the governing bodies of the defaulting municipality, and negotiate with creditors in order to assist the municipality in developing a plan for satisfaction of the outstanding debt;

(2) direct a state agency holding money on behalf of or payable to the defaulting municipality to pay the money either to the commission for payment to creditors, or to the defaulting municipality

respect to a defaulting municipality, until the commission is satisfied that the defaulting municipality has performed or will perform the duties required of it in the plan, and until agreements made with the defaulting municipality's creditors have been performed in accordance with the plan.

(c) The commission may take all actions necessary to accomplish the purposes of AS 29.47.500 - 29.47.590, including issuing subpoenas necessary for the production of documents and issuing orders. A superior court may, upon application of the commission, compel obedience with a subpoena or order issued by the commission.

Sec. 29.47.520. NOTICE OF DEFAULT. (a) A municipality shall give notice of default to the commissioner of community and regional affairs within 10 calendar days after actual knowledge of the default.

(b) A creditor may give notice to the commissioner of community and regional affairs any time after a default by a municipality.

(c) A municipality may request the assistance of the commission at any time before default if, in the judgment of the municipality, assistance from the commission will assist the municipality in relieving financial distress.

Sec. 29.47.530. ACTION UPON RECEIVING NOTICE OF DEFAULT. The commissioner of community and regional affairs shall convene a meeting of the commission within 15 days after the receipt of a notice of default, or of a request for assistance, under AS 29.47.520. The defaulting municipality shall be given notice of the meeting, and shall send an authorized representative to the meeting to represent the defaulting municipality during the development of a plan under AS 29.47.510.

Sec. 29.47.540. LIMITATION ON ACTIONS. If a notice of default or request for assistance has been provided by a municipality under

for disposition as required under an adopted plan;

(3) determine whether a proposed plan is fair and equitable and within the ability of the defaulting municipality to meet, and, if so, enter an order finding that it is fair, equitable, and within the ability of the municipality to meet;

(4) advise the defaulting municipality to take the necessary steps to implement the plan;

(5) order the defaulting municipality to take the necessary steps to implement the plan if the municipality fails to implement the plan within 30 days after receiving the advice of the commission to implement the plan;

(6) require periodic reports on the defaulting municipality's financial affairs during the period in which the plan is implemented;

(7) approve or reject the defaulting municipality's annual budget ordinance during the period in which the plan is implemented;

(8) approve or reject the issuance of additional bonds, notes, or other debt, whether short- or long-term, during the period in which the plan is implemented;

(9) impound the books and records of a defaulting municipality and assume full control of its financial affairs, including the levying of taxes, expenditure of money, and adoption of budgets, if the municipality fails to implement a plan, or if, in the opinion of the commission, the defaulting municipality will default on a future debt service payment under the plan if the financial policies and practices of the municipality are not improved; and

(10) order a defaulting municipality to pay for the cost of developing and implementing a plan.

(b) The authority granted to the commission continues, with

AS 29.47.520, a creditor of the municipality may not file an action based upon the outstanding debt until 90 days after the first meeting of the commission convened under AS 29.47.530 to consider the matter.

Sec. 29.47.550. PENALTY. A municipal official, employee, or agent who intentionally violates a provision of a plan developed under AS 29.47.510 is subject to a civil penalty not to exceed $5,000.

Sec. 29.47.560. BANKRUPTCY PETITION. Nothing in AS 29.47.500 - 29.47.590 limits or otherwise affects the authority of a municipality to file a petition in bankruptcy under 11 U.S.C. 901 - 946.

Sec. 29.47.565. NO STATE OBLIGATION FOR MUNICIPAL DEBTS. (a) Bonds issued by municipalities are neither legal obligations nor moral obligations of the state.

(b) Nothing in AS 29.47.500 - 29.47.590 may be construed to create liability on the part of the state for outstanding debts of a municipality. An action taken by the commission may not be construed as an assumption of liability or responsibility by the state for outstanding debts of a municipality.

Sec. 29.47.570. APPLICATION. AS 29.47.500 - 29.47.590 applies to home rule and general law municipalities.

Sec. 29.47.590. DEFINITIONS. In AS 29.47.500 - 29.47.590

(1) "commission" means the Municipal Financial Emergency Commission;

(2) "creditor" means a person who has standing to bring an action for default on outstanding debt against the defaulting municipality;

(3) "default" means the failure by a municipality to pay an installment of principal or interest on its outstanding debt, on or before the due date;

(4) "defaulting municipality" means a municipality that has

defaulted, or that continues to be subject to the jurisdiction of the commission after the implementation of a plan under AS 29.47.510;

(5) "outstanding debt" means revenue anticipation notes, bond anticipation notes, general obligation bonds, revenue bonds, or refunding bonds issued under this chapter.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.-10.070(c).

April 3, 1986

Honorable Peter Goll, Chairman
House C&RA Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: HB 293, Municipal Financial Emergency Commission; scope of or its legal effect
Our file: 663-86-0405

Dear Representative Goll:

At the March 21, 1986 meeting of the Community & Regional Affairs Committee, several members of the committee raised questions concerning the uncertain scope or legal effect of proposed sec. 29.58.440 in HB 293. I discussed legal aspects of these concerns in my letter to you of March 21, 1986.

Following the committee hearing, Commissioner Nordale and I have discussed alternative approaches to assure, to the extent practicable, that creditors do not initiate state legal proceedings which would compromise the ability of the Municipal Financial Emergency Commission to identify responsible management plans. The intent, of course, is to afford the commission a fair opportunity to devise "work out" arrangements before other, typically more onerous solutions are imposed by judicial order.

With this objective in mind, Commissioner Nordale asked that I draft language to amend proposed sec. 29.58.440 to restrict a creditor's access to court. The following language is suggested in preliminary form as a proposed alternative:

> Sec. 29.58.440. LIMITATION ON ACTIONS. If a notice of default or a request for assistance has been provided under AS 29.58.420, a creditor of a municipality may not file an action in superior court until 90 days after the first meeting of the commission convened under AS 29.58.430.

Stated as a limitation on a creditor's ability to seek judicial relief, the committee's difficult questions regarding any possible impact on Civil Rule 62 are avoided.

Please feel free to contact me if you have any questions.

Sincerely yours,

HAROLD M. BROWN
ATTORNEY GENERAL

By:
Jonathan B. Rubini
Assistant Attorney General

JBR/pjg
cc: Hon. Mary Nordale, Commissioner
Department of Revenue

Arthur Peterson, Esq.
Department of Law

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 March 21, 1986

SUBJECT: Change of Court Rule
(HB 293)

TO: Representative Peter Goll, Chair
House Community and Regional Affairs
Committee

FROM: Tamara Brandt Cook TBC
Director
Division of Legal Services

You have asked whether HB 293 changes Civil Rule 62 and, thus, requires a notation in the title and passage by two-thirds vote. In my opinion it does, and, therefore, triggers those two requirements.

Changing a court rule is the only legislative procedure which has essentially been prescribed by our Supreme Court. In Leege v. Martin, 379 P.2d 447 (Alaska 1963), the Court held:

> "Judicial power to make rules of practice and procedure is not absolute. The legislature may change rules initiated by the judiciary when the desirability of making a change is evident, such as in a case where a particular rule of procedure may involve considerations of public policy that are better left to the legislature to pass upon. But this power of legislative review is not without restrictions. The constitutional convention was careful to provide that court rules could not be changed as simply as other laws could be enacted. A two-thirds vote of the members elected to each house, rather than a simple majority, is required in order to change rules of practice and procedure.
>
> "The object of such a limitation is to prevent unintentional, rash, ill-considered and too easy intervention by the legislature which would ultimately frustrate the

sound purpose in giving courts the primary authority and responsibility for regulating their own affairs. But that object cannot be achieved unless the attention of the legislature is directed to the fact that it is employing, not just its general power of enacting laws, but its particular power of reviewing the exercise of an authority vested in the judicial branch of government. During every session since statehood the legislature has passed laws containing some procedure. Efforts are being made to more effectively screen all bills to eliminate procedure, but the danger that bills containing some procedure will escape notice and be enacted will always be present. Unless the specific intent of the legislature to change procedure is expressed in the bill itself, the courts, as a matter of practical necessity, will have to regard procedural changes as unintentional. While the procedure that may be contained in a given bill was included with the best of intentions and without realizing its possible effect on established court operations, it often is so basic as to require wholesale revision of as many as six sets of court rules. The only answer is cooperation between the legislative and judicial branches. Notification in the bill itself that the intent to change procedure seems to be a partial answer. Another partial answer is to advise the Supreme Court when such a bill is being considered and give it an opportunity to be heard so that the legislature will be advised on all ramifications of the proposed change.

"As a matter of reason and necessity and in order to give article IV, section 15 of the constitution a practical working interpretation, we must hold that a legislative enactment will not be effective to change court rules of practice and procedure unless the bill specifically states that its purpose is to effect such a change. Since chapter 112 does not contain such a statement of purpose, that portion of the statute which purports to forbid the granting of stays pending appeal is ineffective and does not change rules of practice and procedure made and promulgated by this court." (Emphasis added)

The legislature has prescribed in its Rules that a change in Court Rules must be noted in the title, must contain a section expressly citing the Court Rule and must note the change proposed. This satisfies the notice requirement in

Leege. However, the legislature has the power to make substantive law which involves court procedure without changing the rules.

TBC:mkr
m4/036

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 21, 1986

SUBJECT: Municipal default on bonded indebtedness
HB 293

TO: Representative Peter Goll, Chair
Community and Regional Affairs Committee

FROM: Tamara Brandt Cook TBC
Director
Division of Legal Services

You have asked whether HB 293, establishing a Municipal Financial Emergency Commission is consistent with constitutional revisions relating to local government. The commission established under the bill has considerable power over municipalities defaulting on municipal bonded indebtedness. Under AS 29.48.410(a) the commission can, among other things, order a municipality to comply with a plan for satisfaction of the debts, approve or reject the municipality's budget, approve or reject issuance of bonds or acquisition of other debt, impound the books or records of the municipality and assume full control over its financial affairs, including the levying of taxes and expenditure of money.

Under Article X, Section 2 all local government powers are vested in boroughs and cities. Sections 3 and 7 provide for the establishment of boroughs and cities. The role of the legislature in providing for services in the unorganized borough is dealt with under Section 6, and the legislature is not specifically assigned a similar role with respect to the provision of local services in boroughs and cities. Under HB 293 the state can essentially take over and run a municipality by exercising total control over its finances. The question as to whether this amounts to a violation of the various constitutional provisions relating to local government has not been considered by the court and until it is considered, it cannot be determined with certainty that such a scheme would be found to be constitutional. The very best that can be said is that the legislation proposed under HB 293 would be subject to challenge.

You have also asked whether the state, in adopting the active role set out under HB 293, might, thereby incur liability for municipal bonded indebtedness. Under Section 1.(3) of the bill the legislature finds "bonds issued by municipalities are not legal obligations of the state, nor are the bonds supported by the moral obligation of the state. . ." Nevertheless, because the state will have the power under this bill to completely control the finances of a defaulting municipality, I think that it is possible that a court would find that the state under this legislation has taken over the responsibility for protecting borrowers and, therefore, has assumed a measure of liability to them. It also seems to me possible that any uncertainty over this question could have an affect on the state's own bonding ability. Because of the importance of the issue and the specialized legal and practical implications inherent in legislation affecting bonding, I recommend that the bill be submitted to bond counsel for analysis of potential impacts on both the state and municipalities.

Lastly, I note that provisions of HB 293 requiring certain actions of municipalities, including the reporting of default situations and compliance with plans for satisfaction of the debts, do not, under AS 29.13.100, apply to home rule municipalities.

TBC:mkr
m4/034

original

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 3/12/86

REQUEST

Bill/Resolution No. : HB 293
Title : An Act relating to municipal default on bonded indebtedness; and providing for an effective date
Sponsor : Rules Committee by Governor
Requestor :
Date of Request :

FISCAL DETAIL

Agency Affected : Community & Regional Affairs
BRU : Local Government Assistance

Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by : Doug Griffin, Deputy Director
Division : Municipal & Regional Assistance
Phone : 465-4750
Date : 3/12/86

Approved by Commissioner :
Agency : Community & Regional Affairs
Date : 3/12/86

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

10/25/85

STATE OF ALASKA 1985 - 14TH LEGISLATURE
SECOND SESSION
FISCAL NOTE

Bill/Resolution No.: HB 293

Title: An Act relating to municipal default on bonded indebtedness; and providing for an effective date

ANALYSIS:

Assumptions:

Based on the latest information available, it does not appear as though any municipality is in danger of default on bonded indebtedness. Adoption of the Governor's debt management package would provide further assurance that the Municipal Financial Emergency Commission and any staff it may need to employ would not be needed. This zero fiscal note is based on these conditions and assumptions.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM March 12, 1986

SUBJECT: Municipal bonded indebtedness (HB 293)

TO: Representative Peter Goll, Chair
Community and Regional Affairs Committee

FROM: Tamara Brandt Cook TBC
Director
Division of Legal Services

You have asked whether the sections in HB 293 need to be renumbered in view of the fact that all of Title 29 was revised and renumbered effective January 1, 1986. The bill currently adds new sections to AS 29.58. Since that chapter was repealed and provisions dealing with municipal debt placed in AS 29.47, the bill sections should be renumbered to fit into that chapter. Please let me know if you would like a committee substitute accomplishing this.

TBC:mkr
m3/156

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 3/12/86

REQUEST

Bill/Resolution No. : HB 293
Title : An Act relating to municipal default on bonded indebtedness; and providing for an effective date
Sponsor : Rules Committee by Governor
Requestor :
Date of Request :

FISCAL DETAIL

Agency Affected : Community & Regional Affairs
BRU : Local Government Assistance

Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by : Doug Griffin, Deputy Director
Division : Municipal & Regional Assistance
Phone : 465-4750
Date : 3/12/86

Approved by Commissioner :
Agency : Community & Regional Affairs
Date : 3/12/86

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

10/25/85

STATE OF ALASKA 1985 - 14TH LEGISLATURE
SECOND SESSION
FISCAL NOTE

Bill/Resolution No.: HB 293

Title: An Act relating to municipal default on bonded indebtedness; and providing for an effective date

ANALYSIS:

Assumptions:

Based on the latest information available, it does not appear as though any municipality is in danger of default on bonded indebtedness. Adoption of the Governor's debt management package would provide further assurance that the Municipal Financial Emergency Commission and any staff it may need to employ would not be needed. This zero fiscal note is based on these conditions and assumptions.

promptly convene and assess the municipality's financial affairs.

Under proposed AS 29.58.410, the commission enjoys extraordinarily broad powers to assure, to the extent possible, the resolution of the financial crisis. The fundamental objective of the commission is to adopt a plan that satisfies debt service obligations in a manner acceptable to municipal creditors. The commission enjoys the power to issue subpoenas and orders as are necessary to undertake this task.

I certainly anticipate that a municipality will act to implement the plan adopted by the commission. However, the bill provides that, in the unlikely event that a municipality fails to implement the plan, or if the commission determines that the municipality remains in financial disarray, the commission may assume full control of the defaulting municipality's financial affairs. This extraordinary intrusion upon local governmental prerogatives can only be exercised in narrowly prescribed instances and, as do all of the commission's powers, the authority of the commission expires upon the successful satisfaction of the default. While certain of these broad powers may approach the legal limit of the state's authority to impair local government powers, I believe that the overwhelming public concern for the financial stability of all Alaskan communities offers a compelling justification for this possible intrusion.

I again emphasize that this bill does not foretell any municipal default. In the area of municipal finance, however, it is not sufficient to act only in response to events. Instead, it is far preferable to establish a mechanism before any default, so that if a municipality does default on a debt service obligation, the repercussions to the state and to other municipalities are limited to the extent possible. With due respect for the prerogatives of local governments, I believe that this bill provides a needed mechanism for state involvement. I urge your prompt consideration and passage of this bill.

Sincerely,

Bill Sheffield
Governor

Cape May County, New Jersey

$19 million general improvement bonds due 1987-1996
Competitive, March 5
Rated 'A-'

Rationale: S&P affirms Cape May County, N.J.'s 'A-' rating on outstanding general obligation general improvement bonds and assigns an 'A-' rating to the current $19 million offering. The rating reflects strong financial performance and rapid bond retirement, coupled with the tourist-based economy and below-average wealth and income levels. Because of the developments in the casino industry in nearby Atlantic City, building permit activity is very strong. The casino industry also benefits from the county's commercial fishing industry because of increased tourism and year-round populations.

Economy: Cape May County forms the southernmost tip of New Jersey. The county is a peninsula, 454 square miles in total area, and has had steady population growth since the 1960s. The county's major industry is tourism, with the summer tourist industry the strongest economic factor for over 50 years. Population in the summer months increases to 593,856 from 95,724. Unemployment rates are seasonal in nature; during the summer of 1985, unemployment dropped to a low of 6% and reached 15% during the winter. Recent developments in the casino industry in nearby Atlantic City have significantly impacted the county's economy. Building permit activity has been very strong over the past few years with the construction of new hotels and motels, townhouses, and condominiums. The commercial fishing industry continues to be influenced favorably by Atlantic City as the larger tourist and permanent populations create greater seafood consumption.

Debt: Proceeds from this issue will be used for various municipal buildings, road, bridge, and storm sewer construction. With this issue, the county will have outstanding net debt of $29.8 million. Per capita debt is high at $1,007, but low as a percent of true value at 3.9%. Bond retirement is rapid, retiring 87% of the debt in 10 years. The S&P index, measure of per capita debt to per capita effective buying income, is moderate at 9.1%. The county's capital improvement program for the next five years amounts to approximately $16.2 million, with 68% expected to be funded from bond proceeds.

Finances: Financial operations are sound. Revenues are derived primarily from property taxes, which account for approximately 70% of current fund revenues. The largest expenditures item is health and welfare, accounting for 24% of operating expenses. Debt service expense will increase with this sale to approximately 10% of budget. Unaudited results for year ended Dec. 31, 1985 show an ending fund balance net of deferred charges of $6.1 million, or 14% of current fund revenues, a slight decrease from year-end 1984's $6.4 million fund balance. The budget outlook for fiscal 1986 is expected to continue on a favorable basis, with revenues projected to be in line with budget expectations.

Dominick J. Truglio
(212) 208-1769

Alaska

Reviewed: rating affirmed

Rationale: S&P affirms Alaska's 'AA-' rating on all outstanding general obligation bonds. With the continued "softening" of the world oil market, a new approach to revenue forecasting known as the "30th percentile" has been implemented. The 30th percentile method means that, in the estimation of the state financial forecasters, there is a 70% chance that revenues will actually be greater than the amounts forecasted, and only a 30% chance that they will be less. Current projections reflect an average annual decline in petroleum revenues of approximately 10% for 1988-1988. Indications are that at current levels the projected decline will not adversely affect state revenues in the short run. However, in the long run, an absence of sustained exploratory activity, smaller discoveries, enhanced recovery, and production of heavy oil, at least at current levels, can adversely affect state revenues. Financially, the state continues to perform in a manner commensurate with its rating, as evidenced by a good cash and fund balance position, and a strong permanent fund. The fishing and timber industries, important contributors to the Alaskan economy, are still somewhat depressed, but continue to show signs of gains. Debt remains manageable and is declining as the state continues to meet some of its capital needs through pay-as-you-go financing. Overall, the state's economy continued to show growth in population, employment and personal income, and maturation in the trade and services sectors.

Economy: The state's economic base is primarily extractive, with major dependence upon oil and gas production, and to a somewhat lesser extent, the supportive industries of fishing, timber, minerals, and tourism. Approximately 86% of state revenues are derived from royalties and taxes paid on state-owned oil and gas leases. Indications are that the production level of several Cook Inlet fields is declining and production from the Prudhoe Bay field will substantially decline in the 1990s. As of Jan. 1, 1986, the Alaska Oil and Gas Conservation Commission estimated the state's remaining recoverable reserves to be 7.995 billion barrels of oil and 34.23 trillion cubic feet of gas. Approximately one-third of Prudhoe Bay's estimated 9.6 billion barrels had been produced by year-end 1984. Some encouragement may be gained from the fact that there have been varied successes in oil and gas exploration in North Slope, totaling an estimated 2.5 billion barrels of recoverable oil. This new exploration bolstered a relatively strong employment picture. Arco Alaska and Standard Oil Co. of Ohio, two major petroleum operators, are cutting their construction budgets by 43% and 17%, respectively. The combined exploration spending still represents a large sum for 1986 at $1.25 billion. State revenue forecasters believe that in the short run, the current decline in world oil prices will be offset at the wellhead by the reduction in the Trans Alaska Pipeline System tariffs, by approximately $1.20 per barrel. A partial settlement was reached in a long outstanding tariff litigation between the state and pipeline owners. The state will receive a total of $285 million, including refunds from 1982-1985, as a result of this settlement. However, the settlement will have an adverse effect on local communities who depend on the pipeline for a portion of their property taxes. North Slope Borough will lose approximately $2.0 million annually, while Valdez and Fairbanks North Star will lose approximately $1.8 million and $500,000 annually, respectively. In fiscal 1986, the state will receive an added $227 million from this settlement.

The fishing and timber industries continue to be important contributors to the state's economy. Total revenues to fishermen from fish catch sold in Alaska for fiscal 1985 was $700 million, compared to $602.3 million in 1984. Since 1977, salmon catches have been improving, however, the shell fish industry, which includes king crab and shrimp, the major revenue contrib-

(continued on next page)

BILL SHEFFIELD
GOVERNOR

HB293

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 15, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to establish a Municipal Financial Emergency Commission that will provide assistance to municipalities that are in default on bonded indebtedness.

Recent controversy surrounding the financial practices of the North Slope Borough has led to a greater sensitivity to the consequences of local financial disorder. While there is absolutely no indication that the present problems of the North Slope Borough will have any effect on the borough's ability to satisfy all debt service obligations, the controversy has led to concern that current law does not provide a role for the state in the event of a municipal default. It bears noting that a municipal default will inevitably affect the state and other municipalities as well. While each municipality's general obligation debt is of course a direct financial burden of only the issuing municipality, the practical fact is that all governmental entities in the state share, to one degree or another, in the consequences of a municipal default. While I reiterate that there is no present prospect of municipal default, it is imperative to establish a procedure to deal with that event before a financial crisis occurs -- not in response to one.

The bill proposes the establishment of the Municipal Financial Emergency Commission which consists of the commissioners of the Departments of Community and Regional Affairs, Revenue, and Administration. Under proposed AS 29.58.420, a municipality must provide notice of a default to the commission, or the municipality may request the assistance of the commission in anticipation of financial distress. Once the commission receives notice of a municipality in financial disarray, the commission must

promptly convene and assess the municipality's financial affairs.

Under proposed AS 29.58.410, the commission enjoys extraordinarily broad powers to assure, to the extent possible, the resolution of the financial crisis. The fundamental objective of the commission is to adopt a plan that satisfies debt service obligations in a manner acceptable to municipal creditors. The commission enjoys the power to issue subpoenas and orders as are necessary to undertake this task.

I certainly anticipate that a municipality will act to implement the plan adopted by the commission. However, the bill provides that, in the unlikely event that a municipality fails to implement the plan, or if the commission determines that the municipality remains in financial disarray, the commission may assume full control of the defaulting municipality's financial affairs. This extraordinary intrusion upon local governmental prerogatives can only be exercised in narrowly prescribed instances and, as do all of the commission's powers, the authority of the commission expires upon the successful satisfaction of the default. While certain of these broad powers may approach the legal limit of the state's authority to impair local government powers, I believe that the overwhelming public concern for the financial stability of all Alaskan communities offers a compelling justification for this possible intrusion.

I again emphasize that this bill does not foretell any municipal default. In the area of municipal finance, however, it is not sufficient to act only in response to events. Instead, it is far preferable to establish a mechanism before any default, so that if a municipality does default on a debt service obligation, the repercussions to the state and to other municipalities are limited to the extent possible. With due respect for the prerogatives of local governments, I believe that this bill provides a needed mechanism for state involvement. I urge your prompt consideration and passage of this bill.

Sincerely,

Bill Sheffield
Governor

Cape May County, New Jersey

$19 million general improvement bonds due 1987-1996
Competitive, March 5
Rated 'A-'

Rationale: S&P affirms Cape May County, N.J.'s 'A-' rating on outstanding general obligation general improvement bonds and assigns an 'A-' rating to the current $19 million offering. The rating reflects strong financial performance and rapid bond retirement, coupled with the tourist-based economy and below-average wealth and income levels. Because of the developments in the casino industry in nearby Atlantic City, building permit activity is very strong. The casino industry also benefits from the county's commercial fishing industry because of increased tourism and year-round populations.

Economy: Cape May County forms the southernmost tip of New Jersey. The county is a peninsula, 454 square miles in total area, and has had steady population growth since the 1960s. The county's major industry is tourism, with the summer tourist industry the strongest economic factor for over 50 years. Population in the summer months increases to 593,856 from 95,724. Unemployment rates are seasonal in nature; during the summer of 1985, unemployment dropped to a low of 6% and reached 15% during the winter. Recent developments in the casino industry in nearby Atlantic City have significantly impacted the county's economy. Building permit activity has been very strong over the past few years with the construction of new hotels and motels, townhouses, and condominiums. The commercial fishing industry continues to be influenced favorably by Atlantic City as the larger tourist and permanent populations create greater seafood consumption.

Debt: Proceeds from this issue will be used for various municipal buildings, road, bridge, and storm sewer construction. With this issue, the county will have outstanding net debt of $29.8 million. Per capita debt is high at $1,007, but low as a percent of true value at 3.9%. Bond retirement is rapid, retiring 87% of the debt in 10 years. The S&P index, measure of per capita debt to per capita effective buying income, is moderate at 9.1%. The county's capital improvement program for the next five years amounts to approximately $16.2 million, with 68% expected to be funded from bond proceeds.

Finances: Financial operations are sound. Revenues are derived primarily from property taxes, which account for approximately 70% of current fund revenues. The largest expenditures item is health and welfare, accounting for 24% of operating expenses. Debt service expense will increase with this sale to approximately 10% of budget. Unaudited results for year ended Dec. 31, 1985 show an ending fund balance net of deferred charges of $6.1 million, or 14% of current fund revenues, a slight decrease from year-end 1984's $6.4 million fund balance. The budget outlook for fiscal 1986 is expected to continue on a favorable basis, with revenues projected to be in line with budget expectations.

Dominick J. Truglio
(212) 208-1769

Alaska

Reviewed: rating affirmed

Rationale: S&P affirms Alaska's 'AA-' rating on all outstanding general obligation bonds. With the continued "softening" of the world oil market, a new approach to revenue forecasting known as the "30th percentile" has been implemented. The 30th percentile method means that, in the estimation of the state financial forecasters, there is a 70% chance that revenues will actually be greater than the amounts forecasted, and only a 30% chance that they will be less. Current projections reflect an average annual decline in petroleum revenues of approximately 10% for 1986-1988. Indications are that at current levels the projected decline will not adversely affect state revenues in the short run. However, in the long run, an absence of sustained exploratory activity, smaller discoveries, enhanced recovery, and production of heavy oil, at least at current levels, can adversely affect state revenues. Financially, the state continues to perform in a manner commensurate with its rating, as evidenced by a good cash and fund balance position, and a strong permanent fund. The fishing and timber industries, important contributors to the Alaskan economy, are still somewhat depressed, but continue to show signs of gains. Debt remains manageable and is declining as the state continues to meet some of its capital needs through pay-as-you-go financing. Overall, the state's economy continued to show growth in population, employment and personal income, and maturation in the trade and services sectors.

Economy: The state's economic base is primarily extractive with major dependence upon oil and gas production, and to a somewhat lesser extent, the supportive industries of fishing, timber, minerals, and tourism. Approximately 85% of state revenues are derived from royalties and taxes paid on state-owned oil and gas leases. Indications are that the production level of several Cook Inlet fields is declining and production from the Prudhoe Bay field will substantially decline in the 1990s. As of Jan. 1, 1986, the Alaska Oil and Gas Conservation Commission estimated the state's remaining recoverable reserves to be 7.995 billion barrels of oil and 34.23 trillion cubic feet of gas. Approximately one-third of Prudhoe Bay's estimated 9.6 billion barrels had been produced by year-end 1984. Some encouragement may be gained from the fact that there have been varied successes in oil and gas exploration in North Slope, totaling an estimated 2.5 billion barrels of recoverable oil. This new exploration bolstered a relatively strong employment picture. Arco Alaska and Standard Oil Co. of Ohio, two major petroleum operators, are cutting their construction budgets by 43% and 17%, respectively. The combined exploration spending still represents a large sum for 1986 at $1.25 billion. State revenue forecasters believe that in the short run, the current decline in world oil prices will be offset at the wellhead by the reduction in the Trans Alaska Pipeline System tariffs, by approximately $1.20 per barrel. A partial settlement was reached in a long outstanding tariff litigation between the state and pipeline owners. The state will receive a total of $285 million, including refunds from 1982-1985, as a result of this settlement. However, the settlement will have an adverse effect on local communities who depend on the pipeline for a portion of their property taxes. North Slope Borough will lose approximately $2.0 million annually, while Valdez and Fairbanks North Star will lose approximately $1.8 million and $500,000 annually, respectively. In fiscal 1986, the state will receive an added $227 million from this settlement.

The fishing and timber industries continue to be important contributors to the state's economy. Total revenues to fishermen from fish catch sold in Alaska for fiscal 1985 was $700 million, compared to $602.3 million in 1984. Since 1977, salmon catches have been improving, however, the shell fish industry, which includes king crab and shrimp, the major revenue contrib-

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ctors, remains somewhat depressed. However, it is anticipated that harvests will continue to improve, and the future of the industry enhanced by the priority given to U.S. fisheries over foreign fleets to harvest within the 200-mile fisheries conservation zone. Alaska forests are expected to remain a major source of timber, despite restrictions imposed by the Alaska National Interest Lands Conservation Act of 1979. As part of the settlement act passed by Congress, the industry has been guaranteed 450 million board feet per year, a quantity capable of sustaining traditional harvest levels. The industry has been declining since 1950, as export of forest products have declined at an average annual rate of 10% due to competition and a strong U.S. dollar. In 1984, forest product exports totaled $219 million, or 21% of all Alaska exports.

Anticipated depletion of oil reserves in the future resulted in attention to minerals and mineral deposits. Shipments of coal to Korea from the Usibelli Mine, which began in 1984 and now total 560,000 tons yearly, may be increased to 800,000 tons in 1985. Development of a world-class molybdenum mine by U.S. Borax & Chemical Co. is continuing with expectations of 900 new jobs on completion. Also under development are the Red Dog and Greens Creek zinc and lead mines. The Red Dog deposit is estimated at 29% of U.S. deposits and is the second largest zinc deposit in the world. Tourism continues to contribute significantly to the economy. Its importance is underlined by the size of the marketing budget of $8.1 million in 1985, and a projected $7.2 million in 1986. In 1984, 700,000 visitors spent a total of $620 million. Approximately 715,000 visited in 1985.

Following completion of Trans Alaska Pipeline System construction in mid-1977, population which totaled 411,000 in 1978, declined to 402,000 in 1980. Since this decline, major gains have been realized, particularly in the early 1980s resulting in an approximate total increase of 25% for 1980-1984. Current estimated 1985 population is 566,600. For 1980-1984, all sectors of employment continued to experience growth with the exception of mining and manufacturing which had 11% and 1% declines, respectively. Government employment, historically high in Alaska, accounts for 29% of total employment for 1980-1984. Per capital money income experienced modest gains, with the 1981 level at $11,722. This represents 134.8% of the U.S. average; at $12,900 in 1983, it was the equivalent of 135.8% of the U.S. average. Total personal income for 1980-1984 increased from $5,238 million to $8,739 million, or 66.8%.

Finances: The state continues to portray a strong financial posture. Fiscal 1985 unrestricted revenues for the general fund totaled approximately $3.2 billion, excluding amounts which go directly to the permanent fund. Petroleum revenues accounted for approximately 65% of total unrestricted revenues, down from a peak of 90% in 1980. Projected unrestricted general fund revenue for fiscal 1986 is $3.1 billion, of which $2.1 billion, or 65%, will be from petroleum revenues. As of Dec. 31, 1985 the permanent fund balance was $7.0 billion. The fund is expected to total $8.5 billion by 1990 and $16.6 billion by 2000. The amount of fund income available for dividends in 1985 was $217.3 million, with 521,323 eligible applicants receiving $404.

An amendment to limit state appropriations to $2.5 billion, approved by voters at the November 1982 general elections, will be placed on the ballot for reconsideration in the 1986 general election. Under the amendment, state appropriations cannot exceed $2.5 billion for any fiscal year by more than the cumulative change, based on federal indices in population and inflation after July 1, 1981. If rejected, it will be repealed. If approved, the amendment would become permanent, and appropriations may be subjected to impoundment powers of the governor, who may withhold or reduce appropriations during a budget year if revenues are less than appropriations. The amendment has not been operative, and has exceeded any revenues or accrued surpluses available for appropriation.

Debt: Historically, the issuance of state debt has been significant due to the state's commitment to capital improvement programs. The state is currently studying the implementation of a debt management policy, which may have been influenced by declining oil revenues and the need to meet unfilled infrastructure requirements while maintaining a conservative debt position. The policy will include all debt that relies on state general fund appropriations, in particular all nonself-supporting state debt, including G.O. debt, lease revenue debt, and similar obligations paid by the state. The state's last debt issuance was in fiscal 1983. Maximum annual debt service on all bonds is $175.7 million, due in 1986. As currently structured, debt service requirements will decrease substantially through 2000.

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Alaska Municipal Bond Bank

Reviewed; ratings affirmed

Rationale: S&P affirms the 'A' rating on all outstanding Alaska Municipal Bond Bank's general obligation bonds and the 'A-' rating on all outstanding bond bank revenue bonds. About $188.5 million of debt is affected. The basis of the rating is the moral obligation of the state. S&P policy establishes this rating at one full category below the existing rating of the state. In this case, the rating would be 'A+' based upon the state's 'AA-' rating. However, the G.O.s of the bond bank where the state has the authority to withhold aid to participating units, in lieu of debt service payments upon the request of the bank, are rated 'A'. The revenue bonds remain at 'A-', where no withholding provisions exist.

The bank: The Municipal Bond Bank Act established the bank as a public corporation and instrumentality of the state of Alaska within the department of revenue, but separate from and independent of the state. The bank, which began operations in August 1975, was created for the purpose of lending money to government units within the state of Alaska by purchasing municipal bonds issued by such governmental units. Under the act and the bank's general resolution, the bank initially was authorized to purchase only G.O. bonds. Effective May 16, 1978, the Alaska state legislature authorized the bank to purchase municipal revenue bonds, and provided that the bank shall be called the Alaska Municipal Bond Bank Authority when issuing revenue bonds, and the Alaska Municipal Bond Bank when issuing G.O. bonds. The purchase of bonds is dependent upon bond counsel's opinion, stating that the bonds are valid obligations of the governmental unit as required by the act and that a loan agreement has been authorized and executed between the bank and the governmental unit, which constitutes a valid and binding obligation of the governmental unit. The powers of the bank are vested in a five-member board of directors, three of whom are public members appointed by the governor and confirmed by the state legislature. The three appointees serve four-year staggered terms. The remaining two members, the Commissioner of Revenue and the Commissioner of Community and Regional Affairs, are permanent.

Finances: Ongoing operations of the bank are not funded by the state's general fund appropriations, but by fees and charges and interest earned on investments. The bank is not allowed to carry surpluses, which must be returned to the state. Since its inception, the bank has returned $7.6 million. In fiscal 1985, $1.8 million was returned. The reserve fund, which receives capital appropriations from the state's general fund for

funds leveraging, is maintained at an amount equal to the maximum annual debt service requirement. As of June 30, 1985, the Alaska legislature has appropriated $17.9 million to the bank for the statutory reserve fund, of which approximately $5.4 million is available to meet statutory reserve fund requirements for future bank bond issues. The bank is annually required to deliver a statement to the governor and state legislature, stating the sum, if any, necessary to restore the reserve fund to the required debt service reserve level. The state is not legally obligated to make such an appropriation and, to date, it has never been necessary.

Debt: The bank has issued $192.8 million in bonds with $166.5 million currently outstanding. The outstanding debt is comprised of G.O., revenue, coastal energy reserve, and coastal energy loan program bonds. There is a statutory debt limit of $300 million, of which $131.5 million remains available. During 1982-1985, the bank's debt issuance has been $48.5 million, $30.6 million, $7.0 million, and $25.8 million, respectively. Due to declining state petroleum revenues, it is anticipated that local units will be turning to the bank on a regular basis for the financing of their capital needs.

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North Slope Borough, Alaska

Reviewed: ratings affirmed

Rationale: S&P affirms North Slope Borough, Alaska's outstanding 'BBB+' rating on approximately $794.9 million general obligation bonds. The rating on $52.8 million series D bond anticipation notes due Nov. 18, 1986 is also affirmed at 'SP-1+'. An additional $428.6 million of G.O. debt is outstanding but secured separately by various credit enhancements. The long-term debt rating reflects the narrowness of the borough's economic base, the large amount of debt supported by that base, debt carrying charges that represent 67% of general fund expenditures, balanced by good financial operations and a strong financial position. The borough's economic viability entirely depends on the oil and gas industry, and the outlook for any significant diversification is poor. Due to remoteness and harsh environmental conditions, development of the limited infrastructure that supports the small community required the issuance of large amounts of debt. Total G.O. debt currently outstanding is approximately $1.3 billion. The pace of debt issuance slowed over the past two years and is not expected to exceed $107.4 million over the next three years. As a result, maturing debt should exceed new debt issuance over the period. The debt matures rapidly, with 48% rolling off in five years, and 95% in 10 years. The borough derives 60% of its revenues from a tax on oil- and gas-related real property improvements. Therefore, its main revenue stream is unaffected by fluctuations in oil prices. A small effect is expected from the recently settled pipeline tariff agreements which includes owners' income in the property assessment formula. The borough could lose up to $2 million annually as a result of the settlement (0.6% of total revenues). An additional 27% of revenues is derived from interest earnings. The very large debt burden appears adequately supported by an increasing but very narrow tax base.

Issuer: North Slope Borough is a vast, geographically isolated, sparsely populated area located entirely north of the Arctic Circle. Barrow, located almost 2,000 miles northwest of Seattle, is the borough seat and its largest city (population of 2,647). The virtually impassable Brooks Range forms the borough's southern boundary. A wide range of services is provided by the borough, including health, safety, sanitation, utilities, education, housing, and transportation systems. The borough is analogous to the county form of government in the lower 48 states, but has greater governmental powers. Remoteness, the absence of a modern infrastructure, and severe climatic conditions make the cost of development enormous.

Debt: Debt issuance increased sharply in 1983 and 1984 as infrastructure improvements were made to provide services to residents and to accommodate increased oil-related economic activity. The borough currently has outstanding $1.3 billion G.O. bonds and bond anticipation notes (net of refunded debt). Debt on a per capita basis is extremely high at $121,704, but is a more moderate 7.6% of true value ($13 billion in 1986). Carrying charges are very high as a percent of expenditures. The primary source of payment for the debt is a property tax assessed on capital improvements made at the oil and gas fields at Prudhoe Bay and Kuparuk. These properties represent 95% of the tax base. Capital financing of $107.4 million is planned for the next three years. These funds will be raised principally through issuance of G.O. bonds. An emergency debt service reserve fund was established during fiscal 1984 and is funded at 15% of outstanding debt. At July 1, 1985 a balance of $184 million was available in this fund. Debt service requirements for 1985 totaled $189 million.

Economy: Oil and gas production, transportation, and exploration form the base of the borough's economy. Before the discovery of oil and gas at Prudhoe Bay in 1968, and the construction of the Alyeska Pipeline, economic activity was limited to subsistence hunting, fishing, and military activities (DEW LINE maintenance and research). Further diversification of the economy is not expected due to extreme geographic and climatic problems. The lack of a highway system within the borough makes commercial air service and limited water transportation the only available means of mass transportation.

Within the next 25 years, no basic industry is projected to supplement the oil and gas industry. Maintenance or expansion of the oil industry depends on competitive lease offerings by the state and federal governments. The lead time from lease to production is approximately 10 years. The present production level at Prudhoe Bay of 1.5 million barrels of oil per day represents roughly 18% of total U.S. domestic production. Proven, extractable reserves at Prudhoe Bay are currently projected to last 11 years. Production at Kuparuk has begun and is expected to be 250,000 barrels of oil per day during 1986. An industry investment in Kuparuk is expected to total $8 billion and the economic life of the field is projected at 20-30 years. The two major North Slope operating companies are Atlantic Richfield Co. (Arco) and Standard Oil Co. of Ohio (Sohio). Although Arco's 1986 North Slope construction budget was reduced from $715 million to approximately $500 million as a result of reduced oil prices, work on the Prudhoe Bay Gas Plant and the Kuparuk Lisburne production facility will continue. Sohio has indicated it will proceed with its 1986 construction program as planned.

Finances: General fund financial operations remain strong. Significant operating surpluses were generated in each of the past five years which were transferred to the reserve for capital outlay fund, the emergency debt service reserve fund, or the recently created permanent fund. At July 1, 1985, balances available in these funds were $72 million, $184 million, and $117 million, respectively. As a result of these transfers, the general fund balance was reduced from $56 million in 1983 to $4 million in 1985. The three primary revenue sources of the general fund are property taxes (60%), interest earnings (27%), and state aid (10%). Tax collections are excellent, reaching roughly 99% on a current basis in each of the last five years. Debt service of $189 million represented 67% of general fund expenditures in 1985. As of July 1, 1985, a balance of $184 million was available in

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the emergency debt service reserve fund. Monies in excess of the 15% requirement in this fund will be transferred to the permanent fund. As of June 1985, $4 million was transferred from the emergency debt service reserve fund to the permanent fund. An additional $79 million transfer from the general fund left a balance of $117.4 million available in the permanent fund to be held in perpetuity. Interest earnings on permanent fund balances will be used for general fund operations. Although financial management is sound, large debt service carrying charges, the range of services provided, and the high cost of service provision will continue to absorb the borough's large financial resources.

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MUNICIPAL REVENUE

Alaska Industrial Development Authority

$11 million variable demand/fixed rate bond due 2004
Sold, February 25, Goldman, Sachs & Co.
Rated 'A–'

Rationale: S&P assigns an 'A–' rating to the Alaska Industrial Development Authority's conversion of its variable demand/fixed rate bonds, series 1984 A and B to a fixed rate. The 'A–' rating on the outstanding economic development bonds, the consolidated bonds, and the umbrella bonds is affirmed. The rating is based upon the moral obligation pledge of the state of Alaska, whose rating is affirmed at 'AA–'. The bonds are additionally secured by the general obligation of the authority.

Issuer and security: The state legislature established the Alaska Industrial Development Authority in 1967 to aid in economic development. The authority was originally created to administer the enterprise development fund. This fund was capitalized in 1981 with $166 million in state-originated loans. In addition, the state contributed $23 million to fund the capital reserve funds. In 1982 and 1984, the enabling act was amended to expand the authority's powers. In 1982, the multifamily housing loan security fund was set up and in 1984 the economic development fund. All three programs are legally separate and distinct. All economic development activities are channeled through the enterprise development fund. This fund holds the authority's general assets from which all of the authority's general obligation indebtness is payable. The enterprise development fund as of Dec. 31, 1985 had general assets of $525 million. The multifamily housing fund, which is not an asset of the authority, provides additional security to any of the authority's G.O. bonds issued for multifamily housing projects. This fund at Dec. 31, 1985 held $9 million in assets. The economic development fund empowers the authority to own and operate certain types of facilities when it is in the public interest to do so. This fund was capitalized with an appropriation of $12 million in cash and $132 million in loans held by the state. Financial obligations or liability incurred will be secured solely by the economic development fund and there is no general obligation pledge of the authority.

The authority has four types of bond issues outstanding: economic development bonds, consolidated bonds, umbrella bonds, and variable demand/fixed rate bonds. All issues except the variable demand/fixed rate bonds are secured by a general obligation pledge from the authority. Variable demand bonds are special obligations of the authority which become G.O.s upon conversion to a fixed rate. All bonds are further secured by the state's moral obligation pledge. If necessary, the state's legislature can, but is not obligated to, appropriate funds to the bonds through their capital reserve funds pursuant to notice under state statutes, if those reserves fall below required levels. The authority's total outstanding G.O. debt at June 30, 1985 is $213 million. This issue will increase debt by $11 million to $224 million. Total variable rate/fixed rate debt at Dec. 31, 1985 excluding this conversion is $40 million. The total $40 million is expected to be converted to fixed rate by the end of 1986 for $254 million in G.O. debt of the authority.

The economic development bonds provide funds for participations in loans for industrial and commercial projects up to $1 million. All revenues from these loan participations are pledged first to the payment of economic development bonds and then to the other G.O. debt of the authority. As of June 30, 1985, the total outstanding economic development bond debt was $126 million. Consolidated bonds provide funds for participations in loans for industrial, commercial, and multifamily housing projects from $1–$10 million. Revenues from these participations are not specifically pledged to the repayment of consolidated bonds. However, this is not a credit concern because both economic development and consolidated bonds are secured by the authority's general obligation and the state's moral obligation pledges. As of Dec. 31, 1985, outstanding consolidated bonds totaled $59 million.

The new umbrella bond program is intended to replace both the economic development and consolidated bonds. These new bonds do not have claim to the economic development, consolidated, and variable rate bonds' existing capital reserve funds. A separate reserve fund for the umbrella bonds was established with similar provisions to the previously issued bonds. At Dec. 31, 1985, the balances in all the capital reserve funds for the authority's G.O. debt is $26 million. This balance reflects the average annual debt service payments of the bonds.

Loan portfolio: The authority's portfolio of loans falls into three categories: bond loans, appropriation loans, and federal guaranteed loans. Bond loans derive their funds from bond proceeds, appropriated loans from state appropriated money, and federal guaranteed loans from the authority's funds on hand. These three sources of funds are used to buy loan participations from Alaska financial institutions. The fiscal 1985 composition of the portfolio is 22% appropriated loans, 61% bond loans, and 17% Small Business Administration (SBA) guaranteed loans. Appropriated loans are expected to decline to an insignificant percentage of the portfolio by 1991. Funds from the paid-off appropriation loans are used to buy SBA loans or investments. However, no SBA loans have been purchased in the last year due to remittance procedure problems with the new SBA servicer FIDATA. Until this situation is eliminated, no future investments in the SBA program will be maintained. The authority's purchase of loan participations is limited to completed projects that satisfy all terms of the authority's loan underwriting criteria. The authority's capital participation rate in loans under $1 million is 90% and 80% for those between $1–$10 million. Loans are disbursed geographically in proportion to the state's population distribution. As a result, the Anchorage area has the highest percentage of bonded loans at 55.5%. The portfolio's investment in projects is concentrated mainly in commercial space, approximately 78% in fiscal 1985. Bond loans delinquency rates on 90 days and over are still below 1%, even given the slump in the Alaska economy. This low rate is attributed to stringent underwriting criteria. In addition, each participating financial institution must provide servicing on all loans and maintain a 90-day delinquency rate below 2% or be suspended from selling new participations until the rate is controlled. The authority has a loan loss reserve fund of $2.6 million. This was created in 1991 and to date, the only charge offs are $1.1 million in defaulted appropriated loans. The reserve is

returned to its original level from earnings. The authority reviews the adequacy of this reserve fund annually with its accountants.

Finances: The authority's assets have grown from $218 million in 1981 to $524 million in 1985. Liabilities total $220 million in fiscal 1985, of which $213 million are bonds payable. All operating expenses are paid from commitment and finance fees. In fiscal 1985, this totaled $1.4 million to cover expenses of $1.1 million. Net earnings have risen from $16 million in fiscal 1981 to $30 million in fiscal 1985. The authority has unrestricted investments, capital reserve funds, cash, and interest earnings totaling $157 million at June 30, 1985 to meet shortfalls in debt service of approximately $28 million. Unrestricted surplus at June 30, 1985 is $264 million.

During fiscal 1986, the authority will convert all of its remaining $40 million variable rate debt to fixed. In addition, during 1986's first half it intends to issue its first taxable financing of $15 million. For fiscal 1987 and beyond, approximately $65 million in debt will be issued a year. It is impossible to determine how H.R. 3838 will affect future issuances other than to assume the program will continue with additional volume constraints.

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Alaska Housing Finance Corp.

Reviewed: ratings affirmed

Rationale: S&P affirms Alaska Housing Finance Corp. (AHFC) ratings on $4.27 billion in outstanding taxable and tax-exempt debt. The bonds, issued under 59 resolutions, are secured by over 52,000 level-paying mortgage and growing equity mortgage (GEM) loans. The loans are originated throughout the state by private lenders and subsequently purchased by the AHFC with bond proceeds. Direct state appropriations (in cash and in mortgages) permit the purchase of mortgage loans which bear interest at legislatively prescribed "below market" rates. To enhance the security of its bonds, the AHFC has entered into various credit arrangements. They include: Federal Housing Administration (FHA) Title I insurance, Federal National Mortgage Association (FNMA) and Government National Mortgage Association (GNMA) collateralization, bank letters of credit, and surety bonds. Additionally, the issuer enjoys strong support from the state of Alaska; 13 issues are guaranteed by a pledge of the state's full faith and credit. The affirmed bond ratings reflect the strength of the credit enhancements (*see list at right*).

Issuer: To date, AHFC has received $583 million in state appropriations. Fiscal year ending June 1985 witnessed no requests for additional funding. Such funding will not be sought in the foreseeable future. Fund balances of $1,458 million (fiscal 1985) reflect the healthy, well managed performance of the issuer to date. The corporation has a staff of 43 with experience in administration, mortgage underwriting, and finance. AHFC is governed by a five-member board consisting of two ex-officio and three governor-appointed members.

Programs: Since its inception in 1971, AHFC has adopted many innovative programs and financing techniques. The principal activities include:

—*Mortgage loan subsidization.* All of the corporation's programs provide an interest rate subsidy on the first $90,000 of a mortgage loan to Alaskan borrowers. The state currently subsidizes the mortgage loans to a maximum of 3% (4% for eligible veterans) below the cost of taxable funds to the corporation. However, loan rates may not be less than 10% (9% for veterans) unless the corporation's related cost of funds is less than 10%.

—*Taxable bonds.* To overcome the constraints of tax-exempt issuance caps ($200 million per annum), the corporation began issuing taxable bonds in 1981. It currently has approximately $1.3 billion in taxable debt outstanding, $100 million of which was issued in 1985.

—*Alaska Building Equity loan program.* In 1983, AHFC introduced its own version of the GEM loan. Titled the Alaska Building Equity (ABE) loan, it requires an increase in the borrower's monthly payments to provide for an accelerated amortization of principal. Thus, it can take advantage of shorter-term, lower interest taxable bonds.

—*FNMA collateralization.* In 1983, AHFC signed a $530 million pool purchase contract with FNMA enabling Alaskan mortgages to be swapped for FNMA mortgage-backed securities

Rated debt outstanding	Amt. (mil. $)	Rating
Housing mortgage bonds (nonparity)		
1972 series A	10.8	AA
1973 series A	10.3	AA
1973 series B	29.8	AA
1975 series A	30.6	AA
1975 series B	10.5	AA
Insured mortgage bonds (parity)	911.7	A
1975 first series; 1976 first and second series; 1977 first, second, and third series; 1978 first, second, and third series; 1979 first and second series; 1980 first, second, and third series;		
State-assisted mortgage bonds (nonparity)		
series A		A
series B and C	[illegible]	AA
series D and E	90.5	A–
series F	170.8	AA
series H	50.0	AA
series I	60.0	AA
series J	50.0	AA
series K	75.0	AA
series L	75.0	AA
series M	75.0	AA
series N	75.0	AA
series O*	50.0	AAA
series P*	50.0	AAA
Home mortgage bonds (nonparity)		
1981 first series	79.6	A–
1981 second series	90.9	A
1982 first series	77.5	AA–
1982 second series	93.3	AA–
1983 first series	70.1	AA–
1983 second series	122.4	AA–
Collateralized 1984 series A	75.0	AAA
Collateralized 1984 series B	127.4	AAA
Collateralized 1985 series A	100.0	AAA
Collateralized 1985 series B	102.4	AAA
State-guaranteed bonds (nonparity)*		
1983 first series	48.2	AA
1983 second series	117.5	AA
1983 third series	72.0	AA
1983 fourth series	94.7	AA
1983 fifth series	48.3	AA
1983 sixth series	72.7	AA
1984 first series	130.0	AA
1984 second series	100.0	AA
Collateralized 1984 first series	100.0	AAA
Collateralized 1984 second series	302.5	AAA
Collateralized 1985 first series	150.0	AAA
Second mortgage bonds	9.3	AA
Fairbanks North Star Borough rec. m.g6. bonds	28.1	A–
AHFC Overseas Finance N.V. gtd. bonds	98.1	AAA

*Guaranteed by full faith and credit of the state of Alaska.

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(MBSs). These MBSs are then, in effect, purchased with bond proceeds and used as collateral for the bonds. Such collateralization has enabled the issuer to obtain 'AAA' ratings on 10 tax-exempt and taxable issues to date.

—*Recycling.* AHFC relies heavily on recycling, wherein prepayments are used to make new mortgages, in many of its bond structures. This technique has reduced the need for future bond financings and state appropriations.

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Platte River Power Authority, Colorado

$113 million electric revenue bonds due 2018
Sold, February 20, Salomon Brothers Inc.
Rated 'A+'

Rationale: The $113 million issue of Platte River Power Authority electric revenue bonds is rated 'A+', along with $518 million of outstanding parity debt. The 'A' rating of the Loveland, Colo. electric revenue bonds was reviewed in connection with this sale and is affirmed. The ratings reflect the strength of the participant cities' economic bases and good financial performances. The authority's rates to the cities are low because capacity charges to Public Service Co. of Colorado are sufficient to pay debt service. Bond proceeds will be used to retire all outstanding commercial paper. The authority has refunded the commercial paper program instead of retiring it from revenues as was planned to avoid potential tax problems and to take advantage of current long-term interest rates.

Security: The bonds are secured by take-or-pay contracts with the cities of Fort Collins (45.7% of the project), Longmont (28.1%), Loveland (21.5%), and Estes Park (6.1%). The authority's rate covenant is net revenues 1.25 times (x) adjusted aggregated debt service. Debt service is adjusted to levelize payments of term bonds in 2000 and 2002. The additional bonds test requires net revenues in 12 of the preceding 24 months prior to issuance to meet the rate covenant. Additional security is provided by a debt service reserve fully funded to maximum debt service at the time of bond issuance.

Operations: Platte River's resources include energy and capacity under contract with the Western Area Power Administration (WAPA) through 1989. The authority receives 158mw in the winter and 238mw in the summer. The authority owns the 255mw coal-fired Rawhide Energy Station and an 18% share of the Yampa Project coal-fired Craig units, totaling 154mw. Excess capacity in the Craig and Rawhide units is sold to Public Service under a contract through 1994, which is less than the life of the bonds. Public Service is obligated to take-or-pay for capacity and energy made available in accordance with the schedule in the contract. If the contract schedules are not met, Public Service has the option to terminate the contract. Therefore, these bonds are not rated on the basis of the Public Service contract. Revenue derived from these sales is sufficient to pay all Platte River debt service at this time. In 1985, Platte River sold 340.5mw of capacity per month and 2,350gwh to Public Service.

Platte River expects peak demand to grow at a compound rate of 5.4% per year in the future and for energy sales to grow 5.9% per year. Since 1980, annual growth rates ranged from −3.6% to 16.4% for peak demand and from 3.3% to 11.8% for energy sales. The average growth rates of 5.9% and 5.7%, respectively, were strong despite this volatility. Based on this growth, Platte River expects to sell power from Yampa and Rawhide to participants when sales to Public Service end.

Rates: The authority is currently charging the participants 35 mills per kwh. Retail rates in all cities except Loveland are below those of Public Service and the Poudre Valley cooperative supplied by Tri-state generation and transmission cooperative. Loveland's rates are only marginally above Public Service's rates. The authority does not anticipate raising rates to the participants until 1991 when it begins taking back its Rawhide capacity. Between 1991 and 1998, rates are expected to rise from 35.2 mills per kwh to 55.2 mills per kwh.

Finances: During the last two years, Platte River changed from a construction-oriented organization to an operating power supplier. The effect of this change is clearer when the operating statements for 1983 and 1984 are compared. Revenues grew 105% in that year and operating expenses grew 107%, primarily due to a 195% increase in depreciation with the start-up of Rawhide. During 1985, only 29.5% of revenues came from sales to the participants, the remainder of the revenues came from sales to Public Service. Annual debt service coverage was 1.48x in 1984 and 1.53x in 1985, including commercial paper interest. The balance sheet continued to improve in 1985. The current ratio was 4.39:1 and the quick ratio was 1.69:1. Leverage declined as the ratio of debt to plant declined to 1.14:1 from 1.20:1.

Participants: Fort Collins, Loveland, and Estes Park are in Larimer County, north of Denver, and Longmont is in Boulder County, west of Denver. The key economic sectors in this area are manufacturing, services, retail trade, and government. High technology electronics are a major source of employment, with manufacturing facilities of Hewlett-Packard Co., Storage Technology Inc., and NCR Inc. located in the participant cities. Colorado State University is another major employer in Fort Collins. The average unemployment rates for 1985 are below the national average in both counties, but rose slightly toward the end of the year to 7.1% in Larimer County and 6.7% in Boulder County. Total numbers employed remained stable.

Participants	Fort Collins	Longmont	Loveland	Estes Park
% Platte River	45.7	28.1	22.5	6.1
Peak demand 1985	110	69	48	14
gwh sold 1985	582	332	256	72
Population est. 1985	83,000	49,800	35,300	7,500
1984 revenue (000)	30,487	17,981	15,520	4,572
Debt serv. cov. (x)	*	*	5.80	*
Current ratio**	5.17:1	3.15:1	5.43:1	N.A.

*No electric revenue bonds outstanding
**Current assets/current liabilities.
N.A.—Not available.

The financial performance of the participants is good. Each has had a positive trend in revenues and controlled growth of expenses in recent years. Off-balance sheet debt service coverage is less than 1.00x for all participants because Platte River debt service payments are subsidized through the Public Service contract.

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