ALASKA LEGISLATURE COMMITTEE FILE 1985-1986 8672

3214.26 HCRA HB 380

26

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

380

Alaska State Legislature

House of Representatives

Representative Mike Szymanski

Finance Committee
Oil and Gas Committee

11920 Johns Road
Anchorage, Alaska 99515
Phone (907) 349-3373

While in Session:
Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4978/4979

January 17, 1986

TO: REPRESENTATIVE PETER GOLL, CHAIRMAN
HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

FROM: REPRESENTATIVE MIKE SZYMANSKI

RE: HB 380 - AN ACT RELATING TO PUBLIC WATER AND SEWER SERVICE EXTENSIONS

HB 380 requires that when water or sewer service becomes available as the result of a utility line extension, utilities notify property owners of the charges and interest that will be due when a property owner chooses to obtain the utility service. The bill requires that such notification shall be by certified mail, return receipt requested.

In addition, HB 380 prohibits the utility from charging any interest on the fee to connect to the water or sewer line before the line is available for service. When a utility line extension has been approved by a majority vote of property owners in the affected area, the utility may start charging interest 30 days after the notice of fee and interest has been sent to the property owners. If the line extension was not the result of a vote (e.g., if it was undertaken by a private developer), the utility can charge interest on the connection fee only after the individual property owner obtains the utility service.

Section 2 of the bill is a required technical amendment to the statutes governing public utilities and carriers.

C&RA April 22, 1985 3:00 P.M.

4/22/85

Kay--

Subject: HB 380 Relating to Public Utility Water and Sewer Service Extensions (by Szmanski)

Got advance backup on this. It provides for utilities giving notice to property owners of incurred debt when a new line in the event the property owner wants to obtain the utility service through the extension.

What happened in Szmanski's district is that property owners weren't notified and interest was running for two years on the assessment at the rate of 15.6%. When property owners inquired about hooking up, they were liable for the interest from the date the line was installed.

They would like to have been notified so they could make a decision earlier about hooking up and paying.

A committee substitute was prepared to add language that woukld delay interest accrual until 30 days after notification and limit the interest rate to the statutory maximum established in AS 45.45.010 (10.5%).

Pat

Alaska State Legislature

House of Representatives

Representative Mike Szymanski

Finance Committee
Oil and Gas Committee

11926 Johns Road
Anchorage, Alaska 99515
Phone (907) 349-3373

While in Session:
Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4978/4979

April 22, 1985

TO: REPRESENTATIVE PETER GOLL, CHAIRMAN
HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

FROM: REPRESENTATIVE MIKE SZYMANSKI Mike

RE: HB 380

The intent behind HB 380 is to ensure that citizens are notified of liabilities that result from water or sewer line extensions. Current state law does not require utilities to notify property owners of incurred debt when a new line abuts their property, although most utilities do so as a courtesy.

The need for this law is demonstrated in a recent situation in my district where a small utility failed to notify long standing property owners of their obligations as a result of a water extention that benefited a new development nearby. In this case, the individual assessments were quite large ($18,000) and interest was accruing at 15.6% for over two years before the property owners were notified. Should any of these property owners choose to hook up to the utility they will be liable for principle and interest from the date the line was installed.

Further, current banking procedures require that all outstanding liabilities be paid prior to any refinancing or transfer/sale of property. Thus, even though the properties in question are self-contained, if the owners decide to sell or refinance their homes, they will have to pay the assessment and any back interest due.

Although the enactment of this legislation would offer no relief to the citizens referenced above, it would prevent similar situations from occurring in the future.

Sectionally, the bill is quite simple. Section 1, subsection (e) would mandate the notification of estimated costs and potential assessments. Subsection (f) would both delay interest accrual until 30 days after notification and would limit the interest rate to the statutory maximum established in AS 45.45.010 (10.5%). This subsection was suggested by the utility attorney for the Municipality of Anchorage.

Section 2 of the bill is a required technical amendment to the statutes governing public utilities and carriers.

IN THE HOUSE

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CS FOR HOUSE BILL NO. 380 (C&RA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to public utility water and sewer service extensions."

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

* Section 1. AS 42.05.381 is amended by adding new subsections to read:

(e) When utility service is available to a property owner as a result of a water or sewer line extension, the utility offering the utility service to the property owner through the water or sewer line extension shall notify the property owner of estimated costs and potential assessments that may be charged by the utility against the property owner in the event the property owner elects to obtain the utility service through the water or sewer line extension.

(f) The rate of interest due a utility for utility service as a result of a water or sewer line extension under (e) of this section may not accrue until 30 days after notification to the property owner of estimated costs and potential assessments and may not exceed the legal rate of interest specified in AS 45.45.010.

* Sec. 2. AS 42.05.711(b) is amended to read:

(b) Public utilities owned and operated by a political subdivision of the state and none of whose utilities is in competition with any other utility, are exempt from the provisions of this chapter, other than the provisions of AS 42.05.221 - 42.05.281 and 42.05.381(e), unless the owner and operator elects to be subject to all provisions of this chapter.

Introduced: 4/16/85
Referred: Community & Regional Affairs

IN THE HOUSE BY SZYMANSKI

HOUSE BILL NO. 380

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to public utility water and sewer service extensions."

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

* Section 1. AS 42.05.381 is amended by adding new subsections to read:

(e) When utility service is available to a property owner as a result of a waterline extension, the utility offering the utility service to the property owner through the waterline extension shall immediately notify the property owner of estimated costs and potential assessments that may be charged by the utility against the property owner in the event the property owner elects to obtain the utility service through the waterline extension.

(f) The rate of interest due a utility for utility service as a result of a waterline extension under (e) of this section may not exceed the legal rate of interest specified in AS 45.45.010.

* Sec. 2. AS 42.05.711(b) is amended to read:

(b) Public utilities owned and operated by a political subdivision of the state and none of whose utilities is in competition with any other utility, are exempt from the provisions of this chapter, other than the provisions of AS 42.05.221 - 42.05.281 and 42.05.381(e), unless the owner and operator elects to be subject to all provisions of this chapter.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 380

Title: Public Utility Water & Sewer Service Extensions

Sponsor: Szymanski

Requestor:

Date of Request: 4/17/85

FISCAL DETAIL

Agency Affected: Ak. Public Utilities Comm

Program Category Affected: Cons. Prot.

BRU, Program or Subprogram(s) Affected: Ak. Public Utilities Comm.

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

This "zero" fiscal note is submitted with the assumption that the Commission will have a passive role with regard to the legislative changes proposed. If the intent of this legislation is for active Commixxion monitoring and dispute resolution, the fiscal impact will have to be reevaluated.

Prepared By: John B. Farleigh Phone: 276-6222

Division: Alaska Public Utilities Commission Date: April 19, 1985

Approved by Commissioner: Carolyn Guess, Chairman Date:

Agency: Alaska Public Utilities Commission

Distribution (by Agency preparing fiscal note):

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

7/1/84

FROM ... 04/24/85 10:30 ... TOTAL P. 2

Moen
5/7/85

Original sponsor: Szymanski

IN THE HOUSE

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CS FOR HOUSE BILL NO. 380 (C&RA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to public utility water and sewer service extensions."

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

* Section 1. AS 42.05.381 is amended by adding new subsections to read:

(e) When utility service is available to a property owner as a result of a water or sewer line extension, the utility offering the utility service to the property owner through the water or sewer line extension shall notify the property owner by certified mail, with return receipt requested, of the charges and interest due the utility in the event the property owner elects to obtain the utility service through the water or sewer line extension.

(f) The interest on the charges due a utility for construction of a water or sewer line extension may not accrue unless the water or sewer line extension is available for service connection and until

(1) 30 days after the utility mails notice to the property owner under (e) of this section of the charges and interest due the utility if the water or sewer line extension was approved by a majority vote of property owners in the utility district to be served by the proposed water or sewer line extension; or

(2) the date the property owner obtains a utility service connection to the water or sewer line extension.

* Sec. 2. AS 42.05.711(b) is amended to read:

(b) Public utilities owned and operated by a political subdivision of the state and none of whose utilities is in competition with

any other utility, are exempt from the provisions of this chapter, other than the provisions of AS 42.05.221 - 42.05.281 and 42.05.381(e) and (f), unless the owner and operator elects to be subject to all provisions of this chapter.

Cramer
1-16-86

Original sponsor: Szymanski

IN THE HOUSE

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CS FOR HOUSE BILL NO. 380 (C&RA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to public utility water and sewer service extensions."

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

* Section 1. AS 42.05.381 is amended by adding new subsections to read:

(e) When utility service is available to a property owner as a result of a water or sewer line extension, the utility offering the utility service to the property owner through the water or sewer line extension shall notify the property owner by certified mail, with return receipt requested, of the charges and interest due the utility in the event the property owner elects to obtain the utility service through the water or sewer line extension.

(f) The interest on the charges due a utility for construction of a water or sewer line extension may not accrue unless the water or sewer line extension is available for service connection and,

(1) for a water or sewer line extension approved by a majority vote of the property owners in the utility district, until 30 days after the date the utility mails notice to the property owner under (e) of this section; or

(2) for other water or sewer line extensions, until the date the property owner obtains a utility service connection to the extension of the line.

* Sec. 2. AS 42.05.711(b) is repealed and reenacted to read:

(b) If none of the utilities of a public utility owned and operated by a political subdivision of the state competes with any

MUNICIPALITY OF ANCHORAGE

MEMORANDUM

DATE: January 16, 1986

TO: Mayor

FROM: Jean G. Michou - General Manager, AWWU

SUBJECT: Recommendations for Changing the Payment-In-Lieu of Assessment (PILA) Process

In response to growing concerns about AWWU assessment processes, the Utility reviewed its rules and regulations, Ordinances, and Tariffs. We concur with the attached AWWU Advisory Commission's recommendation and recommend that the payment-in-lieu of assessment (PILA) process for water be changed to match the permission-to-enter assessment (PTE) process for wastewater.

Major process changes will be as follows:

°PILA assessments will be submitted to the Assembly for public hearing and approval by Resolution, as is done in PTE, instead of by individual agreements between the AWWU and each affected property owner;

°All bordering property owners will be notified, prior to construction, that new water and/or wastewater lines are being installed;

°AWWU will meet with the affected property owners to answer questions and to resolve problems before assessment rolls are submitted to the Assembly for approval, as is done in PTE;

°Developers will be reimbursed the principal amount only; no interest will accrue to the developer, as is done in PTE;

°PILA assessments will not be subject to interest accrual, as is done in PTE; bordering property owners who choose to make time payments, beginning at the time of application for service, will pay a finance charge to cover AWWU's related administration costs;

°The time payment period for PILA assessments will be extended from 5 years to 20 years (or at least the length of bond financing of the project), as is done in PTE;

°The developer's administrative fee to be paid to AWWU will include AWWU's costs for functioning as a collection agent in their behalf.

These process changes require amendments to Municipal Ordinances and the Water and Wastewater Utility Tariffs. We intend to submit this package to the Assembly for public hearing during April 1986. After Assembly approval, the changes to the Tariffs will be submitted to the APUC for their approval in early May.

Jean G. Michou

JEAN G. MICHOU
General Manager
Anchorage Water & Wastewater Utility

Concur:

Bob Smith

BOB SMITH
Municipal Manager

Approval:

Tony Knowles

TONY KNOWLES
Mayor

Attachments

tsel/lm27

TERESA A. HOGAN
Attorney At Law

608 W. Fourth Ave.
Suite 3-B
Anchorage, Alaska 99501

Telephone
907-276-7849

July 1, 1985

Mark Higgins
Office of Senator Szymanski
1024 W. 6th Ave.
Anchorage, Alaska 99501

Re: Bill 308

Dear Mark:

Thank you for taking the time to discuss my problem with the city P.I.L.A. on 7210 Cantonment Court. I would certainly be interested in participating in hearings on this issue, especially concerning the impact of transfer lines on pre-existing homeowners.

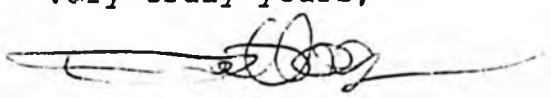
Just for your records, I purchased a home, newly constructed, on the corner of Cantonment Court and East 72nd Street in Kingsberry Subdivision in 1982. The City approved the Kingsberry Plat with a community well. In 1983 a private developer brought city water down 72nd Street. A P.I.L.A. was placed on the lot in the approximate amount of $ 4000.00. I was not advised that no institutional financing was available without hookup. I discovered this when I put my house up for sale. I also discovered that it would cost over $ 8000.00 to connect to the City water which is located on the other side of 72nd Street. The total cost to me, then, exceeds $ 12,000. Basically, this is all I could expect to realize on a sale of the house so I have lost everything I put into it, including money spent on improvements. The same thing happened to the gentleman across the street. Because he had bought later than I, he did not have as much equity in the house and he had no choice but to allow the house to go back to the bank. It is now, and has for some time, been standing empty.

The appraiser who evaluated my house for sale said that City water would not increase the value of my house and he would not increase the appraisal in light of connection. Certainly, the mere availability of city water across 72nd Street at prohibitive cost does not increase the value of the property. As we discussed, this may raise some questions as to whether the assessment was proper at all, but, inthe absence of any notice and hearing provisions, one is left wondering how this evidence is to be presented.

I would be happy to furnish any further details that might assist you in evaluating problems created by the

P.I.L.A. system. If I can be of any assistance with respect to Bill 308, please let me know.

Very truly yours,



Teresa Hogan

For clarity the following definition is given for Payment-in-Lieu-of Assessment (PILA).

A MONETARY CHARGE COLLECTABLE FROM AFFECTED PROPERTIES AS A "FAIR-SHARE" CONTRIBUTION FOR WATER LINES INSTALLED.

The present PILA program became effective on January 1, 1972 and to date currently includes approximately 3,700 properties. The total amount of PILA charges outstanding to date is approximately $14,182,000 (includes applicable interest) of which approximately $8,820,000 (or 62%) represents municipal monies that were used to install water lines. The balance ($5,362,000) represents developer monies that were used to install water lines.

A PILA is a charge that is not collectable until such time as the affected property owner requests and/or connects to water service. An affected property is one that is served by:

1. Developer installed water lines that are <u>not</u> owned by that developer

-- OR --

2. Municipal installed lines that are <u>not</u> within a Water Improvement District (W.I.D.)

Should you wish to know if your property is one of the 3,700 PILA properties or have any other questions regarding water/sewer, please feel free to contact the Assessments Section, Anchorage Water & Wastewater Utility, 3000 Arctic Blvd., or call 786-5522, or 786-5551. For your convenience please have available your property description (lot, block, subdivision) and/or your property tax identification number.

Should you wish not to speak (testify) at this public meeting, written comments are welcome. You may bring or send your comments to:

Anchorage Water & Wastewater Utility
3000 Arctic Boulevard
Anchorage, Alaska 99503
ATTN: Skip Edinger, Assessments Supervisor

Re: HB 320

ALASKA MORTGAGE BANKERS ASSOCIATION/BOARD OF REALTORS

P.I.L.A. Suggestions

not property address

Notification:

1. Notification to be sent by certified mail to the Land Owner at the time Developer initiates the water agreement with the M.O.A.

2. Notification to be sent by certified mail to the Land Owner at the time the Developer acutally signs the agreement.

3. In the agreement between the Developer/M.O.A. in effect should include all properties affected by the P.I.L.A. , state the amount it will cost the Land Owner, including hookup fee, interest assessed at the time of hookup and a disclosure of the costs if the Land Owner did not hookup for five years. The agreement must state clearly to the Land Owner the actual costs upon hookup.

The M.O.A. adds 3% to the Developer's costs already, so to remedy the additional costs of notification, the M.O.A. may have to add an additional .25% to their costs. The Developer should pay the cost of notifications.

EXISTING P.I.L.A.'S

The M.O.A. could create an assessment district to include all outstanding P.I.L.A.'s, float bonds to pay the interest to the Developer's that has accrued, then create assessments on the individual properties for the amount owing. Give the Land Owners the option of payment for the assessment, i.e. payment plan etc. (as normal assessments would be assessed).

The M.O.A. to go through the records and send notifications to all Land Owners who's property is now affected by a P.I.L.A.. Certified mail.

At one time the M.O.A. waived interest if the Land Owner had received no notification of the amount due and paid this within 60 days. This should again be in force.

DEFINITION OF A LIEN:

P.I.L.A.'s should be considered a lien by the M.O.A. for the reason, if a well goes bad sometime later after an approval is issued by the M.O.A. and water is available to that property, the M.O.A. will not issue a permit to put a new well in, therefore the Land Owner is forced to hookup to the M.O.A. water system. It then becomes a first lien position over the Lenders Lien, and is not SUBORDINATABLE.

The issue of interest on private developer generated PILA's has undergone extensive analysis by the Utility, Municipal Ombudsman, and Representative Mike Szymanski. Representative Szymanski has introduced HB 380, which the Utility supports, to legalize statewide generally the procedures AWWU currently uses regarding notification and interest changes.

To address Ms. Hogan's suggestion of dedicating a "negative easement", AWWU is soliciting an opinion from the Municipal Attorney's Office. AWWU's initial reaction is that it is not a workable solution. The Utility has no authority to prevent a property owner from crossing an easement line; our authority by virtue of the plumbing code is in preventing a property owner from crossing more that one lot line to obtain service.

The Utility requested the Planning Department's opinion of a proposal to dedicate a 1-foot or wider strip of land along the lot line fronting the AWWU main as a greenbelt lot. The Planning Department responded that, as long as such a proposal is not for the purpose of restricting right-of-way access, the only obvious obstacles remaining are meeting lot square footage requirements and convincing Property Management to accept the green belt area.

Prepared by:

Jean G. Michou
General Manager
Anchorage Water & Wastewater Utility

Concur:

Gordon Zerbetz
Executive Manager
Public Utilities

Respectfully Submitted:

For Tony Knowles
Mayor

Concur:

Robert E. Smith
Municipal Manager

MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AIM 141-85

Meeting Date: July 23, 1985

From: Mayor

Subject: RESPONSE TO THERESA HOGAN'S APPEARANCE REQUEST

In response to an appearance by Theresa Hogan before the Assembly regarding a water payment-in-lieu-of-assessment against her lot in Kingsberry Subdivision, the Anchorage Water & Wastewater Utility feels that the financial institution with which Ms. Hogan is dealing is being unreasonable. The Utility cannot support or understand the requirement that her property be connected to the Municipal system when she is presently receiving satisfactory water service from a community water system built to Municipal specifications and approved by the State of Alaska Department of Environmental Conservation.

If Ms. Hogan ultimately connects to the Municipal water system, she will be charged a payment-in-lieu-of-assessment (PILA). A payment-in-lieu-of-assessment (PILA) is her share of the Municipal water main construction costs, including interest at the AWWU bond rate. The Municipality does not require properties to connect to Municipal water systems; therefore, payment of PILA's is not mandatory until connection is desired.

The Municipal water main which benefits Ms. Hogan's property was constructed by a private developer. The Municipality is bound by contract to reimburse the developer if Ms. Hogan's property connects to the subject main.

Currently, there is no notification procedure for the impending construction of facilities by private developers which result in PILA's. The Utility is presently examining the possibility of including a statement in the notices of replat, which must occur in many cases prior to construction, issued by the Planning Department to property owners in the surrounding area. A possible example is:

> "The approval of the referenced plat/replat could possibly result in a financial impact upon properties which may be provided with water/wastewater service for which the construction may be required as a condition of this plat/replat."

Prior to 1975, there were no notification procedures whatsoever, and property owners were unaware of the PILA charge until they requested water service. At that time, AWWU initiated notification to 2200 affected properties. In addition, AWWU began including specific principal and interest figures in notifications sent to newly affected properties. This process continues to be used. To date there are roughly 1700 properties with outstanding PILA's, for a total estimated outstanding amount, including interest to date, of approximately $2.7 million.

The issue of interest on private developer generated PILA's has undergone extensive analysis by the Utility, Municipal Ombudsman, and Representative Mike Szymanski. Representative Szymanski has introduced HB 380, which the Utility supports, to legalize statewide generally the procedures AWWU currently uses regarding notification and interest changes.

To address Ms. Hogan's suggestion of dedicating a "negative easement", AWWU is soliciting an opinion from the Municipal Attorney's Office. AWWU's initial reaction is that it is not a workable solution. The Utility has no authority to prevent a property owner from crossing an easement line; our authority by virtue of the plumbing code is in preventing a property owner from crossing more that one lot line to obtain service.

The Utility requested the Planning Department's opinion of a proposal to dedicate a 1-foot or wider strip of land along the lot line fronting the AWWU main as a greenbelt lot. The Planning Department responded that, as long as such a proposal is not for the purpose of restricting right-of-way access, the only obvious obstacles remaining are meeting lot square footage requirements and convincing Property Management to accept the green belt area.

Prepared by:

Jean G. Michou
General Manager
Anchorage Water & Wastewater Utility

Concur:

Gordon Zerbetz
Executive Manager
Public Utilities

Respectfully Submitted:

For Tony Knowles
Mayor

Concur:

Robert E. Smith
Municipal Manager

9. APPEARANCE REQUESTS:

A. Teresa Hogan, regarding sale of her home.

TERESA HOGAN said she purchased her house in January, 1982. The subdivision plat was approved with a community water system. At the time of purchase the closest municipal water system was 68th Street. The community water system currently serving her home is up to municipal standards. This problem arouse when the municipality ran a water service down 72nd Street to service Bulen Subdivision. The water line is on the north side of 72nd Street and her lot is on the south side. When she put her home up for sale she discovered that no institutional financing was available unless she hooked up to the available public water system. She solicited bids for the work and received a bid of $7,100 that expense plus the cost of the assessment and the bond to work in the public right-of-way makes the water connection cost prohibitive neither will it add to the value of her property. The situation seems to be essentially a planning problem. She has been told by municipal employees they simply had no idea the extension of this water service would create this type of problem to the two corner lots in Kingsberry Subdivision. A couple possible solutions are to 1) make municipal water legally unavailable by creating a negative use easement on her lot or 2) municipal acquisition of the community water system currently serving the subdivision. The residents of the subdivision probably would go along with purchase of their system if the municipality traded hook-up costs for the assets of the water system.

In response to Mr. Baer, Ms. HOGAN said that Kingsberry Homeowners Association owned the water system and it serves eighteen lots.

Jean Michou, Manager of the Anchorage Water and Wastewater Utility, commented there are a number of legal issues raised and she would like sometime to explore solutions with Ms. HOGAN.

Mr. Baer asked Ms. Michou to report to the Assembly on how many P.I.L.A.'S exist now and how many people are affected by them.

Ms. HOGAN noted that water availability notices are not recorded documents so the information is not available to title companies when a search is done.

Chairman Angvik asked Ms. Michou to report on her discussion's with Ms. HOGAN at the July 23, 1985 Assembly meeting. She also suggested that Ms. Michous check with right-of-way division and the Department of Law on the negative use easement issue.

10. CONTINUED PUBLIC HEARINGS: None.

11. NEW PUBLIC HEARINGS:

A. Resolution No. AR 85-135, accepting $2,220,919 from a federal Aviation Administration Airport Improvement Program grant, and $74-030 from the Alaska State Department of Transportation and Public Facilities grant and appropriating said grants and $74,031 from airport retained earnings to Merrill Field's capital improvement fund for the reconstruction, paving and installation of area lighting of certain public use aircraft tiedown aprons on Merrill Field airport and the acquisition of snow remcal equipment.
   1. Assembly Memorandum No. AM 738-85.
   2. Resolution No. AR 85-135(S), accepting $2,220, 919 from a federal Aviation Administration Airport Improvement Program grant, and $74,030 from the Alaska State Department of Transportation and Public Facilites grant and appropriating said grants and $103,140 from airport retained earnings to Merrill Field's capital improvement

Municipality of Anchorage

MEMORANDUM

DATE: July 23, 1985

TO: Jane Angvik, Assembly Chair

FROM: Michael Mills, Ombudsman

SUBJECT: Agenda item 9, Karen Pelroy Appearance Request

Karen Pelroy has also filed a complaint with the Ombudsman regarding payment-in-lieu-of-assessment (PILA's). Though her complaint targets the platting process as the source of her PILA problem, the real problem remains with the PILA process. Though notification of the short plat causing the water extension would have allowed her an opportunity to testify, the developer could extend water service regardless of the outcome of the subdivision without notification.

Again, I keep coming back to the main issue and looking for solutions. The question is do we want to continue the process of extending sewer and/or water service without the consent of those who will ultimately bear the costs of those extentions. If not, the municipality should consider eliminating this process and allowing extensions by existing methods requiring consent of at least 50% of the property owners affected. This would of course make extensions of service more difficult or more costly for new developments but would prevent continuing under procedures having questionable equitability.

Such a solution will resolve the issue for the future but brings us to the question of existing property owners with PILA's. Both myself and the utility are grasping for viable solutions and are having difficulty coming up with solutions which do not have drastic implications.

The Utility could attempt to pass the estimated $2.7 million, or a portion of it, onto the rate payers if acceptance were obtained by the APUC. This would provide the dollars to repay the outstanding PILA's. I agree with Jean Michou, that this option would require much consideration and possible case by case review.

The Utility prefers to work on other options which lesson the PILA amount. The are considering proposing such tariff revisions this year. This would make the charges similar to sewer line permission-to-enter charges (PTE's). However, these charges are still required to be paid off by mortgage holders at the time of sale to avoid a cloud over the title.

In summary, there is no easy answer. However, my opinion is that both the PILA and PTE process create an economic burden on property owners which they should have some control over and currently do not.

mm/bml3

Municipality of Anchorage

MEMORANDUM

DATE: July 2, 1985

TO: Municipal Assembly

FROM: Michael Mills, Ombudsman

SUBJECT: Teresa A. Hogan Appearance Request/PILA

In her letter to the Assembly, Ms. Teresa Hogan presents a serious concern which I have received complaints on as early as last fall. Recently, I have had the staff capability to research this subject in the detail necessary to formulate recommendations to the Utility.

The central issue is whether or not public water and/or sewer lines should continue to be constructed under the payment in lieu of assessment (PILA) method as it currently exists. Direction from the Assembly may be appropriate in assisting AWWU in making such a decision.

The PILA method, simply stated, allows a party to extend public water or sewer - initially at their own expense - and later recoup those costs from properties fronting the line as they connect to such service. The concept does not appear inequitable until one considers the specifics involved.

1. One cannot obtain financing for a residential real estate transaction without first clearing the PILA. Lending institutions consider the PILA as a lien or an assessment since it is inevitable that the home will one day be connected to the service and the payment will have to be paid.

2. No notification is given to property owners of charges until after the PILA has been made. There is no opportunity for those property owners to object to or have any influence over the decision.

3. Interest charges begin to accrue from the time the line is installed. PILAs now under AWWU's jurisdiction established under a private water utility have interest rates as high as 17%. PILAs established under AWWU have been at rates less than 10%.

Under the PILA method it is possible for someone who has already paid the costs for on-site systems to lose all the equity in their home at the time of sale as a result of a PILA for a public water or sewer service. This has apparently already been happening. This financial burden prevents some homeowners from selling their homes.

A number of ways to relieve the financial burden have been discussed. One is postponing interest charges until after the person has connected

to the service. This has gained AWWU's support since HB 384 was introduced this year which would make this a requirement. Refinancing PILAs established by a private utility at high interest rates with bond funds has also been mentioned.

My recommendation would be to review and comment on all the options and present this information to the Assembly for review and direction. The Assembly's impact is advised since this issue has a significant impact on who pays for public water and sewer services.

In the case of Ms. Hogan, being somewhat unique having an approved community system, the question could be asked if there is any form of PILA exemption for subdivisions with approved community systems.

I will be continuing my efforts to develop feasible solutions to this issue with the utility and will be prepared to present more information to the Assembly on request.

mm/bm5

Municipality of Anchorage

MEMORANDUM

DATE: December 5, 1985

TO: AWWU Advisory Committee

FROM: Michael Mills, Ombudsman

SUBJECT: Payment-In-Lieu-of-Assessment (PILA)

BACKGROUND

During the fall of 1984, I began receiving complaints about the Payment-In-Lieu-of-Assessment (PILA) process. A review of past cases revealed complaints were also received prior to 1984. Some of the previous complaints about PILA's and their interest charges were resolved by a temporary waiver of the interest fees.

Considerable time has been spent by this office, AWWU, financial institutions, affected citizens, state legislative staff, and a number of Assembly Members researching this issue in hope of identifying ways to improve the current process. Also included when discussing this subject should be the PTE, or Permission-To-Enter. This is the method in which AWWU utilizes to privately finance sewer extensions. Much like the PILA process where a private party may initiate the service extension, PTE's differ primarily in the manner in which actual connection charges are calculated. Rather than an interest charge, PTE's are based on a variable construction cost which will not escalate as do the interest charges.

The investigation by this office has not identified any specific violations of municipal laws or AWWU tariffs pertaining to either PILA or PTE utility extensions.

The Ombudsman's Office is of the opinion, however, that the PILA method of extending service is unreasonable and unfair as it currently exists. Therefore, this office has continued an investigation of the complaints pursuant to the jurisdiction granted by AMC 2.60.110.C.2 in order to promote a higher standard equity in the provision of water and wastewater services.

PRIMARY ISSUE

At the heart of the issue is the question of whether or not property owners should be granted the opportunity to voice their objection or support for a waterline extension for which they may benefit from and will ultimately pay for.

Under the current system these property owners receive no notification that these utility extensions are being planned and will be constructed at their expense. The property owners receive their first notification after the line is constructed and they are notified of what their cost

for the service will be. Homeowners are subjected to the PILA and hook-up charges which can reach into the ten to twenty thousand dollar range, despite the fact that they have already undertaken the expense of installing municipally approved on-site systems. Such an expense can easily cause a homeowner to lose all equity in their home, make it financially prohibitive to sell, or force one into foreclosure in order to move.

The Utility relies on the APUC approved tariffs, and their own interpretation of the tariffs, for the continuation of the PILA and PTE methods of extending service. These methods have been a valuable means of extending such services without the use of bonds or other public monies. Services provided under PILA's and PTE's have unquestionably improved the health and well-being of the general community. What is in question is not the value of these services but rather the process by which they are accomplished.

Improvement Districts and Special Assessment Districts also provide a means by which service can be extended. Both of the processes set forth specific notification procedures and districts are formed only with the consent of the majority of those being assessed. There is quite an inconsistency between the consent process and the PILA method which requires no consent or notification for the improvement. This occurred as a result of the code authorizing allocation of costs according to tariffs. I have been unable to find any similar improvement methods in municipal code which authorize similar improvements at the cost of the property owners without their notification and/or consent.

PILA COMMITTEE

As a result of complaints filed with this office and several appearance requests before the Assembly, a committee was formed to review the issue and prepare recommendations to the Assembly. At the Utility's request, the PILA committee disbanded to make way for the AWWU Advisory Commission to hold meetings and obtain public input. The PILA Committee had identified most of the issues but had been waiting for AWWU to obtain answers from the Legal Department to the most difficult questions regarding the options available to those under existing PILA's. This question has since been brought before the courts.

I encourage the Advisory Commission to pick-up where the PILA Committee left off. That is, to gather the remaining answers to questions related to the PILA and the PTE processes, gather public input, and present options and/or recommendations for amending the tariffs to the Assembly for their action.

RELATED ISSUES/ARGUMENTS

The utility will point out that the municipality does not require these property owners to connect to the service. I believe this argument to be mute. The financial institutions, who for practical purposes are considered an essential part of owning a home, are unable to ignore charges pending for connection to water or sewer service. Since the municipality (Health and Human Services) may at any time require connection to the service and subsequent payment of the charges or "assessment", the financial institutions are obligated to include these expenses in their transaction and require connection. To further demonstrate that the connection requirement is largely in the hands of the municipality, please note the ordinance planned to come before the Assembly early in 1986 that may require connection to available public sewer.

During discussions at the PILA committee meetings several people mentioned the platting process as a means to notify property owners of a potential PILA. Complaints focused on short plats where no notification is required yet PILA's resulted.

I do not believe the platting process is the forum that citizens should be afforded the opportunity to preclude the construction of a utility service. First off, the plat notification boundary would not coincide with the 500 foot plat notification boundary. Secondly, the Platting Authority is empowered to determine what conditions are necessary to permit a subdivision rather than debate and decide what method of financing should be used to construct a particular service. One could question the Platting Authority's power to deny a developer the option of utilizing a method of financing a utility service which is in accordance with an APUC approved tariff. Finally, the developer would not be restricted from constructing the service under the PILA method regardless of a denial of the subdivision by the Platting Authority.

SUMMARY - RECOMMENDATION

The AWWU Advisory Commission can serve an important function by providing the Municipal Assembly a consolidated summary of public input and recommendations for revising the current PILA (and if necessary, PTE) method(s) of extending AWWU's services.

After considering a wide variety of possible amendments to the PILA process, the Ombudsman's Office makes the following two recommendations:

1. Amend the AWWU tariff to be consistent with the draft language of HB 380 submitted by Representative Mike Szymanski. This amendment would postpone interest charges from accruing on a PILA until such time as the homeowner actually connects to the service. This would significantly lessen the PILA burden particularly for those who are planning to live in their homes for a longer period and are not in immediate need of public water.

2. Amend the AWWU tariff, possibly through an amendment to the Municipal Code, to require approval by the Municipal Assembly of any new PILA water extensions after public notification and hearing. Language for this amendment can be based on State procedures for special assessments (Sec. 29.63.015). This procedure would; require public hearings, provide public notice through publication and mailings, and provide a protest provision requiring three-fourths assembly approval to approve a PILA in which over 50% of those bearing the cost of the improvement have protested. This amendment would allow public input and influence over the decision to construct the water extension, yet would give the Municipal Assembly the ultimate authority to determine whether the service is in the public's best interest.

I have not been able to fully review the PTE process in enough detail to make recommendations at this time. Thank you for the opportunity to comment on this subject.

Alaska State Legislature

House of Representatives

Committee on
Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

HEARING DATE: HB 380, April 22, 1985

NAME (Please Print)	ADDRESS	REPRESENTING	TESTIFY (Yes or No)	PHONE NUMBER
John B Farleigh	420 "L" ST Anchorage	APUC		276-6222
M. Mathis Asst		Rep. Szymanski		-4828
MARK M. HIGGINS				

THE FOLLOWING 3 PAGE DOCUMENT NEEDS TO BE SENT TO

TO: Mark Higgins
Aide to Mike Szymanksi 577

FROM: Daniel Helmick
Anchorage Water & Wastewater Utility

PLEASE SEND NOTICE BACK IF YOU RECEIVE.

Our number here is 562-3166

[WOHLFORTH & FLINT DRAFT 3
5/7/85]

[Caution: Section 1 reflects changes from the previous Committee draft. Section 2 reflects a change from existing law.]

IN THE HOUSE BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CS FOR HOUSE BILL NO. 380 (C&RA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to public utility water and sewer service extensions."

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

* Section 1. AS 42.05.381 is amended by adding new subsections to read:

(e) When utility service is available to a property owner as a result of a water or sewer line extension, the utility offering the utility service to the property owner through the water or sewer line extension shall notify the property owner by <u>first class mail</u> [CERTIFIED MAIL, WITH RETURN RECEIPT REQUESTED,] of the charges and interest due the utility <u>on account of</u> [IN THE EVENT THE PROPERTY OWNER ELECTS TO OBTAIN THE UTILITY SERVICE THROUGH] the water or sewer line extension. <u>The utility shall maintain a record</u>

of such notification including an affidavit of a responsible officer of the utility certifying to the fact that the notices were mailed as required.

(f) The interest on the charges due a utility for construction of a water or sewer line extension may not accrue until the water or sewer line extension is available for service connection and

(1) 30 days have elapsed from the date [AFTER] the utility mails notice to the property owner under (e) of this section of the charges and interest due the utility if the water or sewer line extension was approved as part of a municipal special assessment district or otherwise approved by the owners of properties in the utility district which will bear more than 50% of the estimated cost of [BY A MAJORITY VOTE OF PROPERTY OWNERS IN THE UTILITY DISTRICT TO BE SERVED BY] the proposed water or sewer line extension; or

(2) in the case of a water or sewer line extension which is not part of a municipal special assessment district or a utility district where the water or sewer line extension was approved by the owners of properties which will bear more than 50% of the estimated cost of the proposed water or sewer extension, the date the property owner obtains a utility service connection to the water or sewer line extension.

*Section 2. AS 42.05.711(b) is amended to read:

(b) Public utilities owned and operated by a political subdivision of the state and none of whose utilities is in competition with any other utility, are exempt from the provisions of this chapter, other than the provisions of AS 42.05.221 - 42.05.281 and 42.05.381(e) and (f), unless the owner and operator elects to be subject to all provisions of this chapter.

COMMITTEE REPORT

HOUSE

(7)

4/16/85

FURTHER: 1/23 (Rules)

Date: 1-22-86

The Committee on COMMUNITY & REGIONAL AFFAIRS has had HB 380

"An Act relating to public utility water and sewer service extensions."

under consideration and recommends:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 380 (CRA) [X] same title [ ] new title

and recommends DO PASS

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

[X] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the ______ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS:
[signature]	[signature]
[signature]	
[signature]	
[signature]	
[signature]	
[signature]	

[signature]

CHAIRMAN

ANCHORAGE WATER & WASTEWATER UTILITY

3000 Arctic Boulevard
Anchorage, Alaska 99503-3898
(907)

Tony Knowles, Mayor

Owned by the Municipality of Anchorage

April 19, 1985

Representative Mike Szymanski
Fouch V
Juneau, AK 99811

ATTENTION: Mark Higgins

Dear Mike:

RE: HOUSE BILL 380

The Anchorage Water & Wastewater Utility agrees with the concept and intent of HB 380. We do have some concerns, however, which need to be addressed.

We feel that a more equitable approach for both the Utility and the property owners would be to key the notification process to the accrual of interest on the assessment. "Interest would start accruing not less than thirty (30) days after the certification of mailing of the notice of assessments to the affected property owner(s)."

This approach would protect the property owner while at the same time not tying the Utility's hands in the completion and acceptance of the project. This can be very complicated, especially in the case of projects constructed by recalcitrant developers.

Thank you for the opportunity to assist your office on this bill.

Very truly yours,

BRIAN I. CREWDSON
Manager, Engineering & Customer Service
Anchorage Water & Wastewater Utility

BIC:mg

Municipality of Anchorage

MEMORANDUM

DATE: January 31, 1985

TO: Daniel Helmick, Manager, Finance Administration, AWWU
Skip Edinger, Assessment Supervisor

FROM: Michael Mills, Ombudsman
Marsha Walton, Investigator, Ombudsman's Office

SUBJECT: Skyway Park & Timberlane Subdivision Water Assessments

We would like to request a meeting with you and Assistant Municipal Attorney Phil Matricardi to discuss AWWU's policies and procedures governing the assessment of water and sewer mains installed and financed by private parties. In particular, we would appreciate the opportunity to discuss with you some questions we have regarding the installation of water mains by Shorecrest Development Company, Inc. to benefit properties in Shorecrest Subdivision, and the subsequent "assessment" of $283,895.27 against affected properties in Skyway Park and Timberlane Subdivisions.

As you are already aware, affected property owners of these latter two subdivisions have requested an investigation of this matter from our office. On behalf of these property owners and other potentially interested parties, we are submitting the following questions for your consideration (see attachment). Please provide us with written responses to these questions at your earliest convenience, so that this information may serve as the basis for our discussion.

We feel the affected property owners deserve a timely resolution of this matter in consideration of the substantial interest charges accruing against their properties. We would like for you to set up a specific time and location for this meeting at your earliest convenience.

We appreciate your prompt attention to our questions, and look forward to hearing from you.

Thank you for your assistance.

1. What authority enabled CAU to enter into an agreement with Shorecrest Development Co.,Inc. to extend water mains to Shorecrest Subdivision, and to charge affected property owners of Skyway and Timberlane Subdivisions for 100% of the cost of the main extensions up to Shorecrest Subdivision?

Under CAU Tariff, Section 04- "Extension of Water Mains by the Company" must be preceded by a formal request by at least two thirds of the properties which will be subsequently assessed.

> A request for extension (s) of existing facilities shall be initiated by a petition signed by the owner or owners of 2/3 of the proposed benefiting properties.

Section 04 of CAU's Tariff stresses the necessity of having a 2/3 majority of the affected property owners requesting the extension be constructed before CAU is authorized to provide an extension:

> Unless otherwise specifically provided no extension of the water main will be considered to be feasible unless the owners of at least two-thirds (2/3) of the benefitted area, computed on an assessable area basis, excluding dedicated rights-of-way, agree to make a payment in lieu of assessment based on their pro-rata share of the cost as indicated in Schedule B above.

Construction agreements with the property owners who are to be benefitted shall be executed prior to the commencement of construction to secure the payment of costs.

It may be argued that all of the above provisions quoted from the CAU Tariff do not apply in this case because the extension of the water main was performed by Shorecrest Development Company, Inc. not by CAU. However, the same questions still remains: what authority enables Shorecrest, CAU, or AWWU to assess properties not owned by them, in the absence of a petition signed by two-thirds of the property owners in favor of the extension?

In the CAU Tariff -"Extension by Others", it states that:

> Should the company require the installation of a pipe larger than the standard (8) inch or if frontage making service available to other properties is generated, the company may enter into an agreement for reimbursement.

In the case of Shorecrest Development Company Inc.'s extension,

> "CAU agrees to reimburse the developer $18,786.13 for" One hundred (100) percent of the cost difference between 10 inch DIP versus 8 inch DIP and appurtenances for 5,306 LF on Hilltop Drive and Woo Drive.
>
> (Water Installation Agreement with Lien Provisions between CAU and Shorecrest Development Co., Inc., 1981)

Can it then be inferred that CAU also intends to enter into an agreement with Shorecrest Development Company, Inc., to reimburse them for the costs of "frontage making service available to other properties...generated"? If so, why didn't CAU go through the process of confirming at least a 2/3 majority vote from the affected property owners?

2. If property owners in Skyway and Timberlane Park Subdivisions do not choose to hook up to the Municipality's water main by 1991, will their assessments remain the same, or....

3. Does the interest accruing on their assessments then revert to Shorecrest Development Company, Inc.?

4. Will any assessments on this portion of the water main paid after 1991 be reimbursed to Shorecrest Development Company, Inc.?

5. If not, what provisions of which tariff (CAU's or AWWU's) govern the assessment and payment of costs associated with connecting to this water main after 1991?

6. If water improvements are not financed by a bond, but by a private developer, (and assuming the authority in question in #1 above has been granted) are there any tariff (or other) provisions which protect affected property owners from high interest charges? If not, why does the AWWU Tariff take such care to regulate assessments on water mains installed by the utility company (AWWU), but overlooks the regulation of developers' financing and installation of water main extensions?

7. Under AWWU's Water Tariff, regarding "Main Extensions by Subdivision Agreement", it states:

> The subdivider will be responsible under the agreement to pay the costs of the system required to serve the subdivision and which is actually installed. The Assembly will determine whether main extensions necessary to reach the subdivision are feasible by utilizing the criteria set forth in 3.1 or 3.4 of this rule (Main Extensions by Special Assessment or Amortization of Oversizing Costs).

In the case of Shorecrest Development's water main extension, who made the decision that the extension was "feasible"?

8. Under AWWU's Water Tariff, "Extension of Service", the costs of mains installed to link new developments with existing mains are not generally charged against other properties which may lie in between.

> Mains installed by AWWU for the designated purpose of transmitting water to areas for distribution will be constructed or installed as AWWU determines to be necessary without assessment or contribution by the surrounding or abutting areas. Similarly, mains that are installed by AWWU for the purposes of interconnecting developed portions within its service area and which are installed to insure the delivery of an adequate quantity of water under sufficient pressure and from which services are not provided, may be installed by AWWU without assessment or contribution from the surrounding area. To the extent possible, these mains will be included in the design criteria for construction in new developments and will be paid for by the property owners through assessment or contribution.

Why are the "surrounding or abutting areas" being assessed in this case? Why weren't these mains paid for by property owners of Shorecrest Development Company, Inc.?

9. Why does AWWU provide for a graduated payment plan extending from five to up to 30 years for repayment of sewer line assessments (depending upon the total amount assessed), yet AWWU's Water Tariff locks all customers into a five year payment plan, regardless of the amount being assessed?

Municipality of Anchorage

MEMORANDUM

DATE: April 16, 1985

TO: Philip Matricardi, Assistant Municipal Attorney

FROM: Marsha Walton, Investigator
THRU: Michael Mills, Ombudsman
SUBJECT: Skyway Park and Timberlane Subdivision Water Assessments

Thank you for your memorandum of March 29, 1985, responding to our questions.

We regret that you do not see eye to eye with us regarding the issues we raised in our memorandum of January 31, 1985. It is very disappointing to realize that as long as CAU did not overstep their tariff regulations, the Municipality will condone inequitable effects of the regulations.

Although you disagree that the property owners in Skyway Park and Timberlane Subdivisions are not being assessed for water mains installed by Mr. Paul Nangle to benefit Shorecrest Subdivision, you still acknowledge that the Skyway Park and Timberlane Subdivision property owners will not be able to refinance or sell their homes until they hook up to water, and all the while their pro rata share will be accruing a hefty interest of 15.65%. Quoting from your memorandum:

> ...privately owned and operated financial institutions... refuse to finance sales of these houses until they have hooked up to the available utility supplied water...

Publically owned financial institutions (AHFC, among others) also refuse to finance home sales until the seller or buyer hooks up to available utilities.

Please explain to us how the ultimate terms of a payment in lieu of assessment (PILA) differs from an outright assessment.

If affected property owners' PILAs did not accrue interest charges, to be paid in full or escrowed before any sale of their property may be negotiated, then perhaps we could understand your point in differentiating between assessments (which are actual liens against properties) and PILAs. If a person never were to sell their property, a PILA would be of negligable concern. However, settlement patterns in Anchorage are far from static; almost every homeowner eventually sells his or her home.

In the case of Shorecrest Subdivision, the developer receives the PILAs plus any accrued interest when affected homeowners hook-up to the water main. The interest rate for these properties is set at 15.65%. However, the interest the developer pays on the loan which financed the water main

construction "floats", and it is presently less than the 15.65% rate charged affected property owners. Is this morally and legally sound?

You agree that it would be desirable to unify the sewer and water tariffs. We would be interested in knowing when and if a unification is planned, and what changes, if any, will be made. In our opinion, the present water and sewer tariffs benefit developers at the expense of adjacent property owners. If developers wish to put sewer and or water into their subdivision developments, they or their investors should pay the freight. Our recommendation would be to continue to issue PILAs to the affected property owners, but eliminate the addition of interest fees to their pro rata shares. Under these conditions, affected property owners would not be under duress to connect to utilities they never requested and do not need. Hook-up charges could be negotiated between sellers and buyers at the time of sale.

It is our understanding that revisions to one of AWWU's tariffs were drafted several years ago, proposing that interest charges on PLIAs be eliminated.

Thank you for your interest in this matter, and for your attention to our recommendations.

We would like to meet with you, Mr. Helmick, and Mr. Edinger at your earliest convenience. Please let us know if a meeting could be arranged sometime the week of April 22nd.

cc: Annalee McConnell, Director, Management and Budget
Chip Dennerlein, Manager, Intergovernmental Affairs
Jane Angvik, Assembly Chairwoman

Municipality of Anchorage

MEMORANDUM

DATE: April 17, 1985

TO: Annalee McConnell, Director, Office of Management & Budget

FROM: Michael Mills, Ombudsman

SUBJECT: House Bill 162
"An act relating to public utility consumer representation.."

Our office has received numerous complaints from Anchorage citizens regarding the installation and assessment of water and sewer mains. We have attempted to resolve these complaints, without success. Preliminary research of Anchorage Water and Wastewater Tariffs reveals some significant deficiencies with AWWU policies governing private and municipal water and sewer developments. Unfortunately, our office does not have the funding or the expertise necessary to decipher the effects of present utility regulations on future utility developments and to establish greater equity for residential property owners.

I recommend that a thorough evaluation be made of the Administration's position in regards to House Bill 162, which would institutionalize an Office of Consumer Representation for public utility consumers. For your information I am enclosing a recent newspaper article written by State Representative Pat Rodey supporting House Bill 162, as well as several letters of opposition to House Bill 162 filed by MOA department heads. Unfortunately these letters reflect some misperceptions of the agencies currently involved in public complaints. This is the reason for this memorandum.

Presently, there is not an office representing the general public or residential interests in water or wastewater utility matters before the Alaska Public Utilities Commission (APUC). The APUC consumer protection office handles individual complaints against the utility companies, but it is not funded to advocate for the residential class of utility consumers and to intervene on issues such as utility rate design and policies governing the installation and assessment of new water and sewer mains. Although the APUC does keep the residential public interests in mind when evaluating proposed utility rate increases, they must also respect the competing interests of industry and utility service providers. By virtue of their position as a mediator between divergent interests, the APUC cannot advocate one side without compromising their diplomatic and unbiased role. The Commission acts as a judge in rate proceedings, hearing testimony from all sides.

The Alaska Consumer Advocacy Program (ACAP) is insufficiently funded to provide this service. Their funding is restricted to particular issues, excluding water and sewer utilities, and is tenuous at best. The Alaska Legislature discontinued their funding last session and ACAP continues to exist only through its Director's and Board Members' successful fund raising efforts.

The State Ombudsman's office does not have any authority or interest in intervening on behalf of Anchorage citizens in utility matters.

The Municipal Ombudsman's office is not funded to the level of service necessary to represent residential utility customers and insure that their concerns are addressed. From experience I can say that communication with Municipal Utility Companies and their attorneys is extremely time consuming. It has taken on the average two months for AWWU to respond to our requests for information. Additionally, the maze of tariff regulations is extremely difficult to decipher for someone unfamiliar with technical utility jargon. None-the-less, I find that the complaints received regarding costly utility developments without the consumer's approval in certain parts of Anchorage deserve representation.

For years I have been incorrectly under the assumption that the Municipality of Anchorage's philosophy towards providing such public services was based primarily on the citizens desire to have the service and their recognition of the costs associated with those services. Apparently there are no tariff provisions to insure that a private developer must consult or obtain concurrence of the residents in the path of the utility who will ultimately bear the primary cost of installing the service plus the associated interest charges.

Thank you for your consideration of this problem. I hope you will help clarify the need for an office of utility consumer representation, or some suitable substitute, and notify the appropriate municipal departments that this service is not currently being provided.

cc: Jane Angvik, Assembly Chair
Chip Dennerlein, Manager, Intergovernmental Affairs

Municipality of Anchorage

MEMORANDUM

DATE: March 29, 1985

TO: Marsha Walton, Investigator, Ombudsman's Office and Michael Mills, Ombudsman

FROM: Philip Matricardi, Assistant Municipal Attorney

SUBJECT: Skyway Park and Timberlane Subdivision Water Assessments

Thank you for your memorandum of January 31, 1985 in which you request written responses to questions. It is my understanding that after you have had an opportunity to analyze our responses you would like to meet with Dan Helmick and myself to discuss AWWU's policies and procedures governing the assessment of water and sewer mains installed and financed by private parties.

In your Section 1, you cite Section 4 of the CAU tariff "Extension of Water Mains by the Company". In the situation at hand, the proper section to consider would be Section 5 of the tariff since this was a private development and not "company installed". Toward the bottom of the page, you ask your question in a slightly different manner, "What authority enables Shorecrest, CAU or AWWU to assess properties not owned by them?" (emphasis added.) First of all, it should be understood that a payment in lieu of assessment (PILA) is not an assessment. Neither the utility nor the Municipality is compelling the effected homeowners to hook up to the water line which is the act that triggers the PILA. As you are well aware, to the degree that anyone is compelling them, it is privately owned and operated financial institutions that refuse to finance sales of these houses until they have hooked up to the available utility supplied water.

"D" of Section 4 of the CAU tariff provides ample authority for CAU to extend a water line absent two-thirds participation of property owners affected. Sections 3.2, 3.5 and 3.6 of the AWWU tariff authorize utility action in similar situations. Finally, in the last paragraph of your Item 1 appearing on the third page of your memorandum, some confusion arises. Please understand that what you are referring to is an oversizing situation and not a reimbursement and has nothing to do with the individual property owners but is a transaction between the developer and the utility. It has no present effect on the current property owners.

Your Item 2 can be responded to simply by saying, "yes". Principal remains the same; however, since interest continues the actual payment made in the future probably will be greater than a payment made sooner. Please understand, however, that we are talking not about assessments but we are referring to PILA. The bottom line is the PILA never changes, only the interest accumulates.

Your Item 3 brings this response: It has always been given to the developer. The developer always receives the interest accruing on the payments in lieu of assessment.

Your Item 4 receives this response: Yes, but only if we can find Shorecrest Development Company, Inc., after 1991. If they stay in touch with the utility, reimbursement will occur, and never in our collective experience has any money ever gone unreimbursed. Therefore, the question you ask in your Item 5 becomes not applicable and therefore receives no answer. Paragraph 6 in your memo sent us into a huddle to figure out what was intended by your questions. There is limiting language in the CAU tariff on page 11 which is Section 6.1 under "Financing of Charges". In pertinent part is says, "The company shall charge interest at an effective rate not to exceed 18 percent per annum." Section 3.5 of the Anchorage Water and Wastewater Utility tariff should also be considered.

In response to your Item 7, please take a look at Section 5-1 of the CAU tariff and recall that CAU was not governed by the Anchorage Assembly in this situation.

In response to your Item 8, please recognize that AWWU Tariff Section 3.7 refers to transmission mains and connecting mains. In the situation at hand neither are involved, what is the subject of a possible future PILA would be simple water mains and is defined in Section 10.11(X) of the tariff on Sheet No. 45. The simple answer to your questions in Item 9 is that service is provided under two different tariffs that were developed at different times under different circumstances prior to the unification of the former Anchorage Sewer Utility and the former Anchorage Water Utility. You may find that unifying the tariffs or uniformity between the tariffs is desirable as a matter of public policy. You would get no argument from us on that point.

However, until approved and adopted by the Alaska Public Utilities Commission such a public policy cannot be implemented. And please recognize that in most cases under the Sewer tariff, the payment plans extend from 5 to 20 years, not 30 years.

Please let me know at your earliest convenience when you wish to meet with Mr. Helmick and myself for further discussion.

PJM:ld

cc: Daniel Helmick, Manager, Finance Adminstration, AWWU
Skip Edinger, Assessment Supervisor, AWWU
Jean Michou, General Manager, AWWU
Dennis Swiderski, Assistant Municipal Attorney

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

May 7, 1985

MEMORANDUM

TO: Representative Mike Szymanski

ATTN. Mark Higgins

FROM: Gretchen Keiser
Legislative Analyst

RE: Regulation of Utilities' Rights to Assess for Water/Sewer Lines
Research Request 85-329

You requested this agency to address the following questions:

1) What role do states (including Alaska) take in regulating the right of utilities to assess property owners for water or sewer lines?

2) What are standard mortgage loan practices with respect to local water or sewer assessments on real property?

Regulation of Water/Sewer Line Assessments by the Alaska Public Utilities Commission

Water and sewer utilities are commonly owned and operated by local municipalities in Alaska. According to AS 42.05.711(b), municipal utilities are exempt from regulation by the Alaska Public Utilities Commission (APUC) except for the requirement to obtain a certificate of public convenience and necessity in order to operate in the state. Twenty-eight of 33 certificated sewer ("wastewater") utilities are not regulated by the APUC; 35 of 59 certificated water utilities are not regulated (Attachment A).

The APUC investigates a municipal utility's rules and policies regarding a water or sewer line extension only during a general review of the utility's tariff at the time of the original certificate application.[1] In the case of most municipal utilities in Alaska, the certificates were granted years ago; the rules and policies may have changed

[1]Judy White, Chief of the Tariff Section, Alaska Public Utilities Commission, personal communication, April 29, 1985.

significantly since the time the certificates were originally granted. The municipal utilities are controlled by a borough assembly or municipal council which is empowered to provide water and sewer facilities. The assembly or council is governed by the statutory requirements of AS 29.48.030-100 when establishing or modifying municipal utility rates and regulations.

Furthermore, the assembly or council may "assess against...private real property benefited all or a portion of the cost of constructing or improving capital improvements" [AS 29.63.010]. The assembly or council must follow statutorily mandated procedures when making a special assessment for capital improvements, such as water and sewer line extensions [AS 29.63.010-085]. Briefly, these procedures include requirements for a public hearing, notice to property owners of proposed improvement, termination of the proposal if owners of one-half in value of the affected property object in a timely manner, and the establishment of a payment schedule. Attachment B provides the above-mentioned statutes regarding municipal utilities and assessments under Title 29.

In the case of a private water or sewer utility, the APUC has regulatory authority with respect to the rules "setting out the terms and conditions under which it will construct, or permit its customers or subscribers to construct, and install lines...or pipes from its existing facilities to the premises of applicants for service" [AS 42.05.311(c)]. Although the APUC has not promulgated a set of uniform regulations governing all aspects of water or sewer line extensions by private utilities, the commission has general guidelines under which a utility's extension rules are reviewed.[2]

As a general rule, private utilities require the customer who will benefit to pay the estimated costs prior to construction. If additional customers hook up to the line, the original customer may be entitled to a prorated refund paid by a new customer. In fact, the APUC requires that the private utilities record this potential refund obligation which would fall upon property owners adjacent to the original customer if they choose to hook up to the line.[3]

---

[2]As you may know, the APUC has released, for public review, proposed regulations which would establish uniform line extension standards for regulated electric utilities in the state.

[3]A distinction should be made between this type of potential financial obligation recorded by a private utility and a water or sewer assessment recorded by a municipal utility. Private utilities cannot make assessments. In addition, the refund provision likely has an expiration date, commonly five to ten years in many states.

Regulation of Utility Assessments for Water/Sewer Lines by Other States

A 1983 publication by the National Regulatory Research Institute, entitled Commission Regulation of Small Water Utilities: Some Issues and Solutions, provided some data on the extent of state regulation of water and sewer utilities.[4] According to the report, regulation of water and sewer utilities by state public utilities commissions was as follows in 1982:

Type of Regulated Utility	Number of State Commissions Regulating
Private (investor-owned) water utilities	45
Private, combined water-sewer utilities	25
Private sewer utilities	25
Municipal water utilities	13

* * * *

As you expressed particular interest in the regulation of municipal utilities, we contacted the state public utilities commission in five of the 13 states which regulate municipal water utilities (see Attachment C for a state-by-state regulatory breakdown). The states surveyed were Indiana, Maine, Montana, Pennsylvania and Wisconsin. We also surveyed the western states of Idaho and Oregon. The information obtained regarding these states' public utilities commission's role in regulating water and sewer utilities is summarized below.

Extent of Commission Regulatory Authority. Private water utilities are regulated in all of the seven states surveyed; five states regulate private sewer utilities. In the case of municipal utilities, only Montana regulates local sewer utilities, and four of the seven states regulate local water utilities. The degree of state regulatory oversight with respect to municipal water utilities is generally limited.

The public utilities commissions in Indiana, Montana and Wisconsin regulate only municipal water rates, and local users in Maine can petition their commission to review municipal water rates. However,

---

[4]The National Association of Regulatory Utility Commissioners was unable to provide any detailed information on the regulation of water and sewer line assessments in the fifty states.

Maine and Wisconsin were the only states surveyed which have the authority to continuously regulate the rules governing line extensions promulgated by municipal water utilities. As you may recall, the Alaska Public Utilities Commission reviews a municipal utility's rules only during the certification process when the utility is first formed.

Water or Sewer Line Extension Policies. State regulation of private water utilities' line extension rules occurs in all states surveyed. As mentioned above, however, only Maine and Wisconsin have authority over municipal utilities' line extension policies. Generally, the rules carry the following provisions:

1) Standard utility offering--based on three to five years' anticipated revenues from the new customer. Pennsylvania and Wisconsin used to have a utility offering provision but have dropped it in recent years.

2) Customer payment--of the estimated costs minus the utility offering. The payment is required prior to construction in all states except Indiana.

3) Refund agreement--which allows original customers to recover a prorated share of the initial costs from a new customer who hooks up to the line. Generally, a refund provision is in effect for five years.

Line extension provisions reviewed by state commissions usually do not address terms or conditions of repayment since utilities commonly require the customer payment upfront.

Water or Sewer Assessments by Municipalities. In the states surveyed, the commissions have no regulatory authority over assessments made by local governments on behalf of municipal water or sewer utilities. Generally, the municipal officials establish utility rules and assessment policies (including terms and conditions of payment). Local officials are governed by state statutes addressing local government, as is the case in Alaska. In Maine, liens on private property for water improvements are expressly prohibited under water utility charters.[5]

In summary, it appears that the public utility commissions surveyed are generally restricted in their regulatory oversight of municipal utilities. Municipal sewer utilities are rarely regulated. Regulation of municipal water utilities is generally confined to approval of

---

[5]Maine's municipal water and sewer utilities are created under legislative charters which are subsequently ratified by local voters.

rates. Finally, municipal assessments for water or sewer extensions are established at the local government level without any review by state commissions.

Standard Mortgage Loan Practices on Water or Sewer Assessments

You also requested that we determine standard practices with respect to local water or sewer assessments on real property. We contacted the Alaska Housing Finance Corporation (AHFC), the Federal National Mortgage Association (FNMA), Farmers' Home Administration (FHA), and the Veterans Administration (VA). The standard policies practiced by these organizations are summarized below.

A Recorded Water or Sewer Assessment on Real Property. The AHFC, FHA and VA require that an assessment be paid off at the time of closing. They generally have a first lien policy which requires that all encumbrances against real property be cleared prior to accepting a mortgage loan. For your information, the AHFC regulations governing liens on real property are included in Attachment D.

The FNMA requires that assessment payments be current and will subtract the outstanding balance from the appraised value of the property when determining the loan amount approved. The FNMA holds the lender bank responsible for the assumption of an assessment.

Bob Roseberry of the VA loan guarantee program indicated that they have experienced loans in Alaska in which an assessment had been recorded against a property without the actual dollar amount determined. In these cases, the VA requires that an escrow account equaling 1.5 times the estimated assessment be established in order to cover the payment when the actual cost is eventually determined.

A Pending Water or Sewer Assessment on Real Property. According to Mark Cameron, Acting Director, the AHFC requires that appropriate steps be taken to secure the corporation's interest in the case of pending assessments. Generally, an escrow account equaling the estimated assessment is required of the borrower at the time of closing. As you may know, the AHFC is currently considering accepting a bond from a loan applicant in the Girdwood area. Although the AHFC has never allowed a bond before, it may be acceptable in this case and also save the loan applicant the difference between the bond premiums and escrow account loan payments.

The VA does not concern itself with pending assessments when reviewing a loan application. The FHA, however, requires an escrow account to pay off the pending assessment when it is levied, similar to the AHFC. Darwin Betz of the FHA indicated that they often do not have knowledge

of a pending assessment when making a loan. At the time an assessment occurs, the FHA has the flexibility of making a supplemental loan to cover the assessment under a second mortgage. This supplemental loan would depend, of course, on a subsequent appraisal which indicates that there is sufficient equity in the property to warrant a second mortgage. According to Joann Holbert of the FNMA, they do not have a standard policy with respect to pending assessments.

* * * *

We hope that this information is useful. Please contact us if you have any questions.

GK

Attachments

ATTACHMENT A

Certificated Water and Sewer Utilities in Alaska

Source: Alaska Public Utilities Commission Annual Report
for the Fiscal Year Ending June 30, 1985

CERTIFICATED WATER UTILITIES

Alyeska Utilities, Inc.
Anchorage Water Utility
  Municipality of Anchorage d/b/a
Barrow Utilities and Electric Cooperative,
  Inc.
Chugiak Utilities
College Utilities Corporation
*Copper Valley Construction Company
*Cordova, City of
*Craig, City of
Dawn Development Corporation
*Dillingham, City of
Eklutna Utilities, Inc.
ERU, Inc.
*Fairbanks Municipal Utilities System
Glacier Utilities, Inc.
*Haines, City of
*Homer, City of
*Hoonah, City of
*Hydaburg, City of
*Juneau, City and Borough of
*Kake, City of
*Kenai, City of
*Ketchikan Public Utilities, City of
*Klawock, City of
*Kodiak, City of
*Kotzebue Municipal Utilities, City of
Kwik Log Water System
  Myron Allon Newton d/b/a
Matanuska Utility Company, Inc.
Mendenhaven Improvement & Maintenance Corp.
McCann, Alfred O.
McCahan Utilities, Inc.
McKinley Utilities, Inc.
*Mountain Point Service Area of the Ketchikan
  Gateway Borough
*Nome, City of
  Nome Water and Sewer Utilities d/b/a
Norfolk Utilities, Inc.
*North Pole, City of
  North Pole Utility d/b/a
Omlin, Inc., Paul
*Palmer, City of
Pelican Utility Company
*Petersburg, City of
Rhodes, R. J. & Clara
Romig Park Improvement Company
S & S Development
  Robert M. & Evelyn V. Scott,
  Charles J. & Marlene C. Schneider d/b/a
*Saxman, City of
*Seldovia, City of
Settlers Bay Properties, Inc.
*Seward, City of
*Sitka, City and Borough of
*Skagway, City of
*Soldotna, City of
Spenard Heights Water System
  Wayne Cates d/b/a
Sunny Slopes Water System
  Thomas R. Brewer & Robert T. Griffin d/b/a
*Thorne Bay, City of
*Unalaska, City of
*Valdez, City of
Valley Water Company, Inc.
*Wasilla, City of
*Whittier, City of
*Wrangell, City of
*Yakutat, City of

(*)Not regulated by Alaska Public Utilities Commission as to rates and services.

CERTIFICATED WASTEWATER UTILITIES

Anchorage Sewer Utility
  Municipality of Anchorage d/b/a
Barrow Utilities and Electric Cooperative, Inc.
College Utilities Corporation
*Copper Valley Construction Company
*Cordova, City of
*Craig, City of
*Dillingham, City of
*Fairbanks Municipal Utilities System
*Haines, City of
*Homer, City of
*Hoonah, City of
*Juneau, City and Borough of
*Kake, City of
*Kenai, City of
*Kodiak, City of
*Kotzebue Municipal Utilities, City of
*Nome, City of
  Nome Water & Sewer Utilities d/b/a
*North Pole, City of
  North Pole Utility d/b/a
*Palmer, City of
*Petersburg, City of
Salmantof Utilities, Inc.
*Saxman, City of
*Seldovia, City of
Settlers Bay Properties, Inc.
*Seward, City of
*Sitka, City and Borough of
*Skagway, City of
*Soldotna, City of
*Thorne Bay, City of
*Valdez, City of
*Wasilla, City of
*Whittier, City of
*Wrangell, City of

(*)Not regulated by Alaska Public Utilities Commission as to rates and services.

APPENDIX

ATTACHMENT B

Chapter 48. Powers Applicable to All Municipalities

Revisor's notes. — Formerly AS 11.60.250. Renumbered in 1978 under § 22, ch. 166, SLA 1978.

Sec. 29.43.110. Penalty for violation of curfew. The penalty for violation of AS 29.43.100 — 29.43.110 is as prescribed by the curfew ordinance of the city, and a fine so paid shall be paid to the city when the violation takes place in the city. Otherwise the fine shall be paid to the state. However, the penalty shall not exceed a fine of $300, or imprisonment for 30 days, or both. (§ 2 ch 86 SLA 1962)

Revisor's notes. — Formerly AS 11.60.250. Renumbered in 1978 under § 22, ch. 166, SLA 1978.

Chapter 48. Powers Applicable to All Municipalities.

Article
1. General Powers (§§ 29.48.010 — 29.48.020)
2. Facilities, Services and Regulation (§§ 29.48.030 — 29.48.110)
3. Municipal Enactments (§§ 29.48.130 — 29.48.220)
4. Miscellaneous Provisions (§§ 29.48.250 — 29.48.270)
5. Construction of Powers (§§ 29.48.310 — 29.48.330)

Article 1. General Powers.

Section
10. General powers
20. Second class borough powers outside cities

Sec. 29.48.010. General powers. Municipalities have the following general powers, subject to other provisions of law:

(1) to establish and prescribe the functions of municipal departments, offices or agencies;

(2) to establish and prescribe salaries for the elected and appointed municipal officers and employees;

(3) to make investigations of the affairs of the municipality and make inquiries into the conduct of a municipal department;

(4) to enter into agreements, including those for cooperative or joint administration of any functions or powers with a local government, with the state, or with the United States;

(5) to require periodic and special reports from a municipal department to be submitted through the municipal executive;

(6) to sue and be sued;

(7) to levy taxes and special assessments;

(8) to enforce ordinances and to prescribe penalties for violations;

(9) to acquire, manage, control, use and dispose of real and personal property for a purpose authorized under this title, federal law, or other

law, or in accordance with such law, and irrespective of whether the property is situated within or outside the municipal boundaries; this power includes the power of a second class borough to expend, for any purpose authorized by law, money received from the disposal of land in a service area created under AS 29.63.090(f);

(10) to acquire membership in organizations which promote legislation for the good of the municipality;

(11) to expend funds for community purposes for the good of the municipality;

(12) to borrow money and issue evidences of indebtedness. (§ 2 ch 118 SLA 1972; am § 8 ch 85 SLA 1979)

NOTES TO DECISIONS

The rule of strict construction did not apply to the mode adopted by the corporation to carry into effect powers expressly or plainly granted under a former, similar provision. Femmer v. City of Juneau, 9 Alaska 175 (1937), aff'd, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

And power might be exercised in any reasonable way. — The power having been granted, the municipal corporation had the power to exercise such power in any reasonable way it saw fit. Femmer v. City of Juneau, 9 Alaska 175 (1937), aff'd, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

Taxing authority under paragraph (7) consistent with liberal construction requirements. — The broad grant of taxing authority under paragraph (7), limited only by other provisions of law, is consistent with the second sentence of Alas. Const., art. X, § 1, which requires that a "liberal construction shall be given to the powers of local government units." Liberati v. Bristol Bay Borough, Sup. Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978). See also AS 29.48.310 — 29.48.330 as to liberal construction and broad local power.

Imposition of civil penalties. — The power of a municipality to impose a civil penalty for failure to timely file or pay sales taxes is granted primarily because Alaska Const., art. X, § 1, requires that a liberal construction be given the powers of municipalities, a rule of interpretation that is echoed by AS 29.48.310 — 29.48.330. Bookey v. Kenai Peninsula Borough, Sup. Ct. Op. No. 2199 (File No. 4878), 618 P.2d 567 (1980).

The power to impose civil penalties for failure to timely pay sales taxes is granted by paragraph (8) of this section, however, such a power does, to some extent, interfere with the policies implied in the $500 fine limitation of AS 29.48.200 and the eight percent interest limitation of AS 29.53.115(d), which are that the consequences of noncompliance be limited in severity, and while the power could be more clearly expressed, as it is in the case of the authorization for the penalty pertaining to property taxes set out in AS 29.53.180, these considerations are not sufficiently strong to justify the conclusion that the power to ordain a civil penalty has not been granted. Bookey v. Kenai Peninsula Borough, Sup. Ct. Op. No. 2199 (File No. 4878), 618 P.2d 567 (1980).

There is no general prohibition against like municipal and state taxes. Liberati v. Bristol Bay Borough, Sup. Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978).

Applied in Libby v. City of Dillingham, Sup. Ct. Op. No. 2097 (File No. 3861), 612 P.2d 33 (1980).

Cited in Gorman v. City of Haines, Sup. Ct. Op. No. 2772 (File No. 6622), 675 P.2d 646 (1984).

Collateral references. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 193-230.

Estoppel as to claim against municipality, 1 ALR2d 338.

Contributory negli
action by municipalit
Granting or takin
ipality as within auth
or acquisition thereo
Compromise of clai
15 ALR2d 1359.
Punitive damages,
ipal corporation, 19
Death action again
tion as subject to st
governing wrongful
governing actions ag
for injury to person o
1068.
Mandamus, liabilit
ration for damages t
or relator in, 73 ALR
Waiver of, or est
contractual limitatio
action against munic
ical subdivision, 81
Pledging parking
unlawful relinquishn
power, 83 ALR2d 64
Revocation, prior t
written contract, of
public body awarding
ALR3d 864.
Power of municipa
mit to arbitration, 2
Right of munici
recover back from
made under contract
bidding statute, 33 A

Sec. 29.48.02(
second class bor
(1) regulate o
use, or explosion
(2) provide fo
mals;
(3) regulate t
operators;
(4) regulate s
(5) provide fo
ject to AS 29.48.
(6) provide fo
(7) establish
programs for ho
of energy;
(8) provide for
and trails under
(9) establish
29.73.080. (§ 2
38 SLA 1981; ar

ve of whether the
l boundaries; this
:o expend, for any
lisposal of land in

ı promote legisla-

· the good of the

btedness. (§ 2 ch

ıle of interpretation
· AS 29.48.310 —
Kenai Peninsula Bor-
No. 2199 (File No.
(1980).
ıse civil penalties for
sales taxes is granted
his section, however,
ɔ some extent, inter-
: implied in the $500
S 29.48.200 and the
st limitation of AS
are that the conse-
liance be limited in
the power could be
d, as it is in the case
for the penalty per-
:axes set out in AS
siderations are not
ustify the conclusion
in a civil penalty has
Bookey v. I nai
up. Ct. Op. No. 2199
·.2d 567 (1980).
neral prohibition
ıal and state taxes.
y Borough, Sup. Ct.
lo. 3365), 584 P.2d

City of Dillingham,
(File No. 3861), 612

City of Haines, Sup.
No. 6622), 675 P.2d

iin against munic-

Contributory negligence as defense in action by municipality, 1 ALR2d 827.

Granting or taking of lease by municipality as within authorization of purchase or acquisition thereof, 11 ALR2d 138.

Compromise of claim, power of city as to, 15 ALR2d 1359.

Punitive damages, recovery from municipal corporation, 19 ALR2d 903.

Death action against municipal corporation as subject to statute of limitations governing wrongful death actions or that governing actions against a municipality for injury to person or property, 53 ALR2d 1068.

Mandamus, liability of municipal corporation for damages to successful plaintiff or relator in, 73 ALR2d 930.

Waiver of, or estoppel to rely upon, contractual limitation of time for bringing action against municipality or other political subdivision, 81 ALR2d 1039.

Pledging parking meter revenues as unlawful relinquishment of governmental power, 83 ALR2d 649.

Revocation, prior to execution of formal written contract, of vote for decision of public body awarding contract to bidder, 3 ALR3d 864.

Power of municipal corporation to submit to arbitration, 20 ALR3d 569.

Right of municipal corporation to recover back from contractor payments made under contract violating competitive bidding statute, 33 ALR3d 397.

Liability of municipality on quasi contract for value of property or work furnished without compliance with bidding requirements, 33 ALR3d 1164.

Power of eminent domain as between state and subdivision or agency thereof, or as between different subdivisions or agencies themselves, 35 ALR3d 1293.

Validity of "freezing" ordinances or statutes preventing prospective condemnee from improving, or otherwise changing, the condition of his property, 36 ALR3d 751.

Validity and construction of state and municipal enactments regulating lobbying, 42 ALR3d 1046.

Validity and construction of statute or ordinance providing for repair or destruction of residential building by public authorities at owner's expense, 43 ALR3d 916.

Right of governmental entity to maintain action for defamation, 45 ALR3d 1315.

Power of municipal corporation to lease or sublet property owned or leased by it, 47 ALR3d 19.

Standing of municipal corporation or other governmental body to attack zoning of land lying outside its borders, 49 ALR3d 1126.

Recovery of exemplary or punitive damages from municipal corporation, 1 ALR4th 448.

Sec. 29.48.020. Second class borough powers outside cities. A second class borough may, in the area outside cities,

(1) regulate or prohibit the offering for sale, exposure for sale, sale, use, or explosion of fireworks;

(2) provide for the licensing, impounding, and disposition of animals;

(3) regulate the licensing and operation of motor vehicles and operators;

(4) regulate snow vehicles as provided in AS 05.30.070;

(5) provide for garbage and solid waste collection and disposal subject to AS 29.48.033;

(6) provide for water pollution control;

(7) establish or participate in federal and state government loan programs for housing rehabilitation and improvement for conservation of energy;

(8) provide for the acquisition and construction of local service roads and trails under AS 19.30.111 — 19.30.251;

(9) establish an emergency communications center under AS 29.73.080. (§ 2 ch 118 SLA 1972; am § 5 ch 83 SLA 1980; am § 12 ch 38 SLA 1981; am § 1 ch 107 SLA 1981)

Revisor's notes. — Paragraph (9) of this section was enacted as (8). Renumbered in 1981.

Effect of amendments. — The 1980 amendment added paragraph (7).

The first 1981 amendment added paragraph (8).

The second 1981 amendment added paragraph (9).

Article 2. Facilities, Services and Regulation.

Sec. 29.48.030. Municipal facilities and services. (a) A municipality may exercise the powers necessary to provide the following public facilities and services:

(1) streets and sidewalks;
(2) sewers and sewage treatment facilities;
(3) harbors, wharves, and other marine facilities;
(4) watercourse and flood control facilities;
(5) health services and hospital facilities;
(6) cemeteries;
(7) police protection and jail facilities;
(8) cold storage plants;
(9) telephone systems;
(10) light, power and heat;
(11) water;
(12) transportation systems;
(13) community centers;
(14) libraries, visual or performing arts centers, or museums;
(15) recreation facilities;
(16) airport and aviation facilities;
(17) garbage and solid-waste collection and disposal service and facilities subject to AS 29.48.033;
(18) fire protection service and facilities, not in conflict with AS 18.70.075, but not limited to AS 18.70.075;
(19) parking and parking facilities;
(20) housing and urban renewal, rehabilitation and development;
(21) preservation, maintenance and protection of historic sites, buildings and monuments;
(22) consumer protection;
(23) emergency medical services and facilities.

(b) First and second class boroughs may exercise the powers conferred by (a) of this section or AS 29.48.033(a) only after they have

been assumed in
for areawide exe
exercise in the l
29.48.020 for exe
to powers conferr
areawide or in tl
borough and is n
tional borough
September 10, 19
of this section on
to areawide exer
the Alaska Tran
whether exercise
to be approved as
circumstances at
am § 4 ch 78 SL

Cross references
medical services, see

The rule of strict
not apply to the mod
poration to carry
expressly or plainly
former, similar provi
of Juneau, 9 Alaska
Alaska 315, 97 F.2d

And power migh
any reasonable w
having been granted
ilar provision, the m
had the power to ex
any reasonable way
City of Juneau, 9 Ala
9 Alaska 315, 97 F.2

Unlawful exper
enjoined. — Equit
could grant relief b
from the unlawful ex
the performance of
gation, under a form
Femmer v. City of J
97 F.2d 649 (9th Cir

A city had no aut
drugstore, under a
sion. Cochran v. City
425 (1944).

Power to acqui
doci. — Under a for
a city had the right
or otherwise acquire
wharf, or "city dock
funds as were neces

been assumed in the manner required under AS 29.33.250 — 29.33.290 for areawide exercise or in the manner required under AS 29.38 for exercise in the borough area outside cities, or are conferred by AS 29.48.020 for exercise in the borough area outside cities. However, as to powers conferred under (a) (12) of this section, exercise of the powers areawide or in the borough area outside cities is at the option of the borough and is not subject to those restrictions on acquisition of additional borough powers. With respect only to boroughs which on September 10, 1972 are not exercising powers conferred under (a) (12) of this section on an areawide basis, objection which a city may raise to areawide exercise of the powers by a borough shall be reviewed by the Alaska Transportation Commission. The commission shall decide whether exercise of the powers exclusively by the borough areawide is to be approved as in the public interest under the particular facts and circumstances at issue. (§ 2 ch 118 SLA 1972; am § 3 ch 215 SLA 1975; am § 4 ch 78 SLA 1978; am § 5 ch 62 SLA 1979)

Cross references. — For emergency medical services, see AS 18.08.

NOTES TO DECISIONS

The rule of strict construction did not apply to the mode adopted by the corporation to carry into effect powers expressly or plainly granted under a former, similar provision. Femmer v. City of Juneau, 9 Alaska 175 (1937), aff'd, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

And power might be exercised in any reasonable way. — The power having been granted under a former, similar provision, the municipal corporation had the power to exercise such power in any reasonable way it saw fit. Femmer v. City of Juneau, 9 Alaska 175 (1937), aff'd, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

Unlawful expenditure could be enjoined. — Equity, in a proper case, could grant relief by restraining a city from the unlawful expenditure of funds in the performance of a contractual obligation, under a former, similar provision. Femmer v. City of Juneau, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

A city had no authority to conduct a drugstore, under a former, similar provision. Cochran v. City of Nome, 10 Alaska 425 (1944).

Power to acquire and operate city dock. — Under a former, similar provision a city had the right to purchase, construct or otherwise acquire or establish a public wharf, or "city dock," and to expend such funds as were necessary for that purpose from the general funds of the city, and the city had the authority necessary to maintain and operate the dock for the use of the city and public, provided it did so from the revenue collected for services rendered by the utility from its customers or users. Femmer v. City of Juneau, 9 Alaska 175 (1937), aff'd, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

Including powers necessarily implied. — It was undoubtedly the intention of the legislature, when it passed a former, similar provision, authorizing municipalities in Alaska to purchase, construct, or otherwise acquire, establish and operate public wharves, for the use of the city and public, to confer on the towns of the state all the powers necessary to enable them to do so, under the express powers so granted and those necessarily implied from the grant so conferred. Femmer v. City of Juneau, 9 Alaska 175 (1937), aff'd, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

Such as power to execute contracts. — Incident to a power expressly granted to purchase, construct, or otherwise acquire, establish, and operate public wharves under a former, similar provision was the power to make such contracts as are necessary to its effective exercise. Femmer v. City of Juneau, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

And provide for their arbitration. — Having a right to contract incident to the power to operate a public wharf under a former, similar provision a city had power to provide for arbitration of contracts thus entered into. Femmer v. City of Juneau, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

And lease wharf privileges if it retains control. — It was within the power of a town under a former, similar provision to lease wharf privileges to furnish to the traveling public r convenient and economical landing place, but there could not lawfully be what in effect was an abandonment by the town of the right to control and regulate. Juneau Ferry & Nav. Co. v. Morgan, 236 F. 204 (9th Cir. 1916).

But city may not grant exclusive use of wharf. — In the exercise of a power under a former, similar provision to establish and operate a public wharf, a municipality would not be warranted in divesting itself of control or in granting away exclusive use. A contract having such a result would be illegal and void. Femmer v. City of Juneau, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

Municipality may buy land and divert stream beyond its limits. — Since a former, similar provision gave municipalities the express right to provide for the location and construction of sewers, aqueducts, and watercourses and widen, straighten, strengthen or change the channels of streams and watercourses, such a grant of power would be idle if the city could not purchase ground outside of the incorporated limits and divert a stream beyond its limits and prevent it from reaching the incorporated limits, if such a course should be deemed advisable, rather than to confine it activities to the city limits proper. Town of Seward v. Margules, 9 Alaska 354 (1938).

A city could exercise implied authority in police control where the exigencies of municipal life seemed to require more rigid regulation than was required in the state at large. Guidoni v. Wheeler, 230 F. 93 (9th Cir. 1916).

Power to provide for utilities authorizes binding grant of franchise. — Power granted to a municipality to provide for water supply and lights under a former, similar provision undoubtedly carried with it the power to grant a franchise to an electric light company for a limited period of time to use the municipal streets for poles and wires and the transmission of electricity, and the franchise, if accepted, became binding upon both the city and the company, not to be revoked or repealed, unless the power to repeal had been clearly and unmistakably reserved. Alaska Elec. Light & Power Co. v. City of Juneau, 294 F. 864 (9th Cir.), cert. denied, 266 U.S. 601, 45 S. Ct. 90, 69 L. Ed. 462 (1924).

A city had the right to own and operate an electrical distribution system under a former, similar provision. Homer Elec. Ass'n v. City of Kenai, Sup. Ct. Op. No. 390 (File No. 675), 423 P.2d 285 (1967); Chugach Elec. Ass'n v. City of Anchorage, Sup. Ct. Op. No. 407 (File Nos. 705, 706), 426 P.2d 1001 (1967).

And it may grant exclusive right to occupy portions of streets for pipes or electric power poles. — A state legislature could grant exclusive rights to occupy certain portions of certain streets for the purpose of putting down pipes for gas or for putting poles up upon which electric wires may be strung or hung, and for putting pipes down for the conduct of water that might be used for fire and domestic purposes; and a city might do what the state could do, or the city council might by its action do what the state could do, if the state had granted such exclusive right and such power and authority to the city and the city council. Ketchikan Co. v. Citizens' Co., 2 Alaska 120 (1903).

It could not be doubted that incorporated towns in Alaska have all of the usual powers of control over their streets, including the right to grant franchises for lighting, water supply, etc., and to fix the terms thereof, and regulate the conduct of such utilities under a former similar law. Town of Seward v. Seward Water & Power Co., 5 Alaska 52 (1914).

Applied in Libby v. City of Dillingham, Sup. Ct. Op. No. 2097 (File No. 3861), 612 P.2d 33 (1980).

Cited in Girves v. Kenai Peninsula Borough, Sup. Ct. Op. No. 1162 (File No. 2016), 536 P.2d 1221 (1975).

Collateral references. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 193 et seq.; 64 Am. Jur. 2d, Public Utilities, §§ 9, 11, 101, 234.

62 C.J.S., Munic
§§ 293, 651, 699; 64 C
porations, §§ 1693, 1
Power of municipa
duty of providing an
road crossings, 1 ALF
Public utility act
municipal corporat
operating waterwork
ALR 946.
Ordinance relating
pital, sanitarium, etc
Power of legislatur
ALR 1266; 63 ALR 4
implied power to
ALR 613.
Constitutionality of
for protection of wa
Power of municipa
equipment to consu
ity service furnished,
Establishment an
municipal waterwo
expense" within
constitutional or
limiting amount of
ness, 113 ALR 1210.
Municipality's dut
respect to excavatio
owner to connect his
mains in street, 13 A
Liability of munici
ball park for injuries
nearby premises, 16
Liability of munic
injury or death occur
or negligence in const
maintenance of its el
equipment, apparat
ALR2d 344.
Liability of munici
of subterranean wat
Duty and liabilit
regards barriers for
pedestrians who
deviate from stree
marginal or externa
633.
Capacity of munic
maintenance or care

Sec. 29.48.03
ipality
by o
and operation o
disposal for the
require all perso
and to dispose
ordinance; awar
the collection a

NOTES TO DECISIONS

Power to provide for utilities authorizes binding grant of franchise. — Power granted to a municipality to provide for water supply and lights under a former, similar provision undoubtedly carried with it the power to grant a franchise to an electric light company for a limited period of time to use the municipal streets for poles and wires and the transmission of electricity, and the franchise, if accepted, became binding upon both the city and the company, not to be revoked or repealed, unless the power to repeal had been clearly and unmistakably reserved. Alaska Elec. Light & Power Co. v. City of Juneau, 294 F. 864 (9th Cir.), cert. denied, 266 U.S. 601, 45 S. Ct. 90, 69 L. Ed. 462 (1924).

Meaning of "franchise". — While the grant of a right to use a public wharf, being a privilege conferred by public authority, might be a "franchise" within the broad and general meaning of that word, it was not a "franchise" within the meaning of a former, similar provision. As there used, the word was limited to include only privileges granted to a private person to construct and maintain public services. Femmer v. City of Juneau, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

This section draws a distinction between franchises and permits to use. Femmer v. City of Juneau, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938), decided under former, similar law.

Permits need not be given by separate ordinances. — A former, similar provision required only that permission to use might be given under, i.e., in accordance with, "rules and regulations" established by ordinance, not that each separate permit had to be the subject of an ordinance. Femmer v. City of Juneau, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

But franchises must be approved by electorate. — Both in the case of the grant of a franchise to construct and maintain public utilities and in the case of a sale, lease, exchange or similar disposal of public property, approval of the electorate was necessary to validate the transaction under a former, similar provision. Femmer v. City of Juneau, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

A certificate of public convenience and necessity did not grant a monopoly, in relation to a city's electrical utility system, to furnish electrical energy throughout the service areas which had been allotted. Chugach Elec. Ass'n v. City of Anchorage, Sup. Ct. Op. No. 407 (File Nos. 705, 706), 426 P.2d 1001 (1967).

A certificated utility is not insulated from competition by municipally owned and operated utilities under the Alaska Public Service Commission Act (AS 42.05). Chugach Elec. Ass'n v. City of Anchorage, Sup. Ct. Op. No. 407 (File Nos. 705, 706), 426 P.2d 1001 (1967).

Applied in B-C Cable Co. v. City of Juneau, Sup. Ct. Op. No. 2112 (File No. 4587), 613 P.2d 616 (1980).

Collateral references. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 140 et seq.

64 C.J.S., Municipal Corporations, § 1726.

Motive of council passing ordinance as to franchise as affecting validity thereof, 32 ALR 1525.

Forfeiture of street railway franchise for breach of condition, 34 ALR 1420.

Municipality's liability in damages for refusal to grant franchise, 37 ALR2d 694.

Sec. 29.48.060. Public utilities rates. The assembly acting for the area outside cities and the council acting for the area within a city may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the municipality or its inhabitants by a municipally owned utility not regulated under AS 42.05 and may regulate and provide what is a reasonable deposit for meters and security for service to be given, provided that interest is paid on the deposit. All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return on invested capital. (§ 2 ch 118 SLA 1972; am § 1 ch 136 SLA 1980)

Cross references. — For exemption of certain unregulated utilities from regulation by municipalities, see AS 42.05.711 (l).

Effect of amendments. — The 1980 amendment substituted "municipally owned utility" for "public service association, corporation, or individual" following "inhabitants by a" near the middle of the first sentence, and substituted "is" for "be" preceding "paid on the deposit" near the end of the first sentence.

NOTES TO DECISIONS

Applicability. — A former, similar provision was intended to refer, not only to franchises thereafter to be granted, but to franchises then in existence. Alaska Elec. Light & Power Co. v. City of Juneau, 294 F. 864 (9th Cir.), cert. denied, 266 U.S. 601, 45 S. Ct. 90, 69 L. Ed. 462 (1924); Town of Cordova v. Alaska Pub. Util., 9 Alaska 196 (1937).

The fact that an entity was subject to the commission's jurisdiction while another entity was not may not be regarded as a factor in the first entity's favor. City of Fairbanks v. Alaska Pub. Utils. Comm'n & Wire Communications, Inc., Sup. Ct. Op. No. 2079 (File No. 3977), 611 P.2d 493 (1980).

City may not contract away power to fix rates of utilities. — A city could not contract away its power to fix, and from time to time change, the rates to be charged by private organizations engaged in furnishing public services. Such action was prohibited by a former, similar provision and by AS 29.10.147 and 29.10.150 (now 29.48.070 and 29.48.080). Femmer v. City of Juneau, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

But may contract as to rates for its own services. — A former, similar provision and AS 29.10.147 and 29.10.150 (now 29.48.070 and 29.48.080) had no effect upon the power of a city to fix contractually the rates to be charged a user of a municipally owned public utility. Femmer v. City of Juneau, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

Rates may not be irrevocably fixed. — There was not necessarily included in the power of a municipality to provide lights for a city under a former, similar provision, the power to enter into a binding contract whereby the rates to be charged by a public utility corporation would be irrevocably fixed. Alaska Elec. Light & Power Co. v. City of Juneau, 294 F. 864 (9th Cir.), cert. denied, 266 U.S. 601, 45 S. Ct. 90, 69 L. Ed. 462 (1924).

All the operator of a public utility was entitled to was a reasonable return on his net capital investment under a former, similar provision, represented by property actually used and useful in the public service, and then only provided that his operation was efficient and economical. Pichotta v. City of Skagway, 12 Alaska 42, 78 F. Supp. 999 (D. Alaska 1948).

Meaning of "invested capital". — "Invested capital," as used in a former, similar provision, meant the initial investment, regardless of subsequent changes in ownership, plus capital additions and minus accrued depreciation. Pichotta v. City of Skagway, 12 Alaska 42, 78 F. Supp. 999 (D. Alaska 1948).

The term "invested capital" as used in a former, similar provision should not have been construed to mean fair value, nor was the utility entitled to the benefit of any appreciation in value, nor should the term have been construed to mean that which was paid for a utility by the last purchaser. Pichotta v. City of Skagway, 12 Alaska 42, 78 F. Supp. 999 (D. Alaska 1948).

Collateral references. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 567 et seq.

62 C.J.S., Municipal Corporations, § 292; 63 C.J.S., Municipal Corporations, § 979.

Discrimination between property within and that outside municipality or other governmental district as to public service or utility rates, 4 ALR2d 595.

Variations of utility rates based on flat and meter rates, 40 ALR2d 1331.

What land is contiguous or adjacent to municipality so as to be subject to annexation, 49 ALR3d 589.

Sec. 29.48.070. Hearing for regulation of utilities rates. If the assembly or council considers it advisable to regulate, change, or fix the rates to be charged by a public service corporation, association or individual not regulated under AS 42.05, it shall order a hearing to be held before the governing body at a time and place specified. Notice of the hearing shall be given by at least one publication in a newspaper of general circulation distributed within the municipality or, if no newspaper of general circulation is distributed within the municipality, notice shall be given by posting a notice in three public places within the city or borough area outside cities receiving the utilities services and by serving written notice upon the corporations, associations and individuals whose rates are to be regulated, fixed, or changed in the same manner that summonses are served. The notices shall be published or posted and served at least 15 days before the hearing. (§ 2 ch 118 SLA 1972)

Collateral references. — 64 Am. Jur. 2d, Public Utilities, §§ 79 to 87, 101 to 109.

73B C.J.S., Public Utilities, § 15 et seq.

Regulation of municipal utility rates, 76 ALR 852; 127 ALR 94.

Sec. 29.48.080. Right to participate and compel testimony. At a hearing held under AS 29.48.070, all public service corporations, associations, or individuals affected by or interested in the matters to be heard may be present and may be represented by counsel. The municipality and all interested parties may produce witnesses and examine them and introduce evidence to prove or disprove the facts in issue or matters to be established or inquired into at the hearing. All parties may compel the attendance of witnesses, and subpoenas requiring attendance shall be issued by the municipal clerk under the clerk's hand and the seal of the municipality. Subpoenas duces tecum requiring the production of books and papers shall be issued in like manner upon request. If a person fails to obey a subpoena, the party at whose request the subpoena issued may petition the superior court for an order compelling the attendance of the disobedient witness or the production of the books or papers referred to in a subpoena duces tecum. The superior court shall order the witness to appear and testify or compel the production of the books or papers. A violation of the order of the court is a contempt of court. If a witness appears and refuses to testify concerning a matter material to the facts inquired about at the hearing and to establish or determine which the hearing was had, an application may be made to the superior court to compel the witness to testify and answer questions put to the witness concerning the matters inquired about, and the court shall make an order compelling the witness to testify. Violation of the order is contempt of court. (§ 2 ch 118 SLA 1972)

es rates. If the
hange, or fix the
ociation or indi-
aring to be held
d. Notice of the
a newspaper of
ality or, if no
ain the munic-
ee public places
ng the utilities
ations, associa-
xed, or changed
notices shall be
ne hearing. (§ 2

ilities, § 15 et seq.
pal utility rates, 76

estimony. At a
porations, asso-
matters to be
sel. The munic-
s and examine
acts in issue or
ng. All parties
enas requiring
der the clerk's
duces tecum
issued in like
na, the party at
perior court for
witness or the
ubpoena duces
ear and testify
ion of the order
and refuses to
d about at the
ng was had, an
the witness to
ng the matters
ompelling the
court. (§ 2 ch

Sec. 29.48.090. Further proceedings. A hearing under AS 29.48.070 shall begin at the time stated in the notice but may be continued from time to time. At least a quorum of the assembly or council shall be present at the hearing. At the conclusion of the hearing the parties interested may make such arguments before the assembly or council, either in person or by attorney, as they consider proper, touching the matters at issue, and thereafter the assembly or council shall proceed to regulate and fix the rates by ordinance. The date upon which the rates fixed or regulated take effect shall be stated in the ordinance and shall be at least 10 days after passage and approval of the ordinance. (§ 2 ch 118 SLA 1972)

NOTES TO DECISIONS

Courts may review rate orders. — There was no statutory provision for appeals from rate orders, but it appears to be settled that, where a constitutional right was involved, the court could determine the issue upon its own record and the evidence adduced before it, even though it had not been presented to the regulatory body. Pichotta v. City of Skagway, 12 Alaska 42, 78 F. Supp. 999 (D. Alaska 1948), decided under former, similar law.

Rules governing review by court. — In its consideration of the mass of evidence produced in appeals from rate orders, the court was aided by well-settled rules governing litigation of this kind, namely: (1) That the orders of a regulatory body are presumptively valid, reasonable and correct; (2) that the burden of proof on the issue of confiscation is on the one raising it, and that nothing less than clear and convincing proof will justify judicial interference; (3) that the court cannot substitute its judgment for that of the authority whose action is under review upon a question as to which there is room for a difference of intelligent opinion. Pichotta v. City of Skagway, 12 Alaska 42, 78 F. Supp. 999 (D. Alaska 1948), decided under former, similar law.

There was a strong presumption in favor of the rates found by the council. Graff v. Town of Seward, 20 F.2d 816 (9th Cir. 1927), decided under former, similar law.

Sec. 29.48.100. Application. (a) In the case of conflict between the provisions of AS 29.48.050 — 29.48.070 and the provisions of AS 42.05 as to the regulation of rates of a utility, the provisions of AS 42.05 shall prevail.

(b) AS 29.48.050 — 29.48.100 apply to home rule and general law municipalities. (§ 2 ch 118 SLA 1972)

Sec. 29.48.108. Creation of historical district commissions. The governing body of a general law or home rule municipality may establish a historical district commission or designate the planning and zoning commission or itself to serve as the historical district commission. (§ 2 ch 139 SLA 1977)

Sec. 29.48.110. Establishment of historical districts. (a) In addition to existing municipal authority providing for the preservation, protection, and maintenance of historic sites, the local historical district commission established under AS 29.48.108, in consultation with the Historic Sites Advisory Committee within the Department of Natural Resources, may establish historical districts within the boundaries of the municipality.

Article 1. Special Assessments.

Sec. 29.63.010 Assessment and proposal. The assembly or council may assess against the property of a governmental unit and private real property benefited all or a portion of the cost of constructing or improving capital improvements. The state shall pay an assessment levied, except as otherwise provided by law and subject to its right of protest under AS 29.63.015(a)(8). If a governmental unit other than the state benefited by an assessment refuses to pay the assessment, it shall be denied the benefit of the improvement. An improvement proposal may be initiated by

(1) petition to the assembly or council of the owners of one-half in value of the property to be benefited or

(2) the assembly or council. (§ 2 ch 118 SLA 1972)

Opinions of attorney general. — Special assessments are usually distinguished from general taxation. Special assessments are levied for improvements which benefit particular individuals or property and are levied with reference to, and in proportion to, the special benefit conferred. General taxes, on the other hand, are imposed for the purpose of raising moneys to be expended for governmental purposes without regard to special benefits conferred on a particular group or class of persons or property. 1966 Op. Att'y Gen., No. 10, decided under former, similar law.

NOTES TO DECISIONS

This section does not constitute a special or local law. Kissane v. City of Anchorage, 17 Alaska 514, 159 F. Supp. 733 (D. Alaska 1958), decided under former, similar law.

Determination of assessments is for city council. — The determination of assessments by municipal corporations of adjacent property for local improvements is a matter for the city council acting in its legislative capacity, and such determination is conclusive, in the absence of fraud or conduct so arbitrary as to be the equivalent of fraud, or so manifestly arbitrary or unreasonable as to be palpably unjust and oppressive. Kissane v. City of Anchorage, 17 Alaska 514, 159 F. Supp. 733 (D. Alaska 1958), decided under former, similar law.

As is different assessment for residence or business property. — If any distinction in the method of assessment between business and residence property is to be made, such must be done by the city council, acting in its legislative capacity. Kissane v. City of Anchorage, 17 Alaska 514, 159 F. Supp. 733 (D. Alaska 1958), decided under former, similar law.

Assessment may be made if property will benefit. — The levy of special assessments for off-street parking facilities is justified if the improvement is a public one and the property to be assessed will receive a benefit. Kissane v. City of Anchorage, 17 Alaska 514, 159 F. Supp. 733 (D. Alaska 1958), decided under former, similar law.

Whether a tax is in the form of special assessments or a general tax, the test is substantially the same, that is, whether any benefit, direct and tangible or indirect and intangible, will result to the property owner. Kissane v. City of Anchorage, 17 Alaska 514, 159 F. Supp. 733 (D. Alaska

1958), decided under former, similar law.

Assessment is not arbitrary if there is some benefit. — Where property will receive some benefit, gain or advantage from the proposed improvement, the assessment contemplated under this section cannot be considered so arbitrary or unjust as to render the method of assessment invalid as a matter of law. Kissane v. City of Anchorage, 17 Alaska 514, 159 F. Supp. 733 (D. Alaska 1958), decided under former, similar law.

It is not essential that the benefits be direct or immediate, although it is essential that they be based on more than mere speculation or conjecture. Kissane v. City of Anchorage, 17 Alaska 514, 159 F. Supp. 733 (D. Alaska 1958), decided under former, similar law.

Except in the case of flagrant inequality amounting to confiscation. — The principle is firmly established that only where an assessment imposed clearly results in such a flagrant and palpable inequality between the burden imposed and the benefits received that it amounts to an arbitrary taking of property without compensation, does it violate the due process guaranty of the 14th amendment. Kissane v. City of Anchorage, 17 Alaska 514, 159 F. Supp. 733 (D. Alaska 1958), decided under former, similar law.

Improvements and assessments against abutting property, not provided for by ordinance or resolution, are void. In re Ketchikan Delinquent Tax Roll, 293 F. 577 (9th Cir. 1923), decided under former, similar law.

The power to locate, construct, and maintain streets, and more especially the power to impose a tax upon abutting property owners, is a legislative one and can only be exercised by ordinance or resolution. In re Ketchikan Delinquent Tax Roll, 293 F. 577 (9th Cir. 1923), decided under former, similar law.

Town may recover value of requested improvements under implied contract. Town of Nome v. Lang, 1 Alaska 593 (1902), decided under former, similar law.

Valid petition will be presumed. — Unless its records disclose a failure on the part of the common council to take all of the jurisdictional steps required by law, it will be presumed approval for the construction and widening of a street was passed pursuant to a petition sufficient in law to give the council jurisdiction to pass such an ordinance. Town of Ketchikan v. Zimmerman, 4 Alaska 336 (1911), decided under former, similar law.

Collateral references. — 70 Am. Jur. 2d, Special or Local Assessments, § 1 et seq.

63 C.J.S., Municipal Corporations, Counties, and Other Political Subdivisions, § 1290 et seq.

Who is owner within statutes as to special assessments, 2 ALR 790; 95 ALR 1085.

Loss of right to contest assessment, 9 ALR 634.

Use of general funds or credit in case of inability to collect special assessment, 70 ALR 176; 135 ALR 1287.

Assessment as affected by character or extent of traffic, 73 ALR 1295.

Personal liability of property owner to pay assessment, 86 ALR 779; 127 ALR 551; 167 ALR 1030.

Diversion of traffic into business district as special benefit, 96 ALR 1380.

Power to remit, release or compromise assessments for public improvements, 28 ALR2d 1425.

Widening of city street as local improvement justifying special assessment of adjacent property, 46 ALR3d 1276.

Sec. 29.63.015. Procedure. (a) The assembly or council may prescribe by ordinance the complete special assessment procedure for local improvements, including and subject to the following:

(1) the procedure for filing petitions;

(2) a survey and report by the borough or city executive concerning the need for, desirable extent of, and estimated cost of each proposed local improvement;

(3) a public hearing on the necessity for the local improvement;

(4) a resolutic
not to proceed w
(5) a public
sessment roll
(6) publis.ed
and mailing noti
the special asse
(7) a resolutio
improvement;
(8) if protests
owners of proper
cost of the impro
the improvement
per cent, except
assembly or cou
(b) If the asse
special assessme
cil shall comply
29.63.020 — 29.(

Quoted in Martens
Op. No. 1059 (File No
(1974).

Sec. 29.63.020
proposal has beer
assembly or coun
whether (1) the ir
and (2) the reque
of the assembly c
(b) If the asse
improvement pro
proposed improv
percentage of the
property benefite
(c) The assemb
improvement pla
least once a week
circulation if distr
by mail to every r
district. (§ 2 ch 1

(4) a resolution of the assembly or council determining to proceed or not to proceed with the proposed local improvement;

(5) a public hearing by the assembly or council on the special assessment roll for the local improvement;

(6) published notice of each public hearing required by this section and mailing notice to each legal owner of record of real property within the special assessment district;

(7) a resolution confirming the special assessment roll for the local improvement;

(8) if protests as to the necessity of a local improvement are made by owners of property which will bear 50 per cent or more of the estimated cost of the improvement, the assembly or council may not proceed with the improvement until the objections have been reduced to less than 50 per cent, except upon approval of not fewer than three-fourths of the assembly or council.

(b) If the assembly or council does not prescribe a procedure for special assessments as permitted by this section, the assembly or council shall comply with the special assessment procedures set out in AS 29.63.020 — 29.63.070. (§ 2 ch 118 SLA 1972)

NOTES TO DECISIONS

Quoted in Martens v. Metzgar, Sup. Ct. Op. No. 1059 (File No. 1885), 524 P.2d 666 (1974).

Sec. 29.63.020. Decision and notice. (a) When an improvement proposal has been filed with the municipal clerk and presented to the assembly or council, the assembly or council shall find by resolution whether (1) the improvement request is necessary and should be made, and (2) the request has sufficient and proper petitioners. The findings of the assembly or council are conclusive.

(b) If the assembly or council passes a resolution approving an improvement proposal with the necessary findings, it shall develop a proposed improvement plan including the cost estimate and the percentage of the improvement plan cost to be assessed against the property benefited. This plan is to be filed with the municipal clerk.

(c) The assembly or council shall set a time for public hearing on the improvement plan. The assembly or council shall publish a notice at least once a week for four consecutive weeks in a newspaper of general circulation if distributed within the municipality and shall send notice by mail to every record owner of property within the special assessment district. (§ 2 ch 118 SLA 1972)

NOTES TO DECISIONS

Section is mandatory. — As the provisions of this section are mandatory, full compliance with due process otherwise is not sufficient. Ashley v. City of Anchorage, 13 Alaska 168, 95 F. Supp. 189 (D. Alaska 1951), aff'd, 196 F.2d 809 (9th Cir. 1952), decided under former, similar law.

And steps must be taken in order. — The steps to be taken by the council must be followed in the order provided in this section without substantial deviation, and one council is not permitted by ratification to validate the acts of a previous council. Ashley v. City of Anchorage. 13 Alaska 168, 95 F. Supp. 189 (D. Alaska 1951), aff'd, 196 F.2d 809 (9th Cir. 1952), decided under former, similar law.

Levy of assessment must be made when petition heard. — See In re Ketchikan Delinquent Tax Roll, 293 F. 577 (9th Cir. 1923); Ashley v. City of Anchorage, 13 Alaska 168, 95 F. Supp. 189 (D. Alaska 1951), aff'd, 196 F.2d 809 (9th Cir. 1952), decided under former, similar law.

And assessment may not be made by another council. — Most assuredly one city council cannot make an improvement, and some other city council, at some later day, exercise the discretion to impose a part of the burden upon abutting property owners. Ashley v. City of Anchorage, 13 Alaska 168, 95 F. Supp. 189 (D. Alaska 1951), aff'd, 196 F.2d 809 (9th Cir. 1952), decided under former, similar law.

When defect in proceedings prior to assessment may be raised. — Where no opportunity was afforded objectors prior to the assessment to protest against the work, no notice was given them that their property would be assessed for any part of the cost of the improvement, there was no showing by the city in the testimony that they had knowledge that the city contemplated assessing the cost of the improvement, and there was no showing that they had any knowledge of the defect in the proceedings, they had the right to object and insist upon any defect in the proceedings anterior to the assessment. In re Ketchikan Delinquent Tax Roll, 6 Alaska 653 (1922), decided under former, similar law.

Collateral references. — 70 Am. Jur. 2d, Special or Local Assessments, § 133 et seq.

63 C.J.S., Municipal Corporations, § 1097.

Denying right of property owners to defeat street improvement by protest, 52 ALR 883.

Lump sum assessment for improvements against property owned in undivided shares, 80 ALR 862.

Sufficiency of statutory provisions for hearing. 84 ALR 1098; 145 ALR 1196.

Petition of property owners for local improvement, 95 ALR 116.

Withdrawal of signer of petition, 126 ALR 1031; 27 ALR2d 604.

Classification of streets as regards source of payment for improvements, 127 ALR 1090.

Sec. 29.63.025. Record owner. The person in whose name property is listed on the municipal property tax roll as owner is conclusively presumed to be the legal owner of record. If the owner is unknown, the assessment may be made against "unknown owner." (§ 2 ch 118 SLA 1972)

Sec. 29.63.030. Objections and revision. (a) Objections to the improvement plan may be filed not less than 30 nor more than 60 days after publication of notice on a date specified by the assembly or council. The assembly or council may by resolution approve the plan and proceed with the improvement if the owners of one-half in value of the property to be benefited do not object in writing.

(b) If objecti
of the estimate
not proceed wi
objections and
revised plan sh
118 SLA 1972)

Sec. 29.63.0
approval, the
percentage of t
Assessments m
(b) The spec
names of owne
(c) The asser
roll. The munic
by mail to each
before the hear

Right to object
party may be held t
to a remedy by a c
renders it unjust ar

Collateral refer
2d, Special or Local
seq.
63 C.J.S., Mu
§ 1097.

Sec. 29.63.0
the assembly or
roll. When the
SLA 1972)

Sec. 29.63.0
times of payme
quency of asses
days after asses
but a sum or in
value of the pro
real property ta
(b) Within 30
clerk shall mail
assessed. The
amount, the tim

(b) If objections are made by the owners of property bearing one-half of the estimated cost of the improvement, the assembly or council may not proceed with the improvement unless it revises the plan to meet the objections and the objections are reduced to less than 50 per cent. A revised plan shall be approved and adopted as an original plan. (§ 2 ch 118 SLA 1972)

Sec. 29.63.040. Assessment roll. (a) At any time after project approval, the assembly or council shall assess the authorized percentage of the cost against tracts in proportion to benefit received. Assessments may not exceed actual costs.

(b) The special assessment roll contains property descriptions, names of owners of record and assessment amounts.

(c) The assembly or council shall fix a time to hear objections to the roll. The municipal clerk shall send an assessment and hearing notice by mail to each record owner of an assessed tract not less than 15 days before the hearing. (§ 2 ch 118 SLA 1972)

NOTES TO DECISIONS

Right to object may be waived. — A party may be held to have waived all right to a remedy by a course of conduct which renders it unjust and inequitable to others that he should be allowed to complain of the illegality. In re Ketchikan Delinquent Tax Roll, 6 Alaska 653 (1922), decided under former, similar law.

Collateral references. — 70 Am. Jur. 2d, Special or Local Assessments, § 133 et seq.

63 C.J.S., Municipal Corporations, § 1097.

Assessment by front-foot rule, 56 ALR 941.

Classification of streets as regards source of payment for improvements, 127 ALR 1090.

Sec. 29.63.050. Hearing and settlement. After the public hearing, the assembly or council shall correct errors and any inequalities in the roll. When the roll is corrected, the clerk shall so certify. (§ 2 ch 118 SLA 1972)

Sec. 29.63.060. Payment. (a) The assembly or council shall fix times of payment, rate of interest on unpaid installments, and delinquency of assessments. Payment may not be required sooner than 60 days after assessment. Payment may be in one sum or by installments, but a sum or installment may not exceed 25 per cent of the assessed value of the property affected. Penalty and interest are the same as for real property taxes.

(b) Within 30 days after fixing the time of payment, the municipal clerk shall mail a statement to the owner of record of each property assessed. The statement designates the property, the assessment amount, the time of delinquency, and penalties.

(c) Within five days after the statements are mailed, the clerk shall publish notice that the statements have been mailed.

(d) Assessments are liens upon the property assessed and are prior and paramount to all liens except municipal tax liens. They may be enforced as provided in AS 29.53.200 — 29.53.390 for enforcement of property tax liens. (§ 2 ch 118 SLA 1972)

NOTES TO DECISIONS

Property must be described with certainty. — To create a lien on real estate, the property must be described with reasonable certainty, sufficient for identification. In re Ketchikan Delinquent Tax Roll, 6 Alaska 653 (1922), decided under former, similar law.

Collateral reference. — 58 Am. Jur. 2d, Notice, § 26 et seq., 70 Am. Jur. 2d, Special or Local Assessments, § 163 et seq.

63 C.J.S., Municipal Corporations, § 1564 et seq.

Priority as between liens for public improvements, 5 ALR 1301; 99 ALR 1478.

Transfer or assignment of lien, 55 ALR 667.

Priority of lien for improvement and pre-existing contractual lien, 78 ALR 513.

Duration of lien, 114 ALR 399.

Vendor and purchaser, liability with respect to improvement assessments or charges as between, 59 ALR2d 1044.

Superiority of special or local assessment lien over earlier private lien or mortgage, where statute creating such special lien is silent as to superiority, 75 ALR2d 1121.

Duty as between life tenant and remainderman as respects payment of improvement assessments, 10 ALR3d 1309.

Sec. 29.63.065. Exemption. (a) The real property owned and occupied by a resident 65 years of age or over, or the spouse, widow, widower, or minor heir of the original applicant, on which is located only the owner's permanent abode that is a single-family residence, is exempt from (1) special sewer assessments levied by a home rule or general law municipality after September 2, 1975 and (2) special water assessments levied by a home rule or general law municipality after September 2, 1975. Only one exemption may be granted with respect to the same property, and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. Real property may not be exempted under this subsection which the municipality determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the municipality is appealable under AS 44.62.560 — 44.62.570.

(b) An exemption may not be granted under this section except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors and in accordance with the following requirements:

(1) the claima
time between th
payment fixed b
the assessment r
shown may waiv
tion for the exem
tion as if timely

(2) a claimant
ment by March
proving eligibilit
within the same
the claimant's fi
application as if

(3) if an appli
subsection and is
shall be allowed
waiver under thi
tion approved, th
the claimant ma
refunded; the mu
considered necess
under this sectio

(c) The state s
ipality for the se
receive but for th
subsection is a lie
to the extent of t
recordation in th
exempted is locat
the property exce
may be enforced b
and payable

(1) upon sale c
widow, widower,
to a minor heir th
heir reaches the

(2) when prop
receives more tha
nection; or

(3) when the c
section.

(d) In this sect

(1) "minor h
property, has not
not attained the a
institution or a n

(1) the claimant must file the initial application during the period of time between the date the assessment roll is certified and the time of payment fixed by the assembly or council; within one year of the date the assessment roll is certified the assembly or council for good cause shown may waive the claimant's failure to make timely initial application for the exemption and authorize the assessor to accept the application as if timely filed;

(2) a claimant receiving the exemption must file with the department by March 15 of each subsequent year a separate application proving eligibility as of January 1 in order to retain the exemption; within the same year the department for good cause shown may waive the claimant's failure to make timely application and approve the application as if timely filed;

(3) if an application is filed within the required time under this subsection and is approved by the assembly or council, the exemption shall be allowed in accordance with the provisions of this section; if a waiver under this subsection is granted and the application for exemption approved, the amount of any assessment, penalty or interest which the claimant may have already paid on the assessment shall be refunded; the municipality may at any time require proof in the form considered necessary of the right and amount of an exemption claimed under this section.

(c) The state shall reimburse a home rule or general law municipality for the sewer and water assessment revenues which it would receive but for the operation of this section. Reimbursement under this subsection is a lien in favor of the state against the property exempted to the extent of the assessment against the property exempted. Upon recordation in the recording office of the district in which the property exempted is located the lien is prior and superior to other liens against the property except for general taxes or other special assessments and may be enforced by lien foreclosure. The lien becomes immediately due and payable

(1) upon sale or other transfer of the property except to a spouse, widow, widower, or minor heir; however, if the property is transferred to a minor heir the lien becomes due and payable on the date the minor heir reaches the age of 25 years; or

(2) when property exempted under (a)(1) or (2) of this section receives more than one sewer connection or more than one water connection; or

(3) when the claimant fails to prove eligibility under (b)(2) of this section.

(d) In this section

(1) "minor heir" means a person who, at the time of transfer of the property, has not attained the age of 19 years or who, if the person has not attained the age of 22 years, is a full-time student at an educational institution or a member of the armed forces of the United States.

(2) "real property" includes, but is not limited to, mobile homes, whether classified as real or personal property for municipal tax purposes. (§ 1 ch 114 SLA 1975; am § 1 ch 215 SLA 1976; am § 23 ch 83 SLA 1979; am § 64 ch 59 SLA 1982; am § 19 ch 67 SLA 1983)

Revisor's notes. — The paragraphs in subsection (d) were reorganized in 1984 to place the defined terms in alphabetical order.

Effect of amendments. — The 1982 amendment in the introductory language of subsection (c), deleted "as provided in AS 34.10.070 — 34.10.220" from the end of the third sentence.

The 1983 amendment repealed former paragraph (d)(1).

Sec. 29.63.070. Reassessment. (a) The assembly or council shall within one year correct any deficiency in a special assessment found by a court.

(b) Notice and hearing must conform to the initial assessment procedures.

(c) Payments on the initial assessment are credited to the property upon reassessment.

(d) The reassessment becomes a charge upon the property notwithstanding failure to comply with any provision of the assessment procedure. (§ 2 ch 118 SLA 1972)

Collateral references. — 70 Am. Jur. 2d, Special or Local Assessments, § 129 et seq.

63 C.J.S., Municipal Corporations, § 1541 et seq.

Sec. 29.63.080. Objection and appeal. (a) The regularity or validity of an assessment may not be contested by a person who did not file with the municipal clerk a written objection to the assessment roll before its confirmation.

(b) The decision of the assembly or council upon an objection may be appealed to the superior court within 30 days of the date of confirmation of the assessment roll.

(c) If no objection is filed or an appeal taken within the time provided in this section, the assessment procedure shall be considered regular and valid in all respects. (§ 2 ch 118 SLA 1972)

Sec. 29.63.085. Special assessment bonds. (a) The assembly or council may by ordinance authorize the issuance and sale of special assessment bonds to pay all or part of the cost of an improvement in a special assessment district. The principal and interest of bonds issued shall be payable solely from the levy of special assessments against the property to be benefited. The assessments shall constitute a sinking fund for the payment of principal and interest on the bonds. The property benefited may be pledged by the assembly or council to secure a payment.

(b) Upon default in a payment due on a special assessment bond, a

bondholder me
collection in a
as actions for t
shall be again
period for rede
foreclosure on
(c) Before t
bonds, it shall
annually a sun
of principal an
assessments w
property for no
antee fund. In
improvement d

Section
90. Service areas

Sec. 29.63.0
services within
abolished by th
vices not provi
borough area ou
that provided o
cities. In a firs
service area any
as provided in (
the powers gran
the powers mu
residing within
or special electi
(b) The asse
charges, or asse
(c) The assen
supervise the fu
(d) A new ser
purposes of art.
provided by an
incorporation as
(e) The assen
powers which m
outside cities. Ir
power must be
election held wi
issuance of bond

bondholder may enforce payment of principal and interest and costs of collection in a civil action in the same manner and with the same effect as actions for the foreclosure of mortgages on real property. Foreclosure shall be against all property on which assessments are in default. The period for redemption shall be the same as in the case of a mortgage foreclosure on real property.

(c) Before the assembly or council may issue special assessment bonds, it shall establish a guarantee fund and appropriate to the fund annually a sum adequate to cover any deficiency in meeting payments of principal and interest of bonds issued by reason of nonpayment of assessments when due. Money received from actions taken against property for nonpayment of assessments shall be credited to the guarantee fund. Interest on the guarantee funds shall be a cost of the improvement district. (§ 2 ch 118 SLA 1972)

Article 2. Service Areas.

Section
90. Service areas

Sec. 29.63.090. Service areas. (a) Service areas to provide special services within a borough may be established, operated, altered or abolished by the assembly by ordinance. Special services include services not provided on an areawide basis within the borough or the borough area outside cities or a higher or different level of service than that provided on an areawide basis or in the borough area outside cities. In a first class borough the assembly may exercise within a service area any power granted a first class city by general law. Except as provided in (f) of this section, a second class borough may exercise the powers granted a first class city by general law but the exercise of the powers must be approved by a majority of the qualified voters residing within the service area and voting on the question at a regular or special election.

(b) The assembly may levy or authorize the levying of taxes, charges, or assessments in service areas to finance the special services.

(c) The assembly may provide for appointed or elected boards to supervise the furnishing of special services in service areas.

(d) A new service area may not be established if, consistent with the purposes of art. X of the state constitution, the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.

(e) The assembly may exercise or delegate to a service area any powers which may be exercised by a first class borough in the area outside cities. In a second class borough, each exercised or delegated power must be approved by a majority vote at a regular or special election held within the service area. The rate of taxation and the issuance of bonds are subject to assembly approval.

ATTACHMENT C

State Regulation of Water and Sewer Utilities

Source: National Regulatory Research Institute, "Commission Regulation of Small Water Utilities: Some Issues and Solutions", 1983.

TABLE 2-2

STATE COMMISSIONS REGULATING WATER UTILITIES IN 1982

Regulatory Commission	Investor-Owned Water Utility	Combined Water and Sewer Utility	Sewer Utility	Municipal Utility
1. Alabama	X	---	---	---
2. Alaska	X	X	X	X
3. Arizona	X	X	X	---
4. Arkansas	X	X	X	---
5. California	X	X	X	---
6. Colorado	X	---	---	---
7. Connecticut	X	X	---	---
8. Delaware	X	---	---	---
9. Florida	X	X	X	---
10. Hawaii	X	X	X	---
11. Idaho	X	---	---	---
12. Illinois	X	X	X	---
13. Indiana	X	X	X	X
14. Iowa	X	---	---	---
15. Kansas	X	---	---	---
16. Kentucky	X	X	X	X
17. Louisiana	X	X	X	---
18. Maine	X	---	---	X
19. Maryland	X	X	X	---
20. Massachusetts	X	---	---	---
21. Michigan	X	---	---	---
22. Mississippi	X	X	X	X
23. Missouri	X	X	X	X
24. Montana	X	---	X	X
25. Nevada	X	X	X	---
26. New Hampshire	X	---	---	X
27. New Jersey	X	X	X	X
28. New Mexico	X	---	---	---
29. New York	X	---	---	---
30. North Carolina	X	X	X	---
31. Ohio	X	X	X	---
32. Oklahoma	X	---	---	---
33. Oregon	X	---	---	---
34. Pennsylvania	X	X	X	X
35. Rhode Island	X	---	---	X
36. South Carolina	X	X	X	---
37. Tennessee	X	X	X	---
38. Texas	X	X	X	---
39. Utah	X	---	X	---
40. Vermont	X	---	---	---
41. Virginia	X	X	X	---
42. Washington	X	---	---	---
43. West Virginia	X	X	X	X
44. Wisconsin	X	X	---	X
45. Wyoming	X	---	---	---

Source: 1982 NRRI Commission Water Survey.
X = Regulates; --- = Does not regulate.

ATTACHMENT D

AHFC Regulations Governing Liens on Real Property

(14) The collateral securing the loan must have been appraised no more than six months before the loan application is submitted to the Corporation. The appraisal shall have been

(A) performed by an appraiser approved by the Corporation and completed on a form approved by the Corporation;

(B) completed after improvements to the property have been completed for existing units;

(C) subject to a final inspection for units not set up on the site at the time of appraisal.

(15) The mobile home securing the loan must have been inspected for, and have affixed to it, a U.S. Department of Housing and Urban Development seal for Zone 3 if the mobile home arrived in the State of Alaska after January 1, 1985.

(c) For the purpose of determining the maximum financing allowed under (b) of this section, the cost of real property is limited to the purchase price or amount refinanced and the direct costs paid to a party other than the borrower for providing permanent improvements including, but not limited to water, sewer, and access improvements.

(d) In this section

(1) "borrower's mobile home" means

(A) the mobile home the borrower will purchase with the loan if the loan is one described in (a)(1), (2), or (3) of this section; or

(B) the mobile home already owned by the borrower if the loan is described in (a)(4) or (5).

(2) "mobile home" means a mobile home which has at least 600 square feet of living area determined by measuring the exterior of the unit at the base but excluding the tongue of the unit and any lean-tos, wanigans, and the like;

(3) "Class I Loan" means a loan that qualifies for purchase under a Corporation bond indenture the funds related to which are being committed at the time the loan is approved;

(4) "Class II Loan" means a loan under this section which does not qualify for purchase under a Corporation bond indenture the funds related to which are being committed at the time the loan is approved. (Eff. 10/1/83, Reg. 87; am 2/1/84, Reg. 89; am 8/20/84, Reg. 92)

Authority: AS 18.56.090
AS 18.56.099

15 AAC 118.290. DEFINITIONS. Repealed 2/17/82.

15 AAC 118.300. SPECIAL MORTGAGE LOAN PURCHASE PROGRAM SCOPE. (a) 15 AAC 118.300 – 15 AAC 118.580 implement the special mortgage loan purchase program established by AS 18.56.098.

(b) 15 AAC 118.400 – 15 AAC 118.450 implement the portion of the special mortgage loan purchase program to be financed with the proceeds of qualified mortgage bonds.

(c) 15 AAC 118.490 – 15 AAC 118.580 implement the portion of the special mortgage loan purchase program to be financed with the proceeds of qualified veterans' mortgage bonds. (Eff. 6/30/80, Reg. 78; am 9/17/81, Reg. 80; am 2/17/82, Reg. 82; am 1/26/83, Reg. 85)

Authority: AS 18.56.088
AS 18.56.098

15 AAC 118.305. BORROWER ELIGIBILITY. (a) A person is eligible under the program for a residential mortgage loan to finance the purchase of a dwelling, including a duplex, triplex or fourplex, condominium, or an individual unit within a PUD project, subject to any restrictions under 15 AAC 118.400 – 15 AAC 118.580 for mortgages financed by bonds issued thereunder. Eligibility is without regard to location of the dwelling within the State of Alaska or another eligible location. The dwelling must be designed for residential use, and intended for use and used as the principal residence of the borrower pursuant to AS 18.56. A person is not eligible for a loan if the person is an owner of a dwelling financed by an outstanding loan purchased by the Corporation. As used in this section, "owner" includes a person who is liable on a

mortgage or note with respect to a loan. A loan to finance the purchase of a dwelling includes a loan to an owner/builder, providing that the loan constitutes the first permanent financing of a dwelling which has been newly constructed by the owner/builder; or a loan to a purchaser, providing that the loan constitutes the initial permanent financing obtained for the dwelling by the purchaser, and further providing that the loan is submitted to Alaska Housing Finance Corporation as soon as practicable, but in no event more than one year from date of purchase. The determination of whether the dwelling constitutes "newly constructed" or whether a loan constitutes the first "permanent financing" by the purchaser on a dwelling or whether the loan is submitted to Alaska Housing Finance Corporation as soon as practicable shall be made by the Corporation based upon information submitted to the Corporation.

(b) Release of Mortgagor. The Corporation may release a co-mortgagor from liability on a loan owned by the Corporation if the co-mortgagor retaining ownership currently qualifies for the mortgage loan. Qualification for the mortgage loan will be determined by the mortgage servicer and the Corporation and will be based on a full credit package underwritten and approved by the servicer and other pertinent information. To qualify for a release under this subsection, a co-mortgagor must relinquish all ownership interest in the residence. (Eff. 10/2/80, Reg. 78; am 1/27/81, Reg. 78; am 2/17/82, Reg. 82; am 10/27/82, Reg. 84; am 1/26/83, Reg. 85; am 10/19/83, Reg. 88; am 5/15/84, Reg. 90)

Authority: AS 18.56.088
AS 18.56.098

15 AAC 118.310. LOAN TERMS. (a) Each residential mortgage loan purchased by the Corporation as part of the special mortgage loan purchase program, except as otherwise provided in (d) of this section for triplexes and fourplexes and (f) of this section for loans to members of the Alaska Delegation to Congress, must

(1) be serviced by a seller/servicer approved by the Corporation;

(2) constitute a first or second lien on real estate in fee simple or on a leasehold estate and, if a first lien, be subject only to permitted encumbrances, and, if a second lien, be subject only to permitted encumbrances and a first lien mortgage loan serviced by a seller/servicer approved by the Corporation;

(3) if a first lien, be the subject of private mortgage insurance, federal insurance, or federal guarantee, the benefits of which are payable to the Corporation, in the event that the ratio of the loan to the value of the property ("loan-to-value ratio") exceeds 80 percent;

(4) if a second lien, be the subject of private mortgage insurance, federal insurance or federal guarantee, the benefits of which are payable to the Corporation, in the event that the ratio of the first and second lien mortgage loans combined to the value of the property exceeds 80 percent to the extent necessary to cause the ratio to go down to 75 percent;

(5) be for purchase of completed, owner-occupied residential housing or for the improvement or rehabilitation of owner-occupied residential housing, the mortgage of which shall be eligible for purchase by the Corporation under the Act;

(6) be insured by a mortgagee's policy of title insurance issued by a title insurance company qualified to do business in the area in which the resident is located and acceptable to the Corporation, insuring the enforceable mortgage, subject only to permitted encumbrances or in the case of a second lien mortgage, subject only to permitted encumbrances and the first lien mortgage.

(b) (1) The loan-to-value ratio and the loan amounts on first lien mortgage loans of the Corporation to finance a single-family residence, including a unit in a condominium project or a planned unit development (herein called a "single-family residence") or a duplex shall be as set forth in this paragraph:

(A) the loan-to-value ratio on a mortgage loan for a single-family residence and a duplex shall not exceed 95 percent.

(B) The loan amount on a mortgage loan for a single-family residence shall not exceed $178,650.

(C) The loan amount on a mortgage loan for a duplex shall not exceed $207,750.

(D) The loan amount on a mortgage loan guaranteed by the Veterans Administration for a single-family residence and a duplex shall not exceed $135,000.

(E) The amount of the guarantee plus the down payment on a mortgage loan guaranteed by the Veterans Administration for a single-family residence and a duplex must equal 25 percent of the value of the single-family residence or the duplex.

(F) The loan amount on a mortgage loan insured by the FHA for a single-family residence shall not exceed $101,250.

(G) The loan amount on a mortgage loan

insured by the FHA for a duplex shall not exceed $114,000.

(H) The down payment and loan-to-value ratios of mortgage loans insured by the FHA shall be as required by FHA.

(2) The limitations provided in (b)(1) of this subsection are applicable to a first lien mortgage loan. The limitations as to amount of loan shall also limit the amount of a second lien mortgage loan provided that in computing the amount of a second lien mortgage loan any first lien mortgage loan shall be deducted. The loan-to-value ratio of a second lien mortgage loan shall be as fixed in the Act. All loan-to-value ratios and maximum lien amounts shall be reduced if Federal National Mortgage Association, Veterans Administration or FHA limits are reduced for Alaska.

(c) One unit of a duplex, triplex, or four-plex must be owner-occupied for a residential mortgage loan to finance the purchase of that duplex, triplex or four-plex to be eligible for purchase by the Corporation.

(d) For triplexes and four-plexes, loans purchased as part of the special mortgage loan purchase program

(1) must constitute a first lien on real estate in fee simple or on a leasehold estate and be subject only to permitted encumbrances;

(2) must be only for the purchase of a completed owner-occupied residential housing, the mortgage of which shall be eligible for purchase by the Corporation under the Act;

(3) must have a loan-to-value ratio no more than 90 percent for a triplex or four-plex;

(4) will not exceed a loan amount of $250,800 for a triplex and $311,850 for a four-plex.

(e) A residential mortgage loan hereafter purchased by the Corporation in order to finance a unit in a condominium project or in a planned unit development project ("condominium" or "PUD project") shall be subject to the following terms and conditions:

(1) the living units of the condominium or PUD project must be within the same structure or a reasonably contiguous structure. Common elements of the project must have been completed prior to the purchase of the loan; and

(2) prior approval procedures, warranties and provisions relating to the sale and occupancy of units which are reasonable and customary in mortgage lending, shall apply as prescribed in the seller/servicer guide.

(f) A residential mortgage loan hereafter purchased by the Corporation in order to finance a residence for members of the Alaska Delegation to Congress shall be subject to the following term and condition:

(1) the residence shall be located in the District of Columbia or within 50 miles of the District of Columbia. (Eff. 6/30/80, Reg. 78; am 6/18/81, Reg. 79; am 9/17/81, Reg. 80; am 2/17/82, Reg. 82; am 10/27/82, Reg. 84; am 1/4/83, Reg. 85; am 9/14/83, Reg. 88; am 10/19/83, Reg. 88)

15 AAC 118.315. PURCHASES OF LOANS FROM SELLER/SERVICERS. Repealed 2/17/82.

15 AAC 118.320. ASSUMPTIONS OF MORTGAGE LOANS. Repealed 2/17/82.

15 AAC 118.325. MINIMUM CONSTRUCTION STANDARDS AND STANDARD DEVIATIONS. Repealed 2/17/82.

15 AAC 118.330. IMPROVEMENT OR REHABILITATION. Repealed 2/17/82.

15 AAC 118.335. APPEALS PROCEDURE. Repealed 2/17/82.

15 AAC 118.340. SERVICING FEE. Repealed 2/17/82.

15 AAC 118.342. HOME OWNERSHIP ASSISTANCE PROGRAM. (a) The home ownership assistance program provides assistance to persons of lower and moderate income to purchase homes financed with a mortgage loan purchased by the Corporation under 15 AAC 118.283 – 15 AAC 118.345. Except as provided

15 AAC 118.560. TRAVEL TO OR FROM DUTY. For the purposes of 15 AAC 118.510 – 15 AAC 118.550, "duty" or "service" includes authorized travel to and from the duty or service. (Eff. 1/26/83, Reg. 85)

Authority: AS 18.56.050 AS 18.56.090
AS 18.56.088 AS 18.56.098

15 AAC 118.570. SPOUSES. A spouse of a qualified veteran is not a qualified veteran for purposes of the state guaranteed veterans' home mortgage program unless the spouse also qualifies under 15 AAC 118.510 – 15 AAC 118.580. However, if the residence for which a loan is sought is to be owned by a husband and wife as joint tenants and one spouse is a qualified veteran for purposes of the state guaranteed veterans' home mortgage program, the Corporation will consider both spouses as qualified veterans with regard to that loan. (Eff. 1/26/83, Reg. 85)

Authority: AS 18.56.050 AS 18.56.090
AS 18.56.088 AS 18.56.098

15 AAC 118.580. EVIDENCE OF QUALIFICATIONS. (a) The Corporation may accept, as evidence of the satisfactory fulfillment of the requirements of 15 AAC 118.510(b)(1), an official document of the appropriate federal agency indicating that the individual has received an honorable or general discharge. If the individual has received a discharge or release other than honorable or general, the Corporation may require additional evidence to demonstrate that the discharge or release was under conditions other than dishonorable.

(b) The Corporation may seek assistance from the United States Veterans' Administration as the Corporation considers necessary or appropriate to determine whether an individual qualifies as a veteran under 15 AAC 118.500 – 15 AAC 118.580. The Corporation may accept a certification from the Veterans' Administration as evidence of an individual's qualification as a veteran for the purposes of the state guaranteed veterans' home mortgage program. However, a certification or other determination of the Veterans' Administration is not binding upon the Corporation. (Eff. 1/26/83, Reg. 85)

Authority: AS 18.56.050 AS 18.56.090
AS 18.56.088 AS 18.56.098

15 AAC 118.900. DEFINITIONS. In 15 AAC 118.210 – 15 AAC 118.900, unless the context requires otherwise,

(1) the definitions in AS 18.56.210 apply to words used in this chapter;

(2) "act" means AS 18.56;

(3) "adjusted income per family" means total family gross income, less adjustments for

(A) the number of family members in the household;

(B) child support payments for children; and

(C) the second wage earner's income as determined from time to time by the Corporation based on standard reporting data for the State of Alaska;

(4) "appraised value" means the market value of the property securing the mortgage as estimated by an appraiser acceptable to the Corporation;

(5) "common elements" means those things which are maintained by, but not owned by, the owner's association of a condominium project. The common elements typically include, among other things, the land, roofs, floors, lobbies and community space and facilities;

(6) "condominium" means a form of ownership of real property characterized by title created by statute to a unit in a project together with an undivided real estate interest in the common elements which are a part of said project in accordance with state enabling law;

(7) "executive director" means the executive director of the Alaska Housing Finance Corporation;

(8) "FHA" means the Federal Housing Administration or its legal successors;

(9) "FNMA" means the Federal National Mortgage Association or its legal successors;

(10) "FHLMC" means the Federal Home Loan Mortgage Corporation or its legal successors;

(11) "home mortgage" or "residential mortgage" means a mortgage which is secured by real property upon which is located a dwelling unit designed for residential use and where the real estate is owned in fee simple or consists of a leasehold estate;

(12) "leasehold estate" means an estate having a remaining term running or renewable at the option of the lessee, for a period of not less

than 10 years after the maturity of the mortgage loan, or to any earlier date at which the fee simple title will vest in the lessee, which leasehold estate is assignable or transferable if the same is subjected to the lien of the mortgage, and the term of the mortgage loan must not exceed the term of the set ground rent by more than 10 years and the leasehold estate must otherwise be acceptable to the Corporation;

(13) "mortgage" means the mortgage deed, deed of trust or other security instrument, the obligation secured thereby, the title evidence, and all other documents and other papers pertaining to the mortgage loans

(14) "owner-occupant" means a borrower whose principal residence is the dwelling which is the subject of the mortgage loan;

(15) "permitted encumbrances" means liens, encumbrances, reservations and other imperfections of title as shall not materially impair the use or value of the premises or as to which appropriate steps have been taken to secure the interest of the Corporation; and

(16) "planned unit development (PUD)" means a real estate development which consists of separately owned lots with contiguous or noncontiguous areas or facilities usually owned by an owner's association in which the owners of the lots have a stock or membership interest which cannot be severed from the ownership of an individual unit. Title to the real estate under the dwelling units is held by the individual lot owners and not by the owner's association. The owner's association usually has title to and administers the common areas, and levies monthly charges against lot owners for common area expenses. (Eff. 2/17/82, Reg. 82)

Authority: AS 18.56.088

CHAPTER 137.
RECEIPT, CUSTODY, INVESTMENT, AND MANAGEMENT OF STATE FUNDS

Article

ARTICLE 1.
ALASKA PERMANENT FUND CORPORATION

Section

15 AAC 137.010. SCOPE OF 15 AAC 137.010 – 15 AAC 137.200. 15 AAC 137.010 – 15 AAC 137.200 apply to investments of the corporation in federally guaranteed and insured loans and mortgages and conventional residential mortgages and in certificates of deposit. (Eff. 2/5/81, Reg. 77; am 8/5/82, Reg. 83)

Authority: AS 37.13.120

15 AAC 137.020. FEDERALLY GUARANTEED LOANS AND MORTGAGES. Repealed 8/5/82.

15 AAC 137.030. CONVENTIONAL RESIDENTIAL MORTGAGES. Under AS 37.13.120 (g)(16) and (17), the corporation will, in its discretion, purchase adjustable-rate conventional residential mortgages which meet the following requirements:

(1) a mortgage must be for an owner-occupied, one - to four-unit dwelling;

(2) a loan-to-value ratio must be no more than 90 percent for a single-family dwelling up to $150,000, 80 percent for single-family dwellings over $150,000, and 80 percent for a two- to four-unit dwelling; and