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THE NEW YORK TIMES, WEDNESDAY, APRIL 4, 1984

To Die or Not to Die

By Evan R. Collins Jr.

The Governor of Colorado, Richard D. Lamm, had his heart in the right place when he warned that "we really should be very careful in terms of our technological miracles that we don't impose life on people who, in fact, are suffering beyond the ability for us to help."

Speaking at a meeting of the Colorado Health Lawyers Association, Governor Lamm stirred widespread public criticism, apparently based on a misunderstanding of his remarks, when he said that "we've got a duty to die, to get out of the way with our machines and our artificial hearts." Later, Governor Lamm said that he simply was urging that economically sound and sensible allocation of limited medical resources should preclude fruitless treatment of the terminally ill.

An essential principle of life is the fundamental right of self-determination. From time to time, misguided people say that it is the "duty" of a patient to die — a duty to himself or herself, or to the family. Of course, it is abhorrent for anyone to argue that one should die for social, economic or any other reasons. To philosophically advocate death as a public responsibility — a position that might well lead to public imposition of death for political ends — evokes chilling echoes of other times in history, especially Nazi Germany.

It is also abhorrent to impose on a dying patient a horrifying array of respirators, tracheal tubes, feeding tubes through the nose and repeated violent cardio-pulmonary resuscitations — all futile, and in almost all cases contrary to the wishes of the patient and his or her family.

Because of our society's remarkable technological successes, we find ourselves crossing the line from prolonging life to prolonging dying. At what point do we stop?

Dr. Joseph Fletcher, professor emeritus of Christian ethics and pastoral theology at the Episcopal Divinity School, in Cambridge, Mass., (and former president of the Society for the Right to Die), has written: "Ethical questions jump out at us from every laboratory and clinic ... The crucial question is not whether the end justifies the means, but *what justifies the end?*"

The elderly are frightened — legitimately so. They see a lifetime of control over their own lives eroded at the end by a battery of medical decision-makers who are intent on keeping them alive without thought to their dignity or desires.

A physician's training impels him to try to sustain life, and in the present climate that training is reinforced by the real danger of civil, even criminal, lawsuits. To minimize this legal liability, even humane and sensitive physicians, aware that the quality of life that they are perpetuating does not merit heroic measures, are loath to obey their instincts and let nature take its course. The terminally ill elderly are caught in this tragic conflict. How can they protect themselves?

Aware of this problem facing the elderly, 15 states — New York, New Jersey and Connecticut are not among them — and the District of Columbia now have "living will" laws that offer protection against dehumanized dying and confer immunity upon physicians and hospital personnel who comply with a patient's wishes.

To avail themselves of the right to a dignified death, individuals can execute legal declarations that direct their physicians to withhold or withdraw artificial life support when an illness is medically certified as terminal. As an indication of the widespread demand for this protection, thousands of such directives, different in some respects in each state, have been executed. Also, there is a trend toward recognizing an individual's advance appointment of a proxy to make decisions on treatment in the event of incompetency.

Residents of states that have not yet enacted these laws have signed "living wills" by the hundreds of thousands, thereby expressing a morally potent, if not legally binding, wish not to have their lives prolonged artificially.

With artificial measures rejected, what constitutes appropriate treatment for elderly dying patients? What are they entitled to? Ease of pain, certainly, and, insofar as possible, relief from emotional discomfort. But beyond these considerations, it is the assurance that they will be permitted to die with, to quote Dr. Fletcher again, "that quality of humanness, the preservation of which is what the concepts of loving concern and social justice are built upon."

As he wrote: "Good dying must at last find its place in our scheme of things, along with good birthing, good living and good loving. After all, it makes perfectly sound sense to strive for quality straight across the board, as much in our dying as in our living."

Evan R. Collins Jr. is president of the Society for the Right to Die, a national, nonprofit, educational organization that is based in New York City.

Dr. Joseph Fletcher

Dr. Helen B. Taussig

News From SRD Board

Joseph Fletcher, S.T.D., D.D., President Emeritus of SRD, was elected to the National Council of Alpha Omega Alpha, an honorary medical society—one of only eleven non-physicians accorded this honor. Recently he was officially made a full-fledged brave in the Clan of the Turtle of the Mohawk Indians, a distinction of which he is particularly proud.

The new Helen B. Taussig Children's Heart Center—the pediatric section of the regional Heart Center of Maryland at Johns Hopkins University Hospital—was officially dedicated on December 8, 1983. Dr. Taussig, originator of the "blue baby" blood transfer operation, and the person who more than anyone else alerted the U.S. to the dangers of thalidomide in 1962, has been a Director of the Society since 1976.

Sia Arnason, M.S.W., has been elected to the Board. Ms. Arnason is an expert on problems of the aging, and is Social Work Coordinator at the Institute on Law and Rights of Older Adults, Brookdale Center on Aging of Hunter College.

Anthony Reynolds Smith has joined the Board. Mr. Smith, who has occupied high positions in New York's municipal government, is the Assistant Commissioner of the Metropolitan Transportation Authority.

A MESSAGE FROM OUR PRESIDENT

The right-to-die movement is moving forward rapidly. What was not too long ago the dream of a few—the legal recognition of Living Wills—has become a reality in twenty-one jurisdictions. With five new laws enacted in one month this year, and a promising outlook for legislation in other states, 1984 may prove to be another watershed year, much like 1977, which saw seven bills signed into law.

Elsewhere in this Newsletter you can read about the highlights of our program: the Physicians' Conference we sponsored, the nationwide hospital survey which is proving so fruitful, and the deluge of requests for Living Wills that resulted from "Dear Abby" columns and kept our office working almost around the clock.

But quite aside from the highlights, we must continue the day to day work of just "being there." Due in large part to our efforts, individuals' awareness of their rights is growing. The many court cases in states without laws demonstrate this, even as they demonstrate the need for legislation. As right-to-die activities have intensified, so, inevitably, have the demands on our staff.

To help meet these demands, and to expand our direct services, we have retained a staff attorney. She will give advice on executing Living Wills and Durable Powers of Attorney, act as a central legal information source, and work with legislators in drafting bills to insure that they are inclusive and effective.

Because laws have little value unless citizens are aware of them, we have also added to our staff a public information specialist, to reinforce our presence at the leading edge of the patients' rights movement.

Most of all, we need your awareness, your voice, and your support to help us continue to defend the principle of the individual's right of self-determination at the end of life, which is what the Society is all about.

Evan R. Collins Jr.

Evan R. Collins, Jr., new President of the Board of Directors of the Society, took office in December 1983. A vice president of the New York investment banking firm of Kidder, Peabody & Company, Mr. Collins is past president of United Way of Westchester (N.Y.)

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250 West 57 Street
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The Society for the Right to Die makes available legally recognized advance document forms to residents in the states of Alabama, Arkansas, California, Delaware, Georgia, Idaho, Illinois, Kansas, Mississippi, Nevada, New Mexico, North Carolina, Oregon, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming and the District of Columbia. For use in states lacking right-to-die laws, SRD supplies Living Will Declaration forms.

We deeply appreciate your past contribution.
Your continued support will help us make new gains in behalf of your right to die with dignity.
Please be generous.

Enclosed is my contribution in support of the Society's work: ☐ $25 ☐ $50 ☐ $100 **Other $**_____

(Contributions of $10 or more receive a wallet-size Living Will/Annual Membership Card and Society Newsletters. All contributions are tax deductible.)

Please send me:

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_____ 1984 Handbook(s) of Living Will Laws @ $5
_____ Set(s) of Right-to-Die Fact Sheets in binder @ $3
_____ Hospital Survey sample letter
_____ Living Will Document(s) for my state
_____ Reprints of *N.Y. Times* article, "To Die or Not to Die"

Name _____

Address _____

City _____ **State** _____ **Zip** _____

_____ I can no longer be helpful. Please remove my name from your mailing list.

WORLD CONFERENCE MEETS IN NICE

The World Federation of Right-to-Die Societies will hold its Fifth International Conference in Nice, France, September 20–23. An eleven-member delegation from SRD's Board of Directors will join with their colleagues from countries all over the world to share experiences and discuss issues of mutual concern.

Two roundtable panel discussions will be open to the public—one on legal concerns, and one on ethics. Dr. Joseph Fletcher, President Emeritus of the Society, will be a panelist on the latter. The major address will be delivered by Dr. Christiaan Barnard, cardiologist and pioneer in the heart transplant operation, who will speak on "Good Life — Good Death," also the title of his celebrated book.

Society members who are interested in attending can write for more information directly to Mme. Paula Caucanas Pisier, A.D.M.D./Congres International, 103, rue La Fayette, 75010, Paris.

Hospital Survey

(continued from page 1)

morally persuasive as a document of intent which will carry weight, even if not legally binding. They report their frustration at the failure of their legislatures to act, as the following quote from the Ft. Myers Community Hospital in Florida illustrates: "It is unfortunate that the State of Florida does not recognize the popular Living Will as a legal document. . . . You have brought up an issue that is important . . . It will eventually be resolved with guidelines provided by the legislature and reinforced by the courts. Until then it is imperative that we protect ourselves from the potential of civil and/or criminal liability . . ."

The personal nature of the survey is apparently having a far greater impact than would have been achieved by a more institutional approach, and is alerting hospitals in the most direct way to the increasing importance prospective patients attach to their rights.

Thanks to all of you who have written your hospitals and sent us copies of the responses you have received. If you have not already written, we urge you to do so. A sample letter on which you can base your own is available from the Society on request.

A final report on the survey will be provided in the Newsletter early in 1985.

HELP WANTED . . . to build SRD files of right-to-die news stories, editorials and magazine articles. You are our "clipping service," so please continue to send all relevant material to the Society for the Right to Die, 250 West 57 Street, New York, NY 10107. Warm thanks to those of you who have done so.

Uniform Law Promoted

The National Conference of Commissioners on Uniform State Laws, an organization composed of commissioners from each state who seek to promote uniformity in state laws where appropriate, is now considering such a law in the right-to-die field.

The first meeting of the drafting committee was held in Alexandria, Virginia, in January, to analyze laws which had been enacted or were presently pending before state legislatures. Preliminary policy decisions were made on the text of a Uniform Law at a second meeting in Chicago in April. A first draft was circulated for consideration, and a second is now in preparation for presentation to the Commissioners at their annual conference, to be held in Colorado in July.

Before recommending any law for adoption by the states, the National Conference must approve it at two successive annual meetings.

"The fact that 19 states and the District of Columbia have already enacted 'living will' laws points up the significance of the Commission's work," says Sidney D. Rosoff, SRD board chairman, who attended both conferences. "It is important to have a well-drafted Uniform Law adopted throughout the country, since Americans move easily from state to state and illness or accident may occur in any jurisdiction. The existence of a Uniform Law with a Living Will which will be recognized in all states, irrespective of the state in which it was signed, is imperative."

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DRAFT

FOR DISCUSSION ONLY

RIGHTS OF THE TERMINALLY ILL ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

MEETING IN ITS NINETY-THIRD YEAR
KEYSTONE, COLORADO

JULY 27 - AUGUST 3, 1984

RIGHTS OF THE TERMINALLY ILL ACT

With Prefatory Note and Comments

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RIGHTS OF THE TERMINALLY ILL ACT

PREFATORY NOTE

The Right to Decline Life-Sustaining Procedures Act authorizes an adult person to control decisions regarding administration of life-sustaining treatment by executing a declaration instructing his or her physician to withhold or withdraw life-sustaining procedures in the event the person is in a terminal condition and is unable to participate in medical treatment decisions. As the preceding sentence indicates, the scope of the Act is narrow. It does not address treatment of persons who have not executed such a declaration; it does not cover treatment of minors; and it does not address treatment decisions by proxy. Its impact is limited to treatment that is merely life prolonging, and to patients whose terminal condition is irreversible, whose death will soon occur, and who are unable to participate in treatment decisions. Beyond its narrow scope, the Act is not intended to implicate any existing rights and responsibilities of persons to make medical treatment decisions. The Act merely provides one way by which a terminally-ill patient's desires regarding the use of life-sustaining procedures can be legally implemented.

As of October of 1984, twenty states had enacted legislation in this area. These states are Alabama, Arkansas, California, Delaware, Florida, Georgia, Idaho, Illinois, Kansas, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, Oregon, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The District of Columbia also has an act covering this subject. Many other states have bills pending before their lawmaking bodies. The quality and scope of the enacted and proposed legislation varies significantly.

The purposes of the Act are (1) to encourage the effectiveness of a declaration in states other than the state in which it is executed through uniformity of scope and procedure, (2) to avoid the inconsistency in approach and quality which have characterized the early statutes, and (3) to present an Act which is simple, effective, and acceptable to persons desiring to execute a declaration and to physicians and health-care facilities whose conduct will be affected.

The Act's basic structure and substance is similar to that found in most of the existing legislation. Much of the Act's specific language conforms to usage established in existing statutes. In this respect the Act has drawn upon existing legislation in order to avoid further complexity and to permit its effective operation in light of prior enactments. Departures from existing statutes have been made, however, in order to simplify procedures, improve drafting, and clarify language. Selected provisions have been reworked to more adequately express a specific concept (i.e., life-sustaining procedure, terminal condition) or to reflect changes in established procedure (i.e., the qualifications of witnesses). The Act's stylistic and substantive departures from

existing legislation were pursued for the purposes of clarity and simplicity. The Act seeks to avoid the charge that its "procedural requirements are so cumbersome that it is unlikely that any but a small number of highly educated and motivated patients will be able to effectuate their desires." Barber v. Superior Court, ___ Cal. App.3d ___, ___, 195 Cal. Rptr. 484, 489 (Ct. App. 1983) (describing California's "Natural Death Act," the first legislation to be enacted in this area).

The Act is divided into twelve sections. Section 1 provides definitions. Section 2 relates to the making of a valid declaration. Revocation is addressed in Section 3. Sections 4, 5 and 6 cover the physician's determination of terminal condition, the treatment to be accorded a qualified patient, and the availability for transfer by unwilling physicians. Immunities and penalties are provided in Sections 7 and 8 respectively. Miscellaneous matters are addressed in Section 9. Section 10 provides for recognition of declarations lawfully executed and enforceable in other states. Section 11 provides for severability and Section 12 sets the time for the Act's taking effect.

SECTION 1. DEFINITIONS.

As used in this [Act]:

(1) "Physician" [means a person licensed to practice medicine in this State.]

(2) "Attending physician" means the physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.

(3) "Health-care provider" means a person who is licensed, certified or otherwise authorized by the law of this State to administer health care in the ordinary course of business or practice of a profession.

(4) "Declaration" means a document executed in accordance with the requirements of Section 2.

(5) "Qualified patient" means a patient who has executed a declaration in accordance with this [Act] and who has been determined by the attending physician to be in a terminal condition.

(6) "Life-sustaining procedure" means any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the dying process.

(7) "Terminal condition" means an incurable or irreversible condition that, without the administration of life-sustaining procedures, will, in the opinion of the attending physician, result in death within a relatively short time.

COMMENT

The Act defines "life-sustaining procedure" as any medical procedure or intervention that "will serve only to prolong the

RIGHT TO DECLINE LIFE-SUSTAINING PROCEDURES ACT

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COMMENT

The Act defines "life-sustaining procedure" as any medical procedure or intervention that "will serve only to prolong the

dying process." The Act's definitions of "life-sustaining procedure" and "terminal condition" are interdependent and must be read together. This has caused drafting problems in many existing acts, and the proposed Act has been drafted so as to avoid the problems detected in existing legislation.

Most of the "life-sustaining procedure" and "terminal condition" definitions in existing statutes were considered problematical in that they (1) were tautological, defining "terminal condition" with respect to "life-sustaining procedure" and vice versa, and (2) defined terminal condition as requiring "imminent" death "whether or not" or "regardless of" the application of life-sustaining procedures. Strictly speaking, if death is "imminent" even with the full application of life-sustaining procedures, there is little point in having a statute permitting withdrawal of such procedures. The Act's definitions have attempted to avoid these problems.

For an example of the tautological problems, the "life-sustaining procedure" definition found in many statutes inserts the clause "and when, in the judgment of the attending physician, death will occur whether or not such procedure or intervention is utilized," after the phrase "will serve only to prolong the dying process" found in the draft's provision. Because the Act's life-sustaining procedure definition concerns only those procedures or interventions applied to "qualified patients" (i.e., those who have been determined to be in a terminal condition), and because a terminal condition is defined as "incurable or irreversible" with death resulting "in a relatively short time," the requirement that death be "inevitable" has been satisfied by the presence of "qualified patient" in the life-sustaining procedure definition. Therefore, this additional clause was excluded because it was considered merely repetitious and possibly confusing.

The Act defines "life-sustaining procedure" in an all-inclusive manner, dealing with those procedures necessary for comfort care or alleviation of pain separately in section 5(b), where it is provided that such procedures need not be withdrawn or withheld pursuant to a declaration. Most existing statutes incorporate "comfort care" as an exclusion from the definition of life-sustaining procedures. Because most such procedures <u>are</u> life-sustaining, however, the Act avoids definitional confusion by treating them in a separate provision that reflects the Act's policy more clearly, and better reflects the fact that comfort care does not involve a fixed group of procedures applicable in all instances.

Subsection (7) of Section 1 is the "terminal condition" definition. The difficulty of trying to express such a condition in precise, accurate, but not unduly restricting language is obvious. A definition must preserve the physicians' professional discretion in making such determinations and it must reflect the decisions physicians normally make under such circumstances. Consequently, the draft's definition of terminal condition incorporates not only selected language from various state acts, but also suggestions from medical literature in the field.

First, the terminal condition definition requires that the condition be "incurable or irreversible." These adjectives were chosen over the similar phrase, "no possibility of recovery," because of the possibilities of ambiguity in the term "recovery" (i.e., recovery to "normal" or to some other stage). A number of state statutes now use "incurable" and/or "irreversible," and the terms appear to comport with the criteria applied by physicians in terminal care situations.

Subsection (7) also requires that the condition result in the death of the patient within a "relatively short time ... without the administration of life-sustaining procedures." These requirements differ to some degree from the language employed in most of the statutes. First, the decision that death will occur in a relatively short time is to be made without considering the possibilities of extending life with life-sustaining procedures. The alternative is that required by a number of states--that death be imminent whether or not life-sustaining procedures are applied. The President's Commission for the Study of Ethical Problems in Medicine and Biomedical Research has noted that such a definition severly limits the group of terminally-ill patients able to qualify under these acts. It is precisely because life can be prolonged indefinitely by new medical technology that these acts have come into existence. To require a physician to determine that death will be imminent whether or not such procedures are utilized also may be contrary to what physicians actually consider under these circumstances. Though the Act intends to err on the side of prolonging life, it should not be made wholly ineffective as to the actual situation it purports to address. The provisions which require that death be imminent regardless of the application of life-sustaining procedures appear to have that effect. Therefore, such provisions have been excluded in the draft.

The terminal condition definition of subsection (7) requires that death result "in a relatively short time." Rejecting the "imminency" language employed in a number of statutes, this alternative is drawn from a terminal condition definition proposed in a recent article in the New England Journal of Medicine. Though the phrase, "relatively short time," is certainly not devoid of ambiguity, it allows the physician a degree of necessary discretion and avoids the narrowing implications of the word "imminent." This phrase, "relatively short time," also was suggested by medical experts, trained in such determinations, and reflects their best understanding of the factors involved in these decisions. In drafting the terminal condition definition deference to their professional knowledge was deemed especially appropriate.

The "relatively short time" formulation is employed to avoid both the unduly constricting meaning of "imminent" and the artificiality of another alternative--fixed time periods, such as 6 months, 1 year, or the like. The circumstances and inevitable variations in disorder and diagnosis make unrealistic a fixed time period. Physicians may be hesitant to make predictions under a fixed time period standard unless the standard of physician judgment is so loose as to be unenforceable. Under the Act's standard,

considerations such as the strength of the diagnosis, the type of disorder, and the like can be reflected in the judgment that death will result within a relatively short time, as they are now reflected in judgments physicians must and do make.

Finally, the life-sustaining procedure and terminal condition definitions exclude certain types of disorders, such as kidney disease requiring dialysis, and diabetes requiring continued use of insulin. This is accomplished in the requirement that terminal conditions be "irreversible," and that life-sustaining procedures serve "only to prolong the dying process." For purposes of the Act, diabetes treatable with insulin is "reversible," a diabetic person so treatable is not in the "dying process," and insulin is a treatment the benefits of which foreclose it serving "only" to prolong the dying process.

SECTION 2. DECLARATION RELATING TO USE OF LIFE-SUSTAINING PROCEDURES.

(a) Any competent [adult] may execute a declaration at any time directing that life-sustaining procedures be withheld or withdrawn; provided, however, that such declaration is to be given operative effect only if the declarant's condition is determined to be terminal, and the declarant is not able to make treatment decisions. The declaration must be signed by the declarant, or another at the declarant's direction, in the presence of two witnesses. A physician or health-care provider may presume, in the absence of actual notice to the contrary, that the declaration complies with this Act and is valid.

(b) It shall be the responsibility of the declarant to notify his or her physician of the declaration. A physician or other health-care provider who is provided a copy of the declaration shall make it a part of the declarant's medical records.

(c) A declaration may, but need not, be in the following form:

DECLARATION

If I should have an incurable or irreversible condition that will cause my death within a relatively short time, it is my desire that my life not be prolonged by administration of life-sustaining procedures. If my condition is terminal and I am unable to participate in decisions regarding my medical treatment, I direct my attending physician to withhold or withdraw procedures that merely prolong the dying process and are not necessary to my comfort or freedom from pain.

Signed this _____ day of _____, ____.

Signature _____

City, County and State of Residence _____

The declarant is known to me and voluntarily signed this document in my presence.

Witness _____
Address _____

Witness _____
Address _____

COMMENT

Section 2 sets out the minimal requirements regarding the making and execution of a valid declaration. A "sample" declaration form is offered in this section. The form is not mandatory, as some acts require; it "may, but need not, be" followed. The form provided also is not as elaborate as others. The drafters rejected a more detailed declaration for two reasons. First, the form is to serve only as an example of a valid declaration. A more elaborate form may have erroneously implied that a declaration more simply constructed would not be legally sufficient. Second, the sample form's simple structure and specific language attempts to provide notice of exactly what is to be effectuated through these documents to those persons desiring to execute a "living will" and the physicians who are to honor it.

The Act's provisions governing witnesses to a declaration have also been simplified. Section 2 provides only that the declaration be signed by the declarant in the presence of two witnesses. The draft does not require witnesses to meet any specific qualifications and, as such, departs quite significantly from the statutory law established in almost every state. Most states require that the witnesses at least be (1) not related to the declarant in blood or marriage, and (2) not entitled to inherit from the declarant under the state's intestacy laws or by will. Many states also require that the witnesses meet various other requirements.

Section 2 departs from existing statutory approaches for two primary reasons. First, the interest in simplicity mandates as uncomplicated a procedure as possible. It is intended that the Act present a viable alternative for those persons interested in participating in their medical treatment decisions in the event of a terminal condition.

Second, the absence of witness requirements relieves physicians of the inappropriate and perhaps impossible burden of determining whether the legalities of the witness requirements have been met. Many physicians understandably and rightly would be hesitant to make such decisions and, therefore, the effectiveness of the declaration might be jeopardized. Though ensuring protection against abuse in these situations is not to be overlooked, it is available through other less burdensome measures. The attending physicians and other health care professionals will be able, in most circumstances, to discuss the declaration with the patient and family and any suspicion of duress or wrongdoing can be discovered and handled by established hospital procedures.

The draft language reflects the judgment that the burdens of elaborate witness requirements (to both the patients and physicians) outweigh their usefulness. Virginia's recently enacted Natural Death Act defines a witness as a person not related by blood or marriage to the declarant. This approach may present a viable alternative to section 2 of the Act for those states which desire to mandate only minimal witness requirements.

SECTION 3. REVOCATION OF DECLARATION.

(a) A declaration may be revoked at any time and in any manner by which the declarant is able to communicate his or her intent to revoke, without regard to mental or physical condition. A revocation is only effective as to the attending physician or any health-care provider acting under the guidance of that physician upon communication to the physician or health-care provider by the declarant or by another to whom the revocation was communicated.

(b) The attending physician or health-care provider shall make the revocation a part of the declarant's medical record.

COMMENT

Section 3 provides for revocation of a declaration and is modeled after North Carolina's similar provision. Virtually every other statute sets out specific examples of how a declaration can be

revoked — by physical destruction, by a signed, dated writing, or by a verbal expression of revocation. A provision that freely allowed revocation and avoided procedural complications was desired. The simple language of Section 3 appears to meet these qualifications. It should be noted that the revocation is, of course, not effective until communicated to the attending physician or another health-care provider working under a physician's guidance, such as nursing facility or hospice staff. The draft, unlike many statutes, also does not explicitly require that a person relaying the revocation be acting on the declarant's behalf. Such a requirement could impose an unreasonable burden on the attending physician. The communication is assumed to be in good faith, and the physician may rely on it.

In employing a general revocation provision, it was intended to permit revocation by the broadest range of means. Therefore, for example, it is intended that a revocation can be effected in writing, orally, by physical defacement or destruction of a declaration, and by physical sign communicating intention to revoke.

SECTION 4. RECORDING DETERMINATION OF TERMINAL CONDITION AND CONTENTS OF DECLARATION.

When an attending physician who has been notified of the existence and contents of a declaration determines that the declarant is in a terminal condition, the physician must record that determination and the contents of the declaration in the declarant's medical record.

COMMENT

Section 4 of the draft Act requires that an attending physician record the determination that the patient is in a terminal condition in the patient's medical records. Many statutes label this procedure "certification." The draft does not use this term because it was considered an artificial and perhaps misleading attempt to qualify what physicians actually do in such situations. The section provides that an attending physician first must be notified of the declaration's existence. Second, if the attending physician determines that the patient is in a terminal condition, he or she is to make that determination part of the patient's medical records. There is no explicit requirement that the physician tell the patient that he or she is in a terminal condition. That decision is to be left to the physician's professional discretion and, in the majority of circumstances, it is assumed that the patient will be informed. The draft also does not require, as do many statutes, that a physician other than the attending physician concur in the terminal condition determination. It appears to be the established practice

of most physicians to request a second opinion, and the Act is not intended to discourage such a practice. Requiring it, however, may represent unnecessary regulation of normal hospital procedures, and in smaller or rural health facilities, a second qualified physician may not be readily available to confirm the attending physician's determination.

Finally, under the Act a determination of terminal condition must be accompanied by notice to the physician of the contents of the declaration, and the physician must record the contents of the declaration in the medical record so that its specific language or any special provisions are known at later stages of treatment. It is assumed that "contents" of the declaration will be a copy of the declaration itself in most instances, although cases of an emergency character may arise, for example, in which the contents of a declaration can be reliably conveyed, and where obtaining a copy of the declaration prior to making decisions governed by it will be impracticable. In such cases, the substance of the declaration will suffice for recording purposes under Section 4.

SECTION 5. TREATMENT OF QUALIFIED PATIENTS.

(a) A qualified patient has the right to make decisions regarding use of life-sustaining procedures so long as the patient is able to do so. If a qualified patient is not able to make such decisions, the declaration shall govern decisions regarding use of life-sustaining procedures.

(b) This [Act] does not prohibit the application of any medical procedure or intervention, including the provision of nutrition and hydration, considered necessary to provide comfort care or to alleviate pain.

(c) Unless the declaration provides otherwise, the declaration of a qualified patient known to the attending physician to be pregnant shall be given no force or effect as long as it is probable that the fetus could develop to the point of live birth with continued application of life-sustaining procedures.

COMMENT

Section 5(a) recognizes the right of patients who have made a declaration and are determined to be in a terminal condition to make decisions regarding use of life-sustaining procedures. Until unable to do so, such patients have the right to make such decisions independently of the terms of the declaration. In affording patients a "right to make decisions regarding use of life-sustaining procedures," the Act is intended to reflect existing law pertaining to this issue. As section 9(e) indicates, qualifications on a patient's right to force the carrying out of those decisions in a manner contrary to law or accepted standards of medical practice or hospital procedure, for example, are not intended to be overridden.

In Section 5(b) the Act uses the term "comfort care" in defining procedures that may be applied notwithstanding a declaration instructing withdrawal or withholding of life-sustaining procedures. The purpose for permitting continuation of life-sustaining procedures deemed necessary for comfort care or alleviation of pain is to allow the physician to take appropriate steps to insure comfort and freedom from pain, but not rigidly to dictate this judgment by statute. Many existing statutes employ the term "comfort care" in connection with the alleviation of pain, and the draft follows this example. Although the phrase "to alleviate pain" arguably is subsumed within the term comfort care, the additional specificity was considered helpful for both the doctor and layperson.

Section 5(b) also treats nutrition and hydration as life-sustaining procedures which can be continued in order to provide comfort care and alleviation of pain. This was deemed preferable to the approach in a few existing statutes, which treat nutrition and hydration as comfort care in all cases, regardless of circumstances, and exclude comfort care from the life-sustaining procedure definition.

It is debatable whether physicians or other professionals perceive the providing of nourishment through intravenous feeding apparatus or nasogastric tubes as comfort care in all cases or whether such procedures at times merely prolong the dying process. Whether procedures to provide nourishment should be considered life-sustaining treatment or comfort care appears to depend on the factual circumstances of each case and, therefore, such decisions should be left to the physician, exercising reasonable medical judgment, in consultation with the patient's family. A declarant may, however, specifically provide for continuation of these procedures in the declaration.

Section 5(c) addresses the problem of a qualified patient who is pregnant. The states which address this issue require that the declaration be given no force or effect during the pregnancy. Because this requirement inadvertantly may do more harm than good to the fetus, Section 5(b) provides a more suitable, if more complicated, determination. It is possible to hypothesize a situation in which life-sustaining procedures, such as medication,

may prove possibly fatal to a fetus which is at or near the point of viability outside the womb. In such cases, the Act's provision would permit the life-sustaining procedures to be withdrawn or withheld as appropriate in order best to assure survival of the fetus. Also, for example, if the qualified patient is only a few weeks pregnant and the physician, pursuant to reasonable medical judgment, determines that it is not probable that the fetus could develop to a point of viability outside the womb even with application of life-sustaining procedures, such procedures may also be withheld or withdrawn. Thus, the pregnancy provision attempts to honor the terminally-ill patient's right to refuse life-sustaining treatment without jeopardizing in any respect the likelihood of life for the fetus. A declaration may, however, include a provision specifying the precise intention of the declarant, and such language would be controlling notwithstanding Section 5(c).

SECTION 6. TRANSFER OF PATIENTS.

(a) An attending physician who is unwilling to comply with the requirements of Section 4 or who is unwilling to comply with the declaration of a qualified patient in accordance with Section 5 shall take all reasonable steps to effect the transfer of the declarant to another physician.

(b) If the policies of a health-care facility preclude compliance with the declaration of a qualified patient under this [Act], that facility shall take all reasonable steps to effect the transfer of the patient to a facility in which the provisions of the [Act] can be carried out.

COMMENT

Section 6 is designed to address situations in which a physician, for personal or ethical reasons, is unwilling to make and record a determination of terminal condition, or to respect the decisions of the patient regarding withholding or withdrawal of life-sustaining procedures. In such instances, the physician must take all reasonable steps to transfer the patient to another physician willing to carry out the terms of the Act. Subsection (b) imposes a parallel duty on health-care facilities whose policies would foreclose compliance with the Act's provisions and the stated wishes of the declarant.

SECTION 7. IMMUNITIES.

(a) In the absence of actual notice of the revocation of a declaration, the following, while acting in accordance with the requirements of this [Act], are not subject to civil or criminal liability or guilty of unprofessional conduct:

(1) A physician who causes the withholding or withdrawal of life-sustaining procedures from a qualified patient.

(2) A person who participates in the withholding or withdrawal of life-sustaining procedures under the direction or with the authorization of a physician.

(3) The health-care facility in which such withholding or withdrawal occurs.

(b) A physician is not subject to civil or criminal liability for actions under this [Act] which are in accord with reasonable medical standards.

SECTION 8. PENALTIES.

(a) A physician who willfully fails to transfer in accordance with Section 6 shall be guilty of [a class _____ misdemeanor].

(b) A physician who willfully fails to record the determination of terminal condition in accordance with Section 4 shall be guilty of [a class _____ misdemeanor].

(c) Any person who willfully conceals, cancels, defaces, or obliterates the declaration of another without the declarant's consent or who falsifies or forges a revocation of the declaration of another shall be guilty of [a class _____ misdemeanor].

(d) Any person who falsifies or forges the declaration of another, or willfully conceals or withholds personal knowledge of a revocation as provided in Section 3, with the intent to cause a withholding or withdrawal of life-sustaining procedures, shall be guilty of [a class _____ misdemeanor].

COMMENT

Section 8 provides criminal penalties for specific conduct that violates the Act. Subsections (a) and (b) provide that a physician's failure to transfer a patient or record the diagnosis of terminal condition constitutes a misdemeanor. Subsection (c) makes certain willful actions which could result in the unauthorized prolongation of life a misdemeanor. Subsection (d) governs acts which are intended to cause the unauthorized withholding or withdrawal of life-sustaining treatment, thereby advancing death.

The latter provision departs significantly from most existing statutes. Most statutes provide penalties for intentional conduct that actually causes the death of a declarant, and define such conduct as murder or a high degree felony. The draft does not take this approach. Assuming that such conduct will already be covered by a state's criminal statutes, the draft only addresses the situations in which the actor willfully falsifies or forges the declaration of another or conceals or withholds knowledge of revocation with the intent to cause the withholding or withdrawal of life-sustaining procedures. To be criminally sanctioned as a misdemeanor under the draft the circumscribed conduct need not cause the death of a declarant. The approach taken by most states, that of providing a felony penalty for those acts that actually caused death, was considered unnecessary. A specific penalty for the conduct described in Section 8(d), however, was deemed appropriate as existing criminal codes may not adequately address it.

SECTION 9. GENERAL PROVISIONS.

(a) Death resulting from the withholding or withdrawal of life-sustaining procedures pursuant to a declaration and in accordance with this [Act] does not, for any purpose, constitute a suicide or homicide.

(b) The making of a declaration pursuant to Section 3 does not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor is it deemed to modify the terms

of an existing policy of life insurance. No policy of life insurance is legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified patient, notwithstanding any term of the policy to the contrary.

(c) No physician, health-care facility, or other health-care provider, and no health-care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital plan, may require any person to execute a declaration as a condition for being insured for, or receiving, health-care services.

(d) This [Act] creates no presumption concerning the intention of an individual who has not executed a declaration with respect to the use, withholding, or withdrawal of life-sustaining procedures in the event of a terminal condition.

(e) Nothing in this [Act] shall be interpreted to increase or decrease the right of a patient to make decisions regarding use of life-sustaining procedures so long as the patient is able to do so, nor impairs or supercedes any right or responsibility that any person has to effect the withholding or withdrawal of medical care in any lawful manner. In that respect, the provisions of this [Act] are cumulative.

(f) This [Act] does not condone, authorize or approve mercy killing or euthanasia.

SECTION 10. RECOGNITION OF DECLARATIONS EXECUTED IN OTHER STATES.

A declaration executed in another state in compliance with the law of that state shall be effective for purposes of this Act.

SECTION 11. SEVERABILITY.

If any provision of this [Act] or its application to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 12. TIME OF TAKING EFFECT.

This [Act] takes effect on _____.

PROCEEDINGS IN COMMITTEE OF THE WHOLE

RIGHTS OF THE TERMINALLY ILL ACT

of the

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

August 1, 1984
Keystone Lodge
Keystone, Colorado

MARTIN C. JOHNSON REPORTING SERVICE, INC.
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REPRESENTATIVES IN PRINCIPAL CITIES

Proceedings in Committee of the Whole

Rights of the Terminally Ill Act

Wednesday Morning, August 1, 1977

Ms. Acie L. Ward of North Carolina presiding; Mr. Richard C. Hite of Kansas presenting the Act.

CHAIRMAN WARD: Good morning, everyone! Before we begin our debate on the Rights of the Terminally Ill Act, I would like to remind you, as other Chairmen of the Committee of the Whole have, to please bring forward in writing any changes that are simply matters of style to the Chairman of the Committee, and they will consider those.

Also, I'd like to ask each of you, although all of you feel your names are known, for various reasons--maybe even for reasons that we wouldn't like to be known--but when you do approach the mike, please state your name, for identification purposes for the record, and the state which you represent.

And if motions do arise, my memory is very good and I can hear very well, but I want to make sure that the Committee has the exact language of the motion, so I would request that you bring up those motions in writing and submit them to me, so that I will make sure that we are passing exactly what you would like to have passed, as far as your suggestions are concerned to the Committee.

We will proceed now by allowing Commissioner Richard Hite, Chairman of the Committee on the Right of the Terminally Ill Act, to begin with an introductory statement.

MR. HITE: Thank you, Madam Chairman.

First of all, I would like to introduce John Lombard, of Philadelphia, who has been an Advisor from the ABA Section of Real Property and Trust Law. And, Madam Chairman, I believe under the prior blanket motion that Mr. Lombard has the rights of the floor for the purpose of discussing this Act. Mr. Lombard is at the far left of the platform.

Secondly, I'd like to make a brief comment on the title of our Act. You can see from the blue book that it's referred to both as the Rights of the Terminally Ill Act and the Right to Decline Life-Sustaining Procedures Act. The Committee has suggested the latter name, not being entirely satisfied with Rights of the Terminally Ill. The Executive Committee, for the time being, has rejected the suggestion of the Drafting Committee, and I believe there is an agreement that further consideration as to the exact title will be given at the next meeting of the Drafting Committee this fall, and there will be further work on that at some time in the future.

We are advised by President Ring that we have only limited time for the first reading of this Act, and therefore

The Committee believes it might be helpful to make a few remarks about the work of the Committee, the scopy of the Act, the history of the facts and events giving rise to our reasoning, hoping this will help us to sharpen the focus of the discussion and debate.

At the turn of this century, the leading causes of death were influenza, pneumonia, tuberculosis, and something referred to in the statistics as gastritis. It will be noted that all of these leading causes of death were acute diseases which might attack anyone, regardless of the age group.

At the turn of the century, most deaths in this country occurred in the home, rather than in the hospital or any other type of medical institution. There is some question as to what obligation, if any, physicians had to prolong life at the beginning of this century. In a treatise entitled The Art in Hippocratic Corpus, three goals of medicine were defined. The first of those was doing away with the suffering of the patient; the second was lessening the violence of the disease; and the third, and the one that is at work here, refers to "those overmastered by their disease".

This, of course, provides a great contrast to the situation in recent years. At this time approximately 2 million people per year die in this country. The leading causes of

death are heart disease, which accounts for more than one-third of the deaths, malignancies, which account for approximately 23% of the deaths, and cerebrovascular diseases, which account for about 7% of all deaths. In one recent year, chronic, progressive disease accounted for more than 81% of all of the deaths in this country. This is, of course, in great contrast to what was going on at the turn of the century; and since we are considering deaths resulting from chronic and progressive diseases, it's necessary to keep in mind that those situations frequently involve lengthy periods of medical treatment.

Also, these diseases are more inclined to attack the elderly than the young. At this time it's probably well known that a vast majority of all deaths occur either at hospitals or some other medical institution. It's also obvious that tremendous advances in biomedical sciences have created the means to prolong life for substantial periods of time. In addition, the medical profession has a clear commitment to prolong human life.

From this combination of circumstances, many profound questions have arisen about prolonging life when the quality of life is either nonexistent or very, very doubtful. The entire subject has received the attention of many groups in this country--certainly, too numerous to mention--but the groups include

a Precidential Commission which has published a very comprehensive report entitled "Deciding to Forego Life-Sustaining Treatments", which has been a very valuable resource for this Committee.

The circumstances cutlined have alsc prompted the legislatures of twenty-three states in this country to adopt so-called Natural Death Acts or Living Will Statutes. That has occurred since 1975, and in the last two or three years there has been a rush of the state legislatures to adopt such legislation. Six of those acts have been adopted since January 1, 1984.

The Committee believes that there is a great variance in the quality of these acts. We also believe that if there was ever any question about the propriety of legislation in the field with which we are dealing, it has been laid to rest by the fact that twenty-three legislatures have acted in this area.

The Committee also believes that there is a clear and pressing need for a quality act, and for the promotion of uniformity.

In assigning the drafting task to this Committee, the Executive Committee placed certain limitations upon the purpose of the Act. Our exact charge was to draft an act providing the means for competent adults to direct that life-sustaining procedures either not be instituted or, if they have been previous-

ly instituted, be withdrawn if the person involved is in a terminal condition and no longer able to participate in decisions concerning medical treatment.

Stated a little bit differently, our Act does not deal with minors, including newborns, with serious illnesses. It does not deal with persons who have not executed a directive, or declaration. And it does not deal with the use of proxies, or substituted judgments, in making medical decisions--medical treatment decisions.

However, having noted those limitations, I would ask you to keep in mind that, because of the fact that chronic and progressive diseases constitute the leading cause of death, this Act, even with those limitations, would have possible application in a great majority of situations in which there is concern that life will be prolonged after all quality has forever disappeared.

In facing up to our drafting responsibilities, we have been guided by certain basic considerations. The first is that competent adults have the fundamental right to make important decisions concerning their own lives, including the right to decline medical treatment; secondly, that this Act should simply be a means whereby the fundamental right to decline medical treatment is extended to decisions which will be of no ef-

fect until after the person involved is no longer able to make such decisions. Thirdly, we have been guided by the principle that in case of doubt there should be a presumption in favor of continuing life.

We have tried to draft this Act with simple language which is both understandable to lay persons and meaningful to physicians. And we have tried to draft this Act in a convenient way, so that strictly medical decisions and judgments regarding particular cases are referred to the attending physician. And let me state that in the converse: We believe it is impossible to draft an act which speaks to specific factual situations.

As structured, as now before you, this Act basically does three things. First of all, it authorizes competent adults to execute a declaration stating that the person does not want life-sustaining procedures, as defined, utilized when he is in a terminal condition, as defined. Secondly, it provides, or notes. or acknowledges the right of the individual to make his own decisions regarding use of life-sustaining procedures, as long as he is able to do so. And thirdly, it provides that the declaration shall govern the use of life-sustaining procedures when the individual is no longer able to do so.

Before turning to the line-by-line reading, I would like for the Committee of the Whole to know that this Committee

has received valuable inputs from the ABA Section of Real Property, Probate and Trust Law through Mr. Lombard, from the ABA Commission on Legal Problems of the Elderly, the United States Catholic Conference, the American Hospital Association, the American Society of Law and Medicine, the Society for the Right to Die, the Catholic Health Association, and we have given both the American Medical Association and the Joint Commission on Accreditation of Hospitals opportunities to comment about the drafts of this Act.

In addition, I would like to acknowledge the very valuable contribution made by Commissioner Randy Bezanson, who has acted as our unofficial Reporter, and Nancy Belcit, of the University of Iowa Law School, who has given Randy a substantial amount of support.

With that, Madam Chairman, I believe we are ready to turn to a line-by-line reading of the Act.

CHAIRMAN WARD: If there are no comments at this point, we will begin by reading Section 1, Definitions, of the Act.

MR. HITE: Again, to try to sharpen the focus of the issues, in Section 1 the first, fifth, and sixth definitions really are the operative provisions, or provide the operative basis, of this Act. And before I read the entire thing, I

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James O. Smith
Signature of Camera Operator

11/7/89
Date

02-519 (REV 8/78)

SB

142

BILL CONTACT/ACTION

DATE	CONTACT/ACTION
3/15	Bill received in committee
3/20	Fiscal note received - C + Ra

Cook ✓

A M E N D M E N T

Offered in the SENATE

TO: CSSB 142(C&RA)

Page 4, line 15:

Delete "home rule or"

Page 6, line 26:

Delete "home rule or"

Page 7, line 5:

Delete "municipality" and insert "borough"

Page 8, line 27:

Delete "municipality" and insert "borough"

Page 11, line 16:

Delete "home rule or"

Page 29, lines 11 - 16:

After "ment." delete all material and reletter the following subsections accordingly.

Page 29, line 27:

Delete "an unincorporated community or"

Page 30, line 1:

Delete "municipality" and insert "borough"

Page 30, lines 3 and 4:

Delete "and at least one model home rule charter for a city"

Delete "charters" and insert "charter"

Page 30, line 6:

Delete "municipality" and insert "borough"

Page 31, line 18:

Delete "unincorporated community or for an"

Page 31, line 23:

Delete "an unincorporated community or in"

Page 31, lines 24 and 25:

Delete "municipality" and insert "borough"

Page 31, line 28:

Delete "municipality" and insert "borough"

Page 33, line 1:

Delete "municipality" and insert "borough"

Page 33, line 2:

Delete "unincorporated community or"

CITY of WRANGELL, ALASKA

INCORPORATED JUNE 15, 1903

BOX 531, 99929 (907) 874-2381

ADOPTED AUGUST 1972

March 13, 1985

House Community & Regional Affairs Comm.
House Judiciary Committee
House Finance Committee
Pouch V
Juneau, AK 99801

Senate Community & Regional Affairs Comm.
Senate Judiciary Committee
Senate Finance Committee

Dear Sirs:

We have reviewed House Bill No. 72 (Senate Bill No. 142, Title 29 revisions, only insofar as it pertains to home rule municipalites. As a home rule municipality, the Wrangell City Council has the following concerns:

CS (c+24) Sec. 29.10.100 (7) AS 29.10.100--(Charter Amendment) should read (7) AS 29.10.100--(limitation of home rule powers) Charter Amendment is 29.10.080.

CS (c+24) Sec. 29.10.100 (44) AS 29.60.230 (state aid for hospital and health facility construction) is incorrect as there is no AS 29.60.230.

P. 35 L. 14 Sec. 29.20.010 Conflict of Interest (2) provides that the presiding officer shall rule on a request by a member of the governing body to be excused from a vote. Our municipal code provides that the Council will rule on the request. The manner of ruling on the request should be set by the governing body.

P. 43 L. 3 Sec. 29.20.140 Qualifications provides that a city voter is eligible to be a member of the Council and allows a municipality to establish durational residency requirements. A City voter is 18 years of age, our Charter sets an age requirement of 21 years of age. The voters of a home rule municipality should be allowed to establish an age requirement for their elected officials. This is supported by the United States and State of Alaska Constitutions which do establish age requirements for elected officials. The local governing body carries a great deal of responsibility and certainly deserves the maturity that is recognized as necessary for a State office.

P. 69 L. 10 Sec. 29.26.270 Recall Petition (a) provides that the City Clerk shall prepare a recall petition. The sponsors should be responsible for preparation of the petition. The City Clerk should only be responsible for certifying whether content of the petition is sufficient.

P. 72 L. 22 Sec. 29.26.350 Successors prescribes the manner of filling the office of an official that is recalled from a governing body (29.20.180). Home Rule municipal Charters should prescribe the manner of filling vacancies.

CITY OF WRANGELL, ALASKA

House Community & Regional Affairs Comm.
House Judiciary Committee
House Finance Committee
Page Two

Senate Community & Regional Affairs Comm.
Senate Judiciary Committee
Senate Finance Committee

P.7 L.21 Sec. 29.35.120 Past Audit (a) provides that copies of the audit shall be available to the public upon request. A strict reading by the public would require the audit to be available for distribution to the public at no cost. Although we understand this is not the intent, we request the section be amended for clarification to the public, to require the audit to be available for review or at cost.

P.12 L.24 Sec. 29.45.320 Real Property Tax Collection (a) provides for annual foreclosure unless otherwise provided by ordinance. Sec. 29.45.330 (a) (1) provides for annual foreclosure proceedings, but does not include "unless otherwise provided by ordinance." Sec. 29.45.330 (a) (1) should be amended to be consistent with 29.45.320 (a). The number of delinquent accounts in a small municipality may not justify the cost of annual foreclosure.

~~P.13~~ P.13 L.1 Sec. 29.45.460 Disposition and Sale of Foreclosed Property (c) provides that the Clerk shall send a copy of the published notice of hearing of an ordinance by certified mail to the former record owner. Home rule municipalities are not required to publish notice of a hearing of an ordinance. This section should be amended to provide for notice to the former record owner prior to introduction of an ordinance by a home rule municipality.

The City of Wrangell supports revisions to Title 29. We cannot, however, support additional limitations and regulation of home rule powers. Some of our foregoing concerns are merely clerical errors and inconsistencies. Our review and comments are limited to home rule only. Any amendments that may have been made have not yet been received, so our comments are limited to the Bill as introduced.

Very truly yours,

Joyce Rasler

Joyce Rasler
City Manager

JR:fv

cc: Senator Robert Ziegler
Representative Robin Taylor
Representative John Sund
Alaska Municipal League

ARECA CONCERNS ON SENATE BILL 142
submitted to Senate Judiciary Committee
April 11, 1985

1. Page 102. Exemption from municipal taxation.

Problem: Electric and telephone cooperatives are taxed under AS 10.25.540-560 and are exempt from municipal taxes. Our concern is that the enactment of a new Title 29 without an exemption for electric and telephone cooperatives could be interpreted as a change in public policy.

Solution: A letter of intent which clearly states that this does not represent a change of public policy and that electric and telephone cooperatives taxed under AS 10.25 will continue to be exempt from municipal taxes as provided in AS 10.25.540. The letter of intent from the Senate Committee on Community and Regional Affairs appears to be adequate.

2. Page 77 - 78. Franchises and permits.

Problem: The proposed AS 29.35.060 reenacts subsections (a) and (b), but it deletes the existing law now contained in AS 29.48.050(c). The missing language provides that utilities shall have the right to use municipal rights of way under reasonable terms and conditions and that the APUC shall decide what is reasonable when there is a disagreement between a municipality and a utility. Similar language also is found in AS 42.05.251. We are concerned that the enactment of a new Title 29 without this provision could be interpreted as a change in public policy.

Solution: A letter of intent which clearly states that this does not represent a change in public policy and that public utility access to municipal rights of way are governed by AS 42.05.251. The letter of intent from the Senate Committee on Community and Regional Affairs appears to be adequate.

3. Page 78. Utility Regulation.

Problem: The drafting style in this section opens the door for municipal regulation of utilities already regulated by the APUC if the regulation by the municipality is somehow different from the regulation by the APUC.

Solution: Amend p. 78, lines 8-11, to read:

> "or its inhabitants by a utility that is not subject to regulation under AS 42.05 unless that utility is exempted from regulation under AS 42.05.711(a) or (d)-(k)."

4. Pages 74-75. Extraterritorial jurisdiction.

Problem: Existing law in AS 29.48.040 provides that a municipal utility may extend its service outside its municipal boundary into "adjacent areas." This language was written to solve real historical problems. The proposed AS 29.35.020 would give municipal utilities the legal authority to extend their service anywhere in the state. That authority, coupled with the power of emminent domain, could permit municipal imperialism at the expense of existing utilities.

Solution: Reenact the present law by amending AS 29.35.020, page 75, line 3, by deleting "utility services" and on line 15, by adding a new subsection (c) to read:

"(c) A municipality owning or operating utilities may extend service to adjacent areas outside its municipal limits. For that purpose the municipality may acquire, maintain and operate utility facilities together with necessary real property interests in real property outside its limits."

MEMORANDUM

State of Alaska

Community and Regional Affairs

TO: Jeff Smith
Deputy Commissioner

DATE: April 12, 1985

FILE NO: 0109j/JP/sw

THRU: Marty Rutherford
Director

TELEPHONE NO: 465-4707

FROM: Jim Plasman
Local Government Specialist IV

SUBJECT: Requested Senate Bill 142 Amendment

You have requested I prepare an amendment for SB 142 which would essentially delete the House CRA amendment allowing second class cities and unincorporated communties to go directly to home rule status and restore the original language of the Governor's bill.

AMENDMENT

TO: SB 142

Page 29, line 9 through page 33, line 7:

Delete all material and insert the following new sections:

be appealed under the Administrative Procedure Act (AS 44.62).

Sec. 29.06.510. ELECTION. (a) The Local Boundary Commission shall immediately notify the director of elections of its acceptance of a dissolution petition. Within 30 days after notification, the director of elections shall order an election in the municipality to determine whether the voters desire dissolution. The election must be held at least 30 and not more than 90 days after the election order. A person who is a voter of the municipality may vote in the dissolution election.

(b) The director of elections shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15). The state shall pay all election costs.

(c) The director of elections shall certify the election results. If dissolution is approved, the director of elections shall declare that the municipality is dissolved effective on the date of certification.

Sec. 29.06.520. SUCCESSION. The government succeeding to a dissolved municipality succeeds to all its rights, powers, duties, assets, and liabilities.

Sec. 29.06.530. APPLICATION. AS 29.06.450 -- 29.06.530 apply to home rule and general law municipalities.

* Sec. 5. AS 29 is amended by adding a new chapter to read:

CHAPTER 10. HOME RULE MUNICIPALITIES.

ARTICLE 1. CHARTERS.

Sec. 29.10.010. MUNICIPAL CHARTER ADOPTION. A first class municipality or second class borough may adopt a charter for its own government. A home rule municipality may amend its charter or adopt a new one. A charter is framed by a charter commission of seven members chosen by the municipal voters at a regular or special election. A

candidate for the commission shall be a qualified voter of the municipality and a resident of the municipality for three years immediately preceding the election. A charter commission election is called by filing a petition with the borough assembly or the city council, or by resolution of the borough assembly or city council. The petition shall be signed by a number of municipal voters equal to 15 percent of the votes cast in the last regular election of the municipality.

Sec. 29.10.020. NOMINATION. Charter commission candidates are nominated by petitions signed by 50 voters or the number of qualified municipal voters equal to 10 percent of the number of votes cast in the last regular election, whichever is less.

Sec. 29.10.030. ELECTION. At the charter commission election the voters shall consider the question "Shall a charter commission be elected to frame a proposed new charter?" and shall select the members of the commission. If the question is approved, the seven candidates receiving the highest number of votes shall immediately organize as a charter commission.

Sec. 29.10.040. PREPARATION OF CHARTER. The charter commission shall, within one year, prepare a municipal charter. The proposed charter shall be signed by a majority of the charter commissioners and filed in the office of the municipal clerk. Within 15 days, the borough assembly or city council shall have the charter published once in a newspaper of general circulation if distributed within the municipality. The clerk shall post copies of the proposed charter in at least three public places and make copies available at the office of the clerk. The commission shall give published notice of and hold at least one public hearing on the proposed charter before the signing and filing of the charter.

Sec. 29.10.050. INITIATIVE AND REFERENDUM. (a) Municipal

charters shall provide the procedures for the initiative and referendum.

(b) A charter may not require an initiative or referendum petition to have a number of signatures greater than 25 percent of the total votes cast at the last regular municipal election.

(c) A charter may not permit the initiative and referendum to be used for a purpose prohibited by sec. 7, art. XI of the state constitution.

Sec. 29.10.060. CHARTER ELECTION. The charter shall be submitted to the municipal voters at a regular or special election held not less than 30 days nor more than 90 days from the publication of the charter.

Sec. 29.10.070. CHARTER ADOPTION. (a) If a majority of those voting on the question favor the proposed charter, it becomes the organic law of the municipality. Thereafter, the court shall take judicial notice of the charter. The municipality shall file the indicated number of copies of the charter with the

(1) lieutenant governor -- two copies;

(2) Department of Community and Regional Affairs -- two copies;

(3) district recorder -- one copy;

(4) municipal clerk -- one copy.

(b) If a proposed charter is rejected, the charter commission shall prepare another proposed charter to be submitted to the voters at a regular or special election to be held within one year after the date of the first charter election. If the second proposed charter is also rejected, the charter commission shall be dissolved and the question of adoption of a charter shall be treated as if it had never been proposed or approved.

Sec. 29.10.080. CHARTER AMENDMENT. A municipal charter may be amended as provided in the charter or by initiative referendum as provided in AS 29.26.100 -- 29.26.190, except that no amendment shall be effective unless ratified by the voters.

ARTICLE 2. HOME RULE LIMITATIONS.

Sec. 29.10.100. LIMITATION OF HOME RULE POWERS. Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise than as provided. These provisions supersede existing and prohibit future home rule enactments that provide otherwise:

(1) AS 29.05.140 (transition)
(2) AS 29.06.010 (change of municipal name)
(3) AS 29.06.040 -- 29.06.060 (annexation and detachment)
(4) AS 29.06.090 -- 29.06.170 (merger and consolidation)
(5) AS 29.06.190 -- 29.06.420 (unification of municipalities)
(6) AS 29.06.450 -- 29.06.530 (dissolution)
(7) AS 29.10.100 -- (charter amendment)
(8) AS 29.20.010 (conflict of interest)
(9) AS 29.20.020 (meetings public)
(10) AS 29.20.050 (legislative power)
(11) AS 29.20.060 -- 29.20.120 (assembly composition and apportionment)
(12) AS 29.20.140 (qualifications of members of governing bodies)
(13) AS 29.20.150 (term of office)
(14) AS 29.20.220 (executive power)
(15) AS 29.20.630 (prohibitions)
(16) AS 29.20.640 (reports)

MEMORANDUM

State of Alaska

Community and Regional Affairs

TO: Jeff Smith
Deputy Commissioner

DATE: April 12, 1985

FILE NO: 0109j/JP/sw

THRU: Marty Rutherford
Director

TELEPHONE NO: 465-4707

FROM: Jim Plasman
Local Government Specialist IV

SUBJECT: Requested Senate Bill 142 Amendment

You have requested I prepare an amendment for SB 142 which would essentially delete the House CRA amendment allowing second class cities and unincorporated communties to go directly to home rule status and restore the original language of the Governor's bill.

AMENDMENT

TO: SB 142

Page 29, line 9 through page 33, line 7:

Delete all material and insert the following new sections:

be appealed under the Administrative Procedure Act (AS 44.62).

Sec. 29.06.510. ELECTION. (a) The Local Boundary Commission shall immediately notify the director of elections of its acceptance of a dissolution petition. Within 30 days after notification, the director of elections shall order an election in the municipality to determine whether the voters desire dissolution. The election must be held at least 30 and not more than 90 days after the election order. A person who is a voter of the municipality may vote in the dissolution election.

(b) The director of elections shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15). The state shall pay all election costs.

(c) The director of elections shall certify the election results. If dissolution is approved, the director of elections shall declare that the municipality is dissolved effective on the date of certification.

Sec. 29.06.520. SUCCESSION. The government succeeding to a dissolved municipality succeeds to all its rights, powers, duties, assets, and liabilities.

Sec. 29.06.530. APPLICATION. AS 29.06.450 -- 29.06.530 apply to home rule and general law municipalities.

* Sec. 5. AS 29 is amended by adding a new chapter to read:

CHAPTER 10. HOME RULE MUNICIPALITIES.

ARTICLE 1. CHARTERS.

Sec. 29.10.010. MUNICIPAL CHARTER ADOPTION. A first class municipality or second class borough may adopt a charter for its own government. A home rule municipality may amend its charter or adopt a new one. A charter is framed by a charter commission of seven members chosen by the municipal voters at a regular or special election. A

candidate for the commission shall be a qualified voter of the municipality and a resident of the municipality for three years immediately preceding the election. A charter commission election is called by filing a petition with the borough assembly or the city council, or by resolution of the borough assembly or city council. The petition shall be signed by a number of municipal voters equal to 15 percent of the votes cast in the last regular election of the municipality.

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Sec. 29.10.030. ELECTION. At the charter commission election the voters shall consider the question "Shall a charter commission be elected to frame a proposed new charter?" and shall select the members of the commission. If the question is approved, the seven candidates receiving the highest number of votes shall immediately organize as a charter commission.

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(9) AS 29.20.020 (meetings public)

(10) AS 29.20.050 (legislative power)

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(12) AS 29.20.140 (qualifications of members of governing bodies)

(13) AS 29.20.150 (term of office)

(14) AS 29.20.220 (executive power)

(15) AS 29.20.630 (prohibitions)

(16) AS 29.20.640 (reports)

M E M O R A N D U M

April 1, 1985

TO: Senator Pat Rodey, Chairman
Judiciary Committee

FROM: Senator Frank R. Ferguson FRF

SUBJECT: CSSB 142 (C&RA)

I would like to raise a strong objection to the language contained in this bill.

Under current law a second class city must become a first class city before having the ability to consider home rule status. The new language contained in this bill would allow a second class city or an unincorporated community, containing 400 or more permanent residents, to file for home rule status. This would allow these communities to by pass the other mandatory powers prescribed to first class cities.

Therefore, this new language is illogical. The whole theory of various classes of municipalities is that with greater local autonomy comes greater local responsibility. This new language circumvents this prescribed theory. My particular concern with this new language is the damage it could cause the existing REAA school system. Any second class city or unincorporated community could assume educational powers which would fragment our existing system and significantly drive up the cost of providing education within the state, and considering the most recent revenue projections, this does not look fiscally sound.

I have attached an amendment to this bill whould I believe would take care of the problems I mentioned above. Thank you for your consideration of this amendment.

Cook ✓

A M E N D M E N T

#2

Offered in the SENATE BY FERGUSON

To: CSSB 142(C&RA)

Page 4, line 15:

Delete "home rule or"

Page 5, after line 2 insert the following new subsection:

"(c) A community that meets the standards under (a)(2)-(5), exceeds 35 square miles in area, and has at least 3,500 permanent residents may incorporate as a home rule city."

Page 29, line 12:

After "if" insert "it exceeds 35 square miles in area and"

Page 29, line 13:

Delete "400" and insert "3,500"

Page 29, line 15:

Delete "with" and insert "that exceeds 35 square miles in area and has"

Delete "400" and insert "3,500"

Alaska MUNICIPAL League

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

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

TO: Senator Patrick Rodey, Chair
Members of the Senate Judiciary Committee

FROM: Scott A. Burgess
Executive Director

DATE: April 10, 1985

SUBJECT: Support of SB 142 - Title 29 Revisions

On behalf of the Alaska Municipal League, I urge the Committee to pass SB 142 quickly and without controversial amendments. While the League supports SB 142 as originally introduced, it will accept CSSB 142 (C&RA). The League will work for the passage of those powers limited by the amendments contained in the CS (C&RA) which it feels strongly about under separate legislation. If additional amendments are brought before the Judiciary Committee, we urge that those amendments also be addressed by separate legislation. The bill before you, SB 142, as introduced by the Governor, represents the result of more than five years of work, discussion, and hearings; therefore, any substantive amendments should be considered only after adequate public scrutiny and debate.

The Alaska Municipal League directly represents 100 direct member municipalities. The Board of Directors of the League has again identified the passage of the Title 29 revisions contained in SB 142 as one of its highest priorities for the First Session of the 14th Alaska State Legislature. The League has also received individual letters and resolutions of support for the legislation from 10 boroughs or unified municipalities and 21 cities. Most of these letters and resolutions are copies of those sent directly to individual legislators or committees. In addition, the passage of the Title 29 revisions, without controversial amendments, has been supported by the Alaska Conference of Mayors, the North and Northwest Mayors Conference, the Yukon-Kuskokwim Delta Mayors Conference and the Alaska Association of Municipal Clerks.

Again, the League urges the quick action by the Committee to approve CSSB 142 (C&RA) without additional amendment.

Thank you.

DEPARTMENT OF COMMUNITY & REGIONAL AFFAIRS

PREPARED TESTIMONY ON SB 142

"AN ACT RELATING TO MUNICIPAL GOVERNMENT; AN PROVIDING FOR AN EFFECTIVE DATE."

THANK YOU CHAIRMAN AND MEMBERS OF THE COMMITTEE. IT IS A GREAT PLEASURE TO COME BEFORE YOU THIS AFTERNOON TO SPEAK ON BEHALF OF THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS IN SUPPORT OF SB 142, "AN ACT RELATING TO MUNICIPAL GOVERNMENT" AND, IN THE OPINION OF MOST MUNICIPALITIES AND PERSONS FAMILIAR WITH THIS BILL, AN ACT RELATING TO GOOD GOVERNMENT, MORE RESPONSIVE GOVERNMENT FOR ALL ALASKANS THAT RESIDE WITHIN ONE OF ITS 157 MUNICIPALITIES.

THIS BILL HAS A LONG HISTORY DATING BACK TO SENATE CONCURRENT RESOLUTION NUMBER 66 WHICH WAS PASSED BY THE ELEVENTH LEGISLATURE IN 1980. THIS RESOLUTION REQUESTED THAT A BILL OF THIS TYPE TO COMPREHENSIVELY REORGANIZE, CLARIFY, AND REVISE THE EXISTING BODY OF LAW GOVERNING MUNICIPAL GOVERNMENT BE DRAFTED AND INTRODUCED TO OVERHAUL THE PATCHWORK, OFTEN INCOMPREHENSIBLE STATUTE THAT EXISTS NOW AS TITLE 29.

AFTER THE LEGISLATURE ADJOURNED IN 1980, THIS DEPARTMENT, THE LEGAL SERVICES DIVISION OF THE LEGISLATIVE AFFAIRS AGENCY, THE DEPARTMENT OF LAW, AND THE MUNICIPALITES OF THE STATE

REPRESENTED BY THE ALASKA MUNICIPAL LEAGUE BEGAN AN UNPRECEDENTED COOPERATIVE EFFORT TO HAMMER OUT A NEW, IMPROVED TITLE 29 WHICH WOULD BE TRUE TO CONSTITUTIONAL DIRECTION OF PROVIDING FOR "MAXIMUM LOCAL SELF-GOVERNMENT WITH A MIMIMUM OF LOCAL GOVERNMENT UNITS". THIS ENOURMOUS UNDERTAKING WAS ACCOMPLISHED THROUGH A POLICY GROUP REPRESENTING CITIES AND BOROUGHS OF VARIOUS SIZES ACROSS THE STATE THAT IDENTIFIED PROBLEMS WITH THE EXISTING STATUTE AND SOUGHT MUTUALLY ACCEPTABLE SOLUTIONS, AND A TECHNICAL GROUP COMPOSED OF MUNICIPAL ATTORNEYS AND OTHER TECHNICALLY ORIENTED MUNICIPAL OFFICIALS TO FASHION THE NEW STATUTE IN CLEAR, EASY TO UNDERSTAND LANGUAGE AND ORGANIZE THE STATUTE IN AN EASIER TO USE FORMAT. THE CONSENSUS OF EVERYONE INVOLVED, AND OTHERS FAMILIAR WITH THIS PORTION OF THE ALASKA STATUTES, IS THAT THESE TWO GROUPS DID AN ADMIRABLE JOB OF ACCOMPLISHING WHAT THEY HAD SET OUT TO DO. THE OPEN, REPRESENTATIVE AND BUSINESS-LIKE APPROACH TAKEN TO REDRAFT THIS STATUTE PRODUCED A BILL THAT HAD WIDE-SPREAD SUPPORT AND FEW, IF ANY, DETRACTORS.

UNFORTUNATELY, PASSAGE OF THE BILL DID NOT GO AS SMOOTHLY AS ITS PREPARATION. DURING THE TWELFTH LEGISLATURE THE BILL WAS PASSED BY THE LEGISLATURE, BUT SEVERAL CONTROVERSIAL AMENDMENTS ATTACHED ON THE FLOOR OF THE HOUSE PROMPTED A VETO BY GOVERNOR HAMMOND. DURING THE LAST LEGISLATURE THE BILL WAS INTRODUCED AS A HIGH PRIORITY OF GOVERNOR SHEFFIELD'S. FOLLOWING EXTENSIVE, DETAILED HEARINGS, THE BILL PASSED THE HOUSE, BUT FAILED TO RECEIVE SENATE APPROVAL.

GOVERNOR SHEFFIELD HAS AGAIN MADE THIS BILL A HIGH PRIORITY FOR THE FOURTEENTH LEGISLATURE. THE ADMINISTRATION WOULD LIKE TO SEE IT PASSED WITHOUT MAJOR AMENDMENTS WHICH WOULD UNDO THE HARD WORK OF THOSE INVOLVED IN FASHIONING THIS LENGTHY BILL. ALL PARTIES INTERESTED IN THE PASSAGE OF THIS BILL HAVE TAKEN AN IDENTICAL POSITION OF WISHING TO KEEP WHAT IS LARGELY A NONCONTROVERSIAL HOUSEKEEPING AND REORGANIZATION BILL FROM BEING SIDETRACKED OR BURDENED WITH CONTROVERSIAL AMENDMENTS THAT DO NOT HAVE THE WIDE-SPEAD, NONPARTISAN SUPPORT THAT THIS BILL, IN ITS PRESENT FORM, ENJOYS.

AS I MENTIONED EARLIER, THE MAIN THRUST OF THIS BILL IS TO ORGANIZE THE STATUTE IN A CLEARER, MORE COMPREHENSIBLE MANNER AND TO USE TERMINOLOGY CONSISTENTLY THROUGHOUT THE STATUTE. THERE ARE A HANDFUL OF CHANGES THE DEPARTMENT WOULD CLASSIFY AS SUBSTANITIVE AND SOME OF THESE ARE RELATIVELY MINOR. GENERALLY, THESE CHANGES FALL INTO THREE CATEGORIES: 1) CHANGES THAT PROVIDE MUNICIPALITIES ADDITIONAL FLEXIBILITY BY EXPANDING LOCAL GOVERNMENT POWERS, 2) AMENDMENTS TO THE ORGANIZATIONAL GRANT PROGRAM TO SUBSTANTIALLY INCREASE THE INCENTIVE FOR INCORPORATION AS A CITY OR BOROUGH BY REALISTICALLY DEFRAYING STARTUP COSTS FOR A NEW MUNICIPALITY, AND 3) AMENDMENTS WHICH MAKE IT EASIER FOR THIS DEPARTMENT TO ADMINISTER THE STATE REVENUE SHARING PROGRAM CONTAINED IN TITLE 29.

ADDITIONAL FLEXIBILITY IS PROVIDED TO LOCAL GOVERNMENTS BY:

1) ADDING SOLID AND SEPTIC WASTE DISPOSAL, UTILITY SERVICES, TRANSPORTATION FACILITIES, AND MARINE FACILITIES TO OTHER SERVICES THAT MAY BE PROVIDED ON AN EXTRATERRITORIAL BASIS, THAT IS OUTSIDE OF MUNICIPAL BOUNDARIES. THE MUNICIPALITIES ARE ALSO CLEARLY GIVEN THE POWER TO REGULATE THESE SERVICES TO THE EXTENT THAT THE JURISDICTION IN WHICH THEY ARE LOCATED DOES NOT DO SO.

2) SECOND CLASS CITIES ARE GIVEN THE POWER TO EXERCISE EMINENT DOMAIN AND DECLARATION OF TAKING WITHOUT FIRST RECEIVING C&RA APPROVAL, AS IS NOW REQUIRED.

3) MUNICIPAL LAND DISPOSAL IS SIMPLIFIED FROM THE PRESENT DETAILED STATE REQUIREMENTS BY REQUIRING ONLY THAT THE GOVERNING BODY OF THE MUNICIPALITY ESTABLISH A FORMAL PROCEDURE BY ORDINANCE FOR THE DISPOSAL OF MUNICIPAL LAND.

4) IN LIEU OF A LIST OF SERVICES A GENERAL LAW MUNICIPALITY MAY NOW PROVIDE, THE REWRITE ALLOWS ALL MUNICIPALITIES TO PROVIDE THOSE SERIVES NECESSARY AND DESIRED AND NOT SPECIFICALLY EXCLUDED BY LAW.

ORGANIZATIONAL (OR SOMETIMES CALLED TRANSITIONAL) GRANTS ARE BROUGHT UP TO REALISTIC LEVELS WHICH MAY PROVIDE GREATER INCENTIVES FOR COMMUNITIES OR REGIONS OF THE STATE TO INCORPORATE. PRESENTLY A SECOND CLASS CITY OR A CITY INCORPORATING WITHIN A BOROUGH RECIEVES ONLY $10 FOR EACH VOTE CAST AT THE INCORPORATION ELECTION AS AN ORGANIZATIONAL GRANT. DEPENDING ON THE SIZE OF THE COMMUNITY THIS MIGHT PRODUCE A GRANT LARGE ENOUGH TO PURCHASE A SET OF STATUTES AND REGULATIONS FOR THE NEW CITY. BOROUGHS AND FIRST CLASS CITIES IN THE UNORGANIZED BOROUGH (WHICH BY LAW PROVIDE EDUCATION POWERS) RECEIVE $25,000 UPON INCORPORATION. THESE GRANTS DO NOT, IN THE OPINION OF DRAFTERS OF THIS BILL, PROVIDE ADEQUATE FUNDING TO COMPENSATE FOR THE ADDITIONAL RESPONSIBILITIES REQUIRED BY TITLE 29. SB 142 INCREASES ORGANIZATIONAL GRANTS TO $75,000 FOR CITIES. THIS GRANT IS PAID OUT OVER TWO YEARS WITH $50,000 GOING OUT DURING THE FIRST YEAR OF INCORPORATION AND $25,000 PAID OUT FOR THE CITY'S SECOND YEAR. NEWLY FORMED BOROUGHS WILL RECEIVE $600,000 OVER THREE YEARS: $300,000 THE FIRST YEAR, $200,000 THE SECOND YEAR, AND $100,000 THE THIRD YEAR. THE FISCAL NOTE FOR THIS BILL REFLECTS THIS INCREASE IN THE ORGANIZATIONAL GRANTS AND ASSUMES TWO CITIES INCORPORATING IN FY 86, TWO CITIES AND ONE BOROUGH INCORPORATING IN FY 87, AND TWO MORE CITIES INCORPORATING IN FY 88.

FINALLY, LANGUAGE DEALING WITH NATIVE VILLAGE GOVERNMENTS THAT THE DEPARTMENT OF LAW CITES AS UNCONSTITUTIONAL IS REPLACED WITH ACCEPTABLE LANGUAGE TO CLARIFY HOW REVENUE SHARING GOES TO UNINCORPORATED COMMUNITIES. AN AMENDMENT TO THE BILL WILL ALSO BE OFFERED TO CLARIFY THE HEALTH FACILITY PORTION OF THE STATE REVENUE SHARING PROGRAM.

THESE ARE A SUMMARY OF THE ESSENTIAL CHANGES THAT HAVE BEEN PROPOSED. I BELIEVE THIS LEGISLATION HAS RECEIVED A GREAT DEAL OF SCRUTINY AND PUBLIC REVIEW OVER THE LAST FOUR YEARS IT HAS BEEN BEFORE THE LEGISLATURE. VETERAN LEGISLATORS ARE VERY FAMILIAR WITH THE PROVISIONS OF SB 142 AS THEY ARE NEARLY IDENTICAL TO PREVIOUS VERSIONS OF THE BILL. THERE ARE FEW BILLS BEFORE THE FOURTEENTH LEGISLATURE WHICH ENJOY SUCH WIDESPREAD SUPPORT FROM MUNICIPAL OFFICIALS AROUND THE STATE AND STATE OFFICIALS WITHIN THE ADMINISTRATION. IT IS A FORMIDABLE BILL, BUT THE DEPARTMENT BELIEVES THAT IT SHOULD BE EXPEDITIOUSLY ADDRESSED AND FAVORABLY PASSED OUT OF THIS COMMITTEE AT THE EARLIEST POSSIBLE DATE.

THANK YOU FOR YOUR TIME AND ATTENTION. I WILL BE HAPPY TO RESPOND TO ANY QUESTIONS YOU MIGHT HAVE AT THIS TIME.

BILL SHEFFIELD
GOVERNOR

sb 142

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 998

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill revising the municipal code (AS 29).

An identical bill, HB 72, was introduced in the House on January 16, 1985. At the request of the Alaska Municipal League, I am introducing this bill in the Senate today so that both houses of the Legislature can work on it concurrently.

The bill was modeled on the committee substitute prepared last session by the House Finance Committee as CSHB 172(Fin). There is one significant difference between former CSHB 172(Fin) and this bill with regard to home rule municipalities. Rather than allowing second class cities to move to home rule status in a single step, as sec. 5 of HB 172 and CSHB 172(Fin) had provided, this bill retains the requirement that second class cities become first class cities before voting for home rule, as AS 29.13.010 -- 29.13.080 currently provide.

This bill makes many uncontroversial improvements to our municipal code and I urge its prompt consideration and passage.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 142

Title: An Act relating to Municipal Government

Sponsor: Rules/Governor

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Community & Regional Affairs

Program Category Affected: Community Development

BRU, Program or Subprogram(s) Affected:

BRU: Community Assistance Grants

Component: Organizational Grants

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS		100.0	450.0	350.0		
800 MISCELLANEOUS						
TOTAL OPERATING		100.0	450.0	350.0		
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		100.0	450.0	350.0		
FEDERAL FUNDS						
OTHER						
TOTAL		100.0	450.0	350.0		

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

(See Attached Page)

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

Division: Municipal & Regional Assistance Date: 1-10-85

Approved by Commissioner: [signature] Date: 1-10-85

Agency: Community & Regional Affairs

Distribution (by Agency preparing fiscal note):

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

7/1/84

STATE OF ALASKA 1985 - 14th LEGISLATURE, 1ST SESSION
FISCAL NOTE

Bill/Resolution No.:_____

Title: An Act relating to municipal government

_____

ANALYSIS:

Assumptions: Incorporation under Sec. 29.05.180--.190 of the proposed legislation provides for increased transitional assistance to newly incorporated cities and boroughs. For purposes of this fiscal note it is assumed that incorporations will occur as follows:

FY 86: 2 cities incorporate
FY 87: 2 cities and one borough incorporate
FY 88: 2 cities incorporate

Program Summary: The only portion of this 206 page bill which will create fiscal impact is Sec. 29.05.180--29.05.190 which provides additional transitional assistance through increased organizational grants. These increased organizational grants more realistically provide the level of assistance required to establish new cities and boroughs. The Department is also required to provide additional assistance to newly formed cities and boroughs in setting up a sales tax collection system and tax rolls for property taxation. It is difficult to gauge whether this type of assistance will in fact be requested. If it is requested, additional work will be required of the State Assessor and technical assistance sections of the Division of Municipal and Regional Assistance. Given this uncertainty, possible costs for this type of technical assistance are not reflected in the fiscal note.

1. Positions: No new positions
2. Other Expenditures: N/A
3. Funding: General funds
4. Section Cost Analysis: All costs are contained in Section 3, Article 3 of this bill.

Computations: The costs for FY 86-FY 88 are computed as follows based on the assumptions previously stated:

Grants in FY 86.....100.0
(2 cities incorporate @ $50,000 per -- first year grant)
Grants in FY 87.....450.0
(2 cities @ $50,000 per -- first year grant)
(1 borough @ $300,000 per -- first year grant)
(2 cities @ $25,000 per -- second year grant)
Grants in FY 88.....350.0
(2 cities @ $50,000 per -- first year grant)
(1 borough @ $200,000 -- second year grant)
(2 cities @ $25,000 -- second year grant)

Economic Impact: Other than providing newly incorporated municipalities with greater financial incentives to incorporate and a more realistic level of transitional assistance, the economic impact on the state and local governments will be limited.

Impact on Local Governments: This bill is strongly supported by the Alaska Municipal League and most municipalities of the State. Impacts will generally be positive, particularly for newly incorporated municipalities.

Alaska State Legislature

Senate

Committee on Community and Regional Affairs

Official Business

Senator Edna DeVries, Chairman
Members
Senator Ferguson, Vice Chairman
Senator Coghill
Senator Sturgulewski
Senator V Fischer

Pouch V
Juneau, Alaska 99811

March 14, 1985

Letter of Intent to Accompany Committee Substitute for Senate Bill 142

It is not the intent of the Legislature through the passage of CSSB 142 to change the taxing provisions for electric and telephone cooperatives as set forth by AS 10.25-540-560; nor is it the intent of the Legislature to change present statute provisions covering public utility access to municipal rights of way as set forth by AS 42.05.251.

SENATE COMMITTEE ON COMMUNITY AND REGIONAL AFFAIRS

Edna DeVries

Senator Edna DeVries, Chairman

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM February 21, 1985

SUBJECT: Municipal Code Revision (SB 142)

TO: Senator Edna DeVries
Chairman, Community and Regional Affairs

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

You have asked me whether the versions of the municipal code revision bill, SB 142 and HB 72, are identical. According to the Governor's transmittal letter, SB 142 is identical to the house bill that was introduced first. (Senate Journal, February 8, 1985, page 250) I have compared both bills and found no difference between them.

If I may be of further assistance, please contact me.

TBC:csh
c3/015

BILL SHEFFIELD, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

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

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

January 25, 1985

The Honorable Peter Goll, Chairman
House Community and Regional Affairs Committee
Alaska State House of Representatives
Pouch V
Juneau, AK 99811

RE: BRIEF HISTORY OF TITLE 29 REWRITE (HB 72)

Dear Representative Goll:

To place HB 72 into perspective the Department has prepared a brief history of the issue of the Title 29 revision bill.

CS for Senate concurrent Resolution No. 66 offered during the Eleventh Legislature noted that the municipal code was in need of comprehensive revision and appointed the Alaska Legislative Council to prepare a revision of Title 29 of the Alaska Statutes. This involved having the legal services division of the Legislative Affairs Agency work with a policy advisory group to draft a total revision of the Municipal Code. The policy advisory group in turn appointed a technical advisory group consisting of municipal attorneys, clerks, and other technically oriented staff.

These two groups worked diligently during the latter half of 1980 to hammer out an acceptable comprehensive revision of Title 29. For the most part, the new bill was drafted to insure greater uniformity of terminology, eliminate inconsistencies in the present statute, and, in general, reorder the statute to a more comprehensible format.

A few policy revisions were introduced, but they were not the main focus of the bill. In short, the general intent of the new Title 29 was to create a more understandable, easier to use document which clearly enunciated State policy regarding local governments. The document tended, as a whole, to give local governments greater flexibility and freedom to address local concerns.

The new initiative was introduced as SB 180 during the Twelfth Legislature which convened in January 1981. The legislation was approved by this Legislature, but not before some controversial amendments regarding population, forest land taxation, and public utilities were attached on the floor of the House. These amendments resulted in a veto of the bill by then Governor Hammond. The attachment of these controversial amendments also prompted an unwritten policy among those interested in passage of this bill to keep future versions of the legislation free of controversial amendments which might stop or delay its passage.

The Title 29 bill was reintroduced in Thirteenth Legislature in generally the same form as the pre-amended SB 180. The bill that was introduced in 1982 by Governor Sheffield was numbered HB 172. The bill received extensive review by the House Community and Regional Affairs Committee and its companion in the Senate (SB 1) also received some attention by the Senate Community and Regional Affairs committee. HB 172 passed the House, but languished in the Senate Judiciary Committee until adjournment last year.

This brings us to the third legislature to address this comprehensive bill. Governor Sheffield has again identified a new Title 29 as a priority and has introduced it as HB 72. We hope to work with your committee and all supporters of a revised municipal code to assure speedy passage this year.

I hope this background information proves useful to you deliberations.

Sincerely,

Emil Notti
Commissioner

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM February 8, 1985

SUBJECT: Comparison of HB 72 and last session's CSHB 172(Fin) revision of the municipal code

TO: Representative Peter Goll

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

You have asked me to compare HB 72 introduced this session with CSHB 172(Fin) from the thirteenth legislative session. According to the Governor's transmittal letter, this is the version of the municipal code revision bill upon which HB 72 is based.

The most significant difference between the two bills is in chapter 10 dealing with home rule municipalities. Under HB 72, as in existing law, only a first class borough, a second class borough, or a first class city may adopt a home rule charter. This provision had been liberalized significantly in CSHB 172(Fin). It allowed a third class borough to adopt a home rule charter as well as a second class city with a population of at least 600. In addition, it permitted an unincorporated area to adopt a charter and incorporate as a home rule city or borough without organizing into a general law municipality first. The difference between HB 72 and CSHB 172(Fin) is accomplished through changes made in each section of chapter 10, with the language in HB 10 generally mirroring existing law. However, the list of requirements for an incorporation petition had been expanded in CSHB 172(Fin) to include the requirement that a home rule charter be provided in cases involving direct home rule incorporation. Since that possibility for incorporation has been deleted in HB 72, section 29.05.060(13) should also be deleted from the bill, but appears to have been inadvertently carried over from CSHB 172(Fin).

Because of the extensive changes made in chapter 10, the sections in that chapter were renumbered. Section 29.10.080

dealing with charter amendment was originally section 29.10.100. In HB 72, section 29.10.100 (as renumbered) refers to the section dealing with charter amendment in paragraph (7) as it was originally numbered. This should be corrected to reflect the new numbering in HB 72.

Section 29.40.200 has been altered in the new bill. The provision prohibiting the platting authority from disapproving a subdivision of state land on the basis of requirements for capital improvements has been deleted. Since the section no longer refers to "capital improvements" the definition of that term in subsection (e) should have been deleted, but was not. Subsection (d) from CSHB 172(Fin) has also been deleted. It provided:

> Notwithstanding any other provision of law, the provisions of this section apply to all disposals of land under AS 38.05 or AS 38.08.

Section 29.60.120(3) was changed by inserting after "health facility" at the end of the paragraph the phrase "whether licensed or unlicensed". This section deals with aid to health facilities and hospitals. Under the definition of "health facility" along with certain other restrictions the term can include only licensed facilities when the license is required by the state. Presumably, the term also includes an unlicensed facility if the facility can be deemed to be a "health" facility and if the state does not require that it be licensed. HB 72 does not change the definition of "health facility", so it is unclear whether the change in paragraph (3) is intended to allow an entitlement to a facility that is not license even though the license is, in fact, required by the state. If so, it appears to contradict the definition. This section, as changed by HB 72 needs to be clarified.

Chapter 65 dealing with general grant land entitlements was changed in HB 72 to reflect amendments under chapter 152, SLA 1984. However, not all the amendments made last year were picked up in HB 72. For example, changes in references from the "commissioner" to the director of the division of lands were not incorporated into HB 72. This chapter should be redrafted to include all changes made in 1984.

HB 72 contains some changes to the technical amendments at the end of the bill necessary to reflect legislation passed in 1984. The change to AS 38.05.321(c) contains a minor

error that needs correcting and three sections altered in 1984 need to be added to the revision bill: AS 09.45.845, 19.30.260, and 19.30.280. In addition, AS 28.35.260(a)(10) was renumbered by the revisor in 1984 and needs to be corrected in the repealer section of HB 72. Sections 29.05.180 - 29.05.200 dealing with organization grants contained dates that should be revised. Since HB 72 does not take effect until January 1, 1986 and these provisions are of a fiscal nature, it seems that the dates should be July 1, 1986.

Lastly, as I just mentioned, HB 72 makes the revision effective January 1, 1986. CSHB 172(Fin) had an effective date tied to the fiscal year. Since the provisions dealing with taxation needed to correspond to the calendar year, certain sections of that bill had a January 1 effective date. HB 72 avoids the complexities caused by having two effective dates. However, this may create some slight administrative difficulty with the revenue sharing provisions which contain some changes that would then be in effect for only half a fiscal year.

If I can be of further assistance, please let me know.

TBC:ojb
J11/068

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date: 3/15/85 Rec'd 3/18/85 SC&RA

REQUEST

Bill/Resolution No.: CSSB 142 (C&RA)
Title: An Act Relating to Municipal Government
Sponsor: Rules/Governor
Requestor: Senate C&RA Committee
Date of Request:

FISCAL DETAIL

Agency Affected: Community & Regional Affairs
Program Category Affected: Community Development
BRU, Program or Subprogram(s) Affected:
BRU: Community Assistance Grants
Component: Organizational Grants

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS		-0-	400.0	350.0		
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	400.0	350.0		
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		-0-	400.0	350.0		
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	400.0	350.0		

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

SEE ATTACHED ANALYSIS

Prepared By: Doug Griffin, Deputy Director Phone: 465-4750
Division: Municipal & Regional Assistance Date: 3/15/85

Approved by Commissioner: Date: 3/15/85
Agency: Community & Regional Affairs

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

7/1/84

AN ACT RELATING TO MUNICIPAL GOVERNMENT

ANALYSIS: This bill commits the State to paying increased levels of transitional assistance to newly incorporated cities and boroughs. However, given the increasingly complex requirements for incorporation, the fact that the bill does not become effective until January 1, 1986 (half way through FY 86), and the ability to request supplemental funding to pay transitional grants after the fact on a reimbursement basis, assumptions have been changed to produce a zero fiscal effect for FY 86. This will prevent money from being tied up to address incorporations which may not occur.

The Legislature does need to acknowledge that the bill does carry possible increased financial obligations, but it is impossible to predict when these added costs will be borne by the State. For this reason, the fiscal note reflects no additional cost for FY 86, but assumptions for future years are included as follows:

Assumptions:
FY 86 - no incorporations
FY 87 - two cities and one borough incorporate
FY 88 - two cities incorporate

Program Summary: The only portion of this bill which will create fiscal impact is Sec. 29.05.180-190 which provides additional transitional assistance through increased organizational grants. The Department is also required to provide additional assistance to newly formed cities and boroughs in setting up a sales tax collection system and tax rolls for property taxation. It is difficult to gauge whether this type of assistance will in fact be requested. If it is requested, additional work will be required of the State Assessor and technical assistance sections of the Division of Municipal and Regional Assistance. Given this uncertainty, possible costs for this type of technical assistance are not reflected in this fiscal note.

Computations:

Grants in FY 86	-0-
Grants in FY 87	400.0
(2 cities @ $50,000 per -- first year grant)	
(1 borough @ $300,000 per -- first year grant)	
Grants in FY 88	350.0
(2 cities @ $50,000 per -- first year grant)	
(2 cities @ $25,000 per -- second year grant)	
(1 borough @ 200,000 per -- second year grant)	

Economic Impact: The economic impact on State and local governments will be limited.

Impact on Local Governments: This bill is strongly supported by the Alaska Municipal League and most municipalities of the State. Impacts will generally be positive, particularly for newly incorporated municipalities.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 142

Title: An Act relating to Municipal Government

Sponsor: Rules/Governor

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Community & Regional Affairs

Program Category Affected: Community Development

BRU, Program or Subprogram(s) Affected:

BRU: Community Assistance Grants

Component: Organizational Grants

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS		100.0	450.0	350.0		
800 MISCELLANEOUS						
TOTAL OPERATING		100.0	450.0	350.0		
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		100.0	450.0	350.0		
FEDERAL FUNDS						
OTHER						
TOTAL		100.0	450.0	350.0		

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

(See Attached Page)

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

Division: Municipal & Regional Assistance Date: 1-10-85

Approved by Commissioner: Date: 1-10-85

Agency: Community & Regional Affairs

Distribution (by Agency preparing fiscal note):

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

7/1/84

STATE OF ALASKA 1985 - 14th LEGISLATURE, 1ST SESSION
FISCAL NOTE

Bill/Resolution No.:_____

Title: An Act relating to municipal government

_____

ANALYSIS:

Assumptions: Incorporation under Sec. 29.05.180--.190 of the proposed legislation provides for increased transitional assistance to newly incorporated cities and boroughs. For purposes of this fiscal note it is assumed that incorporations will occur as follows:

FY 86: 2 cities incorporate
FY 87: 2 cities and one borough incorporate
FY 88: 2 cities incorporate

Program Summary: The only portion of this 206 page bill which will create fiscal impact is Sec. 29.05.180--29.05.190 which provides additional transitional assistance through increased organizational grants. These increased organizational grants more realistically provide the level of assistance required to establish new cities and boroughs. The Department is also required to provide additional assistance to newly formed cities and boroughs in setting up a sales tax collection system and tax rolls for property taxation. It is difficult to gauge whether this type of assistance will in fact be requested. If it is requested, additional work will be required of the State Assessor and technical assistance sections of the Division of Municipal and Regional Assistance. Given this uncertainty, possible costs for this type of technical assistance are not reflected in the fiscal note.

1. Positions: No new positions
2. Other Expenditures: N/A
3. Funding: General funds
4. Section Cost Analysis: All costs are contained in Section 3, Article 3 of this bill.

Computations: The costs for FY 86-FY 88 are computed as follows based on the assumptions previously stated:

Grants in FY 86.....100.0
(2 cities incorporate @ $50,000 per -- first year grant)
Grants in FY 87.....450.0
(2 cities @ $50,000 per -- first year grant)
(1 borough @ $300,000 per -- first year grant)
(2 cities @ $25,000 per -- second year grant)
Grants in FY 88.....350.0
(2 cities @ $50,000 per -- first year grant)
(1 borough @ $200,000 -- second year grant)
(2 cities @ $25,000 -- second year grant)

Economic Impact: Other than providing newly incorporated municipalities with greater financial incentives to incorporate and a more realistic level of transitional assistance, the economic impact on the state and local governments will be limited.

Impact on Local Governments: This bill is strongly supported by the Alaska Municipal League and most municipalities of the State. Impacts will generally be positive, particularly for newly incorporated municipalities.

TITLE 29 FACT SHEET

SUMMARY OF HB 72/SB 142 - TITLE 29 (MUNICIPAL CODE)

HB 72 and SB 142 are comprehensive bills that reorganize and clarify Title 29 (Municipal Code), but do not substantially change that part of the state statutes that direct the operation of local government in Alaska.

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

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

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

In 1983, SB 1 was introduced by Senators Sturgulewski and Gilman; HB 172, by Governor Sheffield. Both bills are basically the same as the bill that had passed the previous year minus the controversial amendments. More committee work was done in both the House and Senate on the 204 page bill. HB 172 passed the House in the Second Session of the 13th Legislature but it did not reach the Senate.

Governor Sheffield has introduced HB 72 and SB 142 in the 14th Legislature. These identical bills are the same as HB 172, the bill that passed the House last year, except for removing the ability of a second class city to adopt a home rule charter.

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

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

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

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

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

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

SB 128 (cont'd)

law or regulation."

Effective July 1, 1985.

Labor Relations (school boards & public employees)

SENATE BILL NO. 129, (see page 216). Reported back to the Senate on March 12 by Labor & Commerce with the committee recommending it do pass. Concurring: Eliason (Vice-Chairman), Bennett and Ray. To HESS.

Rights of the Terminally Ill

SENATE BILL NO. 140, (see page 222). Reported back to the Senate on March 15 by Health, Education & Social Services with the committee recommending it be replaced with a HESS CS and as follows: Fahrenkamp (Chmn.) and Sturgulewski signed "do pass"; Paul Fischer and DeVries signed "no recommendation." To Judiciary.

The HESS CS adds an immediate effective date and clarifies that the bill only applies to persons over the age of 18 (original only said "adult").

Municipal Code Revision

SENATE BILL NO. 142, (see page 223). Reported back to the Senate on March 15 by Community & Regional Affairs with the committee recommending it be replaced with a C&RA substitute and that it do pass. Concurring: DeVries (Chairman), Sturgulewski, Vic Fischer and Coghill. To Judiciary.

The committee attached the following letter of intent:

> It is not the intent of the Legislature through the passage of CSSB 142 to change the taxing provisions for electric and telephone cooperatives as set forth by AS 10.25.540-560; nor is it the intent of the Legislature to change present statute provisions covering public utility access to municipal rights-of-way as set forth by AS 42.05.251.

The bill is a 210-page major rewrite of the Municipal Code. See CSHB 72 (C&RA), page 415. Identical, except CSSB 142(C&RA) includes "Purpose" section in Sec. 1. Outlines the reasons for the municipal code revision. Reads, in part: "... Except as expressly provided, the legislature does not intend by this Act to alter or affect in any way the relationship or balance of authority between the state and home rule or general law municipalities with respect to the timing or manner of resource development ... the legislature does not intend by this Act to increase or reduce the authority of state agencies to carry out their functions under other titles."

State Aid for School Construction (increasing)

SENATE BILL NO. 159, (see page 266). Reported back to the Senate on March 15 by Community & Regional Affairs with the committee recommending as follows: DeVries (Chairman) and Coghill recommended "do pass"; Sturgulewski and Vic Fischer signed "no recommendation." To HESS.

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

Economic Development: Allow economic development as a non-areawide power for second class boroughs, without requiring a vote of the people to exercise it.

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

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

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

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

Personal Property: Allows exemption of personal property from taxation.

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

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

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

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

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

Alaska Municipal League
Prepared February 23, 1984
Revised February 12, 1985

DELIVER TO: JPOM

ORIGINAL
SENT: 03/15/85 TIME: 15:25
FROM: MICKI HENSON
SUBJECT: POM
PRINT DATE: 03/15/85 TIME: 15:25

TO: SENATOR RODEY

FROM: HEATHER FLYNN
918 R STREET
ANCHORAGE, AK. 99501
PHONE: 276-0964 HM. 272-5392 WK.

RE: HB 72 AND SB 142 TITLE 29

THE ALASKA MUNICIPAL LEAGUE CONTINUES TO GIVE HIGHEST PRIORITY TO TITLE 29. WE WOULD APPRECIATE IT IF YOU WOULD WAIVE JUDICIARY COMMITTEE REVIEW OF SB 142 SO THAT IT COULD REACH CONFERENCE COMMITTEE AND THE FLOOR AS SOON AS POSSIBLE. THANKS FOR YOUR ASSISTANCE. KIND REGARDS

No response - per Pat

DELIVER TO: JPOM

ORIGINAL
SENT: 04/01/85 TIME: 14:20
FROM: MARTIE ROZKYDAL
SUBJECT: POM - MATR-0176
PRINT DATE: 04/01/85 TIME: 14:20

TO: SENATORS RODEY, KELLY, FAIKS, HALFORD AND ZIEGLER

FROM: ELSIE O'BRYAN
BOX 24
HOUSTON 99694

RE: SB 142

PLEASE WAIVE THIS BILL FROM THE JUDICIARY COMMITTEE.

Nulato City Council

General Delivery
Nulato, Alaska 99765
(907) 898-2205

March 21, 1985

Senator John Sackett
State Capitol
Pouch V
Juneau, AK 99811

Dear Senator Sackett:

I am writing regarding SB 142 - Title 29 Revisions.

I think the Title 29 Revisions are long overdue. I do not believe that passage of this bill should be delayed just because of controversial amendments. In particular, I am referring to amendments offered by Exxon regarding Regulation of Use of State Land. Personally, I do not feel that Exxon should interfere with the exercise of local government powers.

I urge you to push for passage of SB 142 without any controversial amendments. If the Exxon amendment will hinder passage of SB 142 in any way, I ask that it be considered as separate legislation and be debated on its merits alone.

I thank you for your support in this matter.

Sincerely,

Andy Durny
Budget Director

AD/rb

c.c. - Senator Pat Rodey
Senator Tim Kelley
Senator Jan Faiks
Senator Rick Halford
Senator Robert Ziegler
Representative Kay Wallis
Representative Mike M. Miller
Senator Edna DeVries
Governor Bill Sheffield
Alaska Municipal League

Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER SR
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

WHILE IN JUNEAU
POUCH V
JUNEAU ALASKA 99811

Senate

MEMBER
SENATE JUDICIARY COMMITTEE

SELECT COMMITTEE ON LEGISLATIVE ETHICS

WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE

EXECUTIVE COMMITTEE
WESTERN LEGISLATIVE CONFERENCE
COUNCIL OF STATE GOVERNMENTS

ALTERNATE MEMBER
NATIONAL CONFERENCE OF STATE LEGISLATURES
STATE AND FEDERAL ASSEMBLY
COMMITTEE ON
FEDERAL TAXATION, TRADE AND ECONOMIC DEVELOPMENT

March 19, 1985

Ms. Joyce Rasler,
Manager
City of Wrangell
Box 531
Wrangell, Alaska 99929

Dear Joyce:

HB 72 is still working its way though the House. SB 142 is currently in the Senate Judiciary Committee which is chaired by Senator Pat Rodey.

I have taken the liberty of sending him a copy of your March 13th letter, together with a copy of this note.

Senator Rodey is a very diligent legislator, and I am sure that the concerns you enumerated will be given painstaking consideration.

Regards,

Robert H. Ziegler, Sr.

RHZLk

cc: Senator Rodey w/enc.

P.S. SB 189 probably won't go very far.

CITY of WRANGELL, ALASKA

INCORPORATED JUNE 15, 1903

BOX 531, 99929 (907) 874-2381

ADOPTED AUGUST 1972

March 13, 1985

House Community & Regional Affairs Comm.
House Judiciary Committee
House Finance Committee
Pouch V
Juneau, AK 99801

Senate Community & Regional Affairs Comm.
Senate Judiciary Committee
Senate Finance Committee

Dear Sirs:

We have reviewed House Bill No. 72 (Senate Bill No. 142, Title 29 revisions, only insofar as it pertains to home rule municipalites. As a home rule municipality, the Wrangell City Council has the following concerns:

Sec. 29.10.100 (7) AS 29.10.100--(Charter Amendment) should read (7) AS 29.10.100--(limitation of home rule powers) Charter Amendment is 29.10.080.

Sec. 29.10.100 (44) AS 29.60.230 (state aid for hospital and health facility construction) is incorrect as there is no AS 29.60.230.

Sec. 29.20.010 Conflict of Interest (2) provides that the presiding officer shall rule on a request by a member of the governing body to be excused from a vote. Our municipal code provides that the Council will rule on the request. The manner of ruling on the request should be set by the governing body.

Sec. 29.20.140 Qualifications provides that a city voter is eligible to be a member of the Council and allows a municipality to establish durational residency requirements. A City voter is 18 years of age, our Charter sets an age requirement of 21 years of age. The voters of a home rule municipality should be allowed to establish an age requirement for their elected officials. This is supported by the United States and State of Alaska Constitutions which do establish age requirements for elected officials. The local governing body carries a great deal of responsibility and certainly deserves the maturity that is recognized as necessary for a State office.

Sec. 29.26.270 Recall Petition (a) provides that the City Clerk shall prepare a recall petition. The sponsors should be responsible for preparation of the petition. The City Clerk should only be responsible for certifying whether content of the petition is sufficient.

Sec. 29.26.350 Successors prescribes the manner of filling the office of an official that is recalled from a governing body (29.20.180). Home Rule municipal Charters should prescribe the manner of filling vacancies.

CITY OF WRANGELL, ALASKA

House Community & Regional Affairs Comm.
House Judiciary Committee
House Finance Committee
Page Two

Senate Community & Regional Affairs Comm.
Senate Judiciary Committee
Senate Finance Committee

Sec. 29.35.120 Past Audit (a) provides that copies of the audit shall be available to the public upon request. A strict reading by the public would require the audit to be available for distribution to the public at no cost. Although we understand this is not the intent, we request the section be amended for clarification to the public, to require the audit to be available for review or at cost.

Sec. 29.45.320 Real Property Tax Collection (a) provides for annual foreclosure unless otherwise provided by ordinance. Sec. 29.45.330 (a) (1) provides for annual foreclosure proceedings, but does not include "unless otherwise provided by ordinance." Sec. 29.45.330 (a) (1) should be amended to be consistent with 29.45.320 (a). The number of delinquent accounts in a small municipality may not justify the cost of annual foreclosure.

Sec. 29.45.460 Disposition and Sale of Foreclosed Property (c) provides that the Clerk shall send a copy of the published notice of hearing of an ordinance by certified mail to the former record owner. Home rule municipalities are not required to publish notice of a hearing of an ordinance. This section should be amended to provide for notice to the former record owner prior to introduction of an ordinance by a home rule municipality.

The City of Wrangell supports revisions to Title 29. We cannot, however, support additional limitations and regulation of home rule powers. Some of our foregoing concerns are merely clerical errors and inconsistencies. Our review and comments are limited to home rule only. Any amendments that may have been made have not yet been received, so our comments are limited to the Bill as introduced.

Very truly yours,

Joyce Rasler

Joyce Rasler
City Manager

JR:fv

cc: Senator Robert Ziegler
Representative Robin Taylor
Representative John Sund
Alaska Municipal League

Sen. Rodney.