

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5212 SCRA SB 282 - SB 308

784

1 MUNICIPALITIES.]

2 * Sec. 5. AS 29.45.700 is amended by adding a new subsection to read:

3 (d) The assembly may by ordinance authorize a city to levy and
4 collect sales and use taxes on other sources except purchases made
5 with food coupons, food stamps, or other type of certificate issued
6 under 7 U.S.C. 2011 - 2025 (Food Stamp Act) and purchases of tickets,
7 chances, bingo cards, or pull-tabs in a lottery, raffle, bingo game,
8 pull-tab game, or other game of chance licensed under AS 05.15. This
9 subsection applies to home rule and general law municipalities.
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Analysis of proposed bill for "an Act relating to the enforcement of municipal property, sales and use taxes"

Summary

The principal objective of the bill is to eliminate the apparent super-and-retroactive-priority current law accords to personal property, sales and use tax liens -- according such liens, instead, the status and relative priority of an attachment lien but without necessitating the municipality's bringing an action and having the property seized (as are necessary in the case of attachment) as a condition to acquiring and perfecting the liens. In place of the notice imparted by seizure of the property under attachment process, the bill allows notice to be given by the municipality's unilateral filing or recording of a notice. (In the case of personal property taxes, filing is made available as an alternative to the municipality's existing right also to seize the property unilaterally, and then to sell it, without any judicial proceeding, A.S. 29.45.310.)

Analysis

Section 1

A.S. 29.45.290-500 are classified as a separate Article of A.S. 29.45. Though the Article is now captioned

"Enforcement of Property Tax Liens", the sections it comprises are broader in scope, since they also address personal liability for property taxes. This section of the bill would change the title of the Article to disclose more accurately its scope: "Enforcement of Property Taxes".

Section 2

A.S. 29.45.300, though captioned "Tax Liability", currently address speaks to tax liens [Subsec.(b)] as well as liability [Subsec.(a)]. This section of the bill would amend §300 to confine it to the subject of tax liability, leaving to a new section of the code (A.S. 29.45.305 -- Section 3 of the bill) the subject of the lien security for tax obligations.

A.S. 29.45.300(a) currently provides that "the owner of assessed personal property is personally liable for the amount of taxes assessed against the property." Except in the case of business inventories, property's taxable status is determined as of January 1 of each year. [A.S. 29.45.110(a) and (b).] It is not clear whether the "owner" who is liable for payment under current §300(a) is A (who owns the property when it became taxable), B (who bought the property from A subsequently), or both. The amendment makes it clear that A, not B, is personally liable [§300(a)(1) and (2)]; and that if A is more than one person, all As are jointly and severally liable for payment [§300(b)].

The amendment [§300(a)(3)] also states forthrightly the current, but obliquely stated rule that there is no personal liability for the payment of real property taxes except as to those on mobile homes and certain limited interests in realty [current §320]. As to those exceptions, the amendment provides that it is the owner on January 1 (i.e., "A") who is personally liable, and that the municipality may elect either to enforce the owner's liability or its preferred real property tax lien, but may not elect to do both.

The amendment provides [§300(c)] that an owner's liability may be established by action; that the municipality may enforce its lien (by distraint) without bringing such an action, may bring such an action without losing its distraint remedy or in aid of its distraint remedy, and/or may bring the action for the further purpose of foreclosing (other than by distraint and sale) its tax lien.

Section 3

As noted, this section of the bill would enact a new code section, A.S. 29.45.305, to create and define the lien for property taxes. The new §305 would replace -- and as to personal property tax liens, would substantially amend -- current §300(b).

The new §305(a) would leave unchanged current law respecting the existence and priority of real property tax liens.

The new §305(b) would grant the municipality a lien for unpaid personal property taxes which attaches when, and has priority over interests others may acquire in the subject property after, the municipality has given notice of its claim to the property.

Notice can be given by the municipality in either of two ways: by having the property seized pursuant to its right of distraint [A.S. 29.45.310], or by filing notice of its claim. A lien obtained first by filing notice can be enforced without action -- by subsequent distraint and sale of the described property -- or pursuant to action, as the municipality may choose.

The effect of the amendment, then, is to repeal current law insofar as it appears to give the municipality's lien for personal property taxes priority over persons who acquired interests without notice that there was any lien (or unpaid tax); but to give the municipality a means of asserting and perfecting a lien, without having to distraint, by filing notice. It integrates the tax lien with the law governing consensual security interests (Article 9 of the Uniform Commercial Code, A.S. 45.09).

Section 4

This section would amend A.S. 29.45.320 to make its provisions conform to the new §§300 and 305.

Sections 5 and 6

These sections would amend current law respecting sales and use tax liens by repealing the current statutory authority for such liens [A.S. 29.45.650(e)], stating that authority in a new and expanded §29.45.655.

New §655(a) would give a municipality clear authority -- as current law does not -- to assert a lien against property of a seller who does not collect or remit a sales tax. The law currently allows a municipality to provide for a lien "to secure payment of a sales and use tax". As such taxes are typically imposed on buyers, it is questionable whether the current law is of any help to the municipality in enforcing the obligations of sellers to collect and remit the tax. The amendment redresses that problem.

New §655(b) would allow the municipality to decide what property -- realty, tangible personalty, both -- to subject to the lien and the procedures by which it is to determine when to assert the lien.

New §655(c) would provide that the sales-use tax lien, like the personal property tax lien under new §305(b), attaches when notice of the municipality's claim is given. Since distraint is not available in respect of sales or use taxes, notice of the sales-use tax lien is given by filing (or in the case of real property, recording) written notice.

New §655(d) would provide the lien the same relative priority as the lien for personal property taxes, a priority determined by the time the lien arises by virtue of the notice filed (or recorded). It also provides (as current law does not) how the lien is enforced. Again because distraint and sale are not available in respect of sales and use taxes, enforcement is by judicial foreclosure -- sale of the property pursuant to a judgment establishing the liability of the buyer or seller.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
TIM KELLY, Vice Chairman
RICK HALFORD
MIKE SZYMANSKI
FRED ZHAROFF



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JUNEAU, ALASKA 99811
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Senate Community and Regional Affairs Committee

TO: SENATE C&RA MEMBERS

FEB 9, 1988

FROM: SENATE C&RA STAFF

A handwritten signature in dark ink, appearing to be "MEL".

RE: CSSB 282 (C&RA) - "AN ACT RELATING TO MUNICIPAL SALES AND USE TAXES."

UNDER EXISTING LAW (29.45.650(e)) MUNICIPALITIES MAY PLACE LIENS ON REAL OR PERSONAL PROPERTY TO SECURE PAYMENT OF SALES AND USE TAX. THIS ABILITY IS NEW, ADDED UNDER THE TITLE 29 REVISION TWO YEARS AGO.

THE SECTION WAS ADDED TO TITLE 29 IN RESPONSE TO A FAIRBANKS COURT CASE IN WHICH THE JUDGE RULED THAT MUNICIPALITIES DID NOT HAVE THE POWER TO PLACE SUCH LIENS. THE TITLE 29 TECHNICAL COMMITTEE AT THE TIME RECOMMENDED THAT SUCH LIENS HAVE THE FORCE OF JUDGEMENT LIENS, HOWEVER, ALSO ADDED AT THAT TIME WAS A SENTENCE THAT GAVE SUCH LIENS PRIORITY OVER OTHER LIENS, EXCEPT FOR PROPERTY TAXES AND SPECIAL ASSESSMENTS.

THIS PRIORITY CONFLICTS WITH 34.36.060 WHICH GIVES LABOR LIENS FIRST POSITION AND MORTGAGES SECOND POSITION. ACCORDING TO REPRESENTATIVES OF THE HOME MORTGAGE INDUSTRY, INCLUDING AHFC,

THIS PRIORITY FOR SALES TAX LIENS COULD CAUSE MAJOR DISRUPTIONS IN THE HOME MORTGAGE INDUSTRY AND RAISE INTEREST RATES.

SB 282 WOULD ALTER THIS PRIORITY. THE PROPOSED CS GIVES SALES TAX LIENS PRIORITY OVER ALL OTHER LIENS EXCEPT (1) LIENS FOR PROPERTY TAXES AND SPECIAL ASSESSMENTS; AND (2) LIENS THAT WERE PERFECTED BEFORE THE RECORDING OF THE SALES TAX LIEN FOR AMOUNTS ACTUALLY ADVANCED BEFORE THE RECORDING OF THE SALES TAX LIEN.

THIS DRAFT WAS DEVELOPED WITH THE ASSISTANCE OF TOM BOEDEKER, MUNICIPAL ATTORNEY FOR THE KENAI BOROUGH, AND WES COYNER, LOBBYIST FOR THE BANKING INDUSTRY. MR. BOEDEKER, WHO HAS TAKEN THE LEAD FOR THE MUNICIPALITIES ON THIS ISSUE, WOULD PREFER TO LIMIT THE PRIORITY TO PROPERTY TAXES, SPECIAL ASSESSMENTS, AND PRIOR RECORDED MORTGAGES, TRUST DEEDS, AND LAND SALE CONTRACTS; BUT HE BELIEVES THE PROPOSED CS IS REASONABLE AND TECHNICALLY CORRECT.

BOTH GENTLEMEN WILL BE AT THE COMMITTEE TO TESTIFY. THE CS HAS A ZERO FISCAL NOTE FROM THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CS for SB 282 (C&R)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to municipal sales and use taxes."
Sponsor: Senate C&R Committee
Requestor: _____

Agency Affected: Community & Regional Affairs
BRU: Municipal & Regional Assistance
Components: State Assessor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jim Plasman, Deputy Director
Division: Municipal & Regional Assistance
Approved by Commissioner: [Signature]
Agency: Community & Regional Affairs

Phone: 465-4750
Date: 1-19-88
Date: 1-19-88

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

ALASKA BANKERS ASSOCIATION

December 15, 1987

Draft Position Paper For Amending Alaska Law Relating To Liens For Sales, Use And Personal Property Taxes.

Brief History of Municipal/Borough Priority Tax Lien Issue

Local government entities have experienced difficulty in collecting unpaid sales, use and personal property taxes for a number of years. During the 1970's various municipalities enacted laws to establish sales tax liens as a means of collecting unpaid taxes; however, in 1980 the Alaska State Supreme Court ruled that municipalities which levied sales and use taxes had no authority to assert a lien for unpaid taxes except through the normal judicial process. The Supreme Court said further that authorization of such liens "should be addressed by specific legislation rather than by municipal, or judicial fiat".

In 1983, legislation was proposed that would have given boroughs and municipalities a sales tax lien with the full force, priority and duration of a judgement lien; however, this legislation did not become law. When this legislation became law in 1985, the provision that the sales tax obtain an attachment lien was changed in the final draft to give the lien a priority; a priority over all other liens including mortgages, security interests, judgement liens, and the claims of anyone who claims an interest in either real or personal property. This change from the initial version of the 232 page Municipal Code Revision, and the full impact this change was not observed by the banks, the title companies, nor other affected parties. Only when some of the boroughs and municipalities began enforcing their new priority lien, was its significant impact realized.

No Other Tax Lien Has Such A Priority

Not even the State of Alaska, nor the Internal Revenue Service, have such a priority lien. Real property taxes have a clear priority over all other interests. But the real property tax is a charge against the property itself and real estate is immobile. All who deal with real estate know it is subject to annual taxation by a single authority. The lien amount can be readily determined and a reserve fund established to ensure its payment. This is not possible with a sales tax or a tax on personal property. It is patently unfair that, under present law, a lender can make a loan secured by real or personal property with all taxes or liens current and have a subsequent lien due to unpaid taxes at some future date preempt the position. There is no way for a lender to protect itself from this kind of action.

Existing Law Is Not Specific Who Must Pay - It Is Aimed At Everybody

The priority lien provision A.S. 29.45.650(e) gives broad authority to municipalities/boroughs to exact payment from prior lienholders who had nothing to do with the transaction that gave rise to the tax and also to innocent buyers who pay the tax to a seller and then the seller fails to remit the proceeds to the municipality. The priority lien law goes further; it authorizes a municipality to assert a lien on any property of the buyer and it accords that lien a priority over any other lien.

Personal property is highly mobile and can be readily moved from district to district. There is no means of knowing that it is subject to a sales or use tax lien nor any way to determine the amount.

Does an individual now have to call local government to find out if a local auto dealer has remitted all sales tax collected and paid his personal property taxes? Under this law he does or he can lose the automobile, and the lienholder will also lose its lien. In effect, the priority tax lien requires an innocent third party to guaranty tax payments to a municipality or a borough.

A lender relies on the information available at the time a loan is made and then relies on its priority lien to protect it over the term of its loan. Permitting a higher priority lien long after a loan is made and over which a lender has no knowledge or control to erode its safety margin is unfair. It will also have an effect on secondary financing by outside investors and could eventually impact AHFC and AIDA programs as existence of the priority lien becomes known.

Existing Law Is Unclear

It appears that this outcome is not what the drafters of the priority lien provision wanted. What is wanted is authority for a lien on the seller's property to secure the seller's obligation to remit the taxes collected, yet the only authority the present statute grants is for a lien to secure payment of the tax, a liability of the buyer. It is now clear that a revision is needed in this new law to better describe who has the tax obligation and what is a fair priority for a lien on a violator's property.

It is not contended that municipalities and boroughs with sales and use taxes should not have the authority to assert liens; however, that authority should be confined to asserting the lien against property of the violator and the lien's relative priority over other innocent claimants should be determined by the date notice of the lien is filed.

Proposed Compromise Amendment

At a November 13, 1987 meeting between the Alaska Bankers Association and attorneys for the Alaska Municipal League, a compromise solution was recommended. The municipalities and boroughs would give up the 1985 priority lien position in exchange for a sales and use tax lien which is the equivalent of an attachment lien but without the need of first bringing suit. The municipalities and boroughs could also obtain a priority lien on the seller's business assets to secure the seller's obligation to collect and remit sales tax. A priority lien could be achieved on all additional or future advances but only after giving legal notice to senior lienholder(s) that sales and/or use taxes are due and unpaid. A simple lien search will reveal if a senior lienholder exists and its address. This priority lien on commercial financing of business assets (i.e. accounts receivable and inventory) is similar to the lien priority that can be obtained by the Internal Revenue Service and offers the senior lienholder(s) the option of either declining further advance requests or insuring that sales or use taxes are paid. It also elevates concern for remitting local tax payments to a much higher level for local businessmen. The Alaska Bankers Association finds this type of compromise acceptable.

Summary

The 1985 statute authorizing a priority lien for municipal sales and use taxes, as it now exists, is an onerous law and goes beyond what is reasonable and fair. With a single last minute word change, local government gained the power to assert its lien on any property of any innocent buyer (a consumer who purchased in good faith and paid his tax) and it can place a secured creditor in a subordinated position without notice, without knowledge, and even though he had no part in the taxable transaction. Further, the municipalities and borough governments did not achieve a very good vehicle to collect from the real potential violator, the seller who fails to remit taxes collected.

The Alaska Bankers Association does not believe there should be no authority for sales and use tax liens. However, such a law should be worded carefully to restrict the lien to only property of the violator and lien priority to other innocent lienholders should be based on date notice is filed. This law should treat all parties in commerce equally and offer an opportunity to do business without a surprise. A provision that permits a priority lien against subsequent advances after direct notice to a secured party seems fair and should go far in solving the delinquent sales and use tax problems the boroughs and municipalities have experienced.

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Sec. 29.45.570. SALES AND USE TAX. (a) A borough may levy and collect a sales tax not exceeding six percent on sales, rents, and on services made within the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) No change.

(c) No change.

(d) If the assembly of a home rule or general law borough charges interest on sales taxes not paid when due, the rate of interest may not exceed 15 percent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

new (e) A borough may provide for the creation, recording, and notice of a lien on real or personal property to secure the payment of a sales or use tax, and for interest, penalties and administration costs in the event of delinquencies. A lien established under this section has the force, priority and duration of a judgment lien.

EXPLANATION: (a) changed to make it clear that tax can be levied on sales and rents, not just one or the other. (d) interest rate raised from eight to 15 percent. (e) added to allow liens for the collection of sales and use taxes.

TITLE 29 TECHNICAL COMM.

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furnished and labor was done "in connection with the work done upon the claims" does not comply with the statute. *Goldstein v. Noble*, 6 Alaska 282 (1920).

A lien on a building for materials furnished cannot include another structure against which a lien is not filed, and into the construction, alteration, and repairs of which some or all of the materials were employed or used. *Burr v. House*, 3 Alaska 641 (1909).

The general rule is that a lessee cannot impose any charge upon the reversion or estate of the lessor thereof. *Morris v. Marsh*, 3 Alaska 140 (1906).

Nor does the fact that the lessor acquiesces in the improvement by the lessee subject his reversion to the mechanics' liens therefor. *Morris v. Marsh*, 3 Alaska 140 (1906).

Unless lessor fails to give notice of nonresponsibility or his agent causes improvement. — This section, AS 34.35.050 and AS 34.35.065, construed together, mean that the person in charge of the work shall prima facie be deemed to be the agent of the owner, and the property of the latter shall be charged with the lien under the express provisions of AS 34.35.050; that, if the person in charge is not in fact such agent, the interest of the owner shall, nevertheless, be liable for the improvement if it is constructed with his knowledge, and he fails to post the required notice disclaiming responsibility; and that, if the work is done for a lessee of the property, liability is confined to the

leasehold estate, if the owner had no knowledge of the construction of the improvement, or if, having such knowledge, he gave notice that he would not be responsible. *Cascaden v. Wimbish*, 161 F. 211 (9th Cir. 1908). See AS 34.35.115.

To determine whether or not modular units are sufficiently attached to the land on which they are situated, the supreme court will look to the following elements: (1) physical annexation, (2) adaption to use with real property, (3) intention to annex to realty, (4) relationship of the claiming parties, (5) the relative difficulty of removal, (6) the nature of the article annexed, and (7) whether the fact of the annexation is open and apparent. *Dannemiller v. AMFAC Distribution Corp.*, Sup. Ct. Op. No. 1452 (File No. 2895), 56G P.2d 645 (1977).

Applied in *Torkko-Korman/Engineers v. Penland Ventures*, Sup. Ct. Op. No. 2757 (File No. 6489), 673 P.2d 769 (1983).

Quoted in *Jorgensen Co. v. Sheldon*, 2 Alaska 607 (1905).

Stated in *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Collateral references. — 53 Am. Jur. 2d, *Mechanics' Liens*, §§ 28-48.

Public property as subject to lien. 26 ALR 326.

Vendor's interest as subject to mechanic's lien. 58 ALR 911; 102 ALR 233.

Quantity or area of land around improvement which may be subject to lien. 84 ALR 123.

Sec. 34.35.060. Priorities. (a) Except as provided in (c) of this section, an encumbrance which is properly recorded shall be preferred to a lien created under AS 34.35.050 — 34.35.120 unless the claim of lien under AS 34.35.070 or notice of right to lien under AS 34.35.064 has been recorded before the encumbrance. The preference granted for a prior mortgage or deed of trust under this section applies without regard to when the sums are disbursed or whether the disbursements are required under the terms of a loan agreement.

(b) [Repealed, § 19 ch 175 SLA 1978.]

(c) A lien created by AS 34.35.050 — 34.35.120 in favor of an individual actually performing labor upon a building or other improvement in its original construction or of a trustee of an employee benefit trust for those individuals is preferred to a prior encumbrance upon the land on which the building or other improvement is constructed.

(d) In enforcing the lien, the building or other improvement may be sold separately from the land. When sold separately, the purchaser may remove the building or other improvement within a reasonable time after the sale, not to exceed 30 days, upon the payment to the owner of the land of a reasonable rent for its use from the date of its purchase to the time of removal. If removal is prevented by legal proceedings, the 30 days does not begin to run until the final determination of the proceedings in the court of first resort, or in the appellate court if appeal is taken. (§ 26-1-3 ACLA 1949; am § 1 ch 111 SLA 1953; am § 1 ch 7 SLA 1955; am §§ 2, 3, 19 ch 175 SLA 1978)

NOTES TO DECISIONS

Editor's notes. — The cases annotated below were decided under this section as it existed prior to the 1978 amendment, which, among other things, rewrote subsection (a) and repealed subsection (b), which provided when a lien created by AS 34.35.050 — 34.35.120 was preferred to a lien, mortgage, or other encumbrance which is unrecorded.

Legislative intent. — The legislative intent is to limit the priority granted generally to situations where the construction preceded all other construction in and upon a given area of vacant or cleared land. *Lynch v. McCann*, Sup. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970).

In the case of "original construction," the legislature intended to subordinate to some extent the principle of first in time, first in right, to a social interest in securing mechanics' lienors. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

For purposes of this section, a deed of trust and a mortgage are not differentiated. *Thorpe Constr. Co. v. Irvin & Co.*, 367 F. Supp. 87 (D. Alaska 1973).

This section protects the security of a mortgagee or beneficiary of a deed of trust against mechanics' liens so long as his encumbrance attaches and is recorded before the mechanics' lienor commences his labor or furnishes materials, except where "original construction" is performed. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

A beneficiary of a deed of trust whose interest attaches and who records before

any alteration or repair begins or materials are furnished has priority over a mechanics' lienor, except in the case of original construction under this section. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Scheme of priorities not overcome by posting notices of nonresponsibility. — Mortgagees and beneficiaries of deeds of trust need not post notice of nonresponsibility, and if they do, the notices do not overcome the scheme of priorities established in this section. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

A mechanics' lienor has priority over the beneficiary of a deed of trust in the case of original construction under subsection (c), regardless of whether the beneficiary of the deed of trust posts a notice of nonresponsibility. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 655 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

The legislature, in subsection (c), provided that mechanics' lienors performing original construction should have priority over earlier security interests. The scheme of priorities ordered by the legislature in the circumstances of original construction would be defeated if beneficiaries of deeds of trust could attain priority over mechanics' lienors by posting notices of nonresponsibility. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 659 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Construction lenders can protect themselves from mechanics' liens in

5-1116B
Bradley
5/12/87

Original sponsor: Community and Regional
Affairs Committee

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 282 ()
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act relating to municipal sales and use taxes."
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 29.45.650(e) is amended to read:

9 (e) A borough may provide for the creation, recording, and
10 notice of a lien on real or personal property to secure the payment of
11 a sales and use tax, and the interest, penalties, and administration
12 costs in the event of delinquency. When recorded, a lien authorized
13 under this section has priority over other liens except those for
14 property taxes, [AND] special assessments, and prior recorded mort-
15 gages, trust deeds, and land sale contracts. This subsection applies
16 to home rule and general law municipalities.

17 * Sec. 2. AS 29.10.200(42) is amended to read:

18 (42) AS 29.45.650(c), (d), (e), and (f) (sales and use tax)
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STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 11, 1987

SUBJECT: State sales and use tax
TO: Senator Sturgulewski
FROM: Michael F. Ford *M.F.*
Legislative Counsel

You have asked if there are any states that provide by statute that a tax on sales or use has a lien priority over a prior recorded mortgage. After examining the statutes of all fifty states I have concluded that no state has established such a priority. While it is not uncommon for a tax lien to have priority over subsequently recorded mortgages, a prior recorded mortgage would take priority over a subsequent tax lien.

Please contact me if you have further question.

MFF: csh
c8/029

action of the assessor was not correct, it shall issue a supplementary roll including such corrections as are necessary, and the assessment and levy shall have the same force and effect as if made in the first instance, and the county treasurer shall proceed to collect the taxes due on the supplementary roll.

Amended by Laws 1965, ch. 93, § 2; Laws 1970, Ex.Sess., ch. 55, § 13, eff. July 1, 1970; Laws 1975, 1st Ex.Sess., ch. 160, § 1.

Effective date—Laws 1970, Ex.Sess., ch. 55: See Historical Note following § 84.36.050.

Attorney General's Opinions

Remedy provided in this section as available to taxpayers who, during 1974,

received tax statements covering properties that qualified for exemption under Ch. 40, Laws of 1973, 2nd Ex.Sess. Op. Atty.Gen.1974, No. 6.

CHAPTER 84.60—LIEN OF TAXES

84.60.010. Priority of tax lien

All taxes and levies which may hereafter be lawfully imposed or assessed shall be and they are hereby declared to be a lien respectively upon the real and personal property upon which they may hereafter be imposed or assessed, which liens shall include all charges and expenses of and concerning the said taxes which, by the provisions of this title, are directed to be made. The said lien shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility to or with which said real and personal property may become charged or liable.

Amended by Laws 1969, Ex.Sess., ch. 251, § 1.

Notes of Decisions

1. IN GENERAL

Washington personal property lien statute (§ 84.60.010 et seq.) provides taxing authorities with three remedies for nonpayment of personal property taxes: enforcement of a statutory lien on specific items of property charged; enforcement of statutory lien on other personal property owned by the same taxpayer; and enforcement of a statutory lien on taxpayer's real property. In re Electric City, Inc. (Bkrcty.1984) 43 B.R. 336.

3. CONSTRUCTION AND OPERATION OF STATUTE

Under this chapter, the owner of personal property is personally liable for taxes assessed, whereas with real estate, taxes attach to the property and are not a personal obligation of the own-

er. In re Electric City, Inc. (Bkrcty. 1984) 43 B.R. 336.

4. ENFORCEMENT AND DISCHARGE OF TAX LIEN

Where a description of property in tax foreclosure merely indicates that the subject property is part of a larger tract, without greater certainty, that description is not sufficient and subsequent foreclosure is void. Wenatchee Reclamation Dis. v. Mustell (1984) 102 Wash.2d 8, 102 Wash.2d 721, 684 P.2d 1275.

5. — PRIORITY OF LIENS

Provision of this section granting "superpriority" to tax liens does not provide for the perfection of a personal property tax lien by relation back as provided for mechanics or materialmen and secured creditors. In re Electric City, Inc. (Bkrcty.1984) 43 B.R. 336.

84.60.020. Attachment of tax liens

The taxes assessed upon real property, including mobile homes assessed thereon, and other mobile homes as defined in RCW 82.50.010 shall be a lien thereon from and including the first day of January in the year in

which they are levied or vendor and the grantor of a mobile home, when the taxes thereon due under contract to sell, the proportion of such tax the sale or the contract and the grantee or purchaser and subsequent taxes on mobile home shall be the year of its removal and subsequent taxes on property assessed shall be the year of its removal or removal are satisfied property assessed shall be homes as above provided listed with and value of such personal property such property. The treasurer as provided shall in any way affect taxes assessed upon property of the person designated and charged from and after the transfer of such real affect the lien for

Amended by Laws 197 § 5.

Severability—Laws ch. 22: See Historical § 46.04.302.

Attorney General's Opinion: Proration of taxes federally acquired in manner as on state Op.Atty.Gen. 1975, N

Notes of I

1. IN G

Even assuming the operation under this section property tax lien a of a bankruptcy case automatic stay, assessed subject to invalidation transfer. In (Bkrcty.1984) 43 B.R.

6. COMMENCEMENT OF TA

Taxes for two years when debtor's personal impressed with tax

Chap. 82:32

Lee Johnson 228 Applies to Prop. Tax.

753-5528 ONLY.

Excise taxes liens 6.1.3.1 and 6.1.3.2

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
 TIM KELLY, Vice Chairman
 RICK HALFORD
 MIKE SZYMANSKI
 FRED ZHAROFF



P. O. BOX V
 JUNEAU, ALASKA 99811
 (907) 455-4989

Senate Community and Regional Affairs Committee

TO: Senate C&RA Members

May 5, 1987

FROM: Senate C&RA Staff

A handwritten signature in dark ink, appearing to be "MVA".

RE: SB 282 - "An Act relating to municipal sales and use taxes."

Under existing law (29.45.650(e)) municipalities may place liens on real or personal property to secure payment of sales and use tax. This ability is new, added under the Title 29 revision two years ago.

The section was added to Title 29 in response to a Fairbanks court case in which the judge ruled that municipalities did not have the power to place such liens. The Title 29 technical committee at the time recommended that such liens have the force of judgement liens, however, also added at that time was a sentence that gave such liens priority over other liens, except for property taxes and special assessments.

This priority conflicts with 34.36.060 which gives labor liens first position and mortgages second position. According to representatives of the home mortgage industry, including AHFC,

this priority for sales tax liens could cause major disruptions in the home mortgage industry and raise interest rates.

SB 282 would delete the priority. Tam Cook of Legal Services has advised that being silent on priority has the same effect as giving the lien the priority of a judgement lien, which was suggested by the technical committee.

Representatives of AHFC, the banks, and the Municipal League will testify at today's meeting

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CS for SB 282 (C&RA)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to municipal sales and use taxes."
Sponsor: Senate C&RA Committee
Requestor: _____

Agency Affected: Community & Regional Affairs
BRU: Municipal & Regional Assistance
Components: State Assessor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jim Plasman, Deputy Director
Division: Municipal & Regional Assistance
Approved by Commissioner: [Signature]
Agency: Community & Regional Affairs

Phone: 465-4750
Date: 1-19-88
Date: 1-19-88

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

ALASKA BANKERS ASSOCIATION

December 15, 1987

Draft Position Paper For Amending Alaska Law Relating To Liens For Sales, Use And Personal Property Taxes.

Brief History of Municipal/Borough Priority Tax Lien Issue

Local government entities have experienced difficulty in collecting unpaid sales, use and personal property taxes for a number of years. During the 1970's various municipalities enacted laws to establish sales tax liens as a means of collecting unpaid taxes; however, in 1980 the Alaska State Supreme Court ruled that municipalities which levied sales and use taxes had no authority to assert a lien for unpaid taxes except through the normal judicial process. The Supreme Court said further that authorization of such liens "should be addressed by specific legislation rather than by municipal, or judicial fiat".

In 1983, legislation was proposed that would have given boroughs and municipalities a sales tax lien with the full force, priority and duration of a judgement lien; however, this legislation did not become law. When this legislation became law in 1985, the provision that the sales tax obtain an attachment lien was changed in the final draft to give the lien a priority; a priority over all other liens including mortgages, security interests, judgement liens, and the claims of anyone who claims an interest in either real or personal property. This change from the initial version of the 232 page Municipal Code Revision, and the full impact this change was not observed by the banks, the title companies, nor other affected parties. Only when some of the boroughs and municipalities began enforcing their new priority lien, was its significant impact realized.

No Other Tax Lien Has Such A Priority

Not even the State of Alaska, nor the Internal Revenue Service, have such a priority lien. Real property taxes have a clear priority over all other interests. But the real property tax is a charge against the property itself and real estate is immobile. All who deal with real estate know it is subject to annual taxation by a single authority. The lien amount can be readily determined and a reserve fund established to ensure its payment. This is not possible with a sales tax or a tax on personal property. It is patently unfair that, under present law, a lender can make a loan secured by real or personal property with all taxes or liens current and have a subsequent lien due to unpaid taxes at some future date preempt the position. There is no way for a lender to protect itself from this kind of action.

Existing Law Is Not Specific Who Must Pay - It Is Aimed At Everybody

The priority lien provision A.S. 29.45.650(e) gives broad authority to municipalities/boroughs to exact payment from prior lienholders who had nothing to do with the transaction that gave rise to the tax and also to innocent buyers who pay the tax to a seller and then the seller fails to remit the proceeds to the municipality. The priority lien law goes further; it authorizes a municipality to assert a lien on any property of the buyer and it accords that lien a priority over any other lien.

Personal property is highly mobile and can be readily moved from district to district. There is no means of knowing that it is subject to a sales or use tax lien nor any way to determine the amount.

Does an individual now have to call local government to find out if a local auto dealer has remitted all sales tax collected and paid his personal property taxes? Under this law he does or he can lose the automobile, and the lienholder will also lose its lien. In effect, the priority tax lien requires an innocent third party to guaranty tax payments to a municipality or a borough.

A lender relies on the information available at the time a loan is made and then relies on its priority lien to protect it over the term of its loan. Permitting a higher priority lien long after a loan is made and over which a lender has no knowledge or control to erode its safety margin is unfair. It will also have an effect on secondary financing by outside investors and could eventually impact AHFC and AIDA programs as existence of the priority lien becomes known.

Existing Law Is Unclear

It appears that this outcome is not what the drafters of the priority lien provision wanted. What is wanted is authority for a lien on the seller's property to secure the seller's obligation to remit the taxes collected, yet the only authority the present statute grants is for a lien to secure payment of the tax, a liability of the buyer. It is now clear that a revision is needed in this new law to better describe who has the tax obligation and what is a fair priority for a lien on a violator's property.

It is not contended that municipalities and boroughs with sales and use taxes should not have the authority to assert liens; however, that authority should be confined to asserting the lien against property of the violator and the lien's relative priority over other innocent claimants should be determined by the date notice of the lien is filed.

Proposed Compromise Amendment

At a November 13, 1987 meeting between the Alaska Bankers Association and attorneys for the Alaska Municipal League, a compromise solution was recommended. The municipalities and boroughs would give up the 1985 priority lien position in exchange for a sales and use tax lien which is the equivalent of an attachment lien but without the need of first bringing suit. The municipalities and boroughs could also obtain a priority lien on the seller's business assets to secure the seller's obligation to collect and remit sales tax. A priority lien could be achieved on all additional or future advances but only after giving legal notice to senior lienholder(s) that sales and/or use taxes are due and unpaid. A simple lien search will reveal if a senior lienholder exists and its address. This priority lien on commercial financing of business assets (i.e. accounts receivable and inventory) is similar to the lien priority that can be obtained by the Internal Revenue Service and offers the senior lienholder(s) the option of either declining further advance requests or insuring that sales or use taxes are paid. It also elevates concern for remitting local tax payments to a much higher level for local businessmen. The Alaska Bankers Association finds this type of compromise acceptable.

Summary

The 1985 statute authorizing a priority lien for municipal sales and use taxes, as it now exists, is an onerous law and goes beyond what is reasonable and fair. With a single last minute word change, local government gained the power to assert its lien on any property of any innocent buyer (a consumer who purchased in good faith and paid his tax) and it can place a secured creditor in a subordinated position without notice, without knowledge, and even though he had no part in the taxable transaction. Further, the municipalities and borough governments did not achieve a very good vehicle to collect from the real potential violator, the seller who fails to remit taxes collected.

The Alaska Bankers Association does not believe there should be no authority for sales and use tax liens. However, such a law should be worded carefully to restrict the lien to only property of the violator and lien priority to other innocent lienholders should be based on date notice is filed. This law should treat all parties in commerce equally and offer an opportunity to do business without a surprise. A provision that permits a priority lien against subsequent advances after direct notice to a secured party seems fair and should go far in solving the delinquent sales and use tax problems the boroughs and municipalities have experienced.

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Sec. 29.45.570. SALES AND USE TAX. (a) A borough may levy and collect a sales tax not exceeding six percent on sales, rents, and on services made within the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) No change.

(c) No change.

(d) If the assembly of a home rule or general law borough charges interest on sales taxes not paid when due, the rate of interest may not exceed 15 percent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

new (e) A borough may provide for the creation, recording, and notice of a lien on real or personal property to secure the payment of a sales or use tax, and for interest, penalties and administration costs in the event of delinquencies. A lien established under this section has the force, priority and duration of a judgment lien.

EXPLANATION: (a) changed to make it clear that tax can be levied on sales and rents, not just one or the other. (d) interest rate raised from eight to 15 percent. (e) added to allow liens for the collection of sales and use taxes.

TITLE 29 TECHNICAL COMM.

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furnished and labor was done "in connection with the work done upon the claim" does not comply with the statute. *Ginsberg v. Noble*, 6 Alaska 282 (1920).

A lien on a building for materials furnished cannot include another structure against which a lien is not filed, and into the construction, alteration, and repairs of which some or all of the materials were employed or used. *Burr v. House*, 3 Alaska 611 (1909).

The general rule is that a lessee cannot impose any charge upon the reversion or estate of the lessor thereof. *Norris v. Marsh*, 3 Alaska 140 (1906).

Nor does the fact that the lessor acquiesces in the improvement by the lessee subject his reversion to the mechanics' liens therefor. *Norris v. Marsh*, 3 Alaska 140 (1906).

Unless lessor fails to give notice of nonresponsibility or his agent causes improvement. — This section, AS 34.35.050 and AS 34.35.065, construed together, mean that the person in charge of the work shall prima facie be deemed to be the agent of the owner, and the property of the latter shall be charged with the lien under the express provisions of AS 34.35.050; that, if the person in charge is not in fact such agent, the interest of the owner shall, nevertheless, be liable for the improvement if it is constructed with his knowledge, and he fails to post the required notice disclaiming responsibility; and that, if the work is done for a lessee of the property, liability is confined to the

household estate, if the owner had no knowledge of the construction of the improvement, or if, having such knowledge, he gave notice that he would not be responsible. *Cascaden v. Wimlish*, 161 F. 241 (9th Cir. 1908). See AS 34.35.115.

To determine whether or not modular units are sufficiently attached to the land on which they are situated, the supreme court will look to the following elements: (1) physical annexation, (2) adaption to use with real property, (3) intention to annex to realty, (4) relationship of the claiming parties, (5) the relative difficulty of removal, (6) the nature of the article annexed, and (7) whether the fact of the annexation is open and apparent. *Dannemiller v. AMFAC Distribution Corp.*, Sup. Ct. Op. No. 1452 (File No. 2895), 566 P.2d 645 (1977).

Applied in *Torkko/Korman/Engineers v. Penland Ventures*, Sup. Ct. Op. No. 2757 (File No. 6489), 673 P.2d 769 (1983).

Quoted in *Jorgensen Co. v. Sheldon*, 2 Alaska 607 (1905).

Stated in *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Collateral references. — 53 Am. Jur. 2d, *Mechanics' Liens*, §§ 28-48.

Public property as subject to lien. 26 ALR 326.

Vendor's interest as subject to mechanic's lien. 58 ALR 911; 102 ALR 233.

Quantity or area of land around improvement which may be subject to lien. 84 ALR 123.

Sec. 34.35.060. Priorities. (a) Except as provided in (c) of this section, an encumbrance which is properly recorded shall be preferred to a lien created under AS 34.35.050 — 34.35.120 unless the claim of lien under AS 34.35.070 or notice of right to lien under AS 34.35.064 has been recorded before the encumbrance. The preference granted for a prior mortgage or deed of trust under this section applies without regard to when the sums are disbursed or whether the disbursements are required under the terms of a loan agreement.

(b) [Repealed, § 19 ch 175 SLA 1978.]

(c) A lien created by AS 34.35.050 — 34.35.120 in favor of an individual actually performing labor upon a building or other improvement in its original construction or of a trustee of an employee benefit trust for those individuals is preferred to a prior encumbrance upon the land on which the building or other improvement is constructed.

(d) In enforcing the lien, the building or other improvement may be sold separately from the land. When sold separately, the purchaser may remove the building or other improvement within a reasonable time after the sale, not to exceed 30 days, upon the payment to the owner of the land of a reasonable rent for its use from the date of its purchase to the time of removal. If removal is prevented by legal proceedings, the 30 days does not begin to run until the final determination of the proceedings in the court of first resort, or in the appellate court if appeal is taken. (S 26-1-3 ACLA 1949; am § 1 ch 111 SLA 1953; am § 1 ch 7 SLA 1955; am §§ 2, 3, 19 ch 175 SLA 1978)

NOTES TO DECISIONS

Editor's notes. — The cases annotated below were decided under this section as it existed prior to the 1978 amendment, which, among other things, rewrote subsection (a) and repealed subsection (b), which provided when a lien created by AS 34.35.050 — 34.35.120 was preferred to a lien, mortgage, or other encumbrance which is unrecorded.

Legislative Intent. — The legislative intent is to limit the priority granted generally to situations where the construction preceded all other construction in and upon a given area of vacant or cleared land. *Lynch v. McCann*, Sup. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970).

In the case of "original construction," the legislature intended to subordinate to some extent the principle of first in time, first in right, to a social interest in securing mechanics' lienors. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

For purposes of this section, a deed of trust and a mortgage are not differentiated. *Thorpe Constr. Co. v. Irvin & Co.*, 367 F. Supp. 87 (D. Alaska 1973).

This section protects the security of a mortgagee or beneficiary of a deed of trust against mechanics' liens so long as his encumbrance attaches and is recorded before the mechanics' lienor commences his labor or furnishes materials, except where "original construction" is performed. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

A beneficiary of a deed of trust whose interest attaches and who records before

any alteration or repair begins or materials are furnished has priority over a mechanics' lienor, except in the case of original construction under this section. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Scheme of priorities not overcome by posting notices of nonresponsibility. — Mortgagees and beneficiaries of deeds of trust need not post notice of nonresponsibility, and if they do, the notices do not overcome the scheme of priorities established in this section. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

A mechanics' lienor has priority over the beneficiary of a deed of trust in the case of original construction under subsection (c), regardless of whether the beneficiary of the deed of trust posts a notice of nonresponsibility. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

The legislature, in subsection (c), provided that mechanics' lienors performing original construction should have priority over earlier security interests. The scheme of priorities ordered by the legislature in the circumstances of original construction would be defeated if beneficiaries of deeds of trust could attain priority over mechanics' lienors by posting notices of nonresponsibility. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Construction lenders can protect themselves from mechanics' liens in

SB

284

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

284

April 29, 1987

The Honorable Jan Faiks
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Faiks:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to a grant of state land to the City of Nome. Unless this bill passes this session, the Alaska State Building Authority (ASBA) will have to pay \$50,000 to the City of Nome in settlement of a legal dispute.

In 1968, ASBA and the City of Nome entered into a cooperation agreement with respect to the Beringvue Housing Project in Nome. Because ASBA is exempt from local taxes, and because the City of Nome provides municipal services to the Beringvue project, ASBA agreed to make "Payments in Lieu of Taxes" (PILOT payments) to cover the cost of municipal services for the Beringvue project. The city subsequently sued for underpayment of the PILOT payments.

In 1982, ASBA settled the dispute with Nome in an agreement containing a provision under which ASBA would undertake a reasonable and diligent effort in good faith to acquire fee simple title in the name of the City of Nome to a particular piece of property in Nome known as Other State Land 417 (OSL 417). If ASBA does not obtain fee simple title for Nome before November 1987, ASBA is to make an alternative payment to Nome in the amount of \$50,000 as full and final payment of the dispute.

At the time of the agreement, it was anticipated that the Department of Natural Resources could, under existing statutory authority, convey fee simple title to the property. The parties to the agreement now believe that such a conveyance of the property would be subject to a reverter clause required by AS 38.05.810(a) which would provide for the re-

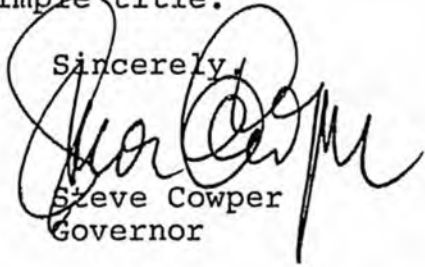
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Honorable Jan Faiks

Page 2

version of the title of the real property to the state if the City of Nome stopped using the property for public purposes. The City of Nome is unwilling to accept transfer of the property with the reverter clause, and continues to insist on a transfer of fee simple title.

Sincerely,



Steve Cowper
Governor

304

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____
Revision Date: 5B284
Title: Relating to Nome Land Grant
Sponsor: Governor
Requestor: _____

Bill Version: 773-87-155
Publish Date: _____
Agency Affected: Comm. & Econ. Dev.
BRU: ASBA
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS :

Prepared by: Barbara Morse-Quinn, Exec. Director Phone: 562-2813
Division: Alaska State Building Authority Date: April 24, 1987
Approved by Commissioner: J. Anthony Smith, Commissioner Date: April 24, 1987
Agency: Department of Commerce and Economic Development

Distribution (by preparer):

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

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FYI

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES

State of Alaska

DIVISION OF LAND & WATER MANAGEMENT

TO: Carol Shobe, Manager *CS*
Title and Contracts Unit

DATE: January 15, 1987

THRU: Jean Whitney, NRM I *JW*
Title Analysis

FILE NO.: 7-830-5
2039A

TELEPHONE NO.: 762-2310

FROM: Pat Murnan, NRT *PM*
Title Analysis *P. Murnan*

SUBJECT: Reindeer Slaughterhouse

Issue

To research and verify title on OSL 417, the Reindeer Slaughterhouse in Nome.

Description of Land Analyzed

T. 11 S., R. 34 W., K.R.M.
U.S. Mineral Survey 1339
Block 135, Townsite of Nome

Chronology of Events

- 1/21-24/1899 Claim located for the Arthur, Broncho, Cephei, Dandy, Eureka, Famous, Golden and Harriet Placer, and Iris, Jonah, Koyuk and Last and Beach Claim Vega Placer.
- 4-13-1905 Official Plat of the Townsite of Nome, Alaska, surveyed and platted under direction of Porter J. Coston, Townsite Trustee.
- 4-18-1908 Trustee's Deed
 Grantor: Porter J. Coston, as Trustee for the Townsite of Nome.
 Grantee: Christina MacLean and Sarah Fill.
 Legal: Block 135, Townsite of Nome and additional lands.
 Reservations: None.
- 1-29-1923 U.S. Mineral Survey 1339 approved. This is a plat of the claim of Nome and Sinook Mining Company known as the Arthur, Broncho, Cephei, Dandy, Eureka, Famous, Golden and Harriet Placer, and Iris, Jonah, Koyuk and Last and Beach Claim Vega Placer.
- 7-14-26 Federal Patent 982319
 Grantor: U.S.A.
 Grantee: Nome and Sinook Company
 Legal: U.S. Mineral Survey 1339
 Reservations: FIRST. That the grant hereby made is restricted in its exterior limits to the boundaries of the said mining premises, and to any veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, which may have been discovered

Carol Shobe
Page 2
January 15, 1987

SECOND. That should any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, be claimed or known to exist within the above described premises at said last named date, the same is expressly excepted and excluded from these presents.

THIRD. That the premises hereby conveyed shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of the courts. And there is reserved from the lands hereby granted a right-of-way thereon for ditches or canals constructed by the authority of the United States.

FOURTH. That in the absence of necessary legislation by Congress, the Legislature of Alaska may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to the complete development thereof.

6-20-34

Deed

Grantor: Nome and Sinook Company
Grantee: Hammon Consolidated Gold Fields
Legal: Arthur, Bronco, Cephei, Dandy, Eureka, Famous,
Golden and Harriet Placer, and Iris, Jonah, Koyuk
and Last and Beach Claim Vega Placer mining claims.

Subject to: A lease granted by the Nome and Sinook Company to Center Creek Dredging Company on September 30, 1920, for the term of fifteen years from the date thereof, expiring at noon on the thirtieth day of September, 1935, which said lease was assigned to Nome Mines, Incorporated, the said claims having been further sublet by Nome Mining Incorporated to Hammon Consolidated Gold Fields by indenture dated April 29, 1925.

Carol Shobe

Page 3

January 15, 1987

6-1-37

Deed

Grantor: Hammon Consolidated Gold Fields

Grantee: United States Smelting Refining and Mining Company.

Legal: All mines, mining grounds and mining claims, all lands or other real estate and all other real property wherever situated, either within or without the Territory of Alaska, owned by the Hammon Consolidated Gold Fields on the date of this deed.

Note: This deed is made by Hammon Consolidated Gold Fields to United States Smelting Refining and Mining Company, owner of all its capital stock, for the purpose of completely liquidating Hammon Consolidated Gold Fields.

10-29-68

Deed

Grantor: United States Smelting Refining and Mining Company.

Grantee: State of Alaska.

Legal: A portion of Block 135 Nome Townsite, described by metes and bounds situated in Arthur Broncho, etc. M.S. 1339.

Reservations: None.

1968

The State legislature appropriated \$75,000 to the Department of Economic Development to initiate a Reindeer Processing Program with the intent that the facility "be turned over to private industry as soon as practicable".

6-30-69

Memorandum of Agreement

Between the Department of Economic Development and the Department of Natural Resources. It was agreed that the Department of Natural Resources would manage and operate the reindeer facility.

8-15-74

The Nome Reindeer Slaughterhouse was transferred from the Department of Economic Development to the Department of Natural Resources.

4-1-86

Memorandum of Agreement, Nome Reindeer Slaughterhouse between Department of Natural Resources, Division of Agriculture and University of Alaska, Institute of Arctic Biology.

The Division of Agriculture hereby grants to the University the authority to operate and manage the Nome reindeer slaughter facility.

Carol Shobe
Page 4
January 15, 1987

Summary

The 1908 Trustee's Deed and the 1926 Federal Patent appear to be in conflict. I talked to Floyd Darby of Lawyer's Title. He has been doing extensive work in the Nome area for the past several years. He explained that there were many invalid Trustee Deeds issued because the Trustee Patent was preempted by the location notices of mining claims.

According to the notation on the plat of U.S. Mineral Survey No. 1339, the claim was located January 21-24, 1899. The official plat of the Townsite of Nome was approved by the Townsite Trustee, Porter J. Coston, on April 13, 1905, and the Certificate was issued to the Townsite Trustee on January 6, 1906 by a metes and bounds description.

This parcel serialized as OSL 417 on the state's records, is depicted as Block 136 on the status plat (Suppl. Sheet No. 10, T. 11 S., R. 34 W., K.R.M.). The townsite of Nome (U.S.S. 451) was resurveyed in 1958. As a result of this survey, Block 135 was changed to Block 136. This explains why the State status plat shows OSL 417 as Block 136 rather than Block 135. Mr. Darby said there is some question as to the accuracy of the 1958 resurvey. He has found numerous errors on it.

The chain of title tracked here stems from the 1926 Patent. Without being able to research records in the Nome Recorder's office, we will be unable to determine if a separate chain exists which stems from the 1908 Trustee's Deed.

Don Leach at the BLM Fairbanks District Office (356-2025) informed me that there are quite a few cases similar to this in Nome where two different conveyances were issued for the same piece of property. His research indicates both conveyances are valid and the parties have learned to live side by side.

! If the State conveys this land it should be done by quitclaim deed. There should also be a covenant in the conveyance guaranteeing the facility would be maintained for the advancement of reindeer husbandry.

PM:eg

MEMORANDUM of AGREEMENT

NOME REINDEER SLAUGHTER HOUSE

between

Department of Natural Resources
Division of Agriculture

and

University of Alaska
Institute of Arctic Biology

Upon properly signed acknowledgement of the conditions of this agreement by officials of the University of Alaska, the Division of Agriculture hereby grants to the University the authority to operate and manage the Nome Reindeer slaughter facility under the following conditions:

1. The coordinator of the University of Alaska, Fairbanks, Reindeer Program will be responsible for the facility management.
2. Maintenance, repair, utilities, security and general operation will be provided by the University of Alaska, Fairbanks.
3. Facility will be maintained and made available, under reasonable conditions, for use as compatible with the reindeer industry and development of the economy of the area.
4. Any use agreement between the University of Alaska, Fairbanks and a third party must be approved in advance by the Division of Agriculture.
5. Any third party use must be by written agreement with the University.
6. Use of the plant will be coordinated with the Reindeer Herders Association at Nome.
7. Uses other than by the University of Alaska, Fairbanks will be under an established schedule of fees and deposits.
8. The Division of Agriculture will maintain fire insurance on the facility.
9. Use of the facility for temporary or permanent residency will be prohibited unless such use is required by the University of Alaska, Fairbanks in carrying out its reindeer research program.
10. Live animals will be permitted only in the kill room portion of the facility.

11. Use of the facility for general purpose meetings will be prohibited. Use for educational functions will be allowed only under the direct supervision of the coordinator, and only for those subjects directly related to the use of the building by the University of Alaska, Fairbanks, Reindeer Research Program.
12. The terms of this authority will be three years, beginning June 30, 1986 or until both parties agree to other terms. The agreement may be cancelled upon 30 days notice by either party, and may not be extended or continued only for programs of benefit to the reindeer industry in Alaska.
13. Any permanent changes or improvements must be approved by the Division of Agriculture in advance.

These conditions should not restrict the use of the facility for the uses for which it was intended, and in fact proper adherence to the requirements for proper security and maintenance should insure more advantageous use in the future. It will be important that the facility be maintained to meet the Department of Environmental Conservation meat inspection requirements, including maintenance of the inspectors office.

Agreed to by:

Bill L. Hovien
Director - Division of Agriculture

3/29/86
Date

Joe Nava
Executive Officer - Institute of Arctic Biology

1 April '86
Date

RANDUM

State of Alaska

DEPARTMENT OF
NATURAL RESOURCES

AUG 26 1968

Honorable Walter J. Hickel, Governor
State of Alaska

RECEIVED
JUNEAU, ALASKA

DATE: August 22, 1968

FROM: Robert W. Ward, Commissioner
Department of Administration

SUBJECT: Department of Economic Development,
Request for Revision of 1968-69
Reindeer Slaughter Program.

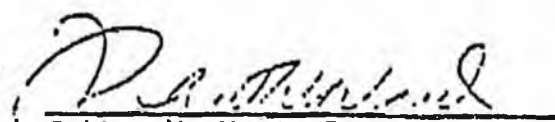
The 1968 Legislature appropriated \$75,000 to the Department of Economic Development to initiate a Reindeer Processing Program, within the Industrial Development Division. In funding this program, it was the express intent that any facility constructed or operated by the state be taken over by private industry as soon as practicable.

Although the original plan was to convert an existing cold storage plant at Golovin for this purpose, Economic Development has determined that the establishment of a new facility in the Nome area would provide a more expedient location for the program. At the present time only one reindeer herder is known who will use a facility at Golovin, and an existing slaughter company is planning to renovate the Golovin warehouse to meet this need.

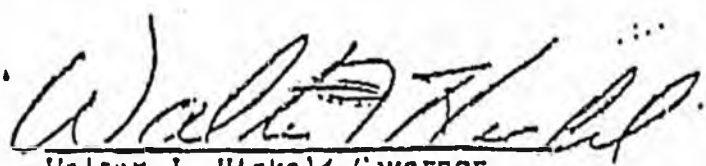
Conversely, a number of herders have agreed to sell their reindeer at Nome, and better utility and transportation facilities are available there. Since no private developer is interested in constructing a physical plant in Nome at this time, it will be necessary to utilize part of the \$75,000 grant for capital expenditures, in contrast to the original plan to use the entire amount for operating capital. A substantial balance of this amount would still be available as operating capital, however.

It is planned to seek a federal EDA loan or grant to sustain this program on a more permanent basis. In the interim, however, it appears necessary for the state to pursue the program as outlined above.

A copy of Economic Development's report on this matter is attached for your information. Since this request does not obligate additional state funds, your approval to revise the scope of the reindeer program is recommended in accordance with the provisions of Executive Order No. 20.


Robert W. Ward, Commissioner
Department of Administration

Approved this 26 day of August, 1968.


Walter J. Hickel, Governor
State of Alaska

CAPE HOME

Serial No. 14-1723

BOOK 211 PAGE 74
Cape Nome Recording Office

D E E D

THIS INDENTURE, between UNITED STATES SMELTING REFINING AND MINING COMPANY, a Maine corporation, hereinafter called "Grantor", and the STATE OF ALASKA, hereinafter called "Grantee":

W I T N E S S E T H

That the said Grantor, in consideration of the sum of One Dollar (\$1.00), lawful money of the United States of America, and other valuable considerations in hand paid by the said Grantee the receipt whereof is hereby acknowledged, does hereby convey and quitclaim unto the said Grantee all interest which the Grantor has in the following described real estate situated in Arthur Broncho, etc. M.S. 1339, State of Alaska:

That portion of Block 135 Nome Townsite, U. S. Survey 451 more particularly described as follows:

Commencing at Corner No. 11 of the Arthur, Broncho, Cephei, Dandy, Eureka, Famous Golden and Harriet Placer, M.S. 1339 from which U. S. L. M. 1-C bears S 72°55' W 1155 feet more or less, proceed S 14°13' W 192 feet to a point on the line between Corner No. 11 and Corner No. 12 of Arthur, Broncho, Cephei, Dandy, Eureka, Famous, Golden and Harriet Placer, M.S. 1339, the true place of beginning, which is Corner No. 1 of Slaughter House Site; proceed S 14°13' W 175 feet to Corner No. 2; thence N 64°41' W 287 feet to Corner No. 3; thence N 25°19' E 170 feet to Corner No. 4; thence S 64°41' E 252 feet to the true place of beginning the whole thereof containing 1.052 acres more or less.

TOGETHER with all and singular, the tenements, hereditaments, and appurtenances therunto belonging, or in any wise appertaining, and the reversions, and remainder and remainders, rents, issues and profits thereof.

RESERVING AND EXCEPTING, however, any reservations to the United States of America that may be set forth in the United States Patent Deed to the said mining claim.

TO HAVE AND TO HOLD all and singular the said premises together with the appurtenances and privileges thereunto incident unto the said Grantee and to its successors and assigns forever.

IN WITNESS WHEREOF, the said Grantor has executed this deed as of the 22nd day of October, 1968.

RECORDED - FILED
Case Name <u> </u> REC. DIST. <u> </u>
DATE <u>Nov. 1</u> 19 <u>68</u>
TIME <u>11:15</u> A.M.
WITNESSED BY <u>The Public Administrator</u>
<u> </u>
<u> </u>

UNITED STATES SMELTING REFINING AND MINING COMPANY

By J. George Gange
J. George Gange, Senior Vice President

And by Henry C. Stanberg
Henry C. Stanberg, Assistant Secretary

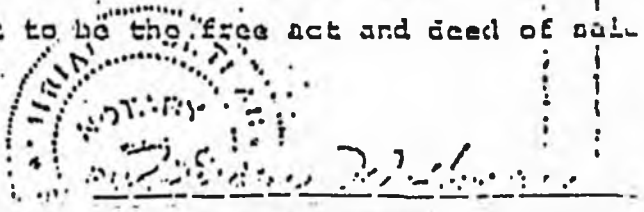
Executed in the presence of:

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STATE OF NEW YORK)
) ss
COUNTY OF NEW YORK)

On this 22nd day of October, 1968, before me appeared J. George Gange and Henry C. Stanberg, to me personally known, who being by me duly sworn, did say that they are, respectively Senior Vice President and Assistant Secretary of United States Smelting Refining and Mining Company, and that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed behalf of said corporation by authority of its Board of Directors and said J. George Gange and Henry C. Stanberg acknowledged said instrument to be the free act and deed of said corporation.



SNAKE RIVER

$N 06^{\circ} 38' W 257.35'$

$S 64^{\circ} 11' E 47.75'$

$S 61^{\circ} 11' E 252'$

EXISTING CITY
SERVICED

NEW 60'
ADDITION

STREET

WILL HAVE
PROPERTY
LINE

$N 25^{\circ} 00' W$

$625.67'$

60' X TH

$N. 61^{\circ} 11' W. 257'$

Holding Area

50.36

49.69

50.31

50.00

50.00

120

125

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FYI

MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES - Division of Land and Water Management

TO: Dick LeFebvre
Deputy Director

DATE: January 26, 1987

THRU: Gary Gustafson, Chief
Land Management

FILE NO: OSL 417

TELEPHONE NO: 762-2326

FROM: Carol Shobe, Manager *CS*
Title/Contracts Unit

SUBJECT: Reindeer Slaughter
House in Nome

The following is an analysis of actions related to a settlement of litigation, not involving DNR, naming the Reindeer Slaughter House in Nome as part of the settlement.

Background:

The 1968 Legislature appropriated \$75,000 to the Department of Economic Development to initiate a Reindeer Processing Program, within the Industrial Development Division, with the intent that the facility be turned over to private industry as soon as practicable.

On October 29, 1968, United States Smelting, Refining and Mining Co. granted to the State of Alaska a portion of Block 135 Nome Townsite, described by metes and bounds, situated in Arthur Broncho, etc. M.S. 1339.

A two story structure was constructed on the land and on June 30, 1969 a Memorandum of Agreement was signed between the Department of Economic Development and the Department of Natural Resources. It was agreed that the DNR would manage and operate the reindeer facility primarily because DNR was administering the Wholesome Meat Act of 1967.

On April 25, 1972 advice was given by the AG's office as to the meaning of the statement in the legislation that the facility "be turned over to private industry as soon a practicable", "This statement of purpose seems broad enough to cover either sale or lease to either a private company or a non-profit association such as the Reindeer Herders Association."

On August 25, 1972 a lease was issued for a period of five years to the Reindeer Herders Association of Nome.

On August 15, 1974 the Nome Reindeer Slaughter House was transferred from the Department of Economic Development to DNR.

On April 1, 1986 a Memorandum of Agreement was signed between DNR, Division of Agriculture and the University of Alaska, reviewed by the Reindeer Herders Association of Nome. The University of Alaska is responsible for maintenance, repair, utilities, security and general operation of the facility. The Division of Agriculture will maintain fire insurance on the facility. The facility will be maintained for uses compatible with the reindeer industry and development of the economy of the area. Use of the plant will be coordinated with the Reindeer Herders Association of Nome. The term of the agreement is for three years beginning June 30, 1986.

Current Situation

This office was contacted by Attorney Francine Harbour of the law firm of Wanamaker, DeVaux and Crabtree representing the Alaska State Housing Authority (the Authority). Apparently "the Authority" built some low income housing in Nome that resulted in the City of Nome suing the Authority and the City winning. On November 22, 1985 a stipulation of Settlement and Release Agreement was signed between the City of Nome and the Authority for City of Nome v. Alaska State Housing Authority, No. 2 NO-80-02 Civil. The Agreement which DNR was not a party to states as follows:

- "1. ASHA shall undertake a reasonable and diligent effort in good faith to acquire, either in the name of or for immediate conveyance to Nome, all of the real property interest of the State of Alaska in that certain real property more particularly described as Block 135, U.S. Survey No. 451 as amended ...
2. If the above described property interests in Block 135 are not conveyed to Nome so that Nome achieves fee simple title to said property subject only to reservations and exception as contained in the U.S. Patent and acts relating thereto, within twenty-four months of the date of execution of this agreement, ASHA shall pay to Nome Fifty Thousand Dollars ..."

The law firm representing the Authority determined that DNR is the record owner of the parcel; contacted the Property Appraisal Division of the City of Nome for a 1986 valuation of \$40,300 for the land, and \$289,900 for the building with a total value of \$330,200; and researched various methods of acquiring the land from DNR for the City of Nome.

Preliminary discussions with the attorney indicates that we have few opportunities to convey the subject land seralized as OSL 417 to the City of Nome other than (1) an .810(a) conveyance subject to a public use reverter clause and a possible covenant that it must allow the continued use of the site for the reindeer industry; (2) a conveyance for fair market value; (3) a conveyance authorized by special legislation. The attorney indicated that the City of Nome would not accept the land with any reverters or covenants and that the fair market value of a preliminary figure of \$330,200 was unacceptable. The attorney desires that our staff provide her with a written narrative of the meaning of the "unrestricted public use and access" language in the reverter clause required in a conveyance under AS 38.05.810(a) and the source in law or policy of this requirement. She also requested that we review AS 18.55.28 the statute from the Authority's enabling legislation authorizing any agency of the state to "donate ... property to the authority ... without appraisal, public notice or advertisement or bidding." She felt this statute may support a request for a waiver of the public use reverter clause.

Summary:

1. The Title Administration Sub-Unit has completed the attached title analysis. It appears that the state has sufficient interest in the land to issue a QCD if it is so determined. There is a question raised in the chain of title which should be checked in the Nome Recorders Office which requires travel. If the land leaves state ownership this issue should be checked.
2. A response is necessary to the law firm representing the Authority informing them that either DNR cannot accomodate their request, or request that a formal application be submitted on which to make a best interest determination.
 - (a) A response is necessary as to the meaning of the "unrestricted public use and access" language in the reverter clause required in a conveyance under AS 38.05.810(a)
3. In reviewing this parcel of land, it may be appropriate to include this parcel in the University of Alaska settlement since the University is managing the land under a current Memorandum of Agreement.

DELIVER TO: <u>CAROL WILSON</u>	LOCATION: <u>JLD</u>
FROM: <u>Salli SIMPSON</u>	LOCATION: <u>AKL</u>
TELEPHONE/TELECOPIER # _____	TOTAL NUMBER OF PAGES <u>13</u>
TRANSMITTING ON/SPEED _____	DATE <u>5/4</u> TIME _____
PHONE FOR PROBLEMS-NAME/NUMBER _____	
COMMENTS _____	



alaska title
guaranty
agency, inc.

RECEIVED

'85 NOV 26 A9:33

711 GAFFNEY, P.O. BOX 7129, FAIRBANKS, ALASKA 99707

WARRANTY PHONE 484-7701

LITIGATION REPORT

Richard Crabtree
1031 West 4th, Suite 401
Anchorage, Alaska 99501

Date: November 22, 1985
Order No. 4128851

Dear Sir:

This is a Litigation Report as of November 21, 1985 at 8:00 A.M.
on the following described property:

All that portion of patented placer mining claim(s)
known as Arthur, Broncho, Cephei, Dandy, Eureka, Famous, Golden
and Harriet Placer designated by the Surveyor General as
Mineral Survey No. 1339, being more particularly described
in that (those) certain patent(s) from the United States
of America to Nome and Sinook Company, dated July 14, 1926 and
recorded August 18, 1926, included within the following described land:

That portion of Block One Hundred Thirty-five (135), NOME TOWNSITE,
U.S. Survey 451, Nome Recording District, Second Judicial District,
State of Alaska, more particularly described as follows:

COMMENCING at Corner No. 11 of the Arthur, Broncho, Cephei, Dandy,
Eureka, Famous Golden and Harriet Placer, M.S. 1339 from which
U.S.L.M. 1-C bears South 72°55' West 1,155 feet more or less;
PROCEED South 14°12' West 192 feet to a point on the line between
Corner No. 11 and Corner No. 12 of Arthur, Broncho, Cephei, Dandy,
Eureka, Famous, Golden and Harriet Placer, M.S. 1339, the true
place of beginning, which is Corner No. 1 of Slaughter House Site;
PROCEED South 14°13' West 175 feet to Corner No. 2;
THENCE North 64°41' West 287 feet to Corner No. 3;
THENCE North 25°19' East 170 feet to Corner No. 4;
THENCE South 64°41' East 252 feet to the true place of beginning.

EXCEPTING THEREFROM any veins or lodes of quartz or other rock in place
bearing gold, silver, cinnabar, lead, tin, copper or other valuable deposits
within the land above described which may have been discovered or known to
exist prior to July 14, 1926.

This Agency agrees that title to the property described herein is
vested on the date shown above in: STATE OF ALASKA

continued--

(A)

cc: Acha; 11/26/85

SUBJECT only to the exceptions shown herein:

1. The provisions and reservations contained in the patent from the United States of America, dated July 14, 1926 recorded August 18, 1926 in Book 211, page 315, as follows:

FIRST. That the grant hereby made is restricted in its exterior limits to the boundaries of the said mining premises, and to any veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, which may have been discovered within said limits subsequent to and which were not known to exist on July 12, 1923.

SECOND. That should any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, be claimed or known to exist within the above described premises at said last named date, the same is expressly excepted and excluded from these presents.

THIRD. That the premises hereby conveyed shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of the courts. And there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States.

FOURTH. That in the absence of necessary legislation by Congress, the Legislature of Alaska, may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to the complete development thereof.

2. Subject property is not being carried on the tax rolls of the City of Nome.
3. Any matters which may be disclosed by a true and accurate survey of subject property.
4. The affect if any of what is common and customarily referred to as the "Plat of the Townsite of Nome Dependent Resurvey" which reflects subject property as lying within Block 136 of the Town of Nome.

continued--

5

Litigation Report

4128851

Page No. THREE

5. Any adverse claim to any portion of said premises lying below the mean high water line of Smoke River.
6. Rights of the public and/or governmental bodies, in and to any portion of the herein described property lying within a public road or road right-of-way.
7. Parties in possession.

This report is restricted to the use of the addressee and is not to be used as a basis for closing any transaction affecting title to said property. Liability of the Agency is limited to the compensation received therefor.

CHARGE: \$1,003.00

ALASKA TITLE GUARANTY AGENCY, INC.

By:

J. Daniel Leland

ejr
PRE6
END

(6)

10. 201-451-03
125 ALL

Observed Physical Condition	Exterior	Interior	Foundation
BUILDING TYPE & USE	3. FRAME	6. INTERIOR	7. FLOORS
Single _____ Double _____ Other _____ # Stories _____ Attic Finish _____ % Basement _____ Frame _____ Concrete _____ Block Log _____	Walls _____ e.v. Floor _____ e.c. Roof _____ e.c. Ceiling _____ e.s. 4. EXTERIOR Concrete _____ Block Sheathing _____ Kind Insulation _____ Kind Studs _____ Siding _____ Kind Shakes _____ Log _____ Slat Log Siding _____ Penetration _____ P.A.G.	Insulation Board _____ Plasterboard _____ Plaster _____ Masonry _____ Wood Paneling _____ Plywood _____ Unfinished _____ Floor _____ Number Rooms _____ Number Baths _____ Basement _____ 1st Floor _____ 2nd Floor _____ 3rd Floor _____ Attic _____ Total # _____ Grade of _____ Floor Plan _____ P _____ A _____ G Ceiling Height _____ Basement _____ 1st Floor _____ 2nd Floor _____ Attic _____ Grade of _____ Kitchen _____ P _____ A _____ G Oven Built-in _____ Range Built-in _____ Attic Unfinished _____ Attic Unfinished _____ % Number Corners _____ Shed Type _____ Size _____ Gable _____ Size _____	Wood _____ Kitchen _____ Bath _____ Living Room _____ Bed Room _____ 8. HEAT Stove _____ Oil Furnace _____ Gas Furnace _____ Hot Water _____ Hot Air Forced _____ Elec. BB _____ Space Heater _____ Kind _____ Floor Furnace _____ Rmt. Heat _____ Number of Chimneys _____ Kind _____ NUMBER OF FIREPLACES Basement _____ 1st Floor _____ Type _____
1. FOUNDATION	5. ROOF	9. PLUMBING	8. PLUMBING (Continued)
Concrete _____ Thick Cone. Block _____ Wood Posts _____ CC Piers _____ Wood Sills _____	Flat _____ Gable _____ Hip _____ Other _____ Kind _____ Shingles _____ Shakes _____ Composition # _____ Shingle Insulation _____ Kind _____ Tar Paper _____ Metal _____ Kind _____ Built-up _____ Other _____	_____ Grade _____ # Tubs w/shower _____ # Toilets _____ # Basins _____ # Kitchen Sinks _____ # Shower Stalls _____ # Hot Water tanks _____ # Sinks _____ Kind _____ # Laundry Trays _____	Total No. Fixtures _____ Water Source _____ Sewer Source _____ 10. ELECTRICAL Wired _____ Grade _____ 220 Service _____ TOTAL GRADE _____ 11. GARAGE _____ 12. PORCHES _____ 13. YARD IMPROVEMENTS _____

Other Buildings	Area	Floor	Roof	Interior	Heat	Plumb	Unit Cost	Adds & Deducts	Repl. Cost	Age	Condition	Building Cost

BUILDING VALUE CALCULATION				OPERATIONS AND PROCEDURES		BUILDING AREA CALCULATION			
Item No.	Area or Quantity	Unit Cost	Total	Performed By	Date	Square Feet - Ground Area			
				Inspection		Floor or Part	Width	Length	Area
				Classification					
				Calculation					
				Review					
ADDITIONS AND DEDUCTIONS				DEPRECIATION AND OBSOLESCENCE		Perimeter _____ Scale 1/4" = _____ Ft.			
				DEPRECIATION		Net Area			
				a. Effective Age					
				Depreciation					
				b. Observed Physical Condition					
				% _____					
				c. Total Depreciation (a + b)					
				% _____					
				d. Net Condition (100 - c)					
				% _____					
				OBSOLESCENCE					
				e. Overimprovement					
				% _____					
				f. Underimprovement					
				% _____					
				g. Other					
				% _____					
				h. Net Condition (100 - (e + f + g))					
				% _____					
				i. FINAL NET CONDITION (d + h)					
				% _____					
SUMMARY OF APPRAISED VALUE				Principal Building Appraisal					
				Other Principal Buildings Appraisal					
				Accessory Building Appraisal					
				Total Building Appraisal					
Total Replacement Cost \$ _____									
Cost Conversion Factor _____									
Adjusted Replacement Cost \$ _____				Total Land Appraisal					
				TOTAL APPRAISED VALUE					

2



May 14, 1987

The Honorable Arliss Sturgulewski
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811 (Mail Stop 3100)

Attn: McKai Campbell

Re: SB 284

Dear Senator Sturgulewski:

Thank you for your assistance regarding our efforts on SB 284. It is our understanding that representatives of the City of Nome are committed to working with the Reindeer Herder's Association to fashion a mutually acceptable accommodation concerning the parties' rights and expectations regarding Block 135 in Nome. Even though this accord is not expected prior to the end of this legislative session, we are encouraged by the prospect of passage of SB 196 which would allow the parties to pursue their goals administratively.

We will continue our efforts for as long as such efforts appear helpful. We appreciate you working with us to facilitate a transfer of the property to the City of Nome.

Sincerely,

ALASKA STATE BUILDING AUTHORITY

Barbara Morse-Quinn
Executive Director

BMQ:mrm



May 13, 1987

The Honorable Arliss Sturgulewski
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Dear Senator Sturgulewski:

This letter is to transmit the attachment which was mistakenly left off our letter to you of May 11, 1987. We apologize for this attachment not being included in our earlier letter and for any inconvenience it has caused.

Sincerely,

ALASKA STATE BUILDING AUTHORITY

Barbara Morse-Quinn
Executive Director

BMQ/laj

Encl.

BERING STRAITS REGIONAL HOUSING AUTHORITY

Regular Meeting
of the
Board of Commissioners
April 14, 1987

Resolution 87-07

WHEREAS, high heating bill remain the greatest drain on income for Rural Alaska Residents, and

WHEREAS, programs such as the Low Income Household Energy Assistance Program (LIHEAP) and Power Cost Equalization (PCE) help Rural Alaska residents pay energy bills, and

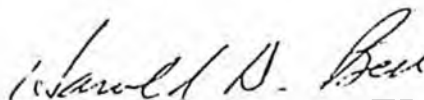
WHEREAS, even with these programs, many low income Rural Alaska residents must use large amounts of their limited cash to buy heating oil, and

WHEREAS, new high efficiency heating equipment could reduce oil consumption in thousands of rural homes by 30 - 50% , and

WHEREAS, these high efficiency units cost \$500 to \$1,000 and most Rural Alaska residents do not have sufficient capital to purchase these units,

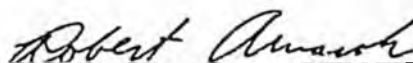
NOW THEREFORE, be it resolved that the Board of Commissioners of the Bering Straits Regional Housing Authority support the idea of the State of Alaska establishing a Low Interest Revolving Loan Fund that would enable people to reduce their heating oil consumption and save money;

Passed and approved by the Board of Commissioners of the Bering Straits Regional Housing Authority this 14 day of April, 1987.



Chairman (Harold Bell)

SEAL

Attest: 

Secretary (Robert Amarok)

Alaska Dept / AREA proposal

FY1 + comments

Paul Sp - 445-5652

REVOLVING LOAN FUND
TO PROMOTE EFFICIENT USE OF HEATING OIL IN RURAL ALASKA

SUMMARY: Establish a revolving loan fund which would enable rural residents to borrow up to \$1000 to purchase either a high efficiency heater or a high efficiency (retention-head) burner.

The loan fund should be administered by the Department of Community and Regional Affairs. Contracts to approve loans and collect payments should be given to rural oriented social service agencies or rural municipal governments.

Loans should be provided for a two and one half year period at five percent interest.

The size of the fund would depend upon the approach:

A single agency fund of \$100,000 could reach 225 households in an eight year period.

A statewide multi-agency fund of \$500,000 could reach 1164 households in an eight year period.

PROBLEM STATEMENT:

High heating bills remain the greatest drain on income for rural residents. In times of economic distress, rural residents have the ability to cut back and/or do without many items that require cash. Heat, however, is essential and in many areas of the state heat is synonymous with heating oil which can only be obtained with cash.

Various programs help rural residents pay energy bills. The Low Income Household Energy Assistance Program (LIHEAP) and the Power Cost Equalization (PCE) program provide significant help for large numbers of rural residents each year. The Low Income Weatherization Program has gradually helped lower consumption and energy bills in many communities.

Even with these programs, many low income rural residents must use large amounts of their very limited cash to buy heating oil. This situation contributes to the poverty of the individual families and the community as a whole.

Money spent for oil has very little positive effect on the local village economy. Dollars are "exported" to oil companies and only a small percentage circulates in the village or state to provide jobs and other economic benefits.

This situation could be very positively changed if heating equipment in rural areas was improved. New high efficiency heating equipment could reduce oil consumption in thousands of rural homes by thirty to fifty percent!

The most common type of oil heater in rural Alaska is the drip pot burner. Some recently built HUD houses have furnaces or boilers. Virtually all of the drip pot burners could be replaced with high efficiency heaters (Monitors or comparable) and many oil burners in the furnace and boilers systems could be replaced with high efficiency burners.

These replacement units could pay for themselves through reduced energy bills in one to three years.

The cost of these high efficiency units ranges from \$500 to \$1000. Though some rural homeowners have purchased these items on their own, many do not have sufficient capital or are unwilling to spend such a large amount of their limited funds for something that is not an essential need. (A heater is essential but replacing it is not unless it breaks.) Another factor is the fact that many people still do not know enough about the new technology.

The need for efficient heating equipment in rural Alaska is very significant. The Alaskan Statewide Housing Needs Study, Phase I Report, November, 1982, indicated that there were 7,913 occupied housing units in "remote" areas of the state. The study provided not data about the number of drip pot burners. However, Rural CAP research and experience suggests that drip pot burners or inefficient burners are used in approximately fifty percent of these homes.

The study indicated that there were 28,355 "rural" housing units in Alaska in 1980. It would be safe to conclude that fifteen to twenty-five percent of these use drip pot heaters or inefficient burners.

The Department of Energy weatherization program does allow replacement of drip pot heaters and oil burners. However, this measure has only been authorized in since 1986. In addition, though many people could use the new technology, limited funds often prevent the program from supplying the heaters. Though several items can qualify under the energy saving guidelines, comfort is often a consideration that dictates installing new windows and doors instead of replacing the heating unit.

It is difficult to predict the number of rural people who would use a loan program. Previous energy conservation loan programs have not served rural people well because they were difficult to apply for and to obtain since many people could offer no collateral. Lack of information has also been a factor.

Borrowing money has also been inconsistent with native cultural habits though many do get loans to purchase commercial fishing equipment.

PROPOSAL BENEFITS:

A low interest revolving loan fund would enable people to significantly reduce their heating oil consumption and save money. In order to be most effective, the program should be operated through agencies that

have regular on-site contact with rural people. This would ensure that the program was well publicized. It would also help ensure repayment of the loans.

Quite likely, the program would have a high default rate. Even so, the state should view the program as a way to help rural residents deal with high energy bills in a more productive way than by giving grants or subsidies.

A loan program would have the additional benefit of giving rural people a degree of ownership of their problem. It would provide an incentive to take responsibility for their situation and provide a way for them to help themselves.

FINANCIAL ANALYSIS:

Two scenarios would be feasible. One option would provide a \$100,000 fund to one agency. A second option would appropriate \$500,000 which should be distributed to several agencies.

The attached rough calculations evaluate a ten year period. After the eighth year loans would not be made. Collection efforts would continue until the end of the tenth year. All remaining funds would be returned to the State and the program would end.

These calculations assume the following:

1. Each loan would be for \$1000, 2.5 years, at 5% interest. Repayment of the loan would be monthly.
2. The fund would be banked so as to draw interest at 10%.
3. Costs of operating the program would be 15% of the amount loaned for that year. After the eighth year it would be a fixed amount.
4. All loans would be made at the beginning of the year. (This would likely not be the case but it simplifies calculations.)
5. The default schedule would be:
 - 50% repaying the complete loan.
 - 15% repaying 75% of the loan.
 - 15% repaying 50% of the loan.
 - 10% repaying 25% of the loan.
 - 10% repaying 0% of the loan.

Given these assumptions, a \$500,000 fund would enable the state to finance approximately 1164 units for a total cost of \$385,281.00. A \$100,000 fund would finance approximately 225 units for a total cost of \$82,125.

A larger program could be instituted if demand for the loans warranted it and the state chose to do so.

ALASKA STATE BUILDING AUTHORITY
TELECOPY COVER SHEET

TO: McKai Campbell
FROM: Barbara Mose - Juena
DATE: 5/8/87

This telecopy is transmitted from:

XEROX 7010 (High Speed Authomatic - Group 3 Machine) Telecopy
#(907) 786-6248.This telecopy consists of 7 pages, including this cover
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Therese Simmonds at (907) 786-6224.PLEASE DELIVER A.S.A.P.

Thank you.

SPECIAL COMMENTS:



May 8, 1987

The Honorable Arliss Sturgulewski
Alaska State Senator
P.O. Box V
Juneau, Alaska 99811 (Mail Stop 3100)

Attn: McKai Campbell

Re: SB 284

Dear Senator Sturgulewski:

Thank you for assistance with regard to SB 284. Enclosed please find additional background information for Committee review. We look forward to participating in a teleconference, tentatively scheduled for Tuesday, May 12, 1987 at 3:30 p.m. It is my understanding that representatives from the Department of Natural Resources (DNR) and the City of Nome are available for teleconference participation as well. Copies to the City of Nome have been forwarded to Brooks Chandler, City Attorney. In addition we have used the following distribution list for this information:

Bill Miles, Chairman of the ASBA Board
John Williams, Deputy Commissioner of Commerce and
Economic Development
Rod Swope, Office of the Governor
Tom Hawkins, Division of Land and Water Management, DNR
Dean Brown, Division of Agriculture, DNR
Senator Willie Hansley
Senator John Binkley
Representative Al Adams
Representative Heinrich Springer
Larry Davis, Reindeer Herders Association
Don Hutson, Public Health Service

I look forward to hearing from your office soon.

Sincerely,

ALASKA STATE BUILDING AUTHORITY

Barbara Morse-Quinn
Executive Director

BMQ:mrq

Enclosures



CITY OF NOME

P.O. BOX 281 - NOME, ALASKA 99762
TELEPHONE (907) 443-3242

May 7, 1987

← hand delivered
to Larry sh

Mr. Larry Davis
President/Chairman
REINDEER HERDERS ASSOCIATION
c/o Kawerak, Inc.

[copy
via hand delivery to Jake Olanna
sh]

Dear Mr. Davis:

The Alaska State Building Authority (formerly Alaska State Housing Authority) in settlement of a lawsuit agreed to pursue transfer of property title from the State of Alaska to the City of Nome. The property in question is located near and under the Reindeer Slaughter Plant. In the proposed transaction, Nome will receive title to the property, both land and buildings.

We are aware that there is an existing lease^{*} for the use of the building. It is certainly Nome's intention to continue that lease^{*} and to work with the Reindeer Herders Association toward the continuation of the economic development of reindeer as a local resource.

In order for this transaction to be recommended by the state administration, it is necessary to have a letter of non-objection from the Association. We would certainly appreciate your support of this transfer. I will be happy to meet with you to discuss the matter further.

It is our hope that your letter will be received at your earliest convenience. A committee hearing is scheduled on the matter for 3:30 Friday afternoon. It would be helpful if you could also attend that hearing.

Thank you for your consideration.

Sincerely,

CITY OF NOME


John K. Handeland, Mayor
Acting City Manager

* also includes
University of Alaska

SB 284 POSITION PAPER

The Litigation

In 1980 the City of Nome sued the Alaska State Building Authority. The lawsuit arose from a 1968 agreement authorizing the Authority to build up to 200 units of low-income housing in Nome. The City based its claim for damages on the Authority's inability to build more than 50 units; an inadequacy of payments in lieu of taxes to meet Nome's costs in providing municipal services to the project; and a delay in returning the property to the tax rolls from public ownership by the Authority.

In 1984, the Authority sought settlement of the law suit by transfer of the project to the City. When federal regulations concerning the outstanding development costs (paid through the federal budget process) prevented transfer of the project to local control, the Authority was requested by the City to assist with the transfer of the State's interest in Block 135 to Nome. Although Nome considered \$50,000 grossly inadequate and would not settle the lawsuit for that amount, in November 1985 the City accepted \$50,000 as the penalty figure to the Authority if, despite the Authority's efforts, the transfer was not completed by November 1987. In December 1985, the Authority began research with DNR which has resulted in the legislation before you today.

The State's Interest

The Authority supports the transfer of the State's interest in Block 135 to local ownership by the City of Nome. Located on Block 135 is a facility used seasonally for the slaughter of reindeer by the Reindeer Herder's Association.

Although we have no private appraisal of the property, the City assessed valuation on all of Block 135 is currently \$40,300 for the land. Since the State's interest in Block 135 is limited to the Slaughterhouse parcel alone, the valuation of the State-owned land is \$24,150.

The Slaughterhouse facility is in quonset hut configuration, 40' x 80', with a plywood floor, and two small sheds. It carried an assessed valuation at the time of settlement of \$33,400, but the slaughterhouse was revalued at \$30 per square foot after settlement. We do not give the current slaughterhouse valuation (\$96,000) particular import since transfer of the property to local control does not contemplate a change in use of the facility. The current valuation lists replacement cost at \$32,000.

Parties of Interest

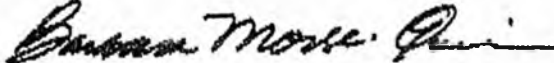
Transfer of the property to local government ownership would not alter the interests of the present user group. The City of Nome

SB 284 Position Paper
May 8, 1987
page two

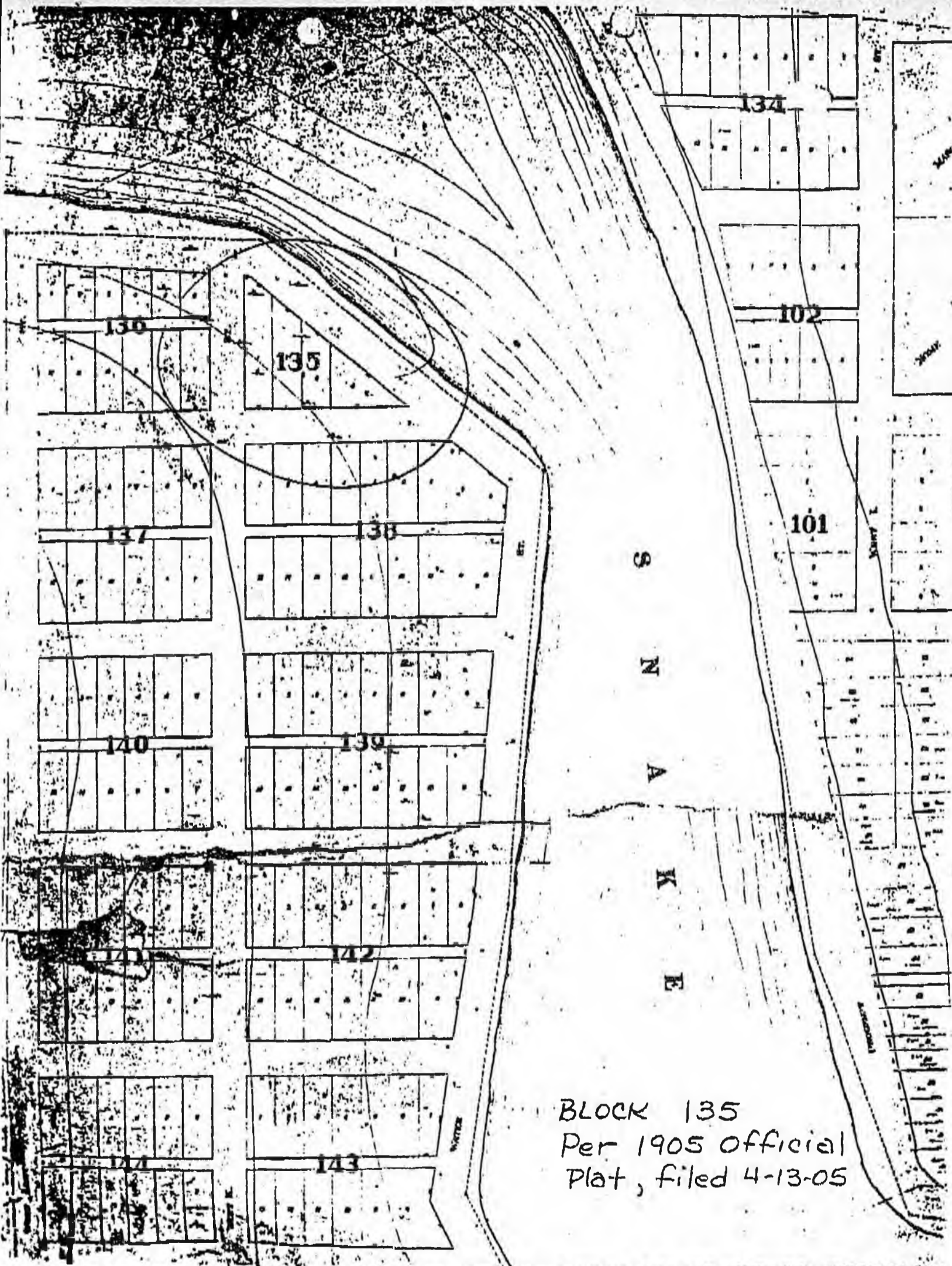
has given written commitment to the Reindeer Herder's Association to fully honor their use of the facility. Nome has agreed to take the property subject to any intermediate leases through the University of Alaska, Institute of Arctic Biology. The Reindeer Herder's Association is to send written comment under separate cover.

Respectfully Submitted,

THE ALASKA STATE BUILDING AUTHORITY



Barbara Morse-Quinn
Executive Director



BLOCK 135
Per 1905 Official
Plat, filed 4-13-05

4 March 1988

Mr. Tom Hawkins, Director
Division of Land & Water Management
DNR- State of Alaska
P.O. Box 107005
Anchorage, Alaska 99510-7005

Ref: State land/real property-Nome

Dear Mr. Hawkins:

Efforts by the Rules Committee by request of the Governor to pass Senate Bill No. 284 " to provide a state land grant to the City of Nome " would have satisfied debt, un-related to the property, the Nome Reindeer Slaughter Plant facility, and would have been a detrimental set-back to future development of the Reindeer Industry in regards to processing and marketing of the products.

In Governor Cowper's message accompanying the bill he stated
"Unless this bill passes this session , the Alaska State Building Authority (ASBA) will have to pay \$50,000.00 to the City of Nome in settlement of a legal dispute" . . ." If ASBA does not obtain fee simple title for Nome before November 1987, ASBA is to make an alternative payment to Nome in the amount of \$50,000.00 as full and final payment of the dispute." . . .

The Governor's message is clear and concise. Why should there be any discussion at the City of Nome level when the bill failed to pass in committee action?

The question arises, why does the membership of the Reindeer Herder's Association, Inc. have to vote to choose a City of Nome lease version v.s. a State of Alaska -University lease version. When the bill failed, 1) the City of Nome had no future involvement in the Nome Reindeer Slaughter Plant facility in regards to management or operation, 2) the City of Nome has no direct business being involved in a regional agricultural industry and 3) it is not a function of local city government to operate or maintain a regional private industry entity although the property does exist within the corporate boundaries and subject to some regulation conditions, although minor.

It is the primary responsibility of agencies of the State of Alaska, i.e. DNR-Div. of Ag; Div. of Lands & Water Management; Dept. of Econ. Devel.; Dept. of Environ. Cons. to advise, assist, promote development; regulate and other responsibility to the industry-private sector for public benefit to the greatest extent possible. Economic opportunity must be emphasized. All at the STATE level of effort and ability with human and financial resources as available. On the other hand, this is not to say that the Federal government does not have obligations, whether moral and /or financial and responsibilities as mandated by the "Reindeer Industry Act of 1937 as amended" a VALID, and existing law.

The first 8-9 years after the Nome Reindeer Slaughter Plant was constructed in 1967-1968 were difficult times due to remote-control management authority of the properties and lack of funding adequate to support the facility locally. It was not until Mr. Welch E. Brogan, owner-operator of Cinnabar Game Ranch- Corvin Springs, Montana came to Nome in 1975 and began purchasing reindeer meat from regional reindeer

herders. His experience with specialty Western Game Meats and live animals brought him to NW Alaska to develop an Alaskan grown specialty meat, Reindeer, market both within the State of Alaska and the nation. Having market ability and markets for the product, Mr. Brogan worked with several state officials, meat inspection personnel from both the State of Alaska and the U.S.D.A. federal program to gain state recognized certification of the Nome Reindeer Slaughter Plant under his supervision and direction. His involvement with the facility was secondary initially as he was an "outsider" and consequently the UA-Fairbanks was given control of the plant and Cinnabar Game Ranch, Mr. Brogan, sub-let from the University and they shared the use of the facility year around. Not to say that they were not problems to overcome. The primary use for many years was a support facility for the UA-F Research and Applied Science Program for the Reindeer Herder's Association and Mr. Brogan's processing of reindeer meat was secondary since both involved seasonal use. Mr. Brogan funded more than his fare share of expenses to keep the plant going on a day to day basis. The heat was kept on 24 hours a day and water circulation was constantly monitored. Credit should be given where credit is due. My hat goes off for Mr. Brogan.

However, for the past 12-13 years leadership and direction, be as it may be called, has never supported his cause, one expert in private industry trying to make a difference to better the Industry. We have difficulty understanding their representation of the members of the RHA. A review as to the "consent", "coordination" regarding this issue is appropriate and necessary to resolve internal problems which block progress which should benefit the entire membership whether he or she has a small struggling herd or a large profit making ag. business.

Future leases need review with necessary amendments to protect the rights of both parties. Consent and coordination by the Reindeer Herder's Association must be clear, concise, objective, and realistic. Rome was not built in one day. It is inappropriate to have so few make decisions which will effect the livelihood of so many. Although it is an internal industry problem, it must be brought out into the open, unfortunately. We are discussing State Public lands and cannot bury our heads in the sand.

The REAL issue is management of a STATE- owned plant by remote-control with limited or no funds. Give it to the guy and it is a thorn once removed. No way! We need alternative solutions to this problem. Mr. Brogan has made his offer and support of the facility as an invested, interested private industry operator. Now we need the support and assistance from the various agencies at the State level: the Interior Department- B.I.A. and a cooperative-effort of all members of RHA.

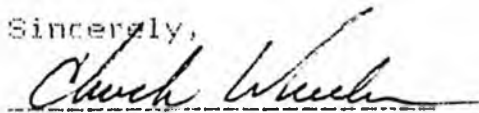
The Nome Reindeer Slaughter Plant is the only facility on the North American Continent built for the purpose of processing reindeer meat in NW Alaska. Let us not forget this fact. We should be proud to continue support and assistance to its perpetuality. We cannot afford to lose an outlet for processing reindeer meat and storing its by-products which is so important to the small individual herder-operator even though it may have its limitations or disadvantages today, which can be improved in the future. Its all we have at present. As a present and past user, we expect to use it in the future and cannot function efficiently and economically without the facility.

We advocate keeping it within State management and authority until positive alternative solutions are agreeable with both the parties.

directly effected by any changes in the near future.

Thank you for your consideration.

Sincerely,



Chuck Wheeler
Box 915
Nome, Alaska 99762
443-5533

Manager, Menadelook Herd/Teller
Corporate Agent, U-Jin Ent., Inc/
SFO, Ca./NW Ak- antler exporter
Consultant- Reindeer Operations/
Helicopter Support activities
Past Manager-NANA Development/AJV
Kakaruk Reindeer
Past Board member/Sec.-RHA

-2345

443-5201 work message(10am-4pm)

cc: Governor Steve Cowper
Senator Frank Murkowski
Senator Ted Stevens
Representative Don Young
Senator Willie Hensley
Representative Heinrich Springer
Representative Albert Adams
Commissioner Judith Brady-DNR
Senator Arliss Sturgulewski
Jake Olanna, Director-RHA
Jim Dau, CES-UAF- Nome
Welch E. Brogan-Cinnaber Game Ranch
Menadelook Herd/Teller
Kakaruk Reindeer/Teller
U-Jin Enterprises, Inc/SFO
Wheeler & Associates/Nome
file

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3 0 8

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

- P.O. BOX B
JUNEAU, ALASKA 99811-2100
PHONE: (907) 465-4700
- 949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 563-1073

February 12, 1988

POSITION PAPER

RE: Senate Bill 308: "An Act Establishing the Alaska Energy-Efficient Home Equity Fund".

SPONSOR: Senators Fahrenkamp, Sturgulewski, Josephson, Szymanski and Rodey

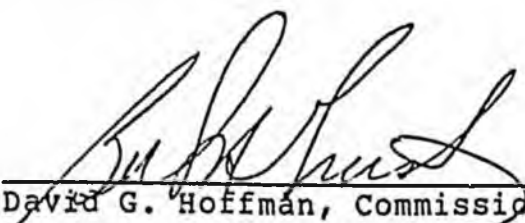
Program Effects of Bill

Senate Bill 308 would create in the Department of Community and Regional Affairs an Alaska Energy-Efficient Home Equity Fund which would be a revolving loan fund to finance the incremental costs to builders to construct superinsulated homes.

Comments

The Department strongly supports the concept of superinsulation. Superinsulated homes can reduce the heating costs of a home by 50 to 80 percent, while costing only an additional 5 to 10 percent to construct. Superinsulation is a technology that is practical, economical, and available now. The Department has sought to foster quality construction through the Alaska Craftsman Home Training Program. With \$200,000 from its share of the Exxon oil overcharge settlement, the Department has supported the Cooperative Extension Service's voluntary program of educating builders on this method of construction.

The Department, however, does not have a position on this legislation. While it supports the construction of superinsulated homes, it has questions regarding state subsidizing the construction of new homes in the light of the current housing glut and with the current state revenue situation.



David G. Hoffman, Commissioner

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act establishing the Alaska Energy-Efficient Home Equity Fund"
Sponsor: _____
Requestor: House C&RA

Agency Affected: Community & Regional Affairs
BRU: -- Housing Assistance
Components: Housing Loan Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		61.5	61.5	61.5	61.5	
TRAVEL		2.0	2.0	2.0	2.0	
CONTRACTUAL		4.8	4.8	4.8	4.8	
SUPPLIES		1.4	1.4	1.4	1.4	
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		69.7	69.7	69.7	69.7	
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

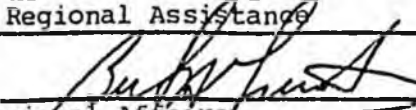
GENERAL FUND		69.7	69.7	69.7	69.7	
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		2	2	2	2	
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The Department estimates that two full-time positions, a loan closer (Range 12) and an accounting clerk 3 (Range 8) will be necessary to administer the program along with associated contractual & supply costs.

Prepared by: Jim Plasman, Deputy Director Phone: 465-4750
Division: Municipal & Regional Assistance Date: 2/12/88
Approved by Commissioner:  Date: _____
Agency: Community & Regional Affairs

Distribution (by preparer):

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

REVISED PROGRAM
REQUEST FOR NEW POSITION

CATEGORY	
COVER PROGRAM	
AGENCY	Community & Regional Affairs
DIVISION	Housing Assistance
BUDGET REQUEST UNIT	Housing Assistance
BUDGET COMPONENT	Housing Loan
APPROPRIATION	
ALLOCATION	

POSITION TITLE Loan Closer II		JUSTIFICATION: This position would process loans and grants under the Alaska energy-efficient home equity fund.
LOCATION Anchorage		
TYPE (FULL OR PART-TIME) <u>Full Time</u>		
NUMBER REQUESTED <u>1</u>		
RANGE 12A	BARGAINING UNIT GGU	
MONTHLY SALARY 2,826.28	# MONTHS (CY) 12	
DETAIL OF RELATED EXPENSES		
01 PERSONAL SERVICES	33.9	
02 TRAVEL	2.0	
03 CONTRACTUAL	2.4	
04 COMMODITIES	7	
05 EQUIPMENT		
06 OTHER		
TOTAL	39.0	
1002 FEDERAL		
1003 G/F MATCH		
1004 GENERAL FUND	39.0	
1005 I/A RECEIPTS		
1028 PROGRAM RECEIPTS		

REVISED PROGRAM
REQUEST FOR NEW POSITION

CATEGORY	
COVER PROGRAM	
AGENCY	Community & Regional Affairs
DIVISION	Housing Assistance
BUDGET REQUEST UNIT	Housing Assistance
BUDGET COMPONENT	Housing Loan
APPROPRIATION	
ALLOCATION	

POSITION TITLE Accounting Clerk III		JUSTIFICATION: The position will provide the necessary accounting support for the Alaska energy-efficient home equity fund.
LOCATION Anchorage		
TYPE (FULL OR PART-TIME) <u>Full Time</u>		
NUMBER REQUESTED <u>1</u>		
RANGE 8A	BARGAINING UNIT .GGU	
MONTHLY SALARY 1,631	# MONTHS (CY) 12	
DETAIL OF RELATED EXPENSES		
01 PERSONAL SERVICES	27.6	
02 TRAVEL	-0-	
03 CONTRACTUAL	2.4	Telephone, copy services, postage
04 COMMODITIES	.7	Miscellaneous administrative
05 EQUIPMENT		
08 OTHER		
TOTAL	30.7	
1002 FEDERAL		
1003 G/F MATCH		
1004 GENERAL FUND	30.7	
1005 I/A RECEIPTS		
1028 PROGRAM RECEIPTS		

Original sponsors: Fahrenkamp, Sturgulewski,
Josephson, et al.

1 IN THE HOUSE

2 CS FOR SENATE BILL NO. 308 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to grants for energy efficient
7 homes."

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

9 * Section 1. FINDINGS AND POLICY. (a) The legislature finds that

10 (1) high quality energy efficient building technology developed
11 by the Alaska Craftsman Home Program would substantially reduce home energy
12 consumption, improve the health and safety of the occupants, improve indoor
13 air quality, reduce the contributions of dwellings to outdoor pollution,
14 increase home durability, reduce home maintenance needs, and increase the
15 economic stability of the home owner;

16 (2) state money now being spent to subsidize energy bills, to
17 weatherize and repair poorly constructed homes, and to improve the health
18 of people affected by poor indoor air quality would be reduced or eliminat-
19 ed as existing homes are replaced by homes that are built to meet Alaska
20 Craftsman Home Program standards;

21 (3) state money now used to finance and repair homes would be
22 invested more wisely in homes that are built to meet the Alaska Craftsman
23 Home Program standards;

24 (4) local economic benefits are achieved when money being spent
25 on energy, home repair, and health are reduced because of building to meet
26 the improved building standards of the Alaska Craftsman Home Program;

27 (5) the principal responsibility for development of housing
28 rests with the private sector;

29 (6) research and development of energy efficient housing will

1 create new jobs, provide technology that can be exported, develop new
2 business opportunities, and increase the stability of the state's economy.

3 (b) It is the policy of the state to encourage the building of homes
4 that meet the energy efficient standards of the Alaska Craftsman Home
5 Program and to assist in the education, planning, and development of this
6 standard of building in cooperation with the building industry.

7 * Sec. 2. AS 18.55.998(a) is amended to read:

8 (a) There is created in the Department of Community and Regional
9 Affairs a supplemental housing development grant fund. Subject to the
10 availability of appropriations for the purpose, the department shall
11 make grants to regional housing authorities established under AS 18.-
12 55.996 for the cost of on-site sewer and water facilities, road con-
13 struction to project sites, energy efficient design features in homes,
14 and extension of electrical distribution facilities to individual
15 residences.

16 * Sec. 3. AS 44.47 is amended by adding a new section to read:

17 Sec. 44.47.378. ALASKA ENERGY EFFICIENT HOME GRANT FUND. (a)
18 There is established in the department the Alaska energy efficient
19 home grant fund consisting of money appropriated to it by the legisla-
20 ture. The commissioner shall administer the Alaska energy efficient
21 home grant fund under the provisions of this section.

22 (b) The commissioner may grant funds from the Alaska energy
23 efficient home grant fund to agencies of the state or federal govern-
24 ment, individuals, or businesses that retrofit existing single family
25 dwellings or build new single family dwellings that meet criteria
26 adopted by the commissioner.

27 (c) The commissioner shall adopt guidelines and procedures for
28 the fund after consultation with the board of directors of the Alaska
29 Craftsman Home Program.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
TIM KELLY, Vice Chairman
RICK HALFORD
MIKE SZYMANSKI
FRED ZHAROFF



P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4989

Senate Community and Regional Affairs Committee

March 8, 1988

TO: Senate Community and Regional Affairs Committee Members

FROM: Senate C&RA Staff

Re: SB 308 - "An Act establishing the Alaska energy efficient home equity fund."

SB 308 will create the Alaska Energy Efficient Home Equity Fund in the Department of Community & Regional Affairs. Guidelines and procedures for the fund would be prepared in consultation with the Alaska Craftsman Home Program.

This bill has a fiscal note of \$69.7 general fund and two positions. The fiscal note and department position paper are in your packet.

Representatives of the Department of Community & Regional Affairs as well as the sponsor will be at the meeting. Also, via teleconference, representatives of the University of Alaska's Cooperative Extension Service, the Alaska State Homebuilders Association and the Alaska Craftsman Home Program will attend the meeting.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

949 E. 36th Avenue
Suite 403
Anchorage, AK 99508
(907) 563-1955

January 22, 1988

The Honorable Arliss Sturgulewski
Chairman, DCRA, Alaska State Senate
P. O. Box V
Juneau, AK 99811

*McK
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Reed*

Dear Sen. Sturgulewski:

An emergency 120-day moratorium has been granted delaying the effective date of the Energy Conservation Standard for New Residential Building's Regulation (19 AAC 69.210). The Department of Community and Regional Affairs intends to extend the moratorium to October 1, 1988. The moratorium is being sought to give the building industry more time to prepare for the implementation of the standard.

Persons interested in commenting on the proposed moratorium are invited to send written statements to:

Steve Baden
Office of Energy Programs
Rural Development Division
Department of Community and Regional Affairs
949 E. 36th Avenue, Suite 403
Anchorage, AK 99508

Comments will be accepted through February 14, 1988.

I have enclosed a copy of the Notice of Emergency Regulations. Copies of the standard can be reviewed at any of the Department's offices, at public libraries, and at local building departments. Copies of the standard can also be purchased for \$4.00 at the above address.

Sincerely,

Michael C. Harper/ms

Michael C. Harper
Director

Enclosure

NOTICE OF ADOPTION OF EMERGENCY AMENDMENT

As required by AS 44.62.250, notice is given that under authority vested by AS 46.11.040, the Department of Community and Regional Affairs amended on this date, as an emergency regulation, 19AAC 69, Article 2 relating to the Energy Conservation Standard For New Residential Buildings.

This amendment took effect January 14, 1988

This amendment places a temporary 120 day moritorium on the implementation of the standard. This action is not expected to require an increased appropriation.

Copies of this regulation may be obtained by writing to Steve Baden, Chief, Conservation Section, Department of Community and Regional Affairs, 949 E. 36th Avenue, Suite 403, Anchorage, AK 99508.

Notice is also given that the Department of Community and Regional Affairs intends to make this regulation permanent under AS 44.62.260 delaying implementation of the standard to October 1, 1988. Any interested persons may submit written statements relevant to the action proposed. Written statements and arguments should be sent to the address given in the previous paragraph and must be received no later than February 24, 1988.

1-20-88

DATE

Juneau, Alaska

CITY

Signed

David G. Hoffman
Commissioner

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Session set for building changes

A public workshop to explain the state's new energy conservation standards for new residential buildings will be March 14 in Ketchikan.

Steve Baden, energy conservation coordinator for the Department of Community and Regional Affairs, will conduct the session. Notice of the workshop has been sent to all area contractors, realtors, assessors and others connected with the housing industry, Baden said. The workshop will be 2 to 4:30 p.m. in the Ketchikan City Council chamber.

The new thermal standards were scheduled to go into effect Jan. 1 of this year. But after opposition from Ketchikan realtors, assessors and financial institutions, Sen. Lloyd Jones and Rep. John Sund intervened. As a result, a moratorium on implementing the new standards was placed in effect until Oct. 1, 1988 for areas south of Juneau. The moratorium was later extended statewide.

Area housing representatives opposed the new standards because they felt they hadn't been adequately informed of the standards. They also felt explanations of the standards weren't clear and that they appeared to have been developed for colder, drier climates than Ketchikan's.

Some of the questioned provisions are those which limit windows in new homes and the amounts and types of insulation. It was feared the standards would change Ketchikan's construction standards and increase area construction costs.

The new thermal standards law applies to all residential buildings whose construction begins on or after Oct. 1, 1988, in order to qualify for state financing.

Proponents of the law maintain

the standards are flexible enough to be adapted to Ketchikan's warmer, wetter climate. Baden said the new standards won't drastically change present building practices and that the required insulation levels are in line with those already developed by the Farmers' Home Administration, the city and borough of Juneau and the Pacific Northwest.

Baden also says the new standards are cost effective because the costs of energy building techniques would be recovered in a relatively short period of time through energy cost savings.

The new standards were developed through a two-year process with input from the public and the housing industry.

The new law can be reviewed at the Ketchikan Public Library. Copies can be obtained for \$4 from Stuart Brooks, Department of Community and Regional Affairs, Office of Energy Programs, 949 E. 36th Avenue, Suite 403, Anchorage AK 99508.

Local group meets early

Individuals within the housing industry and members of the community at large are invited to a workshop session 2 to 5 p.m. Thursday at the First Bank conference room. The session is planned to discuss the state's new thermal energy standards, according to Trish Hoover. Interested persons will identify the concerns the group wishes to put forward at the state-sponsored workshop on thermal energy requirements March 14 in Ketchikan.

Alaska

HOUSING



FINANCE CORPORATION

February 22, 1988

The Honorable Kay Brown
Alaska State Legislature
House of Representatives
P. O. Box V
Juneau, AK 99811

Dear Representative Brown:

Alaska Housing Finance Corporation is aware of the recent delay of the effective date of implementing thermal and energy standards for new construction. Attached is a letter we recently sent to the Department of Community and Regional Affairs acknowledging our support of the implementation delay.

Your letter asked about AHFC's efforts to implement the regulations. Although AHFC supports the standards, we have neither the staff nor the expertise to actually implement construction standards. As you can see from the attached letter, the enforcement of the regulation has not been addressed. AHFC feels this is a serious omission. We do plan to require certification that the standards have been met for loans on new construction, thus keeping AHFC loans in compliance with statutes.

Please let me know if you have any other questions.

Sincerely,

Patty M. Cook

Patty M. Cook
Mortgage Operations Director

ec

Enclosure



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Committee on Finance

Official Business

March 9, 1988

P.O. Box V
State Capitol
Juneau, Alaska 99811

Ronald D. Lehr, Executive Director
Alaska Housing Finance Corporation
P.O. Box 101020
Anchorage, Alaska 99510

Dear Dr. Lehr,

I recently received from Betty Cook a response to my letter of February 8th regarding AHFC's efforts pertaining to implementation of the minimum state thermal standards (AS 46.11.040) for new residential buildings. While I am pleased to know that you apparently support the standard, I remain concerned that you have yet to identify a specific and comprehensive implementation strategy.

Ms. Cook's letter indicated that AHFC plans to require certification that the standards have been met for loans on new construction, but that "enforcement of the regulation has not been addressed." I agree that this is a serious "omission" but it is also my understanding that responsibility for enforcement of the standard lies primarily with AHFC. I am anxious to work with you to ensure that this omission is addressed.

Some clarification of your plans would be appreciated. In particular:

- By what means will certification take place?
- Who will be responsible for the certification and what will the process entail?
- What are the timelines for your agency's implementation plan?

Since the thermal standard is due to take effect on October 1, 1988, it is essential that these questions be addressed and appropriate decisions made in the very near future. While I appreciate that the implementation effort may present some difficulties, it is my understanding that the Department of Community and Regional Affairs has been trying to work with AHFC since early 1986 to devise a workable implementation strategy. Since that time there have been numerous contacts by DCRA on this issue, which include:

April 8, 1986 - letter from (former) DCRA Commissioner Notti outlining an implementation method adopted by the South Dakota Housing Development Authority.

August 13, 1986 - correspondence from Commissioner Notti describing possible implementation options.

March 5, 1987 - correspondence from Commissioner Hoffmann requesting information on how AHFC will implement the standard. (It is my understanding, you responded by indicating that you would incorporate the compliance standard in your Seller/Service guidelines in the last quarter of 1987.)

May 11, 1987 - letter from DCRA Housing Assistance Director Micheal Harper proposing a compliance method based upon builder training, self-certification and spot inspection.

August 4, 1987 - correspondence from DCRA Housing Assistance Director Micheal Harper suggesting mandatory builder training education through the Alaska Craftsman Home Program and offering to pay the workshop fees. (Betty Cook responded saying that AHFC was "not yet certain of the actual requirement" that would be used to assure compliance with AS 46.11.040.)

November 19, 1987 - a meeting between AHFC staff Wayne Mundy, DCRA staff Steve Baden, Division of Occupational Licensing Director Randall Burns and Ray Price from the Office of the Governor.

November 23, 1987 - meeting between Steve Baden and Wayne Mundy to further discuss implementation options at which time it was indicated that DCRA would implement the standard for its loan program.

February 12, 1988 - correspondence from Micheal Harper indicating that DCRA would, in response to concerns about the need for greater public education on the standards, be holding workshops in twenty communities throughout the state starting March 14th. Mr. Harper asked -- as I did in my letter of February 8th -- for specific information on AHFC's implementation plans.

Dr. Lehr, this history of correspondence makes it painfully clear that the effort to identify a specific implementation strategy has been discussed thoroughly. The time has now come for AHFC to make some basic decisions

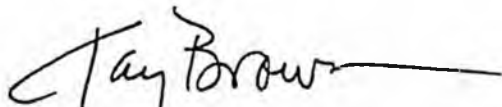
about how the standards will be implemented and enforced. As you know, the effective date of the new regulations was deferred as a result of confusion about the standards and the fact that a clear implementation strategy had not yet been devised. It would be irresponsible to allow such a situation to persist.

DCRA, for its part, is working to ensure that the building industry is familiar with the standards; it is imperative that AHFC also make a commitment to promptly resolving any outstanding ambiguity regarding implementation. As noted by Mr. Harper in his February 12th correspondence to you regarding the DCRA workshops: "One of the questions that is sure to arise [in the DCRA workshops] is how your corporation will implement the standard...." The question remains.

I am anxious to learn the specifics of your implementation strategy and propose that you, Commissioner Hoffmann and I meet to discuss this issue so that we do not all find ourselves once again at an impasse when the regulations go into effect this October. I would also like to ask that you take a personal interest in making sure that this matter is given priority attention.

I look forward to your response and learning when we can meet.

Sincerely,



Representative Kay Brown

cc: Commissioner David Hoffmann
Ray Price

PUBLIC OPINION MESSAGE

DEAR: SENATOR STURGULEWSKI

NAME: JOHN HALE
TITLE: MANAGER, MAT-SU BOROUGH
ADDRESS: FOB 1608
CITY: PALMER ZIP: 99645
PHONE: 745-4801
BILL NO: SB 308
SUBJECT: ENERGY EFFICIENT HOME EQUITY FUND
MESSAGE: BOROUGH ASSEMBLY VOTED TO SUPPORT THIS PROJECT.

POMID: 14093628
DATE: 03/09/88
TIME: 09:36:28
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COPIES: SENATORS

KERTTULA
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