ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5603 HOUSE COMMUNITY & REGIONAL AFFAIRS

HB 131 - Relating to the LBC

I. Purpose:
   1. To Assure Local Input
   2. To Assure Adequate Public Notice
   3. To Assure the Best Interests of the State are Meet

II. Things to consider:
   1. Which concerns should be addressed through regulation?
   2. Which concerns should be addressed through statute?
   3. What would be the fiscal impact of any potential recommendations?
   4. Is this a concern that is being currently addressed by the LBC?

III. Changes Proposed by HB 131:

   1. Section 1, would increase the length of time for notice prior to a hearing form 15 to 30 days.

   2. Section 2, would require that a majority of the full membership approve a proposed boundary change before it be presented to the legislature.

Do we want to extend this to include incorporations (AS 29.05.100)?

   3. Section 3, would require that two public hearings be held in the area affected by a boundary change before it could be proposed to the legislature.

- "in the area affected," can we separate out the requirement to hold hearings in an area to be annexed if there is no population? Many annexations are without population to have them held in an area without population would serve no purpose.

- If there is more than one major population center in the areas to be annexed should hearings be held in each?

- Do we want to include similar language in AS 29.05.090? This would require two hearings for incorporations.

- Do hearings conducted by teleconferencemet the requirements?

- Is the requirement to hold two meetings met if there are two hearings held on the same day but in different places?

- If so should the hearings be separated by time?

- Does the department currently hold hearings when they are preparing their recommendations to the LBC?

- If so could hearings by the department satisfy the requirement for a one of the two hearings?

IV. Method of notice

- Should there be a requirement that public service announcements be broadcasted on local radio stations?

- Should there be a requirement that public service announcements be broadcasted on RATNET?

V. Where must notice be given (in or near)

- Should areas adjacent to annexations be notified?

- Should hearings be held in these areas?

- How large a radius should be included? 10 mile radius

input

VI. Can or should the LBC be required to substantiate their recommendations to the legislature with findings of facts.

VII. Annexations of Unpopulated Areas

- Should annexations of unpopulated areas be addressed

- Should an annexation of an unpopulated area be allowed if there is a population base adjacent to the area which could form a future borough especially if there is a gain in revenues without any increase cost of services?

- Should there be a tie to the increase of revenues through annexation and an increase cost of service?

- Should annexations of unpopulated land be permitted?

- Are annexations of unpopulated lands reducing the state's income and is this a potential problem?

Alaska MUNICIPAL League

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(907) 586-1325
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217 SECOND STREET, SUITE 200
JUNEAU, ALASKA 99801

Increase in Minimum Entitlements under the State Revenue Sharing Program

The Alaska Municipal League supports an increase in the minimum entitlement level under the State Revenue Sharing Program from $25,000 to $50,000 to benefit Alaska's smallest, and most needy, communities and an increase in the FY 90 appropriation for the State Revenue Sharing Program to fully fund this increase without penalizing other communities.

Background

The 1980 revision of the State Revenue Sharing Program included a provision that each incorporated community would receive a minimum entitlement of $25,000, to be adjusted by an area differential for the cost of living. Each unincorporated community is also entitled to a minimum entitlement of $25,000, to be used for a public purpose. The intent of this legislation was to ensure a sharing of the State's resource wealth by all its residents, no matter how small the area in which they lived. Over time the buying power of these dollars has declined, and many of the State's smallest communities are not able to operate with the minimum entitlement grants they receive. As a result, these communities have been forced to cut back on basic life, health, and safety services.

In FY 88, 83 municipalities received the minimum grant of $25,000 (with adjustments for geographic differentials) under the minimum municipal entitlement program. It was estimated that an increase in the base level to $50,000 would add an additional 25 municipalities to the group receiving the minimum grant.

The 74 unincorporated communities eligible for the minimum entitlement would benefit from an increase in the minimum entitlement level as well as full funding of the Miscellaneous Municipal Services Account. The payments to unincorporated communities come from that account, and they have been prorated because of continuing underfunding of the account. In FY 88, the entitlements to the unincorporated communities eligible for these payments were prorated at about 55.52 percent, so that they received only $13,898 of the $25,000 to which they were entitled.

Inflation is not the only factor affecting the communities' ability to survive financially: Alaska's smallest cities have been hurt the most by the decreases in federal and state funds, and the cities with small populations and tax bases have the most trouble raising local revenues. An increase in the minimum entitlement will benefit both small municipalities and unincorporated communities and enable the State to protect its investment in rural Alaska by helping the small communities maintain their infrastructure.

It is important to note that increasing the base amount will require an increase in the total appropriation for the State Revenue Sharing Program so that existing municipalities are not penalized. It is estimated that $3.51 million will be necessary to hold communities harmless given current funding levels of other parts of the program.

HB 101 - MACLEAN

House Bill 101 would raise the minimum entitlements for municipalities from $25,000 to $50,000 under the state revenue sharing program. The effective date clause of this bill would hold harmless any community which receives more than the minimum entitlement by tieing it to a minimum appropriation level.

Alaskan communities rely on state funds to provide a variety of vital services such as police protection, fire protection, road maintenance, and to meet health, water and sewage needs. In the last few years funding of state entitlement programs ·ve been reduced by approximately 32%. Although local revenues have in many instances been increased many communities are in serious financial trouble and the level of services have been reduced in many communities. A survey in your back up packages by the Department of Community and Regional Affairs titled "Impacts of Declining Revenues on Alaska's Smaller Communities" illustrates these effects on seven of Alaska's communities. According to this study 95% of these communities have had to reduce services.

While I understand the need to find ways to reduce the state's budget I feel it is vital that our communities remain healthy.

It is my intention to pass this legislation on to the next committee of referral. If not enough is appropriated to the state's Revenue Sharing Program this year to warrant the passage of this legislation it would be my hope that HB 101 remains ready to be enacted at a time when increased funding of this program is available.

Jim Plasman from the Department of Community and Regional Affairs is hear to speak on behalf of this legislation.

Eileen,

I don't know of anyone else who is going to testify.

Chapter 05. Incorporation.

Article
1. Requirements (§§ 29.05.010 — 29.05.030)
2. Procedure (§§ 29.05.060 — 29.05.150)
3. Transitional Asaistance (§§ 29.05.180 — 29.05.210)

Effective date of chapter. — Section 90, ch. 74, SLA 1985 provides: "This Act takes effect January 1, 1986."

Article 1. Requirements.

Section
10. Incorporation of a city
20. Limitations on incorporation of a city
30. Incorporation of a borough

Effective date of article. — Section 90, ch. 74, SLA 1985 provides: "This Act takes effect January 1, 1986."

Sec. 29.05.010. Incorporation of a city. (a) A community that meets the following standards may incorporate as a first class city:

(1) the community has 400 or more permanent residents;

(2) the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale;

(3) the economy of the community includes the human and financial resources necessary to provide municipal services; in considering the economy of the community, the Local Boundary Commission shall consider property values, economic base, personal income, resource and commercial development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;

(4) the population of the community is stable enough to support city government;

(5) there is a demonstrated need for city government.

(b) A community that meets all the standards under (a) of this section except (a)(1) may incorporate as a second class city. (§ 4 ch 74 SLA 1985)

Sec. 29.05.020. Limitations on incorporation of a city. (a) A community in the unorganized borough may not incorporate as a city if the services to be provided by the proposed city can be provided by annexation to an existing city.

(b) A community within a borough may not incorporate as a city if the services to be provided by the proposed city can be provided on an areawide or nonareawide basis by the borough in which the proposed city is located, or by annexation to an existing city. (§ 4 ch 74 SLA 1985)

Sec. 29.05.030. Incorporation of a borough. (a) An area that meets the following standards may incorporate as a home rule, first class, or second class borough:

(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support borough government;

(2) the boundaries of the proposed borough conform generally to natural geography and include all areas necessary for full development of municipal services;

(3) the economy of the area includes the human and financial resources capable of providing municipal services; evaluation of an area's economy includes land use, property values, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough;

(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated borough government.

(b) An area may not incorporate as a third class borough. (§ 4 ch 74 SLA 1985)

Article 2. Procedure.

Section
60. Petition
70. Review
80. Investigation
90. Hearing
100. Decision
110. Incorporation election
120. Election of initial officials
130. Integration of special districts and service areas
140. Transition
150. Challenge of legality

Effective date of article. — Section 90, ch. 74, SLA 1985 provides: "This Act takes effect January 1, 1986."

Sec. 29.05.060. Petition. Municipal incorporation is proposed by filing a petition with the department. The petition shall include the following information about the proposed municipality:

(1) class;

(2) name;

(3) boundaries;

(4) maps, documents, and other information required by the department;

(5) composition and apportionment of the governing body;

(6) a proposed operating budget for the municipality projecting sources of income and items of expenditure through the first full fiscal year of operation;

(7) for a borough, based on the number who voted in the respective areas in the last general election, the signature and resident address of 15 percent of the voters in

(A) home rule and first class cities in the area of the proposed borough; and

(B) the area of the proposed borough outside home rule and first class cities;

(8) for a first class borough, a designation of areawide powers to be exercised;

(9) for a second class borough, a designation of areawide and nonareawide powers to be exercised;

(10) for a first or second class city, a designation of the powers to be exercised;

(11) for a first class city, based on the number who voted in the area in the last general election, the signatures and resident addresses of 50 voters in the proposed city or of 15 percent of the voters in the proposed city, whichever is greater;

(12) for a second class city, based on the number who voted in the area in the last general election, the signatures and resident addresses of 25 voters in the proposed city or of 15 percent of the voters in the proposed city, whichever is greater;

(13) for a home rule borough, a proposed home rule charter. (§ 4 ch 74 SLA 1985)

Sec. 29.05.070. Review. The department shall review an incorporation petition for content and signatures and shall return a deficient petition for correction and completion. (§ 4 ch 74 SLA 1985)

Sec. 29.05.080. Investigation. (a) If an incorporation petition contains the required information and signatures, the department shall investigate the proposal and shall hold at least one public informational meeting in the area proposed for incorporation. The department shall publish notice of the meeting.

(b) The department may combine incorporation petitions from the same general area.

(c) The department shall report its findings to the Local Boundary Commission with its recommendations regarding the incorporation. (§ 4 ch 74 SLA 1985)

Sec. 29.05.090. Hearing. The Local Boundary Commission shall hold at least one public hearing in the area proposed to be incorporated for the purpose of receiving testimony and evidence on the proposal. (§ 4 ch 74 SLA 1985)

Sec. 29.05.100. Decision. (a) If the Local Boundary Commission determines that a proposed municipality fails to meet the standards for incorporation, it shall reject the petition. If the commission determines that the proposed municipality meets the standards, it shall accept the petition. If the commission determines that the proposed municipal boundaries can be altered to meet the standards, it may alter the boundaries and accept the petition.

(b) A Local Boundary Commission decision under this section may be appealed under the Administrative Procedure Act (AS 44.62). (§ 4 ch 74 SLA 1985)

Sec. 29.05.110. Incorporation election. (a) The Local Boundary Commission shall immediately notify the director of elections of its acceptance of an incorporation petition. Within 30 days after notification, the director of elections shall order an election in the proposed municipality to determine whether the voters desire incorporation and, if so, to elect the initial municipal officials. If incorporation is rejected, no officials are elected. The election must be held not less than 30 or more than 90 days after the date of the election order. The election order must specify the dates during which nomination petitions for election of initial officials may be filed.

(b) A voter who has been a resident of the area within the proposed municipality for 30 days before the date of the election order may vote.

Lorraine

NOTICE OF FILING FOR DISSOLUTION OF CITY OF AKIACHAK

Voters of the community of Akiachak (located approximately 15 miles northeast of Bethel) have petitioned the State of Alaska to dissolve their city government. A copy of the petition and supporting materials is available for review at the Akiachak Native Community Office in Akiachak and at the Department of Community and Regional Affairs (DCRA) in Bethel and Anchorage.

BOUNDARIES. The boundaries of the city proposed for dissolution encompass approximately 12 square miles in and around the community of Akiachak.

WRITTEN COMMENT PERIOD. Individuals may file briefs or written comments in support of or opposition to this petition. To ensure consideration, such materials must be submitted in accordance with the schedule set by the Chairman of the Local Boundary Commission (LBC) as outlined below.

SCHEDULE. The Chairman of the LBC will formally set the schedule for action by the LBC concerning this matter on March 13, 1989. The following is the ***tentative*** schedule of the proceedings. Notice will be given of any changes to this tentative schedule.

03/27/89- Deadline for filing briefs and/or written comments in support of or opposition to the proposed dissolution.

04/10/89- Deadline for submission of answering briefs by petitioners' representative.

04/24/89- DCRA releases (for public review) draft report and recommendation to the LBC concerning the proposed dissolution.

05/22/89- Deadline for receipt of comments on draft report and recommendation from DCRA.

06/05/89- DCRA releases final report and recommendation.

06/26/89- LBC conducts hearing in Akiachak.

11/07/89- State conducts election on dissolution (assuming LBC approves petition - actual election date will be set by Director of Division of Elections).

SPECIAL NOTICE TO CREDITORS AND OTHERS WITH A FINANCIAL INTEREST. Any party to whom a debt is owed by the City of Akiachak or who holds assets of the City of Akiachak is asked to notify Roger Foisy, Internal Auditor, Division of Administrative Services, Department of Community and Regional Affairs, P.O. Box B, Juneau, Alaska 99811 (telephone 465-4725).

FURTHER INFORMATION. Comments on the tentative schedule, questions and requests for copies of documents (petition, briefs, correspondence, DCRA's reports and/or other materials) should be directed to Dan Bockhorst, Department of Community and Regional Affairs, 949 East 36th Avenue, Suite 405, Anchorage, AK 99508 (telephone: 561-8586).

STANDARDS ESTABLISHED BY THE LOCAL BOUNDARY COMMISSION CONCERNING THE ETHICAL CONDUCT OF COMMISSION MEMBERS PROHIBIT INDIVIDUAL MEMBERS OF THE COMMISSION FROM DISCUSSING ANY ASPECT OF THIS MATTER, OTHER THAN PROCEDURES TO BE USED.

HB

139

HOUSE BILL 139

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****

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House C&RA: 3/14/88

HOUSE COMMITTEE REPORT

(5)
Date Referred: February 3, 1989 FURTHER REFERRALS: HESS
FINANCE

Date of Committee Action: 2-16-89

The COMMUNITY & REGIONAL AFFAIRS Committee recommends that:

HOUSE BILL NO. 139 [PAYMENT FOR PURCHASES; SCHOOLS/MUNICIP.'S]
"An Act relating to payments for purchases by school districts and municipalities; and providing for an effective date."

[ ] be replaced with CS HB 139 C-RA [ ] the same title
[ ] a new title

[ ] have attached amendment(s)

[ ] do pass
[ ] do not pass
[✓] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact
[✓] zero fiscal note 2 notes Educ. & C-RA
[ ] zero with analysis

APPROVES PREVIOUS:

[ ] fiscal note(s) published:

_____

[ ] zero fiscal notes(s, published:

_____

SIGNING DO PASS:

Richard Foster

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

Eileen Mackey (NO rec)
Cheri Davis (needs amending
no rec

Eileen P. Mackey
Chairman's signature

#1

[ ] Deleted

6-0553E
Bannister
2/15/89

Original sponsor: Labor and Commerce Committee

___ New Language

IN THE HOUSE

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CS FOR HOUSE BILL NO. 139 (C&RA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to payments for purchases by school districts and municipalities; and providing for an effective date."

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

* Section 1. PURPOSE. The purpose of this bill is to require municipalities and school districts to pay for their purchases of goods and services in a timely manner.

* Sec. 2. AS 14.03 is amended by adding a new section to read:

Sec. 14.03.087. PAYMENTS FOR PURCHASES. Payments for purchases by a school district are subject to the requirements applicable to state agencies under AS 37.05.285(a) - (d) and 37.05.285(f)(1) - (2). When applying AS 37.05.285(a) - (d) and 37.05.285(f)(1) - (2) to a school district, "state" and "state agency" are read as "school district", and "state official" is read as "school district official". In this section, "school district" means a borough school district, a city school district, or a regional educational attendance area.

* Sec. 3. AS 14.08.101 is amended to read:

Sec. 14.0[8].101. POWERS. A regional school board may

(1) sue and be sued;

(2) contract with the department, the Bureau of Indian Affairs, or another [ANY OTHER] school district, agency, or regional board for the provision of services, facilities, supplies or utilities;

(3) determine its own fiscal procedures including but not

limited to policies and procedures for the purchase of supplies and equipment; except as provided by AS 14.03.087, the regional school boards are exempt from AS 37.05 (Fiscal Procedures Act) and AS 36.30 (State Procurement Code);

(4) appoint, compensate and otherwise control all school employees in accordance with this title; these employees are not subject to AS 39.25 (State Personnel Act);

(5) adopt regulations governing organization, policies and procedures for the operation of the schools;

(6) establish, maintain, operate, discontinue and combine schools subject to the approval of the commissioner;

(7) recommend to the department projects for construction, rehabilitation, and improvement of schools and education-related facilities as specified in AS 14.11.010(a), and plan, design, and construct the project when the responsibility for it is assumed under AS 14.11.020;

(8) by resolution adopted by a majority of all the members of the board and provided to the commissioner of the department, assume ownership of all land and buildings used in relation to the schools in the regional educational attendance area;

(9) provide housing for rental to teachers, by leasing existing housing from a local agency or individual, or by entering into contractual arrangements with a local agency or individual to lease housing that will be constructed by the local agency or individual for that purpose;

(10) exercise those other functions that may be necessary for the proper performance of its responsibilities.

* Sec. 4. AS 29.10.200 is amended by adding a new paragraph to read:

(51) AS 29.71.060 (payments for purchases).

[AS 37.05.285(a)-(d) & 37.05.285(1-2)
This reference to The Procurment Code has been removed and The pertinent Language has been Added into The Municipal Code title 29.

* Sec. 5. AS 29.71 is amended by adding a new section to read:

Sec. 29.71.060. PAYMENTS FOR PURCHASES. (a) Payment for purchases of goods or services provided to a municipality must be made by a required payment date that is

(1) the date on which payment is due under the terms of a contract; or

[receipt of]

(2) 30 days after the goods or services are received and the municipality that is responsible for paying for the purchase receives a proper billing for the amount of the payment due, if a date on which payment is due is not established by contract and if the billing contains or is accompanied by documents required by the contract or purchase order.

(b) If a seller offers a discount from the amount otherwise due for property or services in exchange for payment within a specified period of time, the municipality may make payment in an amount equal to the discounted price only if payment is made within the specified period of time.

(c) If payment for goods or services purchased by the municipality is not made on or before a required payment date under (a) of this section, the municipality shall pay interest on the unpaid balance from the required payment date at the rate of 1.5 percent a month, unless an agreement exists between the seller and the municipality that establishes a lower rate of interest or precludes the charging of interest. If the interest-bearing period of time is either (1) a fraction of a month, or (2) one or more full months plus a fraction of a month, the municipality shall pay the same amount of interest for the fraction of a month as it would pay for a full month.

(d) This section does not apply

(1) if the cost of the goods or services purchased exceeds

$500,000;

(2) to payment for specific goods or services in dispute after a seller of goods or services receives notice from the municipal official responsible for authorizing payment for goods and services that the amount of the invoice or quality of specific goods or services is in dispute and stating the reasons for the dispute; the municipality shall pay for the specific goods or services in dispute within 30 days after the resolution of the dispute;

(3) to a contract covered by AS 36.90.010; or

(4) to a payment for which reimbursement is available to the municipality under an insurance contract.

(e) In this section, payment is considered made on the date when the payment is personally delivered to the seller or agent of the seller or on the date the payment is mailed.

(f) In this section, "dispute" means a determination by the municipal official responsible for authorizing the payments for the purchase of goods or services that the performance or price charged is not in compliance with the terms of the contract or purchase order.

* Sec. 6. This Act does not apply to purchase contracts entered into before July 1, 1989.

* Sec. 7. This Act takes effect July 1, 1989.

#2

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 139
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Payments For Purchases By School Districts and Municipalities
Sponsor: House L & C
Requestor: House C & RA

Agency Affected: Education
BRU: K-12 Support
Components: Foundation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Mary Hakala
Division: Commissioner's Office
Phone: 465-2800
Date: 2/13/89

Approved by Commissioner: William G. Demmert
Agency: Education
Date: 2/13/89

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

#3

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSHB 139
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act..payments for purchases by school districts & municipalities.."
Sponsor: Labor & Commerce Committee
Requestor:

Agency Affected: Community & Regional Affairs
BRU:

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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
Phone: 465-4750
Division: Municipal & Regional Assistance
Date: 2-15-89

Approved by Commissioner:
Date:
Agency: Community & Regional Affairs

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

STEVE COWPER, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

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PHONE: (907) 465-4700

☐ 949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 563-1073

POSITION PAPER

RE: House Bill 139

SPONSOR: Labor and Commerce Committee

Program Effects of Bill

This bill would require school districts and municipalities to pay for purchases of goods and services promptly. In the event the school district or municipality failed to make the required payment on either the date due in contract or within 30 days after the goods or services are received, the school district or municipality would be required to pay interest on the unpaid balance at the rate of 1.5 percent a month, unless otherwise provided in contract.

Comments

The requirements set by this bill are an intrusion upon local governmental autonomy and deal with contractual affairs more appropriately left to the parties involved. The requirements imposed on municipalities and school districts under this bill are virtually the same as those set for the state in AS 37.05.275. However, imposition of these requirements on local entities differs significantly from the decision to adopt this requirement for state purchases. In the case of state purchases, the state is a party to the contract and is also the party choosing the apply standard to itself. In the case of local purchases, the state, which is not a party to the contract, is dictating the requirements to one of the parties of the contract.

The structure of local government in the state is guided by the principle of maximum local self government. This principle is founded upon the recognition of the flexibility needed to adapt to the varied local conditions across the state. Imposition of a single, inflexible standard such as that proposed by this bill on all local governments across the state violates this constitutional principle and fails to take into consideration the reality of circumstances in the state upon which the principle is based.

Raymond Henderson for
David G. Hoffman, Commissioner

#= 4

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE
P.O. BOX Y, JUNEAU 99811
(907) 465-3892

February 6, 1989

M E M O R A N D U M

To: Representative Eileen Maclean, Chair
House Community and Regional Affairs Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Request for hearing - HB 139

I am writing to ask chat you schedule HB 139, relating to payments for purchases by schol districts and municipalities, for a hearing before the House Community and Regional Affairs Committee at your earliest convenience.

HB 139 is modeled after recently adopted legisl tion mandating the state to pay their bills on time. The measure requires school districts and municipalities to pay for purchase within 30 days of receipt and subjects them to a 1.5 percent fine and penalties under AS 37.05.285. for failure to pay within the time period outlined in the bill.

The measure was introduced by the House Labor and Commerce Committee on request by the National Federation of Independent Businesses. The Department of Commerce and Economic Development supported a similar measure, HB 422, filed during the 1988 session.

Since adoption of the law governing state purchases, the Department of Administration has reported significant savings to the general fund because they have not had to pay late charges and other related costs (see attached article). Hopefully, HB 139 will bring similar benefits to school districts and local government.

Please contact me or Ginger Baim at 4954 if you have any questions or need additional information.

#5

Anchorage Daily News Sat., May 21, 1988

State agencies save funds by paying the bills on time

By LARRY PERSILY
The Associated Press

JUNEAU — The state will save almost $24,000 this year doing something most people try, but don't always succeed at.

State agencies will save the money by paying their bills on time and avoiding monthly finance charges.

Tired of complaints that the state was slow in paying its bills, the 1986 Alaska Legislature [illegible] law requiring payment within 30 days. Agencies would have to pay 1½ percent a month in finance charges after the deadline.

The law went into effect Oct. 1, [illegible] and in the next nine months [illegible] the fiscal year the state paid $32,930 in finance charges on about $2.2 million in late payments.

In the first nine months of this fiscal year, the state paid $7,391 in finance charges on about $493,600 in late payments.

If that rate holds through the end of the fiscal year June 30, the state will have paid [illegible] about $9,300 in interest — a $23,600 savings from the first year the law was in place.

Looking at the number of bills paid by the state, some people may wonder how so many of them get paid on time.

In the first nine months of the current fiscal year, state agencies issued more than 373,000 checks, with almost half a million expected by June 30. That's down about 3 percent from last year, however, [illegible] state spending is down.

Those 500,000 checks will total about $1.3 billion for goods and services.

"We always have our problem child," said Lauri [illegible] of the Department of Administration's finance division. There always are some bills that get held up for any number of reasons, she said.

But agency payment procedures have been getting better, and the division plans to improve the process even more.

FILM:

Continued

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Alaska sho[illegible] up for the rel[illegible] of doing busi[illegible] by lining up discounts f[illegible] waiving com[illegible] at parks ar[illegible] facilities, and for local hire.

Asked if [illegible] would produ[illegible] worthwhile, restaurant a[illegible] [illegible] if enough mon[illegible] counts [illegible] uses discoun[illegible] motions, it will be able [illegible]

[illegible] can [illegible] text [illegible] said.

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Article 3. State Purchasing.

Section
285. Payment for state purchases

Sec. 37.05.220. Purchasing agent. [Repealed, § 67 ch 106 SLA 1986. For current provisions see AS 36.30.]

Sec. 37.05.225. [Renumbered as AS 36.30.180.]

Secs. 37.05.230 — 37.05.280. Competitive bids; contracts; leases. [Repealed, § 67 ch 106 SLA 1986. For current provisions, see AS 36.30.]

Sec. 37.05.285. Payment for state purchases. (a) Payment for purchases of goods or services provided a state agency must be made by a required payment date that is

(1) the date on which payment is due under the terms of a contract; or

(2) 30 days after receipt of a proper billing for the amount of the payment due, if a date on which payment is due is not established by contract and if the billing contains or is accompanied by documents required by the contract or purchase order.

(b) If a seller offers a discount from the amount otherwise due for property or services in exchange for payment within a specified period of time, the state agency may make payment in an amount equal to the discounted price only if payment is made within the specified period of time.

(c) If payment for goods or services purchased by the state is not made on or before a required payment date under (a) of this section, the state shall pay interest on the unpaid balance from the required payment date at the rate of 1.5 percent a month, unless an agreement exists between the seller and the state that establishes a lower rate of interest or precludes the charging of interest. If the interest-bearing period of time is either (1) a fraction of a month or (2) one or more full months plus a fraction of a month, the state agency shall pay the same amount of interest for the fraction of a month as it would pay for a full month.

(d) This section does not apply

(1) if the cost of the goods or services purchased exceeds $500,000;

(2) to payment for specific goods or services in dispute after a seller of goods or services receives notice from the state official responsible for authorizing payment for goods and services that the amount of the invoice or quality of specific goods or services is in dispute and stating the reasons for the dispute; the state agency shall pay for the specific goods or services in dispute within 30 days after resolution of the dispute; or

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Revisor's no
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Editor's note

Section
287. Insurance
289. State insur
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(3) to a contract covered by AS 36.90.010.

(e) Interest paid under (c) of this section shall be charged to the budget of the state agency that purchased the goods or services.

(f) In this section

(1) "dispute" means a determination by the state official responsible for authorizing the payments for the purchase of goods or services that the performance or price charged is not in compliance with the terms of the contract or purchase order;

(2) payment is considered made on the date when the payment is personally delivered to the seller or agent of the seller or on the date the payment is mailed;

(3) "state agency" has the meaning given in AS 37.05.990 and also includes the legislative and judicial branches. (§ 1 ch 2 SLA 1986)

Revisor's notes. — Enacted as AS 37.05.275. Renumbered in 1986.

Editor's notes. — Section 2, ch. 2, SLA 1986 provides that this section "does not apply to contracts entered into before October 1, 1986."

Article 4. Risk Management.

Section
287. Insurance for state assets
289. State insurance catastrophe reserve account

Sec. 37.05.287. Insurance for state assets. (a) The Department of Administration shall obtain or provide, in an amount and in the form that the department determines to be appropriate, casualty, property and other insurance for protection of state assets and for the operation of state government. The department may provide for insurance coverage, in whole or in part, through a self-insurance program.

(b) The Department of Administration shall annually review the state insurance program to ensure that, to the extent reasonable, adequate insurance coverage of reserves are maintained to satisfy all reasonably foreseeable claims or judgments for which payment may be due under the state insurance program during the next fiscal year. The department shall annually obtain an independent actuarial assessment of the state insurance program. No later than February 1 of each calendar year, the department shall submit to the presiding officers of each house of the legislature a review of the state insurance program, an independent actuarial assessment, and a certified audit of the state insurance catastrophe reserve account. (§ 1 ch 28 SLA 1987)

Matanuska-Susitna Borough

P.O. BOX 1608, PALMER, ALASKA 99645-1608 • PHONE 745-4801

DEPARTMENT OF FINANCE

February 16, 1989

Representative Eileen Maclean
Chairman, HCRA
Alaska House of Representatives
P. O. Box V
Juneau, Alaska 99811

Dear Representative Maclean:

I have had an opportunity to review HB139. I foresee little or no impact in applying the State Procurement Code to Borough and School District activities. I believe that the Borough currently complies, voluntarily, with the requirements of AS 37.05.285. This issue, as presented in this bill, relates to the authority of local governments to manage their own affairs. It is not, in my view, sound public policy to have one governmental entity dictating the way another does business.

There are three issues which must be given some consideration:

1. Department of Labor - will disputes between the State Department of Labor and the contractor be considered disputes under AS 37.05.285(d)(2)? Often municipalities must withhold payment to contractors until a labor/wage issue is resolved. It is not reasonable to expect a municipality to pay interest when the monies are withheld because of levy under Title 23 of the Alaska Statutes.

2. Proper billing - this term, as used in AS 37.05.285(a)(2) must be defined. What constitutes a "proper billing"? How long does a municipality have to review records/work to determine a proper billing?

3. Interest rate - 1.5% per month (AS 37.05.285(c)) results in an 18% APR. This amount seems excessive in light of AS 45.45.010.

Please call me if I can be of further assistance.

Sincerely,

Robert R. Jansen
Finance Director

nm
cc: Representative Ronald Larson
Representative Curt Menard
Scott Burgess, Alaska Municipal League

KENAI PENINSULA BOROUGH
144 N. BINKLEY • SOLDOTNA, ALASKA 99669
PHONE (907) 262-4441

DON GILMAN
MAYOR

MEMORANDUM

TO: Crystal Smith, Alaska Municipal League

FROM: DM Dolly Farnsworth, Mayor, City of Soldotna
Chair Taxation Finance Subcommittee

FROM: TRB Thomas R. Boedeker, Kenai Peninsula Borough Attorney
Member Taxation & Finance Subcommittee

DATE: February 16, 1989

SUBJECT: Position or Testimony Regarding House Bill 139.

1. The rate for any late payments should not be at the one and one-half percent per month with a fraction of a month counting as an entire month. AS 36.09.010 dealing with construction contracts charges retainage interest at 10.5% per annum. That is a more appropriate rate for any delinquent payment. AS 36.09.010 does not use the fractional months which can be a problem and serious penalty.

2. The penalty aspect arises in that the bill does not address differences between the operation of State government and local government. State government separates the legislative body from the administrative role and at the State level all decisions are made by departments on approving payment of bills. However, local government often has the local council or service area board approving payment of bills. Until this approval occurs the bill cannot be paid. Often these bodies only meet twice a month or once a month and have publishing deadlines for their agendas which would preclude an item from being included on the agenda and would require consideration at the next meeting. These procedures and requirements are generally known to contractors who do business with those entities. However, House Bill 139 does not give recognition to this difference between State and local government.

An example would be where a fire service area board had to approve the purchase and the billing comes in a week after that board's monthly meeting. The board would not meet for another 23 or so days after the billing is received and the approved payment of that billing is then forwarded to the accounts payable department for the municipality which in some cases may take several days for mail. Because of personnel limitations municipalities often have a fixed schedule for payment of accounts receivable of every other week

put payment beyond the 30 days and thus invoke the interest provisions of the statute. Even if the payment were one day late the interest would apply back to the original billing date for the first month that is otherwise a grace period. Payment on the 31st day results in a charge of 3%. Given the context of the process for approval of payment of bills in local government, that would seem inappropriate.

3. We believe that the interest should not apply for the first month even if late. Typically, business provides payment within 30 days and the interest or service charges apply only for time subsequent to the original due date. House Bill 139 would make it retroactive to the original billing date which is not consistent with private business practice and is in the form of a penalty.

4. Municipalities often have ordinances governing purchases. School districts may have other purchasing policies. These have to be adopted in a written form and the public has an opportunity to participate. This bill gives no latitude for different procedures established by local bodies. The bill should not apply where such an ordinance or policy of the school district has been adopted. Persons entering into purchase agreements in light of locally established rules would know the rules of the game and are voluntarily entering into a relationship based on those ordinances or policies. There is no reason that those policies should not be given effect where they have been adopted.

5. The bill provides that the interest starts if payment is not made within 30 days of the billing. The bill does not define what is a "proper billing." House Bill 139 would apply even if the billing was received before the goods. Arguably one could say that would be a disputed billing, but why require a local government to notify a vendor of a "ostensible dispute" when it simply it is a matter of whether the goods have been delivered and accepted. It is true that the municipalities could enter into specific contracts which set other terms regarding acceptance test periods and establishing due dates other than just 30 days from the billing. However, this would be a very cumbersome requirement and does not make any sense to force local governments to enter into such arrangements to protect themselves against arbitrary interest charges that could be triggered by House Bill 139, if adopted. Clearly, provisions should be made that a proper billing is only one that is submitted after acceptance of the goods or services.

6. Although we believe that municipalities and school districts should be responsible and pay their bills promptly, we believe that the options for making prompt payment or arrangements for contracting are really the province of the local

government in establishing its relationship to the community and its vendors. We can see some requirement that municipalities adopt provisions for prompt payment, however, a mandate of this type which imposes obligations on the municipalities without consideration of local choice and option is inappropriate. One reason for the establishment of local governments is to allow the flexibility needed for local conditions and circumstances. A statewide mandate of a particular policy and a cost imposed for noncompliance with a rather inflexible program is not good public policy and such a mandate should not be placed upon local governments. Insertion of provisions in the bill to allow for local options and have a general statutory requirement as a default in the absence of some local provision would be a more appropriate method.

TRB:bl

HB

159

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSHB 159
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act..exemptions..municipal property taxation.."
Sponsor: Rep MacLean
Requestor:

Agency Affected: Community & Regional Affairs
BRU:
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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
Phone: 465-4750
Division: Municipal & Regional Assistance
Date: 3/9/89

Approved by Commissioner:
Date: 4/11/89
Agency: Community & Regional Affairs

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

NORTHWEST ARCTIC BOROUGH

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Statement of Dennis J. Tiepelman, Ass't to the Mayor, Northwest Arctic Borough before the Senate Community and Regional Affairs Committee, March 02, 1989

MISTER CHAIRMAN:

The Northwest Arctic Borough would like to go on record as supporting Senate Bill 181, "An act relating to an exemption from municipal property taxation for natural resources in place..."

The bill resolves an immediate issue if it is enacted into law: It will exempt for a period of time a requirement that resources be assessed and taxed of an unknown quantity and value on these same resources (e.g. minerals).

The borough supports the concept that in-place resources be permanently exempt in State law, but we recognize that it should be studied and a report be made reflecting what these issues might be in the way of future legislative recommendations. There are differing opinions.

The borough is part of the Alaska Municipal League which passed a resolution in November, 1988 urging the State legislature to seek legislative remedy for an assessment of minerals in-place, and it is currently required by the Department of Community & Regional Affairs, State Assessors Office.

Knowing that the Department of Revenue, Department of Natural Resources, and the Office of the Governor needs to look at the full implication of exempting minerals-in-place, this Senate Bill 181 establishes a process and allows an exemption to be in place until a final report and legislation is enacted within two (2) years. This should allow ample opportunities for other agency concerns to be addressed.

Northwest Arctic Borough does not in its current administrative structure maintain an assessor's office which may create a financial liability if no exemption is immediately allowed. We are also acutely aware that the proposed Red Dog mining project in our borough will go into production in about a year, and no one knows its actual resource potential of lead and zinc in terms of realistic dollar amounts.

However, the authority to impose a property tax on improvements at the mine site and the ability to impose a severance tax are much better alternatives than requiring us to place an unknown or arbitrary value on minerals-in-place. These other taxing mechanisms should be considered viable remedies in existence.

Natural resources as they exist in-place is not very prudent in methods to determine such a value. Large-scale mining as well as the small-time prospector/miner would have difficulty assessing what is the value of minerals before it could ever be developed and extracted for use elsewhere.

Other taxing districts throughout the State have similar problems, and I would urge that an immediate exemption and a prepared report will resolve any questions in due time so that some unforeseen future revenues will not jeopardize the current need for an exemption to be enacted.

The Northwest Arctic Borough is just completing its second year as a "home-rule borough", and there are many other organizational priorities we are working on, including land selections, planning, and financial stability without incurring additional duties of assessing what is taxable or taxing schemes which would now include natural resources in-place.

I would urge speedy deliberations and enactment of legislation that seems to appease every interest group and at the same time does not close the door on changes that might happen in the ensuing two (2) year period.

Thank you for this opportunity to address the committee.

Dennis Tiepelman

Matanuska-Susitna Borough

P.O. BOX 1808, PALMER, ALASKA 99645-1808 • PHONE 745-9842

ASSESSMENT DEPARTMENT

March 9, 1989

House Community & Regional
Affairs Committee
P.O. Box BH
Juneau, AK. 99811

Dear Committee Members:

The Matanuska Susitna Borough strongly supports HB159. We are a resource rich borough with very present awareness of the dilemmas regarding resource inventory regarding timber. Let me illustrate what current law requires and why taxation of resources inplace should be changed through passage of this bill.

I. Consider your reaction if your assessor came to you and said:

> You have 30 trees around your home; that equates to 10 cords of firewood, at $40.00 a cord. The inplace resource value of trees is $400.00, therefore we are adding $400.00 to your annual assessment.
>
> Conversely if you cut down trees; the assessor says you have X number of stumps --- therefore your assessment is reduced.

Surprisingly this is a realistic extension of what current Title 29 requires. This is also true of other resources; imagine the case of gravel, gold, coal, peat, etc. Any resource that has potential present or future value, even wild grass which could be harvested for hay.

II. Unexplored resources present a different problem:

> For instance, everyone knows coal seams exist in the Susitna River basin but where, how much, or what quality would require extensive drilling and sampling. Whether those seams transverse taxable property in the area is completely unknown or within the Borough's or State's reasonable capacity to identify.
>
> Some exploration has occurred and statements made that the BTU value of those reserves equal BTU value of Prudhe Bay Oil. If true, untaxed resource value exceeds total value of the Borough by many times. As the assessor I would be very presumptuous to tax private property based on speculation that someday the highest and best use may be for coal extraction. Accurate exploration information ranks very high on the list of industry secrets as the State found in relation to oil and gas reserves. The State's solution was a severance tax, which is also a better solution for municipalities.

III. Finally, I'll give you the example of Nome:

> Alaska Gold Company owns mining claims under subdivisions. What is the value of the gold vs the value of displacing whole subdivisions to obtain it. This illustrates the very complex issue of surface and subsurface estates and decisions required as regards when the highest and best use of one estate supersedes the other. Also, it raises the question of division of property value of the two estates when ownership is divided.

These examples are all preliminary complexities assuming one can determine a value per unit of resource reflecting markets, infrastructure, feasibility and capitalization required. As you can see, it would be prudent for the municipality required to value resources inplace to plan on employing foresters, geologists and a bunch of attorneys.

Aside from the almost comical problems of implementing a program of unknown inplace resource taxation, the real issue is that of equity of State DCRA Full Value Determination of untaxed or escaped inplace resource value. This is the reason this bill is before you. In some cases resource values are known; MSB timber inventory studies, and Wishbone Hill coal reconnaissance, KPB Beluga coal exploration, Juneau gold mines, Nome gold fields, etc., but what resource deposits cannot be estimated nor accurately determined to be escaped property by the State Assessor. And what effect will the addition of some, but not all, resource values have on equitable School Foundation Funding distribution and Revenue Sharing distribution. These are the issues this bill seeks to resolve.

This summarizes the reasons the passage of this bill is supported by unanimous resolution of the Alaska Municipal League, Alaska Association of Assessing Officers and Alaska Association of Municipal Finance Officers.

Please: <u>DO PASS</u>

Sincerely,

Gary A. Lewis
Matanuska-Susitna Borough Assessor
AML Taxation & Finance Comm. Co-Chair

ys

Municipality of Anchorage

OFFICE OF THE MAYOR

P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4431

TOM FINK,
MAYOR

March 21, 1989

The Honorable Representative Eileen MacLean
State of Alaska
Pouch V
Juneau, Alaska 99811

Re: House Bill No. 159 - Exemption of Natural Resources in Place

Dear Representative MacLean:

You have asked for the position of the Municipality of Anchorage regarding House Bill No. 159 which exempts from taxation undeveloped natural resources in place.

The Municipality introduced a resolution at the Alaska Municipal League at Fairbanks in November supporting this type of exemption. Although Anchorage is not considered one of the resource rich municipalities in the State, it is our position that failure to provide this exemption could be costly to those which are resource rich. To my knowledge, there is no municipality in the State which assesses and taxes undeveloped resources in place due to the complexity of a system and the expense required to make value determinations.

It is our understanding that if such an exemption is not mandated, the State Assessor's office within Community & Regional Affairs will be forced to make an estimate of the value (at an undetermined cost to the taxpayers of the state) and include that value in the full value determination which his office prepares each year. If that value were included, many municipalities would realize a reduction in revenue sharing and educational assistance.

It is for these reasons that the Municipality of Anchorage supports the passage of House Bill 159.

Sincerely,

Tom Fink

Tom Fink
Mayor

STEVE COWPER, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

MUNICIPAL & REGIONAL ASSISTANCE DIVISION

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PHONE: (907) 443-5457

March 15, 1989

Ken Johnson
Legislative Aide
Representative Sam Cotten's Office
Pouch V
Juneau, AK 99811

Dear Mr. Johnson:

You have asked for the technical position of our office regarding the effects of sponsor substitute for House Bill 159 on the power of the State of Alaska to levy taxes against natural resources in place. The bill clearly states that the temporary tax exemption provided for is from taxation by municipal governments only. The State's authority to levy taxes against these resources is not affected in any way by this legislation.

If you have other questions, or if we can assist you on other matters, please feel free to contact me.

Sincerely,

Michael W. Worley
State Assessor

cc: Representative Eileen MacLean

21-P4LH

MEMORANDUM

State of Alaska

Community and Regional Affairs

TO: Bob Evans
Legislative Liaison
Office of the Governor

DATE: November 14, 1988

FILE NO: 741X/MWW/JP/1410.2

TELEPHONE NO: 465-4750

THRU: David G. Hoffman
Commissioner

SUBJECT: Proposal To Exempt Natural Resources In-Place

FROM: Michael Worley
State Assessor
Municipal and Regional
Assistance Division

The Director of the Municipal and Regional Assistance Division, Marty Rutherford requested that I prepare a briefing for you regarding issues and questions which might arise when the above subject is discussed at the AML Conference. I believe the municipalities will be supportive of the proposal. I have not heard from one municipal official who is in favor of assessing these resources. The initial reaction to our proposal at the municipal level has been that people who do not understand the facts perceive our proposal to be a denial to local governments of a valuable revenue resource. However, once they do understand the issue, they regard this mandatory taxing arrangement as an untenable requirement under state law which they wish to have removed. If our proposed bill is not introduced by the Governor, I am concerned that their perception will be that the Cowper Administration wants to impose this mandate against the wishes of municipalities. In any event, this proposal is advanced on behalf of municipalities. If they do not want it, we will recommend it be withdrawn.

The issue will probably be discussed at the Policy Section Meeting on taxation and finance on Thursday, the 17th from 9:00 to 11:30 a.m. Among others, Commissioner Hugh Malone, Gary Lewis (Mat-Su Borough Assessor) and I will be on the panel for that meeting.

Attached is a position paper which states briefly the pros and cons of this issue as we see them. Also attached is a copy of our response to concerns and questions posed by State Economist Brent Erickson.

If you have additional questions on this issue, or if we can be further help, please don't hesitate to call on us.

Attachments

November 14, 1988

POSITION PAPER

RE: Proposal to exempt natural resources-in place.

SPONSOR: Rules by Request of the Governor

Effects of the Bill:

This bill would stabilize municipal taxing practices, the State Revenue Sharing Program, and the Education Funding Formula by by statutorily recognizing the current property tax practices of municipalities in the State, and the procedures utilized by the Office of the State Assessor in estimating Full Value Determinations. The assessment practices and procedures currently being used by municipalities and the Office of the State Assessor in regard to in-place natural resource reserves are not consistent with existing state law.

Comments:

Although Alaska law technically requires these in-place natural resource reserves to be included in local tax rolls and in the full value determination for municipalities, they have not been so included because of the technical difficulty and expense of accurately determining the value of such reserves. The treatment of these values has become an issue because of the continuing development, lease or sale of the property conveyed to regional corporations under the Alaska Native Claims Settlement Act (ANCSA). As these ANCSA properties are developed or conveyed to other parties, they enter taxable status. Under ANCSA, the surface and subsurface estates to these properties were conveyed separately to village and regional corporations, respectively. Because municipalities must assess property rights to "the record owner" under AS 29.45.160(b), assessors should value resources separately and assess their value to the proper corporation. Although this issue was triggered by ANCSA, it is not confined to only those properties. The municipal assessor must treat all property in a uniform manner; therefore, the practice of valuing these resources will automatically extend to all properties. Several options have been suggested in responding to these problems. The following is a discussion of these options and our position:

Option 1: Do Nothing.

Because of the developments discussed above, doing nothing will not preserve the status quo. It will, in fact, require substantial changes in assessment practices throughout the state, increasing the administrative and fiscal burden on municipalities and the state to determine the values of in-place reserves in municipalities. The addition of these values to municipal tax rolls and full value determinations will have effects at both the local and state level. The values of some resources would be high enough on larger tracts (homesteads, farms, etc.) that the owners would very likely be forced to develop the resources in order to pay property taxes, or face property tax foreclosure. The inclusion of these values in full value determinations will reduce revenue sharing funds to municipalities with additional in-place reserve value and will increase the mandatory local contribution under the education formula to those municipalities. Depending upon the amount of these resource reserves, the fiscal impact to local governments could be substantial.

The positive side to this option is that municipalities would continue to have the capacity to levy against a category of taxable property. In most municipalities, we believe the resource value would not be very high. In some, however, it could be higher than the combined value of all other property located in the jurisdiction.

Option 2: Adopt Legislation Permitting Municipalities to Tax Resources in Place by Local Option.

The advantage to this approach is that the State is not depriving municipalities of new property tax dollars which are currently available to them. At the same time, the requirement for municipalities to tax the resources, whether they want to or not, is removed.

Unfortunately, there are many hidden problems associated with this option. The Full Value Determination includes values for all property which is taxable under state and federal law. Under the local option concept the values of these resources would be required to be included in the Full Value Determination whether municipalities elected to tax them or not. Therefore, we would still have the education funding problem which exists in some resource-rich, revenue-poor municipalities (see attached memo). It has been suggested that perhaps the resource values should be added to full value determinations only if municipalities elected to tax them.

This proposal raises a significant policy question in the rationale and equity for allowing such treatment for only this type of optionally exempt property but not for other types such as personal property, motor vehicles, boats, or the first $10,000 on homes, the value of which is required to be included in their full value determinations whether or not it is taxed. It seems likely that allowing one exception to the rule that optionally exempts property to be included in the full value determination would lead to calls from affected municipal governments for the exclusion of other types of optionally exempt property, based upon the amount of such property within each municipality. If all optionally exempted property values were removed the concept of the full value determination would be dramatically altered in that it would represent only the willingness of municipalities to generate property tax revenues, regardless of their potential to do so. The Department of Education has expressed concern that under the optional exemption concept, local education funding could be dramatically increased or reduced each year through the exercise of the option, thereby causing fiscal instability within school districts.

Option 3: Mandatorily Exempt Resources In-Place from Municipality Levy.

The chief disadvantage of this approach is that municipalities would be unable to tax resources in-place if they desired to do so. Municipalities in Alaska do, however, have the power to levy a severance tax against the extraction or removal of the resources at their option. Therefore, the inability to tax the resources would apply only to those not being developed.

No municipality in Alaska has attempted to assess or even to develop a separate value for resources in-place. Therefore, this option would maintain the status quo in that regard. Similarly, the Office of the State Assessor has never attempted to include a value for these resources in municipal full value determinations. With resources mandatorily exempted under this option, we would no longer be required to do so, thereby maintaining that existing practice as well.

The danger of substantially increasing property taxes on larger tracts of land such as homesteads and farms would be eliminated. With the option of adopting a severance tax, however, municipalities could tax those resources in the event they were developed.

In summary, we believe Option 3 provides the most logical way to resolve these problems. It guards against disruption of revenue sharing and education funding activities, and insures the status quo will be maintained in both municipal property taxation and the Full Value Determination.

MEMORANDUM

State of Alaska
Department of Law

TO Bob Evans, Legislative Liaison
Office of the Governor

DATE April 26, 1988

FILE NO 663-88-0410

TEL NO 465-3600

SUBJECT Exemption of "in place" natural resources

Marjorie L Odland

FROM Marjorie L. Odland
Assistant Attorney General
Governmental Affairs-Juneau

You have requested our opinion regarding a draft bill exempting "in place" natural resources from municipal taxation (Our file: 773-88-0061). You have several concerns regarding the effect and necessity of this bill which will be addressed individually below.

1. What is the state's current obligation regarding the assessment of "in place" natural resources in the full-value determination of a borough or municipality?

The standard by which a local assessor must assess property is set out in AS 29.45.110(a), which reads:

> The assessor shall assess property at its full and true value as of January 1 of the assessment year, except as provided in this section, AS 29.45.060 and 29.45.230. The full and true value is the estimated price that the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

Under the above statute, a local assessor must assess all taxable property in accordance with the standard. The determination as to whether "in place" natural resources must be included in the assessment of property and the state's liability for insuring the inclusion of assessment of "in place" natural resources by municipalities is central to your question.

To date, municipalities have not assessed "in place" natural resources. Additionally, the state has not required municipalities to include these resources when determining full and true value of property under AS 29.45.110. There is no case law in Alaska interpreting AS 29.45.110 with respect to assessment requirements of "in place" natural resources nor is there a case

in Alaska holding that it is mandatory for these resources to be included in property assessment. However, it is the opinion of this office that "in place" natural resources may correctly be included in the full value determination of a municipality under AS 29.45.110(a) and that the Alaska Supreme Court would support this opinion.

Looking to other states' court opinions and treatise law, it is generally held that the right to tax is purely of statutory creation, and practically all of the authorities are to the effect that assessors, in valuing property, may take into consideration the fact that property contains undeveloped minerals in such quantity as to enhance the value of the land over its mere surface value. See 2 A.L.R. 1550-1553 and cases cited therein. It has also been held that minerals in place are not rendered nontaxable merely because of lack of legislative method and regulation for determining their value. Greene County v. Lattas Creek Coal Co., 100 N.E. 561 (Ind. 1913); 72 Am.Jur.2d State and Local Taxation § 764.

There is case law supporting the view that assessors are required to value for taxation all real property according to its market value. Under those decisions, value is measured by all the circumstances and advantages that tend to enhance it, of which underlying minerals, if accessible, are most important items, so that they must necessarily be included in the valuation. See, e.g., Logan v. Washington County, 29 Pa. 373, 14 Mor. Min. Rep. 108 (Penn. 1857). Any element of value tending to affect selling price "may" be taken into consideration by the assessor in arriving at a proper valuation for assessment purposes. Washington County v. Marquis, 82 Atl. 756 (Penn. 1912). The decisions of the courts in these two cases appear to have been based upon statutes similar in wording to AS 29.45.110(a).

Of main import, is that none of the authorities we found held for the premise that liability attaches to the state or local taxing entity for failure to include "in place" natural resources in their assessments. The authorities we found were based upon cases where a taxpayer was challenging the authority of the taxing jurisdiction to include the value of "in place" natural resources in the assessment of their property.

Furthermore, we found no cases holding that local or state assessors are required to search out "in place" natural resources in order to include them in the assessment of property. The cases mainly hold that it is correct for assessors to take into consideration all "facts" directly affecting the value. It is our opinion that this general rule concerns facts which affect

the value of the property that are known or prospective; not sought or speculative.

There is authority supporting the view that assessors may take into consideration prospective value of property as well as present value in making assessments and that an added value may be given property for purposes of taxation where there is "sufficient reason" to believe that the property contains mineral deposits in sufficient quantity to give it a value as a prospective mine. However, there is also authority to the effect that not only must property be valued at its present value at the time of the assessment, but that such value cannot be based on a speculative prospective value. See generally 72 Am.Jur.2d State and Local Taxation, §§ 763-764.

In summary, it is our opinion that AS 29.45.110(a) allows for "in place" natural resources to be assessed and included in the full value determination of a municipality. The issue of whether the state is mandated to assess these resources will be included under the next section dealing with any potential state liability for failure to include assessment of "in place" natural resources in the full value determination of a municipality.

2. If "in place" natural resources are not currently exempted from the full value determination, what liability may the state face if the state assessor does not include these in his assessments?

As pointed out above, the state has never required municipalities to assess "in place" natural resources in order to arrive at the full and true value of property in the municipality. The issue is not whether AS 29.45.110(a) can be interpreted to allow for assessment of "in place" natural resources, since we believe that the Alaska Supreme Court would rule that it does. The issue here centers around the state's longstanding application of this statute in not requiring these resources to be assessed and whether the state faces liability for not including "in place" resources in the assessments. In short, we do not believe that the state faces any present liability for failure to require municipalities to assess "in place" natural resources without a specific exemption in the law.

We are assuming that the liability anticipated by your question concerns a situation where one municipality complains that the state should be requiring another municipality to assess its known "in place" natural resources in the full value determination as it affects the distribution of municipal revenue sharing and education funding. However, a municipality's claim

of deprivation of due process or equal protection against the state must fail. The Alaska Supreme Court recently ruled that a municipality is not a "person" and therefore may not assert due process or equal protection claims against its creator, the state. Kenai Peninsula Borough v. State, ___ P.2d ___, Op. No. 3277 (Alaska, Mar. 4, 1988).

If the state changes its application of AS 29.45.110-(a), rules of contemporaneous construction generally hold that a reversal in interpretation of a statute by the administering agency will be applied only prospectively. 2A N. Singer, Sutherland Statutory Construction § 49.05, (4th ed. 1984 rev.) (hereafter "Sutherland"). In other words, if the state reverses its interpretation and administration of AS 29.45.100(a) requiring municipalities to assess "in place" natural resources in their determinations of full value, the state's new interpretation most likely will apply only to future years; not retroactively.

We note that there is caselaw in other states supporting the following viewpoint:

> the mere failure of public officers charged with the duty to enforce statutory and constitutional provisions in respect to the levy and collection of taxes, or the acquiescence of public officers in conditions that exempted certain property from taxation, should not be permitted to stand in the way of the "correct" administration of the law, or be construed to estop more diligent and efficient public officers when they attempt to perform their duty by bringing in to the revenue proper subjects of taxation that had theretofore been allowed to escape the payment of taxes.

Sutherland § 49.05 (citing Louisville v. Board of Education, 154 S.W. 379, 380-381 (Ky. 1913).

Based upon the above viewpoint, we believe that the present state assessor has correctly pointed out that "in place" natural resources may be included in municipal assessments, and properly should be included. However, as noted above, it is the opinion of this office that no liability attaches to the state for failure to insist on the assessment of these resources at this time.

3. Is it your opinion that this exemption from municipal resources is necessary?

Probably yes, for the main purpose of addressing the issue and clarifying the state's application and interpretation of AS 29.45.110(a). We do not believe any retroactive liability will attach if the state does not immediately provide for this exemption in the law. Additionally, the state may wish to consider whether it wants to make the exemption of "in place" natural resources from municipal taxation mandatory upon the municipalities or whether to allow municipalities the option of providing for the exemption of these resources from taxation.

We hope this addresses your concerns. Please do not hesitate to contact us if you need further assistance on this matter.

MLO/pjg

Introduced by: Alaska Association of Assessing Officers

Date: November 17,1988

RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE .

RESOLUTION NO. 88 - 2

A RESOLUTION RECOMMENDING TAX EXEMPT STATUS OF "IN PLACE" RESOURCE RESERVES.

WHEREAS, "current Alaska law requires municipalities which levy a property tax to assess, levy, and collect property taxes on natural resources in place, except oil and gas resources which are mandatorily exempted and

WHEREAS, the Office of the State Assessor is required under current law to include values for those natural resources in place in the Full Value Determination for municipalities across the State and

WHEREAS, currently neither municipalities nor the Office of the State Assessor includes values for those resources on local assessment rolls or in the Full Value Determination, and neither has the staff or fiscal resources to value natural resources in place and

WHEREAS, the inclusion of values for those resources on local property tax rolls or in the Full Value Determination would be likely to have substantial negative tax impacts on farms, ranches, homesteads and other residential property, and substantial negative impacts on municipalities under the State Revenue Sharing and education funding formulas and

WHEREAS, municipaiities already have the power to levy severence taxes and sales taxes against those resources at the time they are developed and sold;

NOW, THEREFORE, BE IT RESOLVED THAT THE Alaska Municipal League suoports the passage of legislation which would require, under A.S. 29.45.030, the exemption from municipal property taxes of all natural resources in place, together with language which would insure preservation of the power of municipalities to levy severence taxes and sales taxes against the development and sale of those natural resources.

This resolution was passed by the governing body of the

Alaska Association of Assessing Officers on November 15,1988

ATTACHMENT B

Matanuska-Susitna Borough

P.O. BOX 1608, PALMER, ALASKA 99645-1608 • PHONE 745-9682

BOROUGH MAYOR

December 10, 1988

The Honorable Steve Cowper
Governor, State of Alaska
P. O. Box A, Mail Stop 0101
Juneau, AK. 99811-0101

Dear Governor Cowper:

SUBJECT: Tax Exemption of Resources In Place

A Resolution for the state to pass legislation exempting natural resources in place from property taxation was adopted by AML in November (attached).

This emanates from realization that DCRA has not appraised or included value of untaxed or inventoried natural resources in Full Value Determination for municipalities. Likewise, because of cost of inventory and lack of verification of amount and value of particularly subsurface resources, municipalities have not taxed this form of property interest.

The issue arises as, due to ANSCA, subsurface and surface rights are divided between local and regional native owners. There are cases where mineral extraction causes identifiable taxable resources.

Current thought is that the exemption of in place natural resources will:

Avoid tremendous administrative costs involved in identifying and valuing unproven resources both by the state and municipalities.

and;

Avoid onerous disruption of formula funding program distributions between resource rich and resource poor municipalities.

A more reasonable, equitable and less regressive method of taxation appears to be severance tax applied to natural resources at time of production:

It recognizes ability to pay at time of marketability.

It will not punish (funding formulas) those municipalities which inventory and identify natural resources in efforts to diversify economic base.

It is much simpler to administer at the local level.

These may be the same reasons why the State opted to tax Oil and Gas reserves through a severance tax. The Matanuska-Susitna Borough urges your reconsideration of the introduction of legislation exempting resources in place, even with an option that municipalities adopt a severance tax in lieu of property tax.

Sincerely,

Dorothy

Dorothy Jones, Mayor

cc: Scott Burgess - AML Executive Director
Gary Lewis - Taxation & Finance Co-Chairman

Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325
FAX 463-5480

217 SECOND STREET, SUITE 200
JUNEAU, ALASKA 99801

TO: Representative Eileen Mclean, Chair
Members of the House Community and Regional Affairs Committee

FROM: Scott A. Burgess, Executive Director

DATE: March 13, 1989

SUBJECT: Sponsor Substitute for HB 159 - Municipal Property Tax Exemption for In Place Resources

The Alaska Municipal League supports Sponsor Substitute for HB 159. Recognizing the significance of the issue of municipalities imposing or not imposing a property tax on natural resources in place, the AML membership passed Resolution No. 89 - 21 (attached) at the annual business meeting in November 1988. After further analysis, the AML Board of Directors added the legislative resolution of the concern raised by the Department of Community and Regional Affairs earlier this year to its 1989 legislative priorities outlined in the AML Municipal Platform. SSHB 159 reflects the approach supported by the AML and the AML urges passage by the Legislature.

As outlined in AML Resolution No. 89 - 21, municipalities and the State of Alaska are required by law to include the values of natural resources in place (e.g. minerals, timber etc.) on local assessment rolls and in the full value determination, respectively, for purposes of taxation. Neither does because neither has the staff or fiscal resources to value the resources, and the inclusion of values for those resources would likely have a negative impact on residential property and on municipalities under the state revenue sharing and education funding formulas. Exempting the resources from property tax would recognize the difficulty of taxing natural resources in place and the status quo.

However, given the decline in state aid to municipalities and the increasing demand to provide additional local services with local tax dollars, limiting a potential tax base should be approached with caution. When the issue of taxing in place resources was raised earlier this year, the Department of Community and Regional Affairs stimulated significant discussion and debate around the State, especially among the municipalities and with the Department of Revenue. SSHB 159 calls for a temporary, two-year property tax exemption on natural resources in place to recognize the status quo, and it also calls for a study by the Department of Community and Regional Affairs to compare the potential effects of total exemption, partial exemption, no exemption and optional exemption. In conducting the study, DC&RA will consult with the Department of Revenue and the AML. The approach outlined in SB 159 with a temporary exemption and a study will take care of

the immediate situation and provide for more understanding of the issue, a discussion of alternatives, and the development of a consensus on a long-term or permanent solution.

The July 1, 1991 repeal date in Section 3 would provide adequate time for the study to develop recommended long-term legislative solutions (two years) and for the legislature to act. Assessment roles are determined as of January 1st of each year; therefore, in order for the municipality to add property to the assessment rolls if required by legislation passed in 1991 session and to assess in 1992, the assessors would have to do their work during the summer and fall of 1991 and have the property on the rolls by January 1, 1992. If the 17th Legislature does not act in the First Session to implement the recommendations of the study, it will have to extend the temporary exemption.

Finally, the AML wants to clarify in its testimony that municipalities have the authority under law to place a severance tax on natural resources whether or not natural resources in place are exempt from property tax. This is confirmed in an Alaska Attorney General opinion dated April 29, 1986 to the Commisssioner of Community and Regional Affairs.

Again, the AML supports SSHB 159 as a legislative priority of municipalities across the State.

Attachment

Testimony\sb181

Resolution of the Alaska Municipal League

Resolution No. 89-21

A RESOLUTION RECOMMENDING TAX-EXEMPT STATUS OF "IN PLACE" RESOURCE RESERVES

WHEREAS, current Alaska law requires municipalities that levy a property tax to assess, levy, and collect property taxes on natural resources in place, except oil and gas resources, which are mandatorily exempted, and

WHEREAS, the Office of the State Assessor is required under current law to include values for those natural resources in place in the full value determination for municipalities across the State, and

WHEREAS, neither municipalities nor the Office of the State Assessor includes values for those resources on local assessment rolls or in the full value determination, and neither has the staff or fiscal resources to value natural resources in place, and

WHEREAS, the inclusion of values for those resources on local property tax rolls or in the full value determination would be likely to have substantial negative tax impacts on farms, ranches, homesteads, and other residential property, and substantial negative impacts on municipalities under the state revenue sharing and education funding formulas, and

WHEREAS, municipalities already have the power to levy severance taxes and sales taxes against those resources at the time they are developed and sold;

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League supports the passage of legislation that would require, under AS 29.45.030, the exemption from municipal property taxes of all natural resources in place, together with language that would insure preservation of the power of municipalities to levy severance taxes and sales taxes against the development and sale of those natural resources.

Adopted this 18th day of November 1988 in Fairbanks, Alaska.

Heather Flynn, President

ATTEST:

Scott A. Burgess, Executive Director

RSN: 175 ALASKA HOUSE OF REPRESENTATIVES

SSHB 159

1ST SESSION 16TH LEG 3/29/89 11:55 AM

36 YEAS 2 NAYS 2 EXC 0 ABS

Y	BARNES	Y	DONLEY	Y	JACKO	Y	PHILLIPS
Y	BOUCHER	Y	ELLIS	N	KOPONEN	Y	RIEGER
Y	BOYER	Y	FOSTER	Y	LARSON	Y	SHARP
Y	BROWN	N	FURNACE	Y	LEMAN	Y	SHULTZ
E	CATO	Y	GOLL	Y	MACLEAN	Y	SPOHNHOLZ
Y	COLLINS	Y	GRUENBERG	E	MARTIN	Y	SWACKHAMMER
Y	COTTEN	Y	GRUSSENDORF	Y	MENARD	Y	TAYLOR
Y	DAVIDSON	Y	HANLEY	Y	MILLER	Y	ULMER
Y	DAVIS, C.	Y	HOFFMAN	Y	NAVARRE	Y	WALLIS
Y	DAVIS, M.	Y	HUDSON	Y	PETTYJOHN	Y	ZAWACKI

+ VOTED FOR
* CHANGED VOTE

arctic slope regional corp.

P.O. BOX 129 BARROW, ALASKA 99723
PHONE (907) 852-8533 OR 852-8633
PANAFAX TELECOPIER (907) 852-5733

February 6, 1989

The Honorable Eileen MacLean
State of Alaska
House of Representatives
Pouch V
Juneau, Alaska 99811

Re: Taxation of In-Place Minerals

Dear Eileen:

We have reviewed the proposal bill to exempt in-place minerals and natural resources from property taxation. Generally, we would support this provision. Any attempt to tax resources before they are severed would have a negative and deleterious affect on the state and industry. It would not stimulate development to impose such a tax, and it would be extremely difficult to value the resources prior to really knowing what might be produced.

One item that should be added to the list of natural resources is gravel. This is an in place natural resource that does not have significant value unless it can be mined and used. It is also often difficult to realistically determine the value of gravel until the market develops. Amounts in place, quality and costs associated with development are difficult to pre-assess.

Other major natural resources, such as oil and gas, are structured to be taxed on a severance basis, not in place. This approach is appropriate for the natural resources listed in the bill as well. I assume this section would be consistent with AS 43.56, even though it does not reference the oil and gas exemption that already exists; you may wish to have someone check that. Also, the breadth of coverage for all timber as "stumpage" and fish and shell fish "farms" might be considered.

Again, ASRC supports the proposed amendment to AS 29.45.030(a) by adding the exemption for in place natural resources. Further, we would urge the addition of gravel as an example to be clear that is included. If we can provide additional comments, please do not hesitate to contact us.

Sincerely,

Jacob Adams

Jacob Adams, President
ARCTIC SLOPE REGIONAL CORPORATION

NORTH SLOPE BOROUGH
DIVISION OF PERSONNEL

P.O. Box 69
Barrow, Alaska 99723

Phone: 907-852-2611

February 21, 1989

Ms. Edith A. Vorderstrasse
P.O. Box V
Juneau, Ak 99811

Dear Edith & Eileen,

This is my first official letter to Juneau, and of all the people in the world it's to two very special friends.

The following names and titles you requested all have the same address:

Edward Itta, Chief Administrative Officer
Dan Fauske, Director, Administrative & Finance
Barbara Bigelow, Deputy Director, Administrative & Finance
Tom Opie, Director, Fire Department
David Baumgartner, Deputy Director, Fire Department
Cynthia Young, Director, Health Department
Marie Neakok, Deputy Director, Health Department, Behavioral Health Services
Ida Olemaun, Deputy Director, Health Department, Social Services
Elise Patkotak, Deputy Director, Health Department, Physical Health Services
Ida Olemaun, Deputy Director, Health Department, Social Services
John Duffy, Director, Housing Department
Bessie O'Rourke, Deputy Director, Housing Department
Ann Stokes, Director, Law Department
Alan Hartig, Deputy Director, Law Department
Jacob Kagak, Director, Municipal Services
Joe Upicksoun, Deputy Director, Municipal Services
Gary Smith, Director, North Slope Higher Education Center
Warren Matumeak, Director, Planning Department
Leona Okakok, Deputy Director, Planning Department
Dennis Parker, Director, Public Safety Department
Randy Crosby, Director, Search and Rescue
Ben Nageak, Director, Wildlife Department

MEMORANDUM State of Alaska

TO: Hon. Emil Notti, Commissioner
Department of Community and
Regional Affairs

DATE: April 29, 1986

FILE NO: 663-86-0456

TELEPHONE NO: 465-3600

FROM: HAROLD M. BROWN
ATTORNEY GENERAL

By:
Deborah Vogt
Assistant Attorney General

SUBJECT: Power of borough to levy severance tax on minerals

You have asked for our review of an opinion submitted to your office by Mr. Thomas Klinkner of Wohlforth & Flint regarding the authority of a first class borough to levy a severance tax on minerals. With some reservations, we agree with the conclusion of that opinion.

At the outset, we note that neither your request nor the opinion of Mr. Klinkner set out the language of a proposed tax, and as a result our analysis is in the abstract. We understand that the primary concern of the proposed borough is with the ability to tax the DeLong Mountain enterprise, which is on privately owned native corporation land. Mr. Klinkner's conclusion is limited to the authority of the borough to levy a tax on minerals mined from lands in which the mineral estate is privately owned.

The framers of the Alaska Constitution were aware that the powers, particularly the taxing powers, of local governments had been construed very narrowly in other states. As the Alaska Supreme Court in Liberati v. Bristol Bay Borough, 584 P.2d 1115 (Alaska 1978) noted, the second sentence of Article X, Section 1 appears in the Alaska Constitution specifically to overrule the common law rule of narrow construction. 584 P.2d at 1120 and note 19. That provision reads: "A liberal construction shall be given to the powers of local government." 1/ As the court noted, the

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1/ The section in its entirety provides:

Section 1. Purpose and Construction. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

framers placed the provision in what is now Section 1 so that it would apply to general law municipalities as well as home rule municipalities. Id. at 1120-21, n. 19.

The Alaska Legislature has provided for two types of municipalities: home rule municipalities and general law municipalities. A home rule municipality "has all legislative powers not prohibited by law or charter." AS 29.04.010. A general law municipality "has legislative powers conferred by law." AS 29.04.020 I understand that the Northwest Arctic Borough would be a general law municipality and therefore limited to the powers specifically granted by the legislature.

AS 29.35.010 grants general powers to all municipalities, subject to other provisions of law. Among those powers is the power "to levy a tax or special assessment, and impose a lien for its enforcement." AS 29.35.010(6). It could be argued that the general power to levy a tax must be combined with a specific grant such as those found in chapter 45, authorizing property and sales taxes, in order for a general law municipality to levy a particular tax. However, we do not believe that the state supreme court would adopt such an interpretation. In Liberati, the court read the predecessor of this section, former AS 29.48.010(7) (which authorized municipalities "to levy taxes") to be a "broad grant of taxing authority, limited only by other provisions of law" and to be "consistent with the second sentence of Article X, Section 1 which requires that '[a] liberal construction shall be given to the powers of local government.' " Liberati, supra, 584 P.2d at 1120.

Chapter 45 of title 29 delineates specific provisions for municipal property taxes and sales taxes, and for the enforcement of tax liens. Those provisions include some limitations on property taxes and sales taxes, but are silent as to severance taxes. Thus, it appears that the general power to tax granted by AS 29.35.010(6) has not been limited by any other provision of title 29.

Nor do we find a limitation on this power to tax in any other statute. Nothing in the mining license tax specifically prohibits a municipality from levying a severance tax. In this regard, it should be noted that the legislature may limit the ability of a municipality to levy

a tax, including a severance tax, and that it has done so in the past. AS 43.55 levies production taxes on producers of oil and gas. AS 43.55.017 specifically provides that the taxes imposed by that chapter "are in place of all taxes now imposed by the state or any of its municipalities, and neither the state nor a municipality may impose a tax upon [production of oil or gas or oil and gas in place]." Similarly, AS 43.56 levies a property tax on oil and gas production and pipeline transportation property, and permits local taxation of that property subject to limitations. AS 43.56.030 provides that the taxes imposed in the chapter "are in place of ... all other ad volorem [sic] or other taxes imposed by a municipality on property subject to tax under this chapter ..."

Our inquiry would end here with the conclusion that the general power to impose a severance tax on minerals has not been limited by the legislature were it not for the concerns expressed by Justice Rabinowitz in his dissent in Liberati. In that case, the Bristol Bay Borough had levied a 3% tax on the sale of all raw fish caught within the borough. The challengers argued that the tax was a severance tax, and was prohibited by the provisions of Article VIII of the Alaska Constitution. The majority of the court concluded that the tax at issue was a sales tax and did not reach the issue of whether a severance tax is prohibited by Article VIII of the constitution. Justice Rabinowitz, however, concluded that

> In my opinion, the severance tax imposed by Bristol Bay Borough does violate the provisions of Article VIII of the Alaska Constitution which reserve the benefits from, and control over management of the fisheries resource to all the people of the state. The effect of the borough's ordinance is to exclusively appropriate to its own benefit, and that of its residents, the use of a natural resource which is reserved to all of the people of the state for their common use. Article VIII, Section 2 of the Alaska Constitution reserved to the legislature, not the borough, the authority to act as to this resource. Absent a delegation by the legislature to the borough, I conclude that

the ordinance contravenes Alaska's Constitution.

Mr. Klinkner concludes that this prohibition, if adopted by the court, would not apply to a tax levied on minerals mined from a privately owned mineral estate in real property. He further states that such private interests would include mineral estates patented under state or federal public land laws. We have some difficulty with his analysis at this point.

A severance tax is a general revenue tax levied on the activity of severing natural resources within the taxing jurisdiction. 2/ The power to levy this type of tax comes from a jurisdiction's sovereign, statutory or constitutional power to levy taxes, and not from the jurisdiction's proprietary interest in the resource. It is levied on the producer of the natural resource regardless of the ownership of the land from which the resource is produced. Thus, the severance tax at issue in Commonwealth Edison v. Montana, 453 U.S. 609 (1981) was levied by the State of Montana primarily on production from coal leases on federal lands. Alaska's oil and gas production taxes apply to oil and gas produced from state, federal and private land within the state. AS 43.55.011, .016.

Alaska is prohibited by the Statehood Act from alienating the mineral interest in mineral lands (1981 Op. Att'y Gen. #10 (Oct. 20). 3/ If mining activity were to take place within the borough on state lands, the state would retain ownership of the minerals, just as the state retains ownership of the oil on state oil leases until the oil is severed. Thus, since it appears that any borough-wide severance tax would tax the production of

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2/ "Alaska's Oil and Gas Tax Structure: A Study with Recommendations for Improvement," Alaska Department of Revenue 1977 describes the Oil and Gas Properties Production Tax as "a tax on the activity of producing oil and gas in Alaska." Id. at II-2.

3/ Contrary to Mr. Klinkner's representation, the state does not, and may not, patent mineral lands. Id.

state-owned minerals, we believe that the concerns raised by Justice Rabinowitz must be addressed in more detail.

One reading of Justice Rabinowitz' conclusions would be that the constitution reserves to the legislature all legislation dealing with natural resources in the state, whether those resources occur on public or private land. This reading appears consistent with Justice Rabinowitz' language that article VIII, section 2 reserves to the legislature "the power to act as to this resource." It would imply that since the state has the power to levy a severance tax on minerals, that power resides solely in the legislature. We believe this reading to be too broad. The constitutional provision explicitly relied on by Justice Rabinowitz was article VIII, section 2 which provides:

> Section 2. General Authority. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

It is clear from the minutes of the Constitutional Convention that this section was intended to apply only to the state's proprietary interest in natural resources, and not to a general, overall interest in resources within the state regardless of ownership. 4/ At the Constitutional Convention, that provision was developed from section 2 of

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4/ The Commentary on what was then section 1 of Committee Proposal 8 (Natural Resources) read:

(Sec. 1. States' Proprietary Interest)

This section is a general grant of authority to the state for the utilization and development of all resources over which the state has a proprietary interest. This includes all game fish, wildlife, fisheries, waters and those lands and related land uses including mineral rights, etc., that may be acquired by the state through grants from the United States or by other means. Authority over private lands and resource interest is not provided in this article except as that authority is generally reserved in Section 18 [dealing with Private Ways of Necessity].

Committee Proposal No. 8/a. During the floor debate of that section, the following discussion took place:

> DAVIS: Mr. Riley, in Section 2, line 14, or actually lines 12, 13 and 14, it says, "The State of Alaska shall provide for the utilization, conservation and development of all of the natural resources, including lands and waters belonging to the State." It appears to me that as that is written it is broad enough to cover all natural resources, no matter whether they are privately owned, publicly owned, or what they may be. I am wondering if you did not intend to put a comma after the word "waters" at the end of line 14, so that it would then become clear that we are only talking about natural resources belonging to the state.
>
> RILEY: That would be my conception of it, Mr. Davis.
>
> DAVIS: There wasn't any intention that the state is going to develop natural resources on either federal land or privately owned land, is that right?
>
> RILEY: No. The sections covered in the commentary states all resources over which the state has a proprietary interest, and I think the point is well taken.

Alaska Constitutional Convention Minutes p. 2499. The provision was amended so that the words "belonging to the state" modified "natural resources" rather than only "lands and waters." Id. at 2500. Thus, it is clear that the framers intended the provision to apply only to the proprietary interest of the state, and not to all the natural resources that might be found within the boundaries of the state. It then follows that the article cannot be read to prevent <u>any</u> severance tax levied by a municipality on any minerals within the state.

Another possible reading would be that apparently subscribed to by Mr. Klinkner -- that the legislature retains the exclusive authority to act (including tax) as to

resources in which the state retains a proprietary interest. The difficulty with this approach is that a severance tax is not a tax on minerals (state-owned or otherwise), but rather is a tax on the (private) activity of production. Oliver Iron Min. Co. v. Lord, 262 U.S. 172 (1922)("[the tax] is not laid on the land containing the ore, nor on the ore after removal, but on the business of mining the ore ...") As a result, there does not seem to be any neat distinction between a sales tax levied on state owned resources (after they are captured by a private party) and a severance tax levied on the private producer of minerals on state land. The tax at issue in Liberati was on fish -- a resource "reserved to the people for common use" by article VIII, section 3. The tax was levied exclusively on this resource. If the Rabinowitz language were read to prohibit a borough from acting (including taxing) as to resources in which the state has once had a proprietary interest (even after those resources are captured by a private party), it would seem that this sales tax would be prohibited also. The majority of the court, however, had no difficulty finding that tax constitutional.

If the constitution were construed to prohibit only a municipal severance tax as applied to the production of state-owned minerals, then two identically situated private companies, one producing minerals under a lease on state lands and another producing minerals under a lease on private lands, would be treated very differently. The justification for this difference would have to be that article VIII impliedly limits municipal authority in this area. But, as set out above, the constitutional framers intended that municipal powers should be broadly construed, and made this intent explicit. The majority of the court in Liberati held that "we should not be quick to imply limitations on the taxing power where none are expressed." 584 P.2d at 1121.

We believe that a better reading of the restrictions of article VIII, and particularly section 2 of that article, is that the provisions reserve to the legislature the exclusive authority to act as to the state's proprietary interest in natural resources. Thus, a borough would be prohibited from entering into a royalty contract for the production of minerals on state lands, from issuing

grazing leases, and from appropriating water. 5/ An entity's power to tax is separate from its proprietary interest. See, Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 145-46 (1982). We do not believe that, after full briefing, the full Alaska Supreme Court would hold that Article VIII limits taxing authority, whether that authority is exercised by the state or by a municipality.

It may well be that, as a policy matter, the legislature will conclude that the production of mineral resources in the state should benefit the people of the state as a whole, and not just the people of the municipality in which the natural resources occur. The legislature may prohibit a local severance tax altogether, as it has done in AS 43.55. Or, it may devise a particular plan for distributing the revenue from a type of tax between the municipality and the state, as it has done in AS 43.56. Absent a restriction by the legislature, we believe that a borough may exercise the power to levy a severance tax.

DV:jf

5/ The Department of Law has advised that this provision prohibits a municipality from exerting authority over the appropriation of water. Inf. A.G. Op. April 4, 1974.

MEMORANDUM State of Alaska

TO: Hugh Malone
Commissioner
Department of Revenue

DATE: November 10, 1988

FILE NO: 20630/DGH/MWW/dm

TELEPHONE NO: 465-4700

THRU:

SUBJECT: Proposal to Exempt Natural Resources in Place

FROM: David G. Hoffman
Commissioner
Community and Regional Affairs

I have reviewed your memo to the Governor's Office on the above subject, and I understand and appreciate your concerns in regard to this issue. In particular, I note two comments in your memo with which I am in full agreement.

You mention that such a proposal should be accompanied by language granting municipalities the specific authority to levy severance taxes against the extraction or removal of natural resources located within their boundaries. Based on a legal opinion issued by Assistant Attorney General Deborah Vogt in April, 1986 (copy attached), I believe municipalities already have that power, and in fact, Northwest Arctic Borough has already began to pursue this option. For that reason, our proposal did not include such a provision. In any event, I would not object to adding to our proposal appropriate language providing for municipal severance tax power.

Secondly, I believe your idea of opening this issue up for discussion at the upcoming Municipal League Conference is a good one. In the cabinet meeting on November 2, it was agreed that where bill proposals have reached "open bill file" status, it would not be premature to discuss them freely at the AML. Coincidentally, it appears a good forum for the discussion would be during the policy section meeting on taxation and finance. I noted in a recent letter from Scott Burgess to Mike Worley (copy attached) that both yourself and Mr. Worley will be on the panel during that meeting.

Although Alaska law has always required that municipalities include the values for these resources on their assessment rolls, municipal assessors have not done so. Similarly, the State Assessor in our department is required to include those values in the annual Full Value Determinations, but has not included them. Millions of acres of subsurface property rights conveyed to Regional Corporations under the Alaska Native Claims Settlement Act (ANCSA) are now beginning to enter taxable

status. Because of this new development, municipal assessors and the State Assessor will now be forced to assess and appraise those property rights. Without corrective legislation, as municipalities are forced to tax resources in place, homestead lands and other residential property will be negatively affected. People will, in turn, be forced to develop and market the resources or face property tax foreclosure. Without an amendment to the law, the State Assessor would be required to add the value of the in place resources to full value determinations across the State. Depending on the amounts of the values added to the determinations, this change could have significant financial impact on municipalities under the education funding formula, particularly municipalities in northern and western Alaska, such as Northwest Arctic Borough.

Adding these values to the Full Value Determination would also serve as a sizable disincentive to borough formation in many areas of the State. On Prince of Wales Island, for example, the addition of the value of the privately owned standing stumpage could dramatically increase a borough's education funding obligation.

The direction this issue is presently going poses these and other serious policy concerns which I believe need to be addressed very soon. The proposal to mandatorily exempt these resources from taxation will simply maintain the status quo and insure stability in municipal taxing practices, the Full Value Determination, the Revenue Sharing Program and Education Funding. It was for these reasons, that I advanced this legislative proposal so it could be considered by the Legislature in the upcoming session. Furthermore, I am very willing to amend my proposal if municipalities attending the AML indicate that a different approach is needed.

If you would like to meet with me to discuss this proposal further, I would be eager to do so. If you prefer to, or if you are unable to meet earlier, we can discuss the issue after we arrive at the conference in Fairbanks.

cc: Bob Evans, Legislative Liaison, Governor's Office
Gregg Erickson, Senior Economist, OMB
Scott Burgess, Alaska Municipal League
Marty Rutherford, Director, MRAD

MEMORANDUM

State of Alaska
Community and Regional Affairs

TO: Jim Plasman
Deputy Director

DATE: November 22, 1988

FILE NO: 0713A/MW/cm/1410.2

TELEPHONE NO: 465-4750

THRU:

SUBJECT: Proposal to Exempt Natural Resources in Place

FROM:
Mike Worley
State Assessor
Municipal and Regional
Assistance Division

Commissioner Malone has suggested that if our proposal is introduced, it should be accompanied by language which will make certain that municipalities have the power to levy severance taxes against natural resources (except oil and gas). Our office has no objection to the inclusion of such language in our proposal.

The Department of Education raised the point on a separate issue that if municipalities elect to levy a severance tax, some recognition of the levy should become part of the education funding formula. We agree. We suggest that language be added to the bill which would require a municipal severance tax levy to be based on the value of the removed resource, and not on its volume, i.e., $60.00 (or 6%) per $1000.00 of coal extracted, not $10.00 per ton. Our office would then request the total value of the resources severed in each municipality and would simply add those values to each appropriate full value determination.

6-0725A
Cook ✓
2/2/89

IN THE SENATE BY ADAMS

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to an exemption from municipal property taxation for natural resources in place; and providing for an effective date."

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

* Section 1. TEMPORARY TAX EXEMPTION. Natural resources in place, including proven or unproven mineral and other deposits of valuable materials and timber stumpage, are exempt from property taxation by a municipality.

* Sec. 2. STUDY AND REPORT. (a) The Department of Revenue shall study and compare the potential effects of

(1) total exemption from municipal property taxation for natural resources in place;

(2) partial exemption from municipal property taxation for natural resources in place;

(3) no exemption from municipal property taxation for natural resources in place;

(4) total or partial exemption from municipal property taxation for natural resources in place at the option of each municipality.

(b) In conducting the study under (a) of this section the Department of Revenue shall consult with the Department of Community and Regional Affairs and with the Alaska Municipal League. By January 15, 1991, the Department of Revenue shall report to the legislature its findings and recommendations regarding municipal property taxation of natural resources in place.

* Sec. 3. This Act is repealed January 1, 1992.

* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

CITY OF KOTZEBUE
P.O. BOX 46 • KOTZEBUE, ALASKA 99752

City Hall
442-3401
Police Dept.
442-3351
Fire Department
442-3404
Public Works
Dept.
442-3465
Day Care Center
442-3157
Planning Dept.
442-3465
Building Inspector
2-2623
George Francis
Memorial Library
442-3816
Recreation Center
442-3066
Teen Center
442-3979
Regional Fire
Training Center
442-3921

December 23, 1988

Chuck Greene, Mayor
Northwest Arctic Borough
P.O. Box 1110
Kotzebue, Ak 99752

Dear Mr. Greene:

During the recent Alaska Municipal League (AML) Conference in Fairbanks the issue of "In-place resource valuations" was discussed in-depth and a resolution supporting an exemption for such valuations was approved.

As chairman of the AML Legislative Committee, I have been made aware of the potential problems with this issue in discussions with the State Department of Community and Regional Affairs.

Enclosed is a packet of information regarding the "exemption of in-place resources" from municipal taxation. Inaction on this issue will have a profound negative fiscal impact on both the school district education foundation formula and the Borough's revenue sharing program.

As a further result, borough residents will be faced with a local contribution for education that far exceeds our ability to pay. Also, KIC and NANA face potential tax problems if the "in-place" issue is not resolved.

A legislative solution to the "in-place" issue appears to be the most viable answer. The most expendient, temporary solution would be to have the Department of Law, perhaps through the Governor's Office, direct the Department of Community and Regional Affairs to delay implementation of the "in-place" valuations until the legislature and governor agree on a solution.

There are three options that are discussed in the enclosed material but those are not the only solutions. Safe to say, any solution will reguire a balance between to Borough residents and competing interest from other parts of the state.

Your immediate attention to this matter is greatly appreciated. I am available to help develop a possible legislative solution/strategy. Contact me at your pleasure.

Sincerely,

Mike Scott
City Manager

cc: City Council
Jerry Covey, NWABSD
Frank Greene, K.I.C.
Willie Hensley, NANA
David Hoffman, Commissioner
Mike Worley, State Assesor

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

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

January 16, 1989

Mr. Jacob Adams, President
Arctic Slope Regional Corporation
P.O. Box 129
Barrow, Alaska 99723

Dear Mr. Adams,

Thank you for your letter regarding in-place natural resources exemption, dated February 6, 1989.

In your letter you expressed the concern that gravel be included in this exemption. My staff has contacted legislative legal counsel on this matter. Counsel assures us that the language on lines 1 & 2 on page two of HB 159, which reads "material laid down by natural processes," would cover gravel. At this time I am not completely certain whether we will shift our support from HB 159 which I sponsored to a similar bill which Senator Adams may introduce. However, I wanted to assure you that I will make sure that whatever version gains support of our district contains language which would cover the exemption of gravel.

As to the coverage of timber stumpage and fish and shell fish farms all timber would be covered in both versions of the bill. However, at this time fish and shell fish farms would only be included in HB 159. If Senator Adams' bill becomes our vehicle I will speak to him about having these included.

I also wanted to inform you that I have been advised by legal counsel and the Attorney General's office that the municipal governments to have the power to levy a severance tax on these resources. I am prepared to clarify this through legislation if it seems necessary.
Again thank you for keeping me informed and do not hesitate to contact me or my staff on any issue at 465-4833.

Sincerely,

Representative Eileen P. MacLean, Chairman
House Community and Regional Affairs

SSHB 159 Testimony

1. Municipalities and State are faced with significant problem in terms of how to deal with required assessment and taxation of these in place resources.

2. In the past, such property essentially been ignored because of inability to identify and value the property.

3. With split between surface and subsurface rights in land conveyances under ANCSA, and development of these properties, the question of how to value such resources has come to front.

4. The solution to problem involves significant issues of state and local taxation policy.

5. This bill essentially legalizes the status quo and provides the opportunity to carefully review the various issues, get input from interested parties, and proceed in a thoughtful, unhurried manner.

6. Therefore, we support the approach taken in this bill and the companion bill in the Senate.