

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672  
5865 HOUSE JUDICIARY

*268*

Recommendation No. 3

Legislative members of the commission should be allowed to designate a person to represent them at commission meetings should they not be able to attend.

A review of attendance by legislative members of the commission indicated that they attended less than 25% of commission meetings.

In interviews with commission members, it was agreed that participation by legislative members was both desirable and beneficial. Legislative members that have been actively involved in specific commission legislation have apparently been quite helpful in getting the commission's work enacted into law.

It is suggested that instead of replacing legislative members who have poor attendance, that they be allowed to designate a person to represent them at commission meetings. These designees should have full voting powers.

## ANALYSIS OF PUBLIC NEED

The public need factors defined in the "Sunset" law pertain primarily to regulatory bodies, or to commissions, boards and agencies directly serving the public.

The following analysis of the Alaska Code Revision Commission addresses those factors deemed applicable to a permanent commission of the legislature that we were able to cover within the scope of our review.

A determination as to whether a board or commission or agency program has demonstrated a public need for its continued existence shall take into consideration the following factors.

I. The extent to which the board, commission or program has operated in the public interest;

1. The commission has recommended revisions to Alaska law which in its judgement were in the general public interest.

II. The extent to which the operation of the board, commission or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters;

1. The commission's budget has dramatically decreased since its last sunset review. In FY86, the commission's budget was completely eliminated. (see Budget Information Appendix B). Yet despite reduced funding the commission has continued to operate. However, if the legislature is not going to appropriate adequate funding the commission should be eliminated (See Recommendation No.1).

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest;

1. The commission has recommended statutory changes which in its judgement was of benefit to the public interest.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided;

1. The commission has accepted and encouraged testimony on its recommendations.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions;

1. The commission has consistently attempted to notify all parties of interest in topics that it was studying, and has encouraged their participation in its meetings.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

1. No complaints have been filed with the ombudsman's office in a four year period.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public;

Not applicable to this commission.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest;and

Not applicable to this commission.

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to FINDINGS AND RECOMMENDATIONS section of this report.

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APPENDIX A

LEGISLATIVE ENACTMENT OF THE  
RECOMMENDATIONS OF THE ALASKA  
CODE REVISION COMMISSION 1985, 1986, 1987, 1988

APPENDIX A

LEGISLATIVE ENACTMENT OF COMMISSION RECOMMENDATIONS 1985,  
1986, 1987, AND 1988

1985

NO COMMISSION LEGISLATION WAS ENACTED

1986

NO COMMISSION LEGISLATION WAS ENACTED

1987

NO COMMISSION LEGISLATION WAS ENACTED

1988

CORPORATION CODE  
CH 166 - SLA88

DOCUMENT RECORDING  
CH 161 - SLA 88

APPENDIX B

SCHEDULE OF  
ALASKA CODE REVISION COMMISSION  
LEGISLATION SUBMITTED TO THE LEGISLATURE  
AND  
WORK IN PROCESS BUT NOT SUBMITTED TO THE LEGISLATURE

APPENDIX B

LEGISLATION SUBMITTED TO THE LEGISLATURE AND WORK IN PROCESS  
BUT NOT SUBMITTED TO THE LEGISLATURE 1985, 1986, 1987,  
1988.

14TH LEGISLATURE 1985-86.

LEGISLATION SUBMITTED TO THE LEGISLATURE

CORPORATION CODE  
RECORDABLE DOCUMENTS (1)  
SECURITY INTEREST IN REAL PROPERTY (2)

WORK IN PROCESS BUT NOT SUBMITTED TO THE LEGISLATURE

ADMINISTRATIVE PROCEDURE ACT  
COOPERATIVE CORPORATION CODE REVISION

15TH LEGISLATURE 1987-88

LEGISLATION SUBMITTED TO LEGISLATURE

DOCUMENT RECORDING (1)  
REAL PROPERTY SECURITY INTEREST (2)  
CORPORATIONS CODE

WORK IN PROCESS BUT NOT SUBMITTED TO THE LEGISLATURE

ADMINISTRATIVE PROCEDURE ACT  
REVISION OF TITLE 8 (BUSINESS & PROFESSIONS)  
OCCUPATIONAL LICENSING

- (1) Same bill, different titles  
(2) Same bill, different titles

APPENDIX C

BUDGET OF THE ALASKA  
CODE REVISION COMMISSION  
FY84, FY85, FY86, FY87, FY88

APPENDIX C

Budgets of the Alaska Code Revision Commission; FY84, FY85,  
FY86, FY87, and FY88.

FISCAL YEAR 84

Appropriation received.	<u>\$245,600</u>
Personal Services	111,258
Travel and Per Diem	37,539
Contractual Services	91,345
Material and Supplies	<u>5,488</u>
	<u>\$245,600</u>

FISCAL YEAR 85

Appropriation received	<u>\$180,100</u>
Personal Services	115,175
Travel and Per Diem	20,080
Contractual Services	39,025
Material and Supplies	<u>5,820</u>
	<u>\$180,100</u>

FISCAL YEAR 86

Appropriation received.	<u>\$ -0-</u>
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FISCAL YEAR 87

Appropriation received.	<u>\$ 27,600</u>
Personal Services	\$ -0-
Travel and Per Diem	23,000
Contractual Services	5,600
Materials and Supplies	<u>1,000</u>
	<u>\$ 27,600</u>

APPENDIX C (continued)

FISCAL YEAR 88

Appropriation received.	<u>\$ 27,600</u>
Personal Services	\$ -0-
Travel and Per Diem	23,000
Contractual Services	5,600
Materials and Supplies	<u>1,000</u>
	<u>\$ 27,600</u>

# ALASKA CODE REVISION COMMISSION



COMMISSIONERS  
JOHN W. ABBOTT - CHAIRMAN  
WILSON L. CONDON  
PETER FROELICH  
RICK HALFORD  
MARY HUGHES  
DICK MADSON  
JUDGE (RET.) THOMAS B. STEWART  
JOHN SUND

ALASKA STATE LEGISLATURE  
P.O. BOX Y · STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-2450

EXECUTIVE SECRETARY  
TAMARA BRANDT COOK

December 19, 1988

DEC 22 1988

Randy S. Welker  
Legislative Auditor  
Division of Legislative Audit  
State of Alaska  
Budget and Audit Committee  
P.O. Box W  
Juneau, Alaska 99811-3300

Re: A Performance Review of the Alaska Code Revision Commission  
for the years 1985 through 1988; Response of the Commission

Dear Mr. Welker:

This letter will constitute the response of the Alaska Code Revision Commission pursuant to your letter request under date of November 28, 1988. The Commission met in formal session on December 16, 1988 and the following response represents the consensus of the Commission following its review of the performance review performed by Elgee & Rehfeld.

The Commission agrees with most of the matters contained in the performance review. However, it is felt that some clarifications should be made and disagreement with certain conclusions should be stated. The following are clarifications to the report:

1) At page 8 (Report Conclusion), the review states that no new significant legislative projects have been taken under consideration by the Commission.

In fact, the Commission is currently preparing a draft bill on Occupational Licensing. This project was dropped by the Commission during the Sheffield administration when a representative of the governor's office requested that the Commission draft bill and work product be forwarded to the Governor so that the executive branch could pursue legislative updating Title 8. No

such action was undertaken and the Commission again took under consideration the complete overhaul of this title. Because of a new administration, a new director of Occupational Licensing and numerous changes enacted into law by the Legislature, a complete review of the Occupational Licensing draft bill has become necessary. Substantial work will be necessary to provide a draft bill that reflects recent changes by the Legislature. Such a review has been in process since 1987.

The same is true of the Administrative Procedures Act which was exposed to hours of public hearings and considerable written responses from agencies of the executive branch. Because of the new administration, it has been necessary to again solicit responses from all agencies affected by a new APA title. This fresh review of the APA began in 1987 and is expected to conclude with a draft bill within the next six months.

During the last legislative session, the Senate requested that the Commission review Title 2 in its entirety, providing additional funding (\$14,000.00) for the hiring of a consultant to assist the Commission in its review. The Commission will be providing the Legislature with its review and recommendations for changes to this title.

2) The audit report recognizes that the focus of the review should not be the "number or importance of the commission's recommendations that have actually been enacted by the legislature - but rather, the fairness, effectiveness and efficiency of the commission's procedures in arriving at its recommendations for improvement of Alaska's laws". (Page 9 of audit report). However, the report goes on to state at page 10 that the effectiveness of the commission is not impressive because only two recommended changes were enacted into law.

The Commission agrees that the number of bills passed should not be used to determine the effectiveness of its operation. It is important to note that other states that have concluded major overhauls of their statutes have taken from 10 to 15 years from consideration of a topic to enactment by the legislature. Ten years is probably an average amount of time to enact a bill such as the for-profit corporations code. Additionally, the Commission during the last legislative session worked on changes to the Security Interests bill and the Cooperative Corporations Code. Because it is necessary to prioritize the importance of its draft bills, emphasis was placed on those bills most likely to be given consideration by the Legislature. As such, the Commission expended most of its efforts on the for-profit corporations code and the recording act.

3) On page 12 of the report (Efficiency), the report states that "[t]here appears to be a direct correlation between the commission's budget reduction and the amount of work produced by the commission". While the Commission agrees with this proposition, it should also be understood that changes in the membership of the Legislature and the Executive branch of the government necessitate additional changes in the draft bill product of the Commission. This is true of all bills submitted for Legislative consideration and is unavoidable. Also, as previously stated, the scope of legislative change encompassed by the Commission's draft bills will always be reflected in the amount of time needed for enactment of such legislation. What work is not reflected in the "bill passage rate" includes work on Occupational Licensing, Administrative Procedures Act, the non-profit and cooperative corporations codes and updating the Security Interests in Real Property bill. Relatively minor legislative changes have been made in the past on a number of Commission bills which tend to distort the "bill passage rate". As such, it should be understood that the subject matter of the bill plays a significant role in how much time is spent in changes until enactment and how much time is required to get a bill passed into law.

Finally, it is necessary to focus on changes to any draft bill necessitated by a change in administration or recent changes in law enacted by the Legislature. Before a Commission draft bill can be introduced, it is always necessary to "update" the draft to correspond with legislative changes made since the bill was last considered. As such, it is misleading to speak of completion of "legislation" prior to its enactment by the Legislature. Any draft bill is actually complete when considered and enacted by the Legislature.

### FINDINGS AND RECOMMENDATIONS

#### Recommendation No. 1

First Paragraph: The Commission agrees that there is a relationship between the size of its budget and the time frame within which a particular draft bill is ready for introduction into the legislative process. The Commission disagrees with the analysis concerning completion of a particular draft bill. For the reasons previously stated, and because the laws of the State are continually changing, it will always be necessary to "update" draft legislation, regardless of the size of the budget. It is true, however, that an increase in the budget would allow this "updating" process to be speeded up considerably. It should also

be noted that the Commission has been provided with a substantial amount assistance by the Legal Division of LAA, with the understanding that work must be prioritized by Legal Division to carry out its main function of serving the Legislature. Every effort has been made by Legal Division to provide the Commission with assistance in performing its function.

Second Paragraph: The Commission generally agrees with this paragraph with the following comments. First, the Commission has in the past operated at a maintenance level budget and has performed its statutory mandate. It is correct to state that not all minutes of the meetings have been kept (although there are few lapses in the minute records). All of the meetings have been recorded on tape so that the actions of the Commission have been memorialized. The recent practice of having personnel from Legal Division attend meetings and keep the minutes has helped the Commission considerably memorializing its actions.

Third Paragraph: The Commission agrees that a half time position in both administrative and legal research areas be made available to the Commission. It also agrees that these positions should be included in the Legal Division (LAA) rather than creating these positions in the Commission.

Fourth Paragraph: The Commission disagrees that it should be discontinued if a budget increase is not forthcoming. It believes that it can continue to provide a service not presently performed in any other sector of State government. It also believes that it can continue to provide draft legislation of high quality for consideration by the Legislature even with a maintenance level budget and assistance such as is currently available from Legal Division.

#### RESPONSE TO RECOMMENDATION NO. 1

The Commission agrees that its budget should be increased; that two half-time positions should be added to Legal Division for further assistance to the Commission. The Commission disagrees with that part of the recommendation that holds that it should be discontinued if additional funding is unavailable. It also disagrees with that part of the recommendation relating to the appointment of a special commission to work on legislation on an as needed basis.

The Commission has developed a particular expertise in reviewing existing laws and drafting new laws. Its composition is such that it represents the views of all three branches of State government. Furthermore, as the audit report recognizes,

the mandate of the Commission includes much more than just responding to specific legislative requests. The value of the Commission (and other similar commissions in other states) is the ability of the body to determine on its own areas of the law that require review. This is particularly true in Alaska where much of its statutory law was borrowed from other states in 1959. The Legislature does not normally perform a review of existing law except within the context of drafting an amendment to a particular statute. With the exception of Title 11 (the criminal code) and Title 29 (Municipal Government), the Legislature has never undertaken a wholesale review of a particular title. Performance of this function was one of the main reasons for the creation of the Commission in 1976. Additionally, the Legislature does not normally consider or review the many additional sources for change enumerated in AS 24.20.075 et seq. A special commission appointed to just consider a specific legislative request would not be in a position to perform the additional functions outlined in the enabling legislation nor would it maintain the continuity that a permanent commission enjoys. It is the Commission's belief that without a permanent commission, there will be little likelihood that the work presently performed by the Commission will be undertaken by the Legislature or by a special commission. The ability to continually review existing laws to determine a need for change or amendment is a function particularly unique to a permanent commission and is not something that will be done by the Legislature except in rare instances.

The Commission also disagrees with the underlying premises implicit in the recommendations contained in Recommendation No. 1: that is, that the Commission should be discontinued if it is unable to perform at maximum efficiency. It is the Commission's position that it provides a valuable service not provided by any branch of State government, including the Legislature (except in rare instances). Even though the Commission has operated with a drastically scaled-down budget, it has continued to consider needed changes in the law and has in fact gotten two major pieces of legislation considered by the Legislature in the past session. While the Commission would enjoy a return to its 1984 level of funding, such funding is highly unlikely given the present demands for legislative funding and the greatly reduced sources of revenue for the State. The Commission can continue with a maintenance level budget to hold regular meetings and provide testimony to the Legislature during the sessions. With the assistance now available from Legal Division, both administrative and legal duties can be fully performed. In short, the Commission can continue to function and to fully perform its legislative mandate, providing a service not otherwise provided in the State.

Recommendation No. 2

First Paragraph: The Commission agrees with the content of this paragraph.

Second Paragraph: The Commission agrees with the content of this paragraph.

RESPONSE TO RECOMMENDATION NO. 2

The Commission agrees fully with this recommendation and will recommend to the appropriate appointing authority that members whose attendance falls below the 50% level be replaced with a member who will meet the attendance requirements. The Commission will also amend its by-laws (which govern the procedures used by the Commission) to reflect a requirement of 50% attendance at Commission meetings (excluding legislative members who are considered under recommendation no. 3 in this report).

Recommendation No. 3

First Paragraph: The Commission agrees with this paragraph.

Second Paragraph: The Commission agrees with this paragraph.

Third Paragraph: The Commission agrees with this paragraph. Legislative members in the past have designated persons to attend Commission meetings when they were unable to attend. The practice has been helpful to the Commission. It will add considerably to the dialogue established by the Commission if the designees can also vote on the topics under discussion. The Commission will amend its by-laws to reflect the new procedure recommended by this third paragraph.

RESPONSE TO RECOMMENDATION NO. 3

The Commission agrees fully with this recommendation and believes that the designees of legislative members can contribute significantly to the work of the Commission if they are able to vote on matters being considered by the Commission.

Summary of Responses to Recommendations and Action By The Commission.


1. The Commission will submit a request for a budget increase to Legislative Council to increase the amount of funds available to contract for professional services. The Commission will also request that Legislative Council provide additional funding for two half-time positions to be included in the Legal Division of the Legislative Affairs Agency. Whether or not additional funding is available will be up to the Legislature. Funding increases would in all likelihood not be available until the next fiscal year. The Legislative Council would probably not request a supplemental appropriation on behalf of the Commission and additional funding would be available for the following fiscal year.

2. The Commission will adopt amendments to its by-laws to require a minimum of 50% attendance at all meetings by the members. The amendments will also require the Commission to notify any appointing authority of the failure of a member to meet this requirement and will request a replacement for the non-performing member. These amendments will be considered by the Commission at its next regularly scheduled meeting in January 1989.

3. The Commission will adopt amendments to its by-laws which will provide that any legislative members can appoint a designee to attend and vote at all Commission meetings. This amendment will be considered by the Commission at its next regularly scheduled meeting in January 1989.

Since the Commission has already agreed with the recommendations as set forth in this report (excepting therefrom those areas of disagreement), it is anticipated that the by-laws changes will be accomplished at the Commission's January 1989 meeting.

Very truly yours,

  
JOHN W. ABBOTT  
Chairman, Alaska Code Revision  
Commission

SB

149

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_  
Title: Relating to contracts to lend  
money or grant or extend credit  
Sponsor: Rodey  
Requestor: \_\_\_\_\_

Agency Affected: Commerce & Econ. Dev.  
Banking, Securities & Corp.  
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	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

**FUNDING: (Thousands of Dollars)**

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

**POSITIONS:**

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

**ANALYSIS : (Attach a separate page if necessary)**

Prepared by: Willis F. Kirkpatrick, Director *WFK* Phone: 465-2521  
Division: Banking, Securities & Corp. Date: 2-5-89

Approved by Commissioner: Larry Mercurieff *lmercur* Date: 2/3/89  
Agency: Department of Commerce & Economic Development

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



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
BILL ANALYSIS

DEPARTMENT Commerce & Econ. Dev.	DIVISION Banking, Securities and Corporations	BILL NUMBER SB 149	SPONSOR Rodey
SHORT TITLE OF BILL Relating to contracts to lend money or grant or extend credit			
DEPARTMENT POSITION Neutral			
PREPARED BY Willis F. Kirkpatrick <i>WFK</i>	DATE	COMMISSIONER'S SIGNATURE <i>WFK</i>	DATE 2/8/89

SUMMARY

OTHER AGENCIES AFFECTED BY BILL None known	CONSTITUENT GROUPS AFFECTED BY BILL None known
ORGANIZATIONAL SUPPORT FOR BILL None known	ORGANIZATIONAL OPPOSITION TO BILL None known

FISCAL IMPACT:  - NONE       - FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Events leading up to this bill are not known.  
The intent appears to provide that certain advances of credit are unenforceable unless made in writing.

ANALYSIS OF BILL/PROGRAM EFFECTS

A new subsection 13 is added to AS 09.25.010. Statute of frauds which provides that a loan over \$100,000 is unenforceable if not personal and made by a person who is engaged in the business of lending.  
This bill has no effect on the division's programs.

AMENDMENTS PROPOSED

None

3266D-2/020889a

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99801  
207 465 3800

MEMORANDUM

February 16, 1989

SUBJECT: Sectional analysis of SB 149  
(Work Order No. 6-0552A)

TO: Senator Pat Rodey

FROM: Theresa L. Bannister <sup>JB</sup>  
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. States that agreements to make certain loans or to grant or extend credit in certain situations are unenforceable unless the agreements or some notes or memoranda of them are written and signed by the party to be charged or by the party's agent. Does not apply if the loan or grant or extension of credit is primarily for personal, family, or household purposes. Applies if the person who agrees to loan or grant or extend the credit is in the business of lending or arranging for the lending of money or the granting or extension of credit. Applies to amounts over \$100,000.

Section 2. Applies the bill to an agreement entered into on or after January 1, 1990.

TB:kb  
wkk2/015

Testimony presented on Friday, February 17, 1989, regarding Senate Bill No. 149, an Act entitled, "An Act relating to contracts to lend money or grant or extend credit."

Given By: Robert P. Gray  
Legislative Committee Chairman  
Alaska Bankers Association  
and  
President of National Bank  
of Alaska

In Support Of: Senate Bill No. 149  
Unanimous position in support of SB 149  
in its present form.

This legislation is modelled after legislation that passed the California Assembly last year and similar legislation has passed in Kansas and Minnesota.

The purpose of the legislation is to minimize misunderstandings between borrowers and lenders. This legislation does that in requiring loan agreements for business purposes, above \$100,000 to be in writing.

The borrower benefits from having a clear understanding with the lender.

Our experience as bankers, leads us to the conclusion that serious misunderstandings concerning business loans, often resulting in mutually destructive litigation, occur by one or other party relying on oral assumptions.

The real estate industry has operated on this basis for many years.

This legislations does not address, nor takes away any rights of consumers under existing regulaticns or laws such as Truth in Lending, Real Estate Settlement Procedure Act, Fair Credit Act, Community Reinvestment Act.

We urge passage of this legislation.

Thank you for allowing us to testify on this proposal and to answer questions.

Senate Bill No. 2789

CHAPTER 1096

An act to amend Section 1624 of the Civil Code, relating to contracts.

[Approved by Governor September 20, 1988. Filed with Secretary of State September 21, 1988.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2789, Maddy. Contracts.

Existing law specifies that certain contracts are invalid unless they are in writing or there exists a note or memorandum of the same, subscribed by the party to be charged or the party's agent.

This bill would include among those contracts a contract, promise, undertaking, or commitment to loan money or to grant or extend credit in an amount greater than \$100,000, not primarily for personal, family, or household purposes, made by a person engaged in the business of lending or arranging for the lending of money or extending credit, except as specified.

This bill would make a statement of legislative intent that this provision shall only apply to a claim or cause of action arising on or after January 1, 1989, as specified. It would also make a statement of legislative intent as to the application of judicially and legislatively recognized defenses and exceptions to these provisions.

This bill would incorporate additional changes to Section 1624 of the Civil Code, contained in SB 2492, if both bills are chaptered and amend that section and this bill is enacted last.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1624 of the Civil Code is amended to read: 1624. The following contracts are invalid, unless they, or some note or memorandum thereof, are in writing and subscribed by the party to be charged or by the party's agent:

(a) An agreement that by its terms is not to be performed within a year from the making thereof.

(b) A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in Section 2794.

(c) An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; such an agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged.

(d) An agreement authorizing or employing an agent, broker, or any other person to purchase or sell real estate, or to lease real estate

for a longer period than one year, or to procure, introduce, or find a purchaser or seller of real estate or a lessee or lessor of real estate where the lease is for a longer period than one year, for compensation or a commission.

(e) An agreement which by its terms is not to be performed during the lifetime of the promisor.

(f) An agreement by a purchaser of real property to pay an indebtedness secured by a mortgage or deed of trust upon the property purchased, unless assumption of the indebtedness by the purchaser is specifically provided for in the conveyance of the property.

(g) A contract, promise, undertaking, or commitment to loan money or to grant or extend credit, in an amount greater than one hundred thousand dollars (\$100,000), not primarily for personal, family, or household purposes, made by a person engaged in the business of lending or arranging for the lending of money or extending credit. For purposes of this section, a contract, promise, undertaking or commitment to loan money secured solely by residential property consisting of one to four dwelling units shall be deemed to be for personal, family, or household purposes.

SEC. 1.5. Section 1624 of the Civil Code is amended to read:

1624. The following contracts are invalid, unless they, or some note or memorandum thereof, are in writing and subscribed by the party to be charged or by the party's agent:

(a) An agreement that by its terms is not to be performed within a year from the making thereof.

(b) A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in Section 2794.

(c) An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; such an agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged.

(d) An agreement authorizing or employing an agent, broker, or any other person to purchase or sell real estate, or to lease real estate for a longer period than one year, or to procure, introduce, or find a purchaser or seller of real estate or a lessee or lessor of real estate where the lease is for a longer period than one year, for compensation or a commission.

(e) An agreement which by its terms is not to be performed during the lifetime of the promisor.

(f) An agreement by a purchaser of real property to pay an indebtedness secured by a mortgage or deed of trust upon the property purchased, unless assumption of the indebtedness by the purchaser is specifically provided for in the conveyance of the property.

(g) A contract, promise, undertaking, or commitment to loan

money or to grant or extend credit in an amount greater than one hundred thousand dollars (\$100,000), not primarily for personal, family, or household purposes, made by a person engaged in the business of lending or arranging for the lending of money or extending credit. For purposes of this section, a contract, promise, undertaking or commitment to loan money secured solely by residential property consisting of one to four dwelling units shall be deemed to be for personal, family, or household purposes.

This section does not apply to leases subject to Division 10 (commencing with Section 10101) of the Commercial Code.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 1624 of the Civil Code proposed by both this bill and SB 2492.

shall be operative at the same time SB 2492 becomes operative if both this bill and SB 2492 are enacted and become effective on January 1, 1989. (2) this bill and SB 2492 both amend Section 1624 of the Civil Code, and (3) this bill is enacted after SB 2492, in which case Section 1 of this bill shall only be operative until SB 2492 becomes operative.

SEC. 3. It is the intent of the Legislature that subdivision (g) of Section 1624 of the Civil Code shall only apply prospectively to any claim or cause of action arising on or after January 1, 1989, and not otherwise affect any statutory or common law rights in a civil action.

It is also the intent of the Legislature that judicially and legislatively recognized defenses and exceptions to the application of subdivisions (a) to (f), inclusive, of Section 1624 also apply to subdivision (g) of Section 1624.

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157

# HOUSE COMMITTEE REPORT

(7)

Date Referred: March 23, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: 4-23-90

The JUDICIARY Committee considered:

CSSB 157 (FINANCE)

CS SB NO. 157 (Finance)

CIVIL FINES/VIOLATIONS BY LIQUOR LICENSEE

"An Act relating to imposition of a civil fine for violation of a statute, regulation, or ordinance related to alcoholic beverages."

**RECOMMENDATIONS:**

- be replaced with HCSCSSB157(JUD)  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):  
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact \_\_\_\_\_
- zero fiscal note \_\_\_\_\_
- zero with analysis \_\_\_\_\_
- fiscal note(s) \_\_\_\_\_
- zero fiscal note(s) Revenue 2/5/90
- zero fn/analysis \_\_\_\_\_

**SIGNING DO PASS:**

**SIGNING:**  
(Check approp. column)

		Do Not PASS	No Rec	Amend
<u>Mike Miller</u> Miller	<u>John Goll</u> Goll		<input checked="" type="checkbox"/>	
<u>Terry Martin</u> Martin				
<u>Mr. Cruenberg</u> Cruenberg				

John Goll  
Chairman's Signature

Original sponsor(s): Rules/Governor

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 157 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to imposition of a civil fine for  
7 violation of a statute, regulation, or ordinance  
8 related to alcoholic beverages and requiring separate  
9 accounting for fees and fines related to alcoholic  
10 beverages."

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

12 \* Section 1. AS 04.11 is amended by adding a new section to read:

13 Sec. 04.11.575. CIVIL FINE. (a) Except as provided in (c) of  
14 this section, the board may, in addition to any other penalties impos-  
15 ed under this title, impose a civil fine upon a licensee that the  
16 board determines, at a proceeding under AS 04.11.510(c), has violated  
17 a provision of this title, a regulation adopted under this title, or  
18 an ordinance adopted in accordance with AS 04.21.010.

19 (b) The board shall by regulation adopt a schedule of fines that  
20 a licensee may be required to pay under this section. A fine may not  
21 exceed the greater of

22 (1) \$50,000; or

23 (2) an amount that is three times the monetary gain re-  
24 alized by the licensee as a result of the violation.

25 (c) If the board is proceeding under AS 04.11.370(4), the board  
26 may not impose a civil fine exceeding the amount specified under  
27 AS 12.55.035 applicable to the offense for which the licensee was  
28 convicted, or with the licensee's consent, the limit imposed under (b)  
29 of this section.

1 \* Sec. 2. AS 04.11.590(a) is amended to read:

2 (a) Money collected from licenses and civil fines under this  
3 title shall be transferred by the board to the Department of Revenue  
4 and deposited in the general fund.

5 \* Sec. 3. AS 04.11.590 is amended by adding a new subsection to read:

6 (c) The commissioner of administration shall separately account  
7 for all application fees, license fees, and civil fines collected  
8 under this title that the Department of Revenue deposits in the gener-  
9 al fund. The annual estimated balance in the account may be used by  
10 the legislature to make appropriations to the Department of Revenue to  
11 carry out the purposes of AS 04.06.

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STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 21, 1990

SUBJECT: Title amendment - HCS CSSB 157(Jud)  
TO: Representative Max Gruenberg  
FROM: Michael F. Ford *M.F.*  
Legislative Counsel

The attached work draft of HCS CSSB 157(Jud) also contains a corrected title. The title has been corrected to reflect section 3 of the draft, requiring separate accounting for fines and fees collected under AS 4. While under Uniform Rule 41(b) an amendment in the second house is not in order if it requires the title of a bill to be changed, this rule does not prevent the correction of the title to reflect the original content of the bill. Section 3 of the draft has been in the bill ever since the Governor transmitted it for introduction.

Please contact me if you have further questions.

MFF:lmb  
L10/076

Enclosure

S B

173

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 12, 1989

FURTHER REFERRALS:

Date of Committee Action: 5/5/89

The JUDICIARY Committee considered:

CSSB 173 (C&RA)

CS FOR SENATE BILL NO. 173 (C&RA)

[MUNICIPAL PETITIONS/ELECTIONS/APPOINTMNTS]

"An Act relating to municipal petitions and elections, and to appointments to fill certain municipal offices."

RECOMMENDATIONS:

- be replaced with HCS CSSB 173 (JUD)  the same title
- have attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact \_\_\_\_\_
- zero fiscal note \_\_\_\_\_
- zero with analysis \_\_\_\_\_

- fiscal note(s) \_\_\_\_\_
- zero fiscal note(s) 3/29/89 Elections 3/29/89 C&RA
- zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

SIGNING: (Check approp. column)

Do Not Pass No Rec Amend

Max Shumby

Peter J. ...

John Ellis

Mike Miller

Larry ...

Mike ...

Cliff Davidson

	Do Not Pass	No Rec	Amend

Peter J. ... / Max Shumby  
Chairman's Signature

A M E N D M E N T

OFFERED IN HOUSE JUDICIARY

TO: HCSCSSB 173 (Jud)

By: Gruenberg

Page 4, line 12, after "registered", delete ", at least 30 days before the municipal election, to vote in state elections at an address within the boundaries of the local election district or service area"

and insert "to vote in state elections at an address within the boundaries of the local election district or service area at least 30 days before the municipal election"

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

RECEIVED  
1989

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

MEMORANDUM

March 13, 1989

SUBJECT: Sectional summary of CSSB 173(C&RA)  
TO: Senator Pat Pourchot  
FROM: Tamara Brandt Cook *TBC*  
Director  
Division of Legal Services

Sec. 1. Makes municipal initiative and referendum petition requirements applicable to local option petitions (regarding regulation or prohibitions on the use and possession of alcoholic beverages).

Sec. 2. Requires a unification petition to comply with requirements for a municipal initiative and referendum petition. The clerk submits the completed petition to the assembly with a report of the number of valid signatures determined by the clerk to be on it.

Sec. 3. Requires a petition calling for election of a charter commission to be prepared under requirements applicable to an initiative and referendum petition. The completed petition is submitted by the clerk to the governing body with a report of the number of valid signatures on it.

Sec. 4. Requires a petition for adoption of a manager plan to meet the requirements applicable to an initiative and referendum petition. If the clerk certifies that the petition is sufficient, it is submitted to the governing body.

Sec. 5. Reworded slightly, but no substantive change.

Sec. 6. Repeal of a manager plan requires the same procedures as adoption. The repeal is effective within 60 days after certification of the election approving repeal.

Sec. 7. Permits a person to vote in a municipal election only if the person is registered to vote in state elections

at a residence address within the municipality at least 30 days before the municipal election.

Sec. 8. Permits a municipality to require that a person be registered to vote in state elections at the address in the municipality claimed as the residence.

Sec. 9. Permits a municipality by ordinance to require a person whose registration has been cancelled to re-register before voting in municipal elections.

Sec. 10 Requires the name and address of a prime sponsor to be included on an initiative or referendum application. Correspondence relating to the petition is sent to that prime sponsor.

Sec. 11. Copies of the petition are provided to sponsors at the clerk's office, although, special circumstances are listed under which a copy will be mailed.

Sec. 12. Adds a cross reference to an exception added in the next section.

Sec. 13. Provides special initiative or referendum requirements for ordinances or resolutions that affect only part of a municipality.

Sec. 14. The clerk need only notify the prime sponsor of an insufficient petition.

Sec. 15. A recall petition must identify a prime sponsor.

Sec. 16. Copies of a recall petition are to be made available to sponsors at the clerk's office. A copy will be mailed only in special circumstances.

Sec. 17. The clerk is required to inform only the prime sponsor of the number of signatures needed on a recall petition.

Sec. 18. The clerk is required to inform the prime sponsor if the petition is insufficient.

Sec. 19. Minor rewording.

Senator Pat Pourchot  
Page 3  
March 13, 1989

Sec. 20. A person who is recalled may not be appointed to the same office to fill that vacancy until a successor is elected.

Sec. 21. Deletes definition of voter and substitutes a cross-reference to the statute that sets out voter qualifications.

TBC:gc  
WKG8/008

# HOUSE COMMITTEE REPORT

(5)

Date Referred: April 7, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 4/11/89

The COMMUNITY & REGIONAL AFFAIRS Committee considered: CSSB 173 (C&RA)

CS FOR SENATE BILL NO. 173 (C&RA)

[MUNICIPAL PETITIONS/ELECTIONS/APPOINTMENTS]

"An Act relating to municipal petitions and elections, and to appointments to fill certain municipal offices."

**RECOMMENDATIONS:**

- [ ] be replaced with \_\_\_\_\_ [ ] the same title
- [ ] have attached amendment(s) [ ] a new title
- [  ] do pass
- [ ] do not pass
- [ ] no recommendation
- [ ] individual recommendations
- [ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(s): \_\_\_\_\_ APPROVES PREVIOUS: \_\_\_\_\_ (Date/Dept)

- [ ] fiscal impact \_\_\_\_\_ [ ] fiscal note(s) \_\_\_\_\_
- [ ] zero fiscal note \_\_\_\_\_ 2 [  ] zero fiscal note(s) Division of Elec. 3/20/89 C&RA 3/21/89
- [ ] zero with analysis \_\_\_\_\_ [ ] zero fn/analysis \_\_\_\_\_

**SIGNING DO PASS:**

*Richard J. Kelly*  
*Cheryl Davis*  
*Gileen P. Maclean*

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**SIGNING:**  
 (Check approp. column)

	Do Not Pass	No Rec	Amend
<i>Kelly</i>		+	

*Gileen P. Maclean*  
 Chairman's Signature



# Alaska State Legislature

House of Representatives  
Community & Regional Affairs

## TABLE OF CONTENTS COMMITTEE SUBSTITUTE SENATE BILL 173

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- ITEM 2: 0 FISCAL NOTE - DIVISION OF ELECTIONS
- ITEM 3: SPONSOR MEMO
- ITEM 4: SECTIONAL ANALYSIS - LEGAL SERVICES
- ITEM 5: LETTER OF SUPPORT & ANALYSIS - ALASKA MUNICIPAL LEAGUE
- ITEM 6: ALASKA MUNICIPAL LEAGUE RESOLUTION
- ITEM 7: STATEMENT OF DIVISION OF ELECTIONS W/AMENDMENTS ADOPTED  
IN CSSB 173 C&RA
- ITEM 8: STATUTES
- ITEM 9: CSSB 173 C&RA

# FISCAL NOTE

37 |

**REQUEST:**

Revision Date: \_\_\_\_\_  
Title: "An Act..municipal petitions and elections..certain municipal offices."  
Sponsor: Senator Adams  
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						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

<b>CAPITAL</b>						
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<b>REVENUE</b>						
----------------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

**POSITIONS:**

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

**ANALYSIS :** (Attach a separate page if necessary)

Prepared by: *Jim Plasman*  
Jim Plasman, Deputy Director  
Division: Municipal & Regional Assistance

Phone: 465-4750  
Date: 3/7/89

Approved by Commissioner: *David C. Hoffman*  
Agency: Community & Regional Affairs

Date: 3-7-89

Distribution (by preparer):

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

*forthcoming  
rec'd*

FISCAL NOTE

# 2

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An act relating to municipal  
petitions & elections  
Sponsor: Adams  
Requestor: Adams

Agency Affected: Office of the Governor  
BRU: Elections  
Components: I - Elections

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	-0-	-0-	-0-	-0-	-0-	-0-

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						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Linda Edgeworth Phone: 465-4611  
Division: Division of Elections Date: \_\_\_\_\_  
Approved by Commissioner: *Mike Valentine* Date: 3/1/89  
Agency: Division of Elections

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

43

# Alaska State Legislature

Al Adams  
District L

WHILE IN SESSION  
P.O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3707

OUT OF SESSION  
P.O. Box 333  
Kotzebue, Alaska 99752  
(907) 442-3245

3111 C Street  
Anchorage, Alaska 99503  
(907) 561-7622



Official Business

April 7, 1989

TO: Representative MacLean, Chairman  
House Community & Regional Affairs Committee


FROM: Senator Al Adams *APA*

RE: SB 173

Thank you for scheduling SB 173, "An Act relating to municipal petitions and elections, and to appointments to fill certain municipal offices."

This bill clarifies procedures relating to municipal petitions and elections and was developed in response to concerns brought to my attention by the Alaska Municipal League.

In general, SB 173 clarifies petition procedures, requires a prime sponsor to be designated on petitions, establishes a 30 day registration requirement for voting in municipal elections, permits a municipality by ordinance to require a person whose registration has been cancelled to reregister in order to vote in municipal elections, provides special initiative or referendum requirements for ordinances or resolutions that affect only part of the municipality, and prohibits appointment of a recalled official to fill the vacancy created by the recall.

Attached  sectional analysis and fiscal note for CSSB 173 (C & RA).

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

4  
POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 1800

MEMORANDUM

April 5, 1989

SUBJECT: Sectional summary of CSSB 173 (C&RA)  
TO: Representative Eileen MacLean  
FROM: Tamara Brandt Cook *TBC*  
Director  
Division of Legal Services

Sec. 1. Makes municipal initiative and referendum petition requirements applicable to local option petitions (regarding regulation or prohibitions on the use and possession of alcoholic beverages).

Sec. 2. Requires a unification petition to comply with requirements for a municipal initiative and referendum petition. The clerk submits the completed petition to the assembly with a report of the number of valid signatures determined by the clerk to be on it.

Sec. 3. Requires a petition calling for election of a charter commission to be prepared under requirements applicable to an initiative and referendum petition. The completed petition is submitted by the clerk to the governing body with a report of the number of valid signatures on it.

Sec. 4. Requires a petition for adoption of a manager plan to meet the requirements applicable to an initiative and referendum petition. If the clerk certifies that the petition is sufficient, it is submitted to the governing body.

Sec. 5. Reworded slightly, but no substantive change.

Sec. 6. Repeal of a manager plan requires the same procedures as adoption. The repeal is effective within 60 days after certification of the election approving repeal.

Sec. 7. Permits a person to vote in a municipal election only if the person is registered to vote in state elections

at a residence address within the municipality at least 30 days before the municipal election.

Sec. 8. Permits a municipality to require that a person be registered to vote in state elections at the address in the municipality claimed as the residence.

Sec. 9. Permits a municipality by ordinance to require a person whose registration has been cancelled to re-register before voting in municipal elections.

Sec. 10 Requires the name and address of a prime sponsor to be included on an initiative or referendum application. Correspondence relating to the petition is sent to that prime sponsor.

Sec. 11. Copies of the petition are provided to sponsors at the clerk's office, although, special circumstances are listed under which a copy will be mailed.

Sec. 12. Adds a cross reference to an exception added in the next section.

Sec. 13. Provides special initiative or referendum requirements for ordinances or resolutions that affect only part of a municipality.

Sec. 14. The clerk need only notify the prime sponsor of an insufficient petition.

Sec. 15. A recall petition must identify a prime sponsor.

Sec. 16. Copies of a recall petition are to be made available to sponsors at the clerk's office. A copy will be mailed only in special circumstances.

Sec. 17. The clerk is required to inform only the prime sponsor of the number of signatures needed on a recall petition.

Sec. 18. The clerk is required to inform the prime sponsor if the petition is insufficient.

Sec. 19. Minor rewording.

Representative Eileen MacLean

Page 3

April 5, 1989

Sec. 20. A person who is recalled may not be appointed to the same office to fill that vacancy until a successor is elected.

Sec. 21. Deletes definition of voter and substitutes a cross-reference to the statute that sets out voter qualifications.


TBC:gc  
WKG9/011

# Alaska MUNICIPAL League

TELEPHONE  
(907) 586-1325

217 SECOND ST., SUITE 200  
JUNEAU, ALASKA 99801

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

FROM: Scott A. Burgess, Executive Director 

DATE: April 10, 1989

SUBJECT: CSSB 173 (C&RA) - Municipal Petitions and Elections

The Alaska Municipal League supports CSSB 173 (C&RA). In November 1988, the AML Board identified amendments to the statutes governing municipal elections to correct inconsistencies in those statutes and, where appropriate, to allow for greater local control, efficiency and fairness as a top priority of the League for the 1989 legislative session. CSSB 173 (C&RA) addresses several of the individual issues outlined in the League's Municipal Platform.

Sections 1, 2, 3 4, 5, and 6 clarify the petition process for elections on local liquor option under Title 4, and unification, charter commission formation, and the manager plan adoption or repeal under Title 29. The language in most cases adopts the existing petition process under Title 29 (AS 29.26.100 -.190) with some amendments.

A process for initiative and referendum petitions is established in AS 29.26.100-.190. The statutes governing adoption or deletion of the manager plan (AS 29.20.460), alteration of forms of government (AS 29.06), and the local liquor option (AS 4.11.502) currently contain vague references to "by petition" but do not specify that the procedures governing such petitions should be those in AS 29.26.100-.190.

Sections 7 and 8 of CSSB 173 (C&RA) amend the voter qualification criteria for municipal elections under Title 29. Municipal elections are carried out under Title 29, whereas state elections are governed by Title 15. Sections 7 and 8 clarify that an individual is required to be registered within the State of Alaska and the precinct, district, service area, or municipality in which they reside not less than thirty (30) days immediately preceding the date of the municipal election.

Most municipalities have addressed this requirement by incorporating state law into local ordinances; however, the requirements should be clarified. Votes should be registered within the area, precinct, or municipality in which they seek to vote. A person must be a resident and registered in the new area 30 days prior to voting in a local election. Thirty-day residency and registration requirements are standard conditions placed on an elector's entitlement to vote and are based upon substantial public policy reasons such as ensuring that electors are informed about the candidates and issues

of the election, ensuring that an elector in the area has a stake in the election, administrative convenience, and elimination of fraud in elections. Section 9 would allow a municipality the option of passing an ordinance requiring a resident to register to vote in the municipal election if he/she has not registered in the municipality or voted for two years, or have his/her name purged from the eligible voter list. Under Title 15, a voter whose registration has been canceled for non-activity, may still vote in an election as long as they have been registered at sometime during the two previous general elections. This approach works well for state elections because of the Division of Elections immediate access to past records of canceled voters. However, for some municipalities without such easy access (e.g other than Anchorage, Fairbanks and Juneau) this is a burden. The bill would allow each municipality the discretion to determine the procedure regarding purged voters for its elections, while not interfering with the procedures utilized by the State.

Sections 10 - 12 and 14 - 18 address the initiative, referendum and recall petition by amending Title 29 to a) require the municipal clerk to notify the designated contact who submits an application for an initiative, referendum, or recall petition of the sufficiency of the application and the availability of the petition and b) require the clerk to provide petitions only to persons who request a petition in person, or in writing if located in a multi-community municipality, from the clerk's office.

The Title 29 revision of 1986 provided an entirely new format for initiative, referendum, and recall petitions. This format has been tested, and it is time for some revisions to "tighten up" some portions of it. First, it should be clarified that the burden of contacting the sponsors of applications for petitions should be on the designated contact sponsor, not on the clerk. Applications for petitions in larger municipalities may contain hundreds of names of sponsors, many of whom aren't even aware they have been listed.

Second, petitions should be given only to those who agree to circulate the petition and sign for it. This would make the initiative, referendum, and recall process more manageable for the public and the clerk.

Section 19 is a technical clarification of AS 29.26.330, the form of a recall ballot, requiring material be filed at least 20 days before the election.

Section 13 amends AS 29.26.110-.190 to make a distinction for initiative and referendum issues of non-areawide or service area powers. AS 29.26.100-.190, which outlines the standards and process associated with a referendum election, mentions only municipal voters and makes no distinction as to voters inside the city and those outside it. The statutes do not require that petitioners or voters on an initiative or referendum be within the proposed or existing service area. Repeal of a non-areawide or service

AML Testimony on CSSB 173 (C&RA)  
April 10, 1989  
Page 3

area power would affect residents located outside cities, but under current statutes voters within cities could have a significant, and potentially dominant, role in determining whether residents outside the city receive services.

Section 20 amends Title 29 to prohibit a recalled elected official or a recalled official appointed to an elected office from being appointed to the vacancy created by the recall. If voters recall an elected official or an official appointed to an elected office, the voters have spoken, and their decision should stand. Prohibiting a recalled official from being reappointed also avoids pressure on other elected officials. Basically, allowing a recalled person to be appointed to the vacancy created by his or her recall is contrary to the whole recall process. AS 29.26.320(c) states that a person who resigns (during a recall process) may not be appointed to fill the vacancy. To be consistent, a recalled official should not be appointed to the vacancy created by the recall.

The AML supports CSSB 173 (C&RA) and urges the Committee and the Legislature to pass the bill to bring clarity and fairness to the municipal elections process.

**Resolution of the Alaska Municipal League**

**Resolution No. 89-6**

**A RESOLUTION URGING THE AMENDMENT OF MUNICIPAL  
ELECTION STATUTES TO CORRECT INCONSISTENCIES  
AND ALLOW FOR GREATER LOCAL CONTROL**

WHEREAS, several inconsistencies exist in the state laws governing municipal elections and the election process which are inappropriate, and

WHEREAS, these inconsistencies and incongruities impede the efficient management of the municipal elections process and introduce inequities into the election process, the foundation of our democratic system of government, and

WHEREAS, the limitations on staff and funding for the Alaska Public Offices Commission preclude the commission from adequately enforcing state statutes at the municipal level;

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League urges the 16th Alaska Legislature and the Governor to pass legislation amending the statutes governing municipal elections to correct these inadequacies by adopting a package of election revisions proposed by the municipalities themselves through the Alaska Municipal League.

SUGGESTED AMENDMENTS  
SENATE BILL 173

The Division of Elections has reviewed the text of this bill and supports its general intent. It is important to note, however, that the Division of Elections is not directly affected by the main text of this bill. However, the Division serves municipalities in the conduct of local elections in a support capacity, specifically in maintaining voter registration rolls, providing voter lists and precinct registers, recording local voter history and determining precinct boundaries and polling sites. We, therefore, work with and lend our support to the Municipal League and local governments on these issues whenever possible. We support the general content of this bill because we agree with local officials that current laws regarding voter qualifications and petition processing do not adequately address the needs of local officials in the administration of these functions.

The Division wishes to focus its comments specifically on the sections regarding voter qualifications. It is our understanding that the purpose of this legislation is to resolve two major issues that, under current law, are unclear.

1. Under current law a voter must be a "resident" of the municipality in which he or she wants to vote for 30 days prior to an election. The law makes no requirement that they also be "registered" in the community. As long as they are registered somewhere to vote in state elections, local officials must count their vote.
2. Under existing provisions there is no clear statement as to the deadline by which a voter qualified in state elections must be registered for local elections.

The provisions of Section 7, are intended to clarify the requirements. Having discussed this issue with the Executive Director of the Alaska Municipal League, members of the League's legislative committee, and legal counsel for the league, the Division would like to recommend a friendly amendment to the bill which we believe more clearly fulfills the intent of the legislation. The text of that amendment is attached.

AMENDMENT #1

Sec. 7. AS 29.26.050(a) is amended to read:

Sec. 29.26.050. VOTER QUALIFICATION. (a) A person may vote in a municipal election only if the person

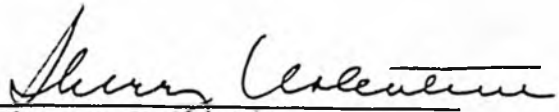
(1) is [A UNITED STATES CITIZEN WHO IS] qualified to vote in state elections[, ] under AS 15.05.010;

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

(3) is registered to vote in state elections at a residence address within the municipality at least 30 days before the municipal election in which the voter seeks to vote, and

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

3/2/89  
Date

  
Sherry Valentine  
Deputy Director

Another issue that has been raised by municipal officials relates to the status of votes cast by voters who have been purged. Under Title 15, a voter whose registration has been canceled for non-activity, may still vote in an election as long as they have been registered at sometime during the 2 previous general elections. This approach works well for state elections because of the Division's immediate access to past records of cancelled voters. For some municipalities this a burden and it has been suggested that the provision be deleted. While the Division of Elections would not support such a repeal for state elections we are sensitive to the burden it puts on some municipalities.

Should the Municipal League and municipalities wish to pursue this issue, however, we offer the following suggestion which would allow each municipality the discretion to determine the procedures regarding purged voters which will be utilized for its elections, while not interfering with the procedures utilized by the State.

Add a new subsection to AS 29.26.050 to read:

(d) A municipality by ordinance may require that a person whose registration has been cancelled under AS 15.07.130 must reregister and meet the qualifications under (a) of this section to vote in the municipal election.

Article 2. Initiative and Referendum.

Section

- 100. Reservation of powers
- 110. Application for petition
- 120. Contents of petition
- 130. Signature requirements
- 140. Sufficiency of petition

Section

- 150. Protest
- 160. New petition
- 170. Initiative election
- 180. Referendum election
- 190. Effect

---

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

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**Sec. 29.26.100. Reservation of powers.** The powers of initiative and referendum are reserved to the residents of municipalities, except the powers do not extend to matters restricted by art. XI, sec. 7 of the state constitution. (§ 9 ch 74 SLA 1985)

**Sec. 29.26.110. Application for petition.** (a) An initiative or referendum is proposed by filing an application with the municipal clerk containing the ordinance or resolution to be initiated or the ordinance or resolution to be referred and the address to which all correspondence relating to the petition may be sent. An application shall be signed by a least 10 voters who will sponsor the petition. An additional sponsor may be added at any time before the petition is filed by submitting the name of the sponsor to the clerk. Within two weeks the clerk shall certify the application if the clerk finds that it is in proper form and, for an initiative petition, that the matter

- (1) is not restricted by AS 29.26.100;
  - (2) includes only a single subject;
  - (3) relates to a legislative rather than to an administrative matter;
- and
- (4) would be enforceable as a matter of law.

(b) A decision by the clerk on an application for petition is subject to judicial review. (§ 9 ch 74 SLA 1985)

**Sec. 29.26.120. Contents of petition.** (a) Within two weeks after certification of an application for an initiative or referendum petition, a petition shall be prepared by the municipal clerk. Each copy of the petition shall contain

- (1) a summary of the ordinance or resolution to be initiated or the ordinance or resolution to be referred;
- (2) the complete ordinance or resolution sought to be initiated or referred as submitted by the sponsors;

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

(4) notice that signatures must be secured within 90 days after the date the petition is issued;

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

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

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

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

(c) Copies of the petition shall be provided to each sponsor by the clerk. (§ 9 ch 74 SLA 1985)

**Sec. 29.26.130. Signature requirements.** (a) The signatures on an initiative or referendum petition shall be secured within 90 days after the clerk issues the petition. The statement provided under AS 29.26.120(a)(6) shall be signed and dated by the sponsor. Signatures shall be in ink or indelible pencil.

(b) The clerk shall determine the number of signatures required on a petition and inform each sponsor. A petition shall be signed by a number of voters based on the number of votes cast at the last regular election held before the date the petition was issued equal to

(1) 25 percent of the votes cast if a municipality has fewer than 7,500 persons; or

(2) 15 percent of the votes cast if a municipality has 7,500 persons or more.

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

(d) A petition signer may withdraw the signer's signature on written application to the clerk before certification of the petition. (§ 9 ch 74 SLA 1985)

**Sec. 29.26.140. Sufficiency of petition.** (a) All copies of an initiative or referendum petition shall be assembled and filed as a single instrument. Within 10 days after the date the petition is filed, the municipal clerk shall

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

(2) if the petition is insufficient, identify the insufficiency and notify the sponsors at the address provided under AS 29.26.110(a) by certified mail.

(b) A petition that is insufficient may be supplemented with additional signatures obtained and filed before the 11th day after the date on which the petition is rejected.

(c) A petition that is insufficient shall be rejected and filed as a public record unless it is supplemented under (b) of this section. Within 10 days after a supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record. (§ 9 ch 74 SLA 1985)

**Sec. 29.26.150. Protest.** If the municipal clerk certifies an initiative or referendum petition is insufficient, a signer of the petition may file a protest with the mayor within seven days after the certification. The mayor shall present the protest at the next regular meeting of the governing body. The governing body shall hear and decide the protest. (§ 9 ch 74 SLA 1985)

**Sec. 29.26.160. New petition.** Failure to secure sufficient signatures does not preclude the filing of a new initiative or referendum petition. However, a new petition on substantially the same matter may not be filed sooner than six months after a petition is rejected as insufficient. (§ 9 ch 74 SLA 1985)

**Sec. 29.26.170. Initiative election.** (a) Unless substantially the same measure is adopted, when a petition seeks an initiative vote the clerk shall submit the matter to the voters at the next regular election occurring no sooner than 45 days after certification of the petition. If no regular election occurs within 75 days after the certification of a petition, the governing body shall hold a special election within 75 days, but not sooner than 45 days after certification.

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

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

(d) If a majority vote favors the ordinance or resolution, it becomes effective upon certification of the election, unless a different effective date is provided in the ordinance or resolution (§ 9 ch 74 SLA 1985)

**Sec. 29.26.180. Referendum election.** (a) Unless the ordinance or resolution is repealed, when a petition seeks a referendum vote the clerk shall submit the matter to the voters at the next election occurring no sooner than 45 days after certification of the petition. If no election occurs within 75 days of certification of a petition, the governing body shall hold a special election within 75 days, but not sooner than 45 days after certification.

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

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

(d) If a majority vote favors the repeal of the matter referred, it is repealed. Otherwise, the matter referred remains in effect or, if it has been suspended, becomes effective on certification of the election. (§ 9 ch 74 SLA 1985)

**Sec. 29.26.190. Effect.** (a) The effect of an ordinance or resolution may not be modified or negated within two years after its effective date if adopted in an initiative election or if adopted after a petition that contains substantially the same measure has been filed.

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

(c) If an initiative or referendum measure fails to receive voter approval, a new petition application for substantially the same measure may not be filed sooner than six months after the election results are certified. (§ 9 ch 74 SLA 1985)

# Alaska State Legislature

Al Adams  
District 1

RECEIVED APR 17 1989

RECEIVED APR 14 1989

WHILE IN SESSION  
P.O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3707

OUT OF SESSION  
P.O. Box 333  
Kotzebue, Alaska 99752  
(907) 442-3245

3111 C. Street  
Anchorage, Alaska 99503  
(907) 561-7622

Official Business

TO: Representatives Goll and Gruenberg, Co-chairs  
House Judiciary Committee

FROM: Senator Al Adams, Chair  
Community and Regional Affairs Committee

RE: SB 173 : An Act relating to municipal petitions and  
elections, and to appointments to fill certain municipal  
offices.

DATE: April 14, 1989

This is to request a hearing on the aforementioned legislation in the House Judiciary Committee. The purpose of SB 173 is to clarify some of the procedures relating to municipal petitions and elections. This bill was developed in response to concerns brought to our attention by the Alaska Municipal League.

Very briefly the highlights of this bill are:

Sections 1-6 clarify the petition process for elections under Title 4, unification, charter commission formation, and manager plan adoption or repeal. The current law does not specify that the procedures for these petitions are those contained in AS 29.100-190.

Sections 7-8 deal with municipal voter qualification criteria.

Section 9 permits a municipality by ordinance to require a person whose registration has been cancelled under AS 15.07.130 to reregister in order to vote in a municipal election.

Sections 10-12,14-18 sets out a prime sponsor, and lines out the responsibilities of municipalities in regards to the prime sponsor.

*Hayden*

Section 13: provides special initiative or referendum requirements for ordinances or resolutions that affect only part of the municipality.

Section 20 makes it clear that you can't appoint a person who is recalled to fill the vacancy until a successor is elected.

Sec 21 amends the definition of voter.

I appreciate your consideration of this request.

TO: Senator Al Adams  
FROM: Scott A. Burgess, Executive Director  
DATE: April 6, 1989  
SUBJECT: SB 173 - Municipal Petitions and Elections

SB 173 addresses several of the issues outlined in the Alaska Municipal League's Municipal Platform dealing with municipal elections.

Sections 1, 2, 3 4, 5, and 6 clarify the petition process for elections on local liquor option under Title 4, and unification, charter commission formation, and the manager plan adoption or repeal under Title 29. The language in most cases adopts the existing petition process under Title 29 (AS 29.26.100 -.190) with some amendments.

A process for initiative and referendum petitions is established in AS 29.26.100-.190. The statutes governing adoption or deletion of the manager plan (AS 29.20.460), alteration of forms of government (AS 29.06), and the local liquor option (AS 4.11.502) currently contain vague references to "by petition" but do not specify that the procedures governing such petitions should be those in AS 29.26.100-.190.

Sections 7 and 8 of SB 173 amend the voter qualification criteria for municipal elections under Title 29. Municipal elections are carried out under Title 29, whereas state elections are governed by Title 15. Sections 7 and 8 clarify that an individual is required to be registered within the State of Alaska and the precinct, district, service area, or municipality in which they reside not less than thirty (30) days immediately preceding the date of the municipal election.

Most municipalities have addressed this requirement by incorporating state law into local ordinances; however, the requirements should be clarified. Votes should be registered within the area, precinct, or municipality in which they seek to vote. A person must be a resident and registered in the new area 30 days prior to voting in a local election. Thirty-day residency and registration requirements are standard conditions placed on an elector's entitlement to vote and are based upon substantial public policy reasons such as ensuring that electors are informed about the candidates and issues of the election, ensuring that an elector in the area has a stake in the election, administrative convenience, and elimination of fraud in elections.

Section 9 would allow a municipality the option of passing an ordinance requiring a resident to register to vote in the municipal election if he/she has not registered in the municipality or voted for two years, or have his/her name purged from the eligible voter list. Under Title 15, a voter whose registration has been canceled for non-activity, may still vote in an election as long as they

have been registered at sometime during the two previous general elections. This approach works well for state elections because of the Division of Elections immediate access to past records of canceled voters. However, for some municipalities without such easy access (e.g other than Anchorage, Fairbanks and Juneau) this is a burden. The bill would allow each municipality the discretion to determine the procedure regarding purged voters for its elections, while not interfering with the procedures utilized by the State.

Sections 10 - 12 and 14 - 18 address the initiative, referendum and recall petition by amending Title 29 to a) require the municipal clerk to notify the designated contact who submits an application for an initiative, referendum, or recall petition of the sufficiency of the application and the availability of the petition and b) require the clerk to provide petitions only to persons who request a petition in person, or in writing if located in a multi-community municipality, from the clerk's office.

The Title 29 revision of 1986 provided an entirely new format for initiative, referendum, and recall petitions. This format has been tested, and it is time for some revisions to "tighten up" some portions of it. First, it should be clarified that the burden of contacting the sponsors of applications for petitions should be on the designated contact sponsor, not on the clerk. Applications for petitions in larger municipalities may contain hundreds of names of sponsors, many of whom aren't even aware they have been listed.

Second, petitions should be given only to those who agree to circulate the petition and sign for it. This would make the initiative, referendum, and recall process more manageable for the public and the clerk.

Section 19 is a technical clarification of AS 29.26.330, the form of a recall ballot, requiring material be filed at least 20 days before the election.

Section 13 amends AS 29.26.110-.190 to make a distinction for initiative and referendum issues of non-areawide or service area powers. AS 29.26.100-.190, which outlines the standards and process associated with a referendum election, mentions only municipal voters and makes no distinction as to voters inside the city and those outside it. The statutes do not require that petitioners or voters on an initiative or referendum be within the proposed or existing service area. Repeal of a non-areawide or service area power would affect residents located outside cities, but under current statutes voters within cities could have a significant, and potentially dominant, role in determining whether residents outside the city receive services.

Section 20 amends Title 29 to prohibit a recalled elected official or a recalled official appointed to an elected office from being appointed to the vacancy created by the recall. If voters recall an elected official or an official appointed to an elected office, the voters have spoken, and their decision should stand. Prohibiting a recalled official from being reappointed also avoids pressure on other elected officials. Basically, allowing a recalled person to be appointed to the vacancy created by his or her recall is contrary to the whole recall process. AS 29.26.320(c) states that a person who resigns (during a recall process) may not be appointed to fill the vacancy. To be consistent, a recalled official should not be appointed to the vacancy created by the recall.

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: "An Act..municipal petitions & elections, & to appointments.."  
 Sponsor: Senator Adams  
 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: Jam Plasman, Deputy Director Phone: 465-4750  
 Division: Municipal & Regional Assistance Date: 3-1-89  
 Approved by Commissioner: [Signature] Date: 3-1-89  
 Agency: Community & Regional Affairs

Distribution (by preparer):

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

## Revisions of the Municipal Election Code

The Alaska Municipal League urges the 16th Legislature to pass legislation amending the statutes governing municipal elections to correct inconsistencies in those statutes and, where appropriate, to allow for greater local control of issues affecting municipalities. The package of election law revisions proposed by the League includes the following:

Sec. 1, 2  
3, 4, 6

- Specifying that the procedures for petitioning for adoption or deletion of the manager plan, alteration of government, and local liquor option are those established in AS 29.26.100-.190:

A process for initiative and referendum petitions is established in AS 29.26.100-.190. The statutes governing adoption or deletion of the manager plan (AS 29.20.460), alteration of forms of government (AS 29.06), and the local liquor option (AS 4.11.502) currently contain vague references to "by petition" but do not specify that the procedures governing such petitions should be those in AS 29.26.100-.190.

Sec. 7, 8

- Amending Title 29, the Municipal Code, to allow a municipality, by ordinance, to require persons to be registered within the State of Alaska and the precinct, district, service area, or municipality in which they reside not less than 30 days immediately preceding the date of the municipal election.

Most municipalities have addressed this requirement by incorporating state law into local ordinances; however, the requirements should be clarified. Voters should be registered within the area, precinct, or municipality in which they seek to vote. A person must be a resident and registered in the new area 30 days prior to voting in a local election. Thirty-day residency and registration requirements are standard conditions placed on an elector's entitlement to vote and are based upon substantial public policy reasons such as ensuring that electors are informed about the candidates and issues of the election, ensuring that an elector in the area has a stake in the election, administrative convenience, and the elimination of fraud in elections.

Sec. 9, 10,  
13, 14, 15, 16,  
17

- Amending Title 29 to a) require the municipal clerk to notify the designated contact who submits an application for an initiative, referendum, or recall petition of the sufficiency of the application and the availability of the petition and b) require the clerk to provide petitions only to persons who request a petition in person, or in writing if located in a multi-community municipality, from the clerk's office:

The Title 29 revision of 1986 provided an entirely new format for initiative, referendum, and recall petitions. This format has been tested, and it is time for some revisions to "tighten up" some portions of it.

First, it should be clarified that the burden of contacting the sponsors of applications for petitions should be on the designated contact sponsor, not on the clerk. Applications for petitions in larger municipalities may contain hundreds of names of

sponsors, many of whom aren't even aware they have been listed.

Second, petitions should be given only to those who agree to circulate the petition and sign for it. This would make the initiative, referendum, and recall process more manageable for the public and the clerk.

Sec. 19

- Amending Title 29 to prohibit a recalled elective official or a recalled official appointed to an elective office from being appointed to the vacancy created by the recall:

If voters recall an elected official or an official appointed to an elective office, the voters have spoken, and their decision should stand. Prohibiting a recalled official from being reappointed also avoids pressure on other elected officials. Basically, allowing a recalled person to be appointed to the vacancy created by his or her recall is contrary to the whole recall process. AS 29.26.320(c) states that a person who resigns during a recall process may not be appointed to fill the vacancy; it is consistent with this that a recalled official should not be appointed to the vacancy created by the recall.

Sec. 12

- Amending AS 29.26.100-190 to make a distinction for initiatives and referendum issues of non-areawide or service area powers:

AS 29.26.100-190, which outline the standards and process associated with a referendum election, mention only municipal voters and make no distinction as to voters inside the city and those outside it. The statutes do not require that petitioners or voters on an initiative or referendum be within the proposed or existing service area. Repeal of a non-areawide or service area power would affect residents located outside cities, but under current statutes voters within cities could have a significant, and potentially dominant, role in determining whether residents outside the city receive services.

The Alaska Municipal League (AML) is a statewide, nonprofit, non-partisan organization of local governments. Its 123 municipal members include most of Alaska's cities, boroughs, and unified municipalities. The League serves as an advocate for municipal government in the Legislature and with the state executive departments, acts as a clearinghouse for information on federal and state actions affecting local governments, conducts training for local government officials, provides information through its newsletter, legislative bulletins, and other publications, and conducts an annual conference for policy development and training.


The Alaska Municipal League provides a forum through which local government officials can assist each other in the solution of municipal problems and can express their common concerns to state and federal officials. Through its members, the AML seeks to advance the interests and well-being of all Alaskans by supporting and advocating strong, cost-effective, and responsive local governments.

# Alaska MUNICIPAL League

TELEPHONE  
(907) 586-1325  
FAX 463-5480

217 SECOND STREET, SUITE 200  
JUNEAU, ALASKA 99801

TO: Senator Al Adams, Chair  
Members of the Senate Community and Regional Affairs Committee

FROM: Scott A. Burgess, Executive Director 

DATE: March 1, 1989

SUBJECT: SB 173 - Municipal Petitions and Elections

The Alaska Municipal League supports SB 173. In November 1988, the AML Board identified amendments to the statutes governing municipal elections to correct inconsistencies in those statutes and, where appropriate, to allow for greater local control, efficiency and fairness as a top priority of the League for the 1989 legislative session. SB 173 addresses several of the individual issues outlined in the League's Municipal Platform.

Sections 1, 2, 3, 4, 5, and 6 clarify the petition process for elections on local liquor option under Title 4, and unification, charter commission formation, and the manager plan adoption or repeal under Title 29. The language in most cases adopts the existing petition process under Title 29 (AS 29.26.100 -.190) with some amendments.

A process for initiative and referendum petitions is established in AS 29.26.100-.190. The statutes governing adoption or deletion of the manager plan (AS 29.20.460), alteration of forms of government (AS 29.06), and the local liquor option (AS 4.11.502) currently contain vague references to "by petition" but do not specify that the procedures governing such petitions should be those in AS 29.26.100-.190.

Sections 7 and 8 of SB 173 amend the voter qualification criteria for municipal elections under Title 29. Municipal elections are carried out under Title 29, whereas state elections are governed by Title 15. Sections 7 and 8 clarify that an individual is required to be registered within the State of Alaska and the precinct, district, service area, or municipality in which they reside not less than thirty (30) days immediately preceding the date of the municipal election.

Most municipalities have addressed this requirement by incorporating state law into local ordinances; however, the requirements should be clarified. Votes should be registered within the area, precinct, or municipality in which they seek to vote. A person must be a resident and registered in the new area 30 days prior to voting in a local election. Thirty-day residency and registration requirements are standard conditions placed on an elector's entitlement to vote and are based upon substantial public policy reasons such as ensuring that electors are informed about the candidates and issues of the election, ensuring that an elector in the area has a stake in the election, administrative convenience, and elimination of fraud in elections.

Sections 9 - 11 and 13 - 17 address the initiative, referendum and recall petition by amending Title 29 to a) require the municipal clerk to notify the designated contact who submits an application for an initiative, referendum, or recall petition of the sufficiency of the application and the availability of the petition and b) require the clerk to provide petitions only to persons who request a petition in person, or in writing if located in a multi-community municipality, from the clerk's office.

The Title 29 revision of 1986 provided an entirely new format for initiative, referendum, and recall petitions. This format has been tested, and it is time for some revisions to "tighten up" some portions of it. First, it should be clarified that the burden of contacting the sponsors of applications for petitions should be on the designated contact sponsor, not on the clerk. Applications for petitions in larger municipalities may contain hundreds of names of sponsors, many of whom aren't even aware they have been listed.

Second, petitions should be given only to those who agree to circulate the petition and sign for it. This would make the initiative, referendum, and recall process more manageable for the public and the clerk.

Section 18 clarifies AS 29.26.330 on the form of a recall ballot.

Section 12 amends AS 29.26.110-.190 to make a distinction for initiative and referendum issues of non-areawide or service area powers. AS 29.26.100-.190, which outlines the standards and process associated with a referendum election, mentions only municipal voters and makes no distinction as to voters inside the city and those outside it. The statutes do not require that petitioners or voters on an initiative or referendum be within the proposed or existing service area. Repeal of a non-areawide or service area power would affect residents located outside cities, but under current statutes voters within cities could have a significant, and potentially dominant, role in determining whether residents outside the city receive services.

Section 19 amends Title 29 to prohibit a recalled elected official or a recalled official appointed to an elected office from being appointed to the vacancy created by the recall. If voters recall an elected official or an official appointed to an elected office, the voters have spoken, and their decision should stand. Prohibiting a recalled official from being reappointed also avoids pressure on other elected officials. Basically, allowing a recalled person to be appointed to the vacancy created by his or her recall is contrary to the whole recall process. AS 29.26.320(c) states that a person who resigns (during a recall process) may not be appointed to fill the vacancy. To be consistent, a recalled official should not be appointed to the vacancy created by the recall.

The AML supports SB 173 and urges the Committee and the Legislature to pass the bill to bring clarity and fairness to the municipal elections process.

# Alaska Municipal League Policy Statement

## 1989



Adopted at the Business Meeting  
of the 38th Annual Local Government Conference  
of the  
**ALASKA MUNICIPAL LEAGUE**  
Fairbanks, Alaska  
November 18, 1988

**Resolution of the Alaska Municipal League**

**Resolution No. 89-6**

**A RESOLUTION URGING THE AMENDMENT OF MUNICIPAL  
ELECTION STATUTES TO CORRECT INCONSISTENCIES  
AND ALLOW FOR GREATER LOCAL CONTROL**

WHEREAS, several inconsistencies exist in the state laws governing municipal elections and the election process which are inappropriate, and

WHEREAS, these inconsistencies and incongruities impede the efficient management of the municipal elections process and introduce inequities into the election process, the foundation of our democratic system of government, and

WHEREAS, the limitations on staff and funding for the Alaska Public Offices Commission preclude the commission from adequately enforcing state statutes at the municipal level;

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League urges the 16th Alaska Legislature and the Governor to pass legislation amending the statutes governing municipal elections to correct these inadequacies by adopting a package of election revisions proposed by the municipalities themselves through the Alaska Municipal League.

*Adopted at Annual Business Meeting o November 18, 1988 o Fairbanks, Alaska*

6-0744H  
Cook  
5/5/89

Original sponsor: Adams

1 IN THE SENATE BY THE JUDICIARY COMMITTEE  
2 HOUSE CS FOR CS FOR SENATE BILL NO. 173 (Judiciary)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to municipal petitions and elec-  
7 tions, and to appointments to fill certain municipal  
8 offices."

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

10 \* Section 1. AS 04.11.502 is amended by adding a new subsection to  
11 read:

12 (e) AS 29.26.110 - 29.26.160 applies to a petition under (a) of  
13 this section in a general law municipality except the

14 (1) number of required signatures is determined under (a)  
15 of this section rather than under AS 29.26.130;

16 (2) application filed under AS 29.26.110 shall contain the  
17 question or combination of questions set out under AS 04.11.490 -  
18 04.11.500 rather than an ordinance or resolution;

19 (3) petition shall contain the question or combination of  
20 questions set out under AS 04.11.490 - 04.11.500 rather than material  
21 required under AS 29.26.120(1) and (2).

22 \* Sec. 2. AS 29.06.200 is amended by adding a new subsection to read:

23 (c) In a general law borough, a unification petition shall be  
24 prepared by the borough clerk upon receipt of an application meeting  
25 the requirements of AS 29.26.110, except that instead of containing an  
26 ordinance or resolution the application shall contain the question  
27 under AS 29.06.210(a). The petition shall be prepared in accordance  
28 with AS 29.26.120, except material required under (a)(1) and (2) of  
29 that section shall be replaced with the question under

1 AS 29.06.210(a). The signature requirements of AS 29.26.130(a), (c),  
2 and (d) apply to a unification petition. The completed petition shall  
3 be submitted to the clerk who shall deliver it to the assembly with a  
4 report of the number of valid signatures determined by the clerk to be  
5 on the petition.

6 \* Sec. 3. AS 29.10.010(e) is amended to read:

7 (e) A proposed charter for an existing municipality is prepared  
8 by a charter commission of seven elected members. A charter commission  
9 election is called by filing a petition with the governing body or by  
10 resolution of the governing body. The petition shall be signed by a  
11 number of voters equal to 15 percent of the votes cast in the last  
12 regular election in the municipality. The petition shall be prepared  
13 by the municipal clerk upon receipt of an application meeting the  
14 requirements of AS 29.26.110 except that instead of containing an  
15 ordinance or resolution the application shall request a charter com-  
16 mission election. The petition shall be prepared in accordance with  
17 AS 29.26.120, except material required under AS 29.26.120(a)(1) and  
18 (2) shall be replaced with the question of whether a charter commis-  
19 sion shall be formed. The signature requirements of AS 29.26.130(a),  
20 (c), and (d) apply to the petition. The completed petition shall be  
21 submitted to the clerk who shall deliver it to the governing body with  
22 a report of a number of valid signatures determined by the clerk to be  
23 on the petition.

24 \* Sec. 4. AS 29.20.460 is repealed and reenacted to read:

25 Sec. 29.20.460. MANAGER PLAN. (a) A municipality may adopt a  
26 manager plan of government. Adoption of a manager plan may be initi-  
27 ated either by petition or by motion adopted by the governing body.

28 (b) A petition for the adoption of a manager plan shall meet the  
29 requirements of AS 29.26.110 - 29.26.160 except, instead of an

1 ordinance or resolution, the application submitted under AS 29.26.-  
2 110(a) must contain the question of whether a manager plan for the  
3 municipality should be adopted and material required under AS 29.26.-  
4 120(a)(1) and (2) shall be replaced with the same question.

5 (c) If the clerk certifies under AS 29.26.140 that a petition is  
6 sufficient, the petition shall be submitted to the governing body.

7 \* Sec. 5. AS 29.20.470 is amended to read:

8 Sec. 29.20.470. ELECTION ON ADOPTION OF MANAGER PLAN. The [ON  
9 RECEIPT OF A PETITION TO ADOPT A MANAGER PLAN OR ON ITS OWN MOTION TO  
10 ADOPT A MANAGER PLAN, THE] governing body shall provide by ordinance  
11 or resolution for a vote on the question of adopting a manager plan at  
12 the next election when it

13 (1) receives a petition to submit the question to the  
14 voters that has been certified as sufficient by the clerk; or

15 (2) adopts a motion to submit the question to the voters.

16 \* Sec. 6. AS 29.20.520 is amended to read:

17 Sec. 29.20.520. REPEAL OF MANAGER PLAN. A municipality may  
18 repeal a manager plan by following the procedures under AS 29.20.460 -  
19 29.20.480 [IN THE SAME MANNER USED] for [ITS] adoption of a manager  
20 plan, except the question shall be whether the manager plan should be  
21 repealed. Within 60 days after certification of the election approv-  
22 ing repeal of a manager plan, the governing body shall enact pro-  
23 visions for the reorganization of the municipal executive and adminis-  
24 trative functions.

25 \* Sec. 7. AS 29.26.050(a) is amended to read:

26 Sec. 29.26.050. VOTER QUALIFICATION. (a) A person may vote in  
27 a municipal election only if the person

28 (1) is [A UNITED STATES CITIZEN WHO IS] qualified to vote in  
29 state elections under AS 15.05.010;

1 (2) has been a resident of the municipality for 30 days  
2 immediately preceding the election;

3 (3) is registered to vote in state elections at a residence  
4 address within a municipality at least 30 days before the municipal  
5 election at which the person seeks to vote; and

6 (4) is not disqualified under art. V of the state constitu-  
7 tion.

8 \* Sec. 8. AS 29.26.050(b) is amended to read:

9 (b) Voter registration by the municipality may not be required.  
10 However, in order to vote for a candidate or on a ballot measure  
11 relating to a local election district or service area, a municipality  
12 may by ordinance require that a person be registered, at least 30 days  
13 before the municipal election, to vote in state elections at an  
14 address within the boundaries of the local election district or ser-  
15 vice area [IN THE PRECINCT IN WHICH THAT PERSON SEEKS TO VOTE IN  
16 MUNICIPAL ELECTIONS].

17 \* Sec. 9. AS 29.26.110(a) is amended to read:

18 (a) An initiative or referendum is proposed by filing an applica-  
19 tion with the municipal clerk containing the ordinance or resolution  
20 to be initiated or the ordinance or resolution to be referred and the  
21 name and address of a contact person to whom [WHICH] all correspon-  
22 dence relating to the petition may be sent. An application shall be  
23 signed by a least 10 voters who will sponsor the petition. An addi-  
24 tional sponsor may be added at any time before the petition is filed  
25 by submitting the name of the sponsor to the clerk. Within two weeks  
26 the clerk shall certify the application if the clerk finds that it is  
27 in proper form and, for an initiative petition, that the matter

28 (1) is not restricted by AS 29.26.100;

29 (2) includes only a single subject;

1 (3) relates to a legislative rather than to an administra-  
2 tive matter; and

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

4 \* Sec. 10. AS 29.26.120(c) is amended to read:

5 (c) The clerk shall notify the contact person when the petition  
6 is available. The contact person is responsible for notifying spon-  
7 sors. Copies of the petition shall be provided by the clerk to each  
8 sponsor who appears in the clerk's office and requests a petition, and  
9 the clerk shall mail the petition to each sponsor who has requested in  
10 writing that the petition be mailed [BY THE CLERK].

11 \* Sec. 11. AS 29.26.130(b) is amended to read:

12 (b) The clerk shall determine the number of signatures required  
13 on a petition and inform the contact person. Except as provided in  
14 (e) of this section, a [EACH SPONSOR. A] petition shall be signed by  
15 a number of voters based on the number of votes cast at the last  
16 regular election held before the date notice is given to the contact  
17 person that the petition is available, [THE PETITION WAS ISSUED] equal  
18 to

19 (1) 25 percent of the votes cast if a municipality has  
20 fewer than 7,500 persons; or

21 (2) 15 percent of the votes cast if a municipality has 7,500  
22 persons or more.

23 \* Sec. 12. AS 29.26.130 is amended by adding a new subsection to read:

24 (e) If the ordinance or resolution that is the subject of an  
25 initiative or referendum petition affects only an area that is less  
26 than the entire area of a municipality, only voters residing in the  
27 affected area may sign the petition. The clerk shall determine the  
28 number of signatures required on the petition and inform the contact  
29 person. The petition shall be signed by a number of voters based on

1 the number of votes cast in that area at the last regular election  
2 held before the date notice is given to the contact person that the  
3 petition is available equal to

4 (1) 25 percent of the votes cast if the area has fewer than  
5 7,500 persons; or

6 (2) 15 percent of the votes cast if the area has 7,500  
7 persons or more.

8 \* Sec. 13. AS 29.26.140(a) is amended to read:

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

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

13 (2) if the petition is insufficient, identify the insuffi-  
14 ciency and notify the contact person [SPONSORS AT THE ADDRESS PROVIDED  
15 UNDER AS 29.26.110(a)] by certified mail.

16 \* Sec. 14. AS 29.26.260(a) is amended to read:

17 (a) An application for a recall petition shall be filed with the  
18 municipal clerk and shall contain

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

21 (2) the name and address of the contact person to whom  
22 [WHICH] all correspondence relating to the petition may be sent; and

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

25 \* Sec. 15. AS 29.26.270(b) is amended to read:

26 (b) The clerk shall notify the contact person when the petition  
27 is available. That person is responsible for notifying sponsors.  
28 Copies of the petition shall be provided by the clerk to each sponsor  
29 who appears in the clerk's office and requests a petition, and the

1 clerk shall mail the petition to each sponsor who has requested in  
2 writing that the petition be mailed [BY THE CLERK].

3 \* Sec. 16. AS 29.26.280(b) is amended to read:

4 (b) The clerk shall determine the number of signatures required  
5 on a petition and inform the contact person [EACH SPONSOR]. If a  
6 petition seeks to recall an official who represents the municipality  
7 at large, the petition shall be signed by a number of voters equal to  
8 25 percent of the number of votes cast for that office at the last  
9 regular election held before the date notice is given to the contact  
10 person that the petition is available [THE PETITION WAS ISSUED]. If a  
11 petition seeks to recall an official who represents a district, the  
12 petition shall be signed by a number of the voters residing in the  
13 district equal to 25 percent of the number of votes cast in the dis-  
14 trict for that office at the last regular election held before the  
15 date the notice is given to the contact person that the petition is  
16 available [WAS ISSUED].

17 \* Sec. 17. AS 29.26.290(a) is amended to read:

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

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

24 (2) if the petition is insufficient, identify the insuffi-  
25 ciency and notify the contact person [SPONSORS AT THE ADDRESS PROVIDED  
26 UNDER AS 29.26.260(a)(2)] by certified mail.

27 \* Sec. 18. AS 29.26.330 is amended to read:

28 Sec. 29.26.330. FORM OF RECALL BALLOT. A recall ballot shall  
29 contain

1 (1) the grounds for recall as stated in 200 words or less on  
2 the recall petition;

3 (2) a statement by the official named on the recall petition  
4 of 200 words or less, if the statement is filed with the clerk for  
5 publication and public inspection at least [WITHIN] 20 days before the  
6 election;

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

9 \* Sec. 19. AS 29.26.350(c) is amended to read:

10 (c) A person who has been recalled may not be appointed under  
11 (a) or (b) of this section to the office from which the person was  
12 recalled. A person appointed under (a) or (b) of this section serves  
13 until a successor is elected and takes office.

14 \* Sec. 20. AS 29.71.800(25) is amended to read:

15 (25) "voter" means a person who is qualified to vote under  
16 AS 29.26.050 [UNITED STATES CITIZEN WHO IS QUALIFIED TO VOTE IN STATE  
17 ELECTIONS, HAS BEEN A RESIDENT OF THE MUNICIPALITY FOR 30 DAYS IMMEDI-  
18 ATELY PRECEDING THE ELECTION, IS REGISTERED TO VOTE IN STATE ELEC-  
19 TIONS, AND IS NOT DISQUALIFIED UNDER ART. V OF THE STATE CONSTITU-  
20 TION].

SB

174

**Key Bank of Alaska**

A KeyCorp Bank



Post Office Box 100420  
Anchorage, Alaska 99510-0420  
(907) 582-6100

April 17, 1989

Representative Max Gruenberg, Co-Chairman  
House Judiciary Committee  
Alaska State Legislature  
Box V  
Juneau, Alaska 99811

RE: Senate Bill #174 - Letters of Credit

Dear Representative Gruenberg:


I am writing to express Key Bank of Alaska's support of SB 174 which proposes to amend Alaska Statute 06.05.275. The proposed amendment will be of great benefit to the bank because it eliminates the one year maturity requirement on letters of credit, a limitation which does not constrain our nationally chartered competitors.

In the past, Alaska Pacific Bank's ("APB") affiliate, 1st National Bank of Fairbanks issued letters of credit with a duration beyond one year on behalf of APB. With the merger of these two banks and the subsequent retention of a state charter, suddenly this issue became a problem for the bank, now known as Key Bank of Alaska.

Many situations arise wherein our customers require letters of credit extending beyond one year. Beneficiaries typically requiring terms beyond one year include government agencies, (ie. Corps of Engineers), municipalities, the Alaska Court System, bonding, surety and insurance companies, large oil companies (ie. Texaco, Exxon), and other banks or long term lenders. For example, the Municipality of Anchorage requires a performance bond or standby letter of credit guaranteeing the work of a contractor (our customer) for as much as a year after construction work has been completed. Generally, the letter of credit is less expensive than the performance bond. Often, the letter of credit language is presented to us on an "all or nothing" basis, with no negotiation with the beneficiary possible. Sureties and municipalities are the most inflexible with regard to this. Thus, without the ability to issue a letter of credit with a maturity extending beyond one year we are unable to meet our customers' needs, clearly placing us at a competitive disadvantage.

We would appreciate an early hearing as it is important to have this legislation passed this session. I would be more than happy to provide you with any further information or clarification on this issue if necessary.

Sincerely,

  
Elizabeth Setzer  
Assistant Vice President

# Alaska State Legislature



2957 SHELDON JACKSON STREET  
ANCHORAGE, ALASKA 99508

SENATOR  
ARLISS STURGULEWSKI  
Senate President Pro Tempore  
Chairman, Senate Rules Committee

While in Juneau  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3818

## Senate

M E M O R A N D U M

April 14, 1989

TO: Representative Peter Goll, Co-Chairman  
Representative Max Gruenberg, Co-Chairman  
House Judiciary Committee

FROM: Senator Arliss Sturgulewski, <sup>as</sup> Chairman  
Senate Rules Committee

RE: SB 174 "An Act relating to letters of credit issued by  
banks."

This bill is a straight forward approach that would correct a disparity between state chartered banks and nationally chartered banks. Presently there is no time limit on Letters of Credit issued by nationally chartered banks but state chartered banks have been limited to one year on letters of credit.

This disparity was brought to us by Key Bank of Alaska and a letter of explanation from them is attached. Senate Bill 174 is supported by the Director of the Alaska Division of Banking. It has a zero fiscal note.

I have attached a packet of background information regarding SB 174 and hope you will be able to schedule it for an early hearing. Thank you for your consideration.

Attachments

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: SB 174  
PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: Relating to letters of credit  
issued by banks  
Sponsor: Sturqulewski and Pearce  
Requester: Senate Labor & Commerce

Agency Affected: Commerce & Econ. Dev.  
BRU: Banking, Securities  
and Corporations  
Components: Banking

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	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Willis E. Kirkpatrick, Director  
Division: Banking, Securities and Corporations

Phone: 465-2521  
Date: 2-22-89

Approved by Commissioner: Larry Mercurieff  
Agency: Department of Commerce & Economic Development

Phone: \_\_\_\_\_  
Date: 2/24/89

Distribution (by preparer):

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Office of Management and Budget  
Impacted Agency(ies)

page \_\_\_\_\_ of \_\_\_\_\_

3388D-2/022289a

SB 174: "An Act relating to letters of credit issued by banks."

The department urges passage of SB 174 as it will provide parity between state and nationally chartered banks in providing letters of credits. Banks operating with national charters have no time restrictions concerning letters of credit. SB 174 deletes the time restrictions from Alaska law.

Banks and their customers have been at a disadvantage when their business sometimes requires letters of credit for greater periods than one year. This may be a common requirement in governmental construction contracts and export transactions with long contract periods.

This type of bank function is considered lending and is regulated and examined for sound lending practices. Letters of credit do convey elements of risk but are generally provided to a bank's customers with long-term satisfactory credit history.

  
Larry Mercurieff, Commissioner  
Department of Commerce and Economic  
Development

Date: 2/24/89

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022389a

**Key Bank of Alaska**

A KeyCorp Bank



Post Office Box 100420  
Anchorage, Alaska 99510-0420  
(907) 562-6100

February 23, 1989

Mr. Frank Homan  
Professional Assistant  
Office of  
Senator Arliss Sturgelewski  
P.O. Box V  
Juneau, Alaska 99811

Re: SB 174 - Letters of Credit

Dear Mr. Homan:

This letter will describe briefly letters of credit and explain why we support SB 174 which amends Alaska Statute 06.05.275(a) to remove its durational limit on letters of credit issued by state banks.

A letter of credit is the undertaking by a bank to pay the person to whom the letter of credit is issued (the beneficiary) upon presentation of a draft or other documentary demand specified in the credit. The bank's customer (the account party) requests issuance of the letter of credit and specifies the terms of the credit, based on the beneficiary's requirements. If the letter of credit is drawn upon, the account party (the bank's customer) has an unqualified obligation to pay the bank.

Letters of credit fall into two general categories. Commercial letters of credit are the type which are frequently used in foreign trade. There, the bank agrees to pay upon receipt of a draft and accompanying documents which often represent title to goods in shipment. The bank compares the documents with the requirements of the letter of credit and, if they are in conformity, pays the draft. A standby letter of credit is usually issued so that the beneficiary has a source of payment if the account party defaults on some obligation to the beneficiary. It acts as security for some performance by the account party. Once again, the bank does not make any decision about the facts of the transaction, but simply pays if it receives a draft and documents (frequently a certification by the beneficiary) as required by the terms of the letter of credit. In either type, the dollar amount of the credit is limited.

wag/pm.3  
letters.cre

There exists a competitive inequality between national and state banks in durational limitations on standby and commercial letters of credit detrimental to state-chartered banks.

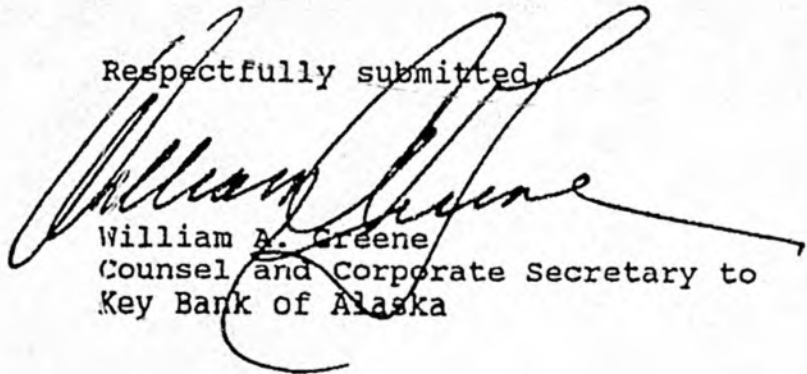
There is no durational limitation on letters of credit which national banks may issue, but AS 06.05.275(a) limits state-chartered banks' letters of credit to a duration of one year. It is interesting to note that the original legislative purpose in adopting this statute was "to improve the competitive balance between state and national banks." 1970 House Journal 1085.

It has been demonstrated that durational limits thwart competitive equality between state and national banks in the marketing and providing of letters of credit according to customer requirements. This is particularly true where the beneficiaries are government agencies, municipalities, the Alaska Court System, bonding, surety, and insurance companies. They are beneficiaries of letters of credit for a variety of reasons such as to secure completion of utility infrastructure construction on subdivisions, appeal bonds, and as security for cash flow requirements for debt service of term loans to operating businesses or income property construction projects. Those beneficiaries in particular have no reason to negotiate with state banks for letters of credit as they may simply go to national banks without having to address the issue of durational limitations. Further, most such beneficiaries are totally inflexible in their requirements and will not even consider durational requirements. They simply avoid the issue by obtaining their letters of credit elsewhere. As to commercial letters of credit, there are situations in which the one-year limitation would exclude their use in connection with manufactured goods and equipment and in connection with some export situation. Accordingly, state banks cannot always service their good customers as can national banks.

Letters of credit are extensions of credit not basically different than any loan or a loan commitment and are analyzed and underwritten like a loan or loan commitment. Most are secured. If not secured they are supported by adequate financial standing of the account party on whose behalf they are issued in the same manner as an unsecured loan. Adequate internal lending and underwriting policies and procedures, competent bank management, internal financial review and reporting requirements and procedures, and bank examinations by regulators are, like loans, the means of controlling and maintaining sound banking practices in issuing letters of credit. Durational limitations, however, are irrelevant to preventing unsound banking practices or to ensuring sound banking practices at the most critical times - when the letters of credit are issued and during the permitted period. They only shut the door after the horse is out at the expense of preventing state-chartered banks from competing equally with national banks.

Accordingly, it is recommended and urged that SB 174 be adopted to delete the second sentence of AS 06.05.275(a) as unnecessary and anticompetitive.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "William A. Greene", written in black ink over the typed name and title.

William A. Greene  
Counsel and Corporate Secretary to  
Key Bank of Alaska

WAG/ag