

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
6780 HOUSE COMMUNITY & REGIONAL AFFAIRS

team for medical problems. With respect to support services for mine employees, the mine employees pay for those services through their own taxes.

The Department's argument goes on to state that KGCMC has a need for planning and zoning and coastal management, tax assessment and collection, and building inspection. These are the very problems associated with annexation that both the CBJ and KGCMC are seeking to avoid by deferral and thus, the statement is ludicrous on its face.

Mr. Clark seems to suggest that the mine should be viewed in an isolated fashion -- totally separate from the community of Juneau. In DCRA's view, KGCMC "needs" the services of the CBJ because it requires an educated, healthy, protected workforce -- one which travels to and from work on roads maintained by the CBJ and uses other facilities and services of the CBJ.

While the Greens Creek Mine may have its own emergency response team, any injured worker requiring serious medical attention is likely to receive such at the Juneau hospital. Regardless of the extent to which the mine endeavors to be self-supporting, any calamity of the mine site would likely require direct services from the CBJ (police, EMS, search and rescue).

Arguments that residential property and sales taxes pay an appropriate share of the costs of providing services to local residents are unpersuasive. The 1990 taxable value of residential real property within the boundaries of the CBJ amounted to only 50.7% of the total taxable property in the CBJ (\$609,218,700 of \$1,200,903,075 - source: State Assessor).

Thus, the territory proposed for annexation is in need of services and it is appropriate that all taxable properties within the CBJ contribute to the financial support of the local government.

2. Law Contemplates Immediate Annexation

The LBC's standards for annexation to boroughs (19 AAC 10.200) require that:

The commission will not approve an annexation unless the annexing organized borough demonstrates to the satisfaction of the commission that it is capable of extending and willing to extend services to the annexed area in accordance with this subsection. If possible, areawide and non-areawide borough services shall be extended to the annexed area immediately. . .

The LBC formally concluded in its October 8, 1990 statement of decision that "the CBJ is capable of extending and willing to extend areawide services to the 140 square mile area proposed for annexation in accordance with 19 AAC 10.200." DCRA is

r. more likely State Hoops US. cost added

unaware of any circumstance which suggests that it is not possible to extend immediate services to the Greens Creek Mine upon annexation. As such, the LBC's regulations contemplate that annexation occur immediately.

D. CONCERNS OVER DUE PROCESS

Mr. Clark indicates in his comments of April 15, 1991 that "KGCMC has previously asserted and continues to assert that the LBC did not have authority to approve the application for annexation after it was withdrawn by the CBJ Assembly on July 13, 1989".

DCRA and the LBC have taken every conceivable measure to ensure the rights of KGCMC in this matter. The reconsideration process has followed all of the steps which would be required of a new petition.

Mr. Clark's comments of April 15 conflict with testimony provided to the Commission in November (see appendix). The November testimony states on page 5:

Greens Creek urges the commission to grant its request for reconsideration because the proper measure of due process has not occurred to date. In order to rectify the situation, the CBJ petition with the 1994 deferred effective date should be noticed and the LBC procedures begun anew. This would give all interested parties the opportunity to submit testimony on the issue and allow the commission to make an informed decision. (emphasis added)

The concerns expressed by Mr. Clark last November were fully addressed in the procedures used in the reconsideration DCRA believes that these procedures are in substantial compliance with all applicable requirements.

SECTION III - CONCLUSIONS AND RECOMMENDATION

The CBJ initiated its petition for annexation in May of 1989. That annexation, which might have been implemented as early as March of 1990, was delayed by one year as a result of the model boundaries project. The annexation was delayed an additional year as a result of the current reconsideration proceedings. The earliest that the annexation could now be implemented is March of 1992. The Greens Creek Mine has already gained nearly one million dollars in tax relief.

The Department does not believe that further delay in the annexation of the Greens Creek Mine is warranted. This position is based upon the following:

- ° The LBC has formally concluded that the Greens Creek Mine is presently in need of municipal services.

- ° Standards for borough annexation contemplate the immediate extension of services to newly annexed areas.
- ° The taxes and regulatory burden placed upon the Greens Creek Mine are not unreasonable when viewed in the context of the size of the mine, its impact upon Juneau and the taxing and regulatory practices of the CBJ.
- ° If the annexation is deferred to provide financial relief to the Greens Creek Mine, others in Alaska are likely to seek similar treatment. Manipulating regional government boundaries in such a fashion is counter to the Constitutional provisions requiring boroughs to "embrace an area and population with common interests to the maximum degree possible".
- ° The deferral would have adverse financial impacts on the State.
- ° The deferral is contrary to the State's goal of diminishing reliance on the State to support local services.

DCRA notes that delays in the annexation proceedings have already resulted in substantial tax savings to the mine. The annexation might have been effected as early as March, 1990; the earliest it can now be implemented is March, 1992. Those delays have resulted in projected tax savings to the mine amounting to \$972,000.

DCRA does not dispute the critical public benefit associated with ensuring the viability of the mine. However, to the extent that deferral of taxes may be necessary to accomplish that end, DCRA stresses that the CBJ enjoys independent authority to grant full relief from municipal sales and property taxes to the mine following annexation.

Therefore, DCRA recommends that the LBC deny the proposed deferral of the annexation.

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MEMORANDUM

February 11, 1992

SUBJECT: Effective Dates of LBC (Work Order No. 7-LS1980)

TO: Representative Jerry Mackie

FROM: Tamara Brandt Cook
Director TBC

You have asked whether the Local Boundary Commission (LBC) may include a delayed effective date in an annexation proposal submitted to the legislature. It is not clear to me that the LBC now has the authority to delay the effective date of an annexation. Article X, section 12 of the state constitution provides:

Section 12. Boundaries. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action. (Emphasis added)

The legislature has included this language in AS 44.47.567, so it could be argued that the effective date of an annexation submitted to the legislature as a boundary change has been established as a matter of both constitutional and statutory law.

It is true that the legislature has provided for gradual or step annexations for cities under AS 44.47.567. The Supreme Court appears to have accepted the power of the legislature to do so, despite the language of the constitution regarding the effective date of changes. (Port Valdez Company, Inc. v. City of Valdez, 522 P.2d 1147 (Alaska 1974)) But it may be that the court does not consider a step annexation to amount to a special effective date, since the beginning of the annexation process may coincide with the constitutionally established effective date. In any case, it does not appear that the legislature has authorized even step annexations for boroughs, much

Representative Jerry Mackie
February 11, 1992
Page 2

less delayed effective dates. There is, I think, at least a question as to whether the LBC can, on its own initiative, provide for a delayed effective date.

TBC:mi
92-021.mai

STATE OF ALASKA

STEVE COWPER, GOVERNOR

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AUG 3 1990

CBJ - LAW DEPT.

July 31, 1990

Mr. John Corso
Deputy Attorney
City and Borough of Juneau
155 South Seward Street
Juneau, AK 99801

Dear Mr. Corso:

You recently inquired about step annexation and the option to defer the effective date of annexation in regard to the Greens Creek Mine.

We believe that the Local Boundary Commission has the authority to delay the effective date of an annexation. In a January 17, 1984 opinion (copy enclosed), Assistant Attorney General James L. Baldwin concluded:

We believe the provisions of section 12 (Article X of the State Constitution) do not restrict the power of the local boundary commission to delay the operative date of the boundary change. . . .

There is no express provision in either the statute or the regulations dictating the time that a boundary change is to become operative. Therefore, the only restraint on the agency's choice of annexation method is the requirement that there be no abuse of discretion.

We are uncertain, however, whether the option of step annexation would be appropriate in this instance. Laws allowing step annexation were enacted as an alternative to immediate annexation. The step annexation provision allows for gradual assimilation of contiguous areas into a municipality where direct annexation would be premature or impractical. We are unaware of circumstances which indicate that it may be "premature or impractical" for direct annexation of the Greens Creek Mine to the City and Borough of Juneau.

EXHIBIT A

Mr. John Corso
July 31, 1990
Page Two

Further, laws regarding step annexation provide only for the annexation to a city of contiguous territory "upon a majority approval of the voters of the contiguous area to be annexed . . ." (see AS 44.47.567(a)(4), AS 44.47.567(b)(2) and 19 AAC 10.740 - 790). Whether a unified municipality could annex an unpopulated area using this method is unclear.

If you wish to further consider the option of step annexation, we would appreciate the opportunity to discuss the matter with you. Please contact Dan Bockhorst or myself.

Sincerely,


Marty Rutherford
Director

enclosure: January 17, 1984 memorandum from James L. Baldwin

cc with enclosure:

The Honorable Bruce Botelho, Mayor, City and Borough of Juneau
Members of the Local Boundary Commission
Marjorie Odland, Assistant Attorney General

EXHIBIT A

MEMORANDUM

State of Alaska

TO: Jim Sanders
Local Boundary Commission

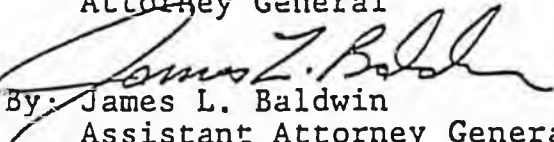
DATE: January 17, 1984

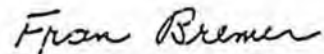
FILE NO:

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Delaying effective
date of boundary
change


By: James L. Baldwin
Assistant Attorney General
Governmental Affairs-Juneau


By: Fran Bremer, Legal Intern
Governmental Affairs-Juneau

You have asked us whether the local boundary commission can validly delay the effective date of a boundary change for two years, contingent on the holding of an election for the unification of the Borough and City of Haines. The answer is yes.

Article X, section 12 of the Alaska Constitution provides for the establishment of a local boundary commission, which may present a proposed boundary change to the legislature within the first 10 days of the session. Section 12 provides, "[t]he change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house." AS 44.47.583 repeats essentially the same language: "the change becomes effective 45 days after the presentation"

An examination of the minutes of the constitutional convention shows that the wording of section 12 was not intended to set a definite date on which the boundary change was to physically occur. 4 Proceedings of the Alaska Constitutional Convention 2750-2753 (Jan. 20, 1956). Rather, the language was intended as a limit on the legislature's power to disapprove a proposed boundary change.

At the convention, an amendment was introduced which required active legislative approval of a proposed boundary change. The delegates discussed the merits of permitting the proposed change to occur without legislative intervention, and rejected the amendment. 4 Proceedings at 2751. It is clear from comments made during floor debate that the delegates' main concern was the potential for delay caused by conditioning a boundary change on legislative approval. A delegate noted that a boundary change could be "difficult to get through if it is going

EXHIBIT C

to affect somebody's constituents." Id. Others noted that changes must be submitted to the legislature "but in the press of business ... they may not get around to consider such little things as a minor boundary change ..." and that "this little boundary adjustment will go from session to session ... because they won't have time to make it approved." Id. The 45-day limit on the legislature's power to disapprove avoided the possibility that the boundary change could go "from session to session" without being decided. See also A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980)(discussion of article X, section 12 in terms of the power of the legislature to veto executive action).

We believe the provisions of section 12 do not restrict the power of the local boundary commission to delay the operative date of the boundary change. Alaska courts have recognized that annexation decisions involve policy choices that are incapable of judicial resolution. Port Valdez Co., Inc. v. City of Valdez, 522 P.2d 1147 (Alaska 1974); U.S. Smelting, Refining & Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971). The local boundary commission was created to provide an expert and experienced agency to make these policy choices within the guidelines set out by law and regulation. See Town of Stillwater v. Minn. Municipal Comm'n, 219 N.W.2d 82, 87 (Minn. 1974)(commenting on the Minnesota Municipal Commission, whose structure and function is similar to that of the local boundary commission). Accordingly, the statutory scheme grants the commission broad power in matters affecting local boundaries. AS 44.47.565 -- 44.47.583. There is no express provision in either the statute or the regulations dictating the time that a boundary change is to become operative. Therefore, the only restraint on the agency's choice of annexation method is the requirement that there be no abuse of discretion. Port Valdez, 522 P.2d at 1151. The commission's decision to allow a two-year delay was a reasoned choice between the competing objectives of encouraging cooperation between the city and borough, and that of settling boundary questions promptly to facilitate planning and assure responsiveness to current conditions. The commission's choice of method -- to delay the operative date -- is analogeous to an agency's power to delay the effective date of a regulation under AS 44.62.180(4). We, therefore, conclude that the commission has the power to delay the operative date of the annexation for two years.

FB/pjg

EXHIBIT C

MEMORANDUM

State of Alaska

TO: Marty Rutherford, Director
Municipal & Regional Asst. Div.
Dept. of Community & Regional
Affairs

DATE: July 23, 1985

FILE NO. 366-034-86

TELEPHONE NO. 465-3600

FROM: Harold M. Brown
Attorney General

SUBJECT: LBC authority to detach an area from an organized borough

By: Jonathan B. Rubini
Assistant Attorney General
Governmental Affairs-Juneau

You have asked whether the Local Boundary Commission (LBC) enjoys the legal authority to present to the legislature a petition which provides for the detachment of an area from an organized borough if, but only if, the area to be detached is included within a newly-formed borough. Upon your request to expedite our review of this matter, we stated our oral advice that the LBC does enjoy the requisite legal authority. We briefly set out our views below.

We are advised that the North Slope Borough presently has under consideration a proposal to detach that portion of the borough which is included within the NANA Regional Corporation. The area in question includes the Red Dog mineral deposit, and inclusion of the Red Dog site is considered essential to the formation of a new borough encompassing the NANA Regional Corporation territory.

Article X, section 12 of the Alaska Constitution provides for the establishment of the LBC, and further directs the LBC to "consider any proposed local government boundary change." (Emphasis added.) Boundary changes approved by the LBC are presented to the legislature and "shall become effective forty-five days after presentation ... unless disapproved by a [concurrent resolution]."

We have previously stated our view that the LBC enjoys broad, inherent legal authority in the discharge of its constitutional and statutory obligations. 1982 Inf. Op. Att'y Gen. (J66-585-01; Oct. 25) (copy attached). Our conclusion in this regard reflects the series of Alaska Supreme Court decisions which reflect the court's deference to recommendations and procedures adopted by the LBC. See Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974); Cesau v. City of Billingsham, 459 P.2d 190 (Alaska 1968); Fairview Public Utilities District Number One v. City of Anchorage, 508 P.2d 540 (Alaska 1962). Cesau is particularly illuminating, since in that case the court explicitly noted that the LBC enjoys the authority to dissolve a city notwithstanding the absence of express statutory authority to do so. Cesau, 439 P.2d at 183.

EXHIBIT D

Marty Rutherford, Director
CNA--Municipal & Regional Asst. Division
366-054-86

July 23, 1985
Page #2

The immediate question is whether the constitutional effective date provision precludes the LBC presentation of a qualified boundary change, that is, a proposal which takes effect at some point -- and for some reasons -- unrelated to the 45-day provision. In most instances, the affirmative action of the legislature is required to initiate legislative action. In this instance, as in the case of legislative review of executive orders under article III, section 23, the constitution uniquely authorizes legislative "approval" through inaction. The provision reflects deference to the LBC and a desire to compel expeditious legislative attention to a LBC proposal. The constitutional provision should not be construed as a substantive limit to the otherwise broad delegation of legislative powers to the LBC. Indeed, the effective date provision is not necessarily in conflict with the broad authority of the LBC. Viewed properly, the effective date clause relates to the LBC proposal, not the underlying boundary change. Were the LBC to exercise its inherent authority to present a qualified proposal to the legislature, the proposal -- as qualified by the LBC -- takes effect 45 days after submission unless disapproved by concurrent resolution. Accordingly, we believe that the LBC enjoys the legal authority to present a qualified proposal to the legislature.

We further note that regulations adopted by the LBC further confirm the authority to present a qualified proposal. 19 AAC 10.240(b) provides:

(b) If, in fulfilling the requirement of (a) of this section, the petitioners have proposed the incorporation of a new municipality, the commission will, in its discretion, condition approval of the detachment upon voter approval of the incorporation proposal.

The regulation expressly authorizes the LBC to condition a detachment petition upon the subsequent incorporation of a municipality including the detached area. By direct implication, the regulation reflects that the LBC may condition a detachment petition upon the subsequent incorporation of a new borough. See 1982 Inf. Op. Att'y Gen. (J66-535-81; Oct. 25). See generally U.S. Smelting, Refining and Mining Co. v. Local Boundary Comm'n, 469 P.2d 140 (Alaska 1971).

If you have any other questions, please feel free to call.

JBR/pig
Enc.

EXHIBIT D

REPRESENTATIVE
JERRY MACKIE

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CHAIRMAN,
COMMUNITY & REGIONAL AFFAIRS COMMITTEE

VICE CHAIRMAN,
TRANSPORTATION COMMITTEE

Alaska State Legislature



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(907) 465-4925

House of Representatives

MEMORANDUM

TO: Representative Gene Kubina, Chair *GKB*
House State Affairs Committee

FROM: Representative Jerry Mackie *JM*

DATE: March 18, 1992

RE: Scheduling of HB 507

HB 507, relating to certain annexation proposals submitted by the Local Boundary Commission to the Legislature, has been referred to your committee. I respectfully request a hearing on this bill at your earliest convenience.

I am attaching a copy of my sponsor statement on HB 507, along with the necessary backup materials. Please contact me if you need any additional information.

REPRESENTATIVE
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CHAIRMAN,
COMMUNITY & REGIONAL AFFAIRS COMMITTEE

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Alaska State Legislature



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SPONSOR STATEMENT

HB 507

HB 507 would prohibit the Local Boundary Commission (LBC) from submitting an annexation proposal with a deferred effective date to the legislature.

This bill was introduced as a result of the Community and Regional Affairs Committee's hearings on the annexation of the Greens Creek Mine by the City and Borough of Juneau. When I read the reports of the Department of Community and Regional Affairs (DCRA), and the decisions of the LBC on the proposal, my instinctive reaction was to agree that delayed effective dates are not good public policy.

On September 6, 1990, the LBC stated that the deferred effective date set poor public policy, would allow an organized borough to "lock-up" parts of the unorganized borough without exercising jurisdiction or control, and was counter to the interests of the state (see Senate House Joint Journal Supplement No. 18, page 9).

On June 4, 1991, the Department of Community and Regional Affairs, in their analysis and recommendation to the LBC on the deferred effective date of the Greens Creek Annexation, pages 15-16, stated that the standards for borough annexation contemplate immediate annexation, would have an adverse financial impact on the state, and is contrary to the state's goal of diminishing reliance on the State to support local services. Additionally, DCRA felt that an annexation deferred to provide relief from taxation would inspire others to seek similar treatment; that such manipulation of government boundaries is counter to the Constitutional provisions requiring boroughs to embrace an area and population with common interests to the maximum degree possible.

Sponsor Statement
HB 507

Article X, section 12 of the Constitution, regarding annexation proposals submitted for legislative approval, provides that The change shall become effective forty-five days after presentation or at the end of the session, whichever comes earlier. I believe this section of the constitution is what DCRA was referring to in their 1991 report regarding standards for annexation contemplating immediate annexation. Even our own legal staff agrees that there is a legitimate question as to whether the LBC can provide for a delayed effective date (see February 11, 1992 opinion, work order No. 7-LS1980).

I believe HB 507 will place into statute what the members of the Constitutional Convention envisioned regarding borough boundaries, and I urge your support.

H B

5 2 2

7-LS2077J ✓
Chenoweth
4/7/92

CS FOR HOUSE BILL NO. 522 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE KOPONEN

A BILL

FOR AN ACT ENTITLED

1 "An Act imposing a real estate conveyance tax; providing for sharing with municipalities
2 of a portion of the revenue obtained from the tax; authorizing certain municipalities to
3 levy and collect a real estate conveyance tax; adding to the duties of the recorder
4 applicable to disclosure of information involving certain public records, and amending the
5 formal requisites of recording a conveyance; and providing for an effective date."

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

7 * Section 1. AS 43 is amended by adding a new chapter to read:

8 CHAPTER 33. REAL ESTATE CONVEYANCE TAX.

9 Sec. 43.33.010. TAX IMPOSED. There is imposed an excise tax upon each conveyance
10 of real property at the rate of one percent of the selling price of the real property.

11 Sec. 43.33.020. TAX CONSTITUTES LIEN. The tax imposed by AS 43.33.010 and the
12 interest or penalties on the tax are a specific lien upon each piece of real property conveyed from
13 the time of conveyance until the tax has been paid.

1 Sec. 43.33.030. SELLER'S OBLIGATION TO PAY TAX. Payment of the tax imposed
2 by this chapter is the obligation of the seller.

3 Sec. 43.33.040. EVIDENCE OF PAYMENT. (a) The tax shall be paid to and collected
4 by the recorder of the recording district in which the real property that was conveyed is located.
5 The recorder shall affix a stamp evidencing satisfaction of the lien to the instrument of
6 conveyance before its recording. A receipt issued by the recorder for the payment of the tax
7 imposed under this chapter is evidence of the satisfaction of the lien of the tax and may be
8 recorded in the manner prescribed for recording satisfactions of mortgages.

9 (b) An instrument evidencing a conveyance subject to the tax may not be accepted by
10 the recorder for filing or recording under AS 40.17 until a tax affidavit form has been completed,
11 the tax has been paid, and the stamp affixed. In a case in which the tax is not due on the
12 transfer, the instrument may not be accepted for recording until suitable notation of the exception
13 has been made on the instrument by the recorder.

14 Sec. 43.33.050. REPORTING REQUIREMENTS FOR CONVEYANCE. The department
15 shall prescribe

16 (1) minimum standards for uniformity in reporting, application, and collection of
17 the tax;

18 (2) a tax affidavit form that must contain, at least, the following:

19 (A) identification of the seller and purchaser;

20 (B) description of the property involved, including the tax parcel or
21 account number;

22 (C) date of conveyance, type of instrument of conveyance, and nature of
23 transfer;

24 (D) gross sales price of the parcel; and

25 (E) signatures of both the purchaser and seller, under oath.

26 Sec. 43.33.060. DETERMINING SELLING PRICE. (a) The department shall

27 (1) provide by regulation for cases where the selling price is not separately stated
28 or is not ascertainable at the time of conveyance, and for payment of the tax at a time when the
29 selling price is ascertained, in which case suitable security may be required for payment of the
30 tax; and

31 (2) provide for the determination of the selling price under (1) of this subsection

1 by an appraisal by the state assessor, a municipal assessor, or a local appraiser, based on the full
2 and true market value of the property conveyed; an appraisal under this paragraph is prima facie
3 evidence of the selling price of the real property.

4 (b) The department shall provide by regulation for the determination of the selling price
5 in the case of a lease with option to purchase, and may provide that the tax is not payable, if
6 inequity will otherwise result, until the option is exercised and the property sold.

7 Sec. 43.33.070. DISTRIBUTION OF REVENUE. Subject to legislative appropriation,
8 from the proceeds of the tax collected under this chapter, excluding penalties and the amount
9 determined to have been spent by the state in its collection, the department shall pay one-half of
10 the revenue received

11 (1) to each unified municipality, each city in the unorganized borough, and each
12 borough for the area outside cities, in proportion to the revenue that was earned within them; and

13 (2) to cities and boroughs for the area of each borough that is inside cities, in
14 proportion to the revenue that was earned within them; the payment under this paragraph shall
15 be divided equally between the city and the borough.

16 Sec. 43.33.100. DEFINITIONS. In this chapter,

17 (1) "conveyance"

18 (A) means

19 (i) a grant, assignment, quitclaim, sale, or transfer of the ownership
20 of or title to real property, or any estate or interest in real property for a valuable
21 consideration;

22 (ii) a contract for a conveyance, grant, assignment, quitclaim, or
23 transfer of real property;

24 (iii) a lease with an option to purchase real property, or any estate
25 or interest in real property; or

26 (iv) a contract under which possession of the property is given to
27 the purchaser, or another person at the purchaser's direction, and title is retained
28 by the seller as security for the payment of the purchase price;

29 (B) does not include

30 (i) a lease, except a lease under (A)(iii) of this paragraph;

31 (ii) a transfer by gift, devise, or inheritance;

- 1 (iii) a cancellation or forfeiture of a purchaser's interest in a
2 contract for the conveyance of real property, whether or not the contract contains
3 a forfeiture clause;
- 4 (iv) a deed in lieu of foreclosure of a mortgage or the assumption
5 by a grantee of the balance owing on an obligation that is secured by a mortgage
6 or deed in lieu of forfeiture of the purchaser's interest in a contract of sale of real
7 property, where no consideration passes;
- 8 (v) a partition of property by tenants in common by agreement or
9 as the result of a court decree;
- 10 (vi) a transfer, conveyance, or assignment of property or interest
11 in property from one spouse to the other under the terms of a decree of divorce
12 or in fulfillment of a property settlement agreement;
- 13 (vii) the assignment or other transfer of a seller's interest in a
14 contract for the sale of real property, even though accompanied by a conveyance
15 of the seller's interest in the real property involved;
- 16 (viii) a transfer by appropriation or decree in condemnation
17 proceedings brought by the United States, the state, or a municipality;
- 18 (ix) a mortgage or other transfer of an interest in real property to
19 secure a debt or the assignment of a debt, or a document that reconveys or
20 releases an interest that was held to secure a debt;
- 21 (x) a transfer or conveyance made under an order of sale by the
22 court in a mortgage or lien foreclosure proceeding or upon execution of a
23 judgment, or deed in lieu of foreclosure to satisfy a mortgage;
- 24 (xi) a conveyance to the Federal Housing Administration or the
25 United States Department of Veterans Affairs by an authorized mortgagee made
26 under a contract of insurance or guaranty with the Federal Housing Administration
27 or the United States Department of Veterans Affairs;
- 28 (xii) a transfer in compliance with the terms of a lease or contract
29 upon which the tax as imposed by this chapter has been paid or where the lease
30 or contract was entered into before January 1, 1993;
- 31 (xiii) the sale of a grave or lot in an established cemetery;

1 (xiv) a sale by or to the United States, the state, or a municipality;
 2 (xv) a conveyance of land or an interest in land by a Native
 3 corporation, as that term is defined in 43 U.S.C. 1602, to the United States if the
 4 conveyance of the land or the interest by the Native corporation is made for cash
 5 or credit;

6 (2) "real property" means an estate in land, and includes mobile homes;

7 (3) "selling price"

8 (A) means the consideration, including money or anything of value, paid
 9 or delivered or contracted to be paid or delivered in return for the conveyance of the real
 10 property or an estate or interest in real property;

11 (B) includes the amount of a lien, mortgage, contract indebtedness, or
 12 other encumbrance, either given to secure the purchase price or as a part of the purchase
 13 price, or remaining unpaid at the time of conveyance of the real property or an estate or
 14 interest in real property;

15 (C) does not include the amount of an outstanding lien or encumbrance
 16 in favor of the United States, the state, or a municipality for taxes or special assessments;

17 (4) "tax" means the real estate conveyance tax imposed by AS 43.33.010.

18 * Sec. 2. AS 29.10.200 is amended by adding a new paragraph to read:

19 (51) AS 29.45.750 (real estate conveyance tax)

20 * Sec. 3. AS 29.45 is amended by adding a new section to read:

21 ARTICLE 6. REAL ESTATE CONVEYANCE TAX.

22 Sec. 29.45.750. REAL ESTATE CONVEYANCE TAX AUTHORIZED. (a) A unified
 23 municipality and a first or second class borough may impose an excise tax upon each conveyance
 24 of real property within the municipality. If the unified municipality imposes a tax, the rate of
 25 the tax may not exceed one percent of the selling price of the real property.

26 (b) The tax levied by a unified municipality or first or second class borough under (a)
 27 of this section shall be paid to and collected by the recorder of the recording district in which
 28 the real property that was conveyed is located. The recorder shall affix a stamp evidencing
 29 satisfaction of the lien to the instrument of conveyance before its recording. A receipt issued by
 30 the recorder for the payment of the tax imposed under this chapter is evidence of the satisfaction
 31 of the lien of the tax and may be recorded in the manner prescribed for recording satisfactions

1 of mortgages.

2 (c) The recorder shall remit payment of the tax imposed by a unified municipality or a
3 first or second class borough under (a) of this section to the municipality in which the real
4 property that was conveyed is located.

5 (d) An instrument evidencing a conveyance subject to the tax may not be accepted by
6 the recorder for filing or recording under AS 40.17 until the tax has been paid and the stamp
7 affixed. In a case in which the tax is not due on the transfer, the instrument may not be accepted
8 for recording until suitable notation of the exception has been made on the instrument by the
9 recorder.

10 (e) In this section,

11 (1) "conveyance" has the meaning given in AS 43.33.100;

12 (2) "selling price" has the meaning given in AS 43.33.100;

13 (3) "tax" means the real estate conveyance tax authorized by (a) of this section.

14 (f) This section

15 (1) applies to home rule boroughs and general law boroughs;

16 (2) does not apply to third class boroughs, whether home rule or general law.

17 * Sec. 4. AS 40.17.030(a) is amended to read:

18 (a) To be eligible for recording, a document must be

19 (1) legible or capable of being converted into legible form by a machine or device
20 used in the recording office;

21 (2) capable of being copied by the method used in the recording office;

22 (3) accompanied by the proper fee for recording and include or be accompanied
23 by information, stamps, certificates, taxes, or fees that under AS 29.45.750, AS 43.33, and other
24 laws are necessary to qualify the document for recording;

25 (4) accompanied by or include the information needed to index the document
26 under regulations of the department;

27 (5) accompanied by or include the name and address of the person to whom the
28 document is to be returned after recording; and

29 (6) accompanied by or include the mailing addresses of all persons named in the
30 document who grant or acquire an interest under the document if it is a conveyance; this
31 paragraph does not apply to a release of a security interest.

1 * Sec. 5. AS 40.17.070 is amended by adding a new subsection to read:

2 (j) After recording, the recorder shall report to the assessor of a municipality in which
3 property subject to the tax imposed by AS 43.33 is located the gross sales price, as stated in the
4 tax affidavit prescribed under AS 43.33.050, of each parcel of property that is conveyed within
5 the municipality and that is subject to that tax.

6 * Sec. 6. This Act takes effect January 1, 1993.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

April 7, 1992

SUBJECT: Draft CSHB 522 () (Work Order No. 7-LS2077J)

TO: Representative Niilo Koponen
ATTN: Ron Clarke

FROM: Jack Chenoweth
Legislative Counsel 

Since I've not heard from the House Community and Regional Affairs Committee staff, I am sending the draft to you. You may offer it to the Community and Regional Affairs Committee.

While there is a sound argument to be offered in support of removal of sections 2 and 3 of the bill, caution suggests that explicit municipal authority to levy and collect this tax remain. Under AS 29.35.010(6), all municipalities have the right to "levy a tax or special assessment" The breadth of the grant is consistent with article X, section 1's directive that "[a] liberal construction shall be given to the powers of local government units." Liberati v. Bristol Bay Borough, 584 P.2d 1115, 1120 (Alaska 1978) (municipal levy of raw fish tax upheld). There are no prohibitions in AS 29 as to a municipality's levying and collecting a real estate conveyance tax. Those who argue that state law need not explicitly authorize the levy and collection of this kind of tax by municipalities have the weight of that argument in their favor.

However, the subject matter does involve a tax and, at least in other jurisdictions, historically courts have usually tended to construe the authority to levy and collect taxes narrowly. While there is every good reason to believe that the courts would follow the constitutional directive and the general statutory grant to uphold a municipality's levy and collection of a conveyance tax without the enactment of these two sections, that conclusion is not certain. Moreover, by implication, the provisions in this bill would preclude cities from the levy and collection of the tax.

So, in my view, the provision probably should remain. It must remain if, as you have sought, only certain unified municipalities and boroughs are to levy the tax (leaving third class boroughs and all cities without the ability to levy). But even if you were

Representative Niilo Koponen

April 7, 1992

Page 2

to allow all municipalities to levy and collect the conveyance tax, putting the authority into the statutes probably forecloses litigation as to whether these municipalities may do so. Out of an abundance of caution, I would retain the provisions but, based on the justification set out above, their removal would not necessarily preclude municipalities from enacting an ordinance to impose the levy at the local level.

JBC:pl

92-246.plm

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 522

Revision Date: _____
Title: Real Estate Conveyance Tax
Sponsor: Representative Koponen
Requestor: Representative Koponen

Department Affected: Community and Regional Affairs
BRU: Local Government Assistance
Component: State Assessor

COMPONENT SERIAL NO.

0	6	7	3
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	*0	*0	*0	*0	*0	*0

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

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	*0	*0	*0	*0	*0	*0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	*0	*0	*0	*0	*0	*0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

* The impact on the State Assessor's office is indeterminate but thought to be minimal. The only reference to the department or the State Assessor's office is on page 2, line 30, and only creates the possibility of a duty to provide service.

Prepared By: Remond Henderson
Division: Administrative Services Division
Approved by Commissioner: Ed. Ruth
Agency: Department of Community and Regional Affairs

Phone: 465-4708
Date: 3/31/92
3 - 81-92 /
Date: _____

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).
Rev 10/7/91

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 522

Revision Date: March 31, 1992
Title: Real estate conveyance tax and providing for tax sharing
Sponsor: Rep. Koponen
Requestor: _____

Department Affected: Department of Revenue
BRU: Revenue Operations
Component: Income and Excise Audit

COMPONENT SERIAL NO. | 1 | 1 | 3 |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	5.8	5.8	5.8	5.8	5.8	5.8
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	5.8	5.8	5.8	5.8	5.8	5.8
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE FUND SOURCE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	5.8	5.8	5.8	5.8	5.8	5.8
FEDERAL FUNDS						
OTHER FUND SOURCE						
TOTAL	5.8	5.8	5.8	5.8	5.8	5.8

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS:

SEE ATTACHED

Prepared By: Paul Dick Phone: (907) 465-2320
Division: Income and Excise Audit Date: March 31, 1992
Approved by Commissioner: Darrel J. Rexwinkel Date: _____
Agency: Department of Revenue

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Intent

HB 522 imposes an excise tax on real property conveyances and provides for sharing a portion of the revenues collected to municipalities based on the location of the real property. This bill also authorizes municipalities and boroughs to impose local conveyance taxes in conjunction with the state conveyance tax.

Analysis

Effective January 1, 1993, this bill imposes an excise tax upon each real property conveyance at a rate of 1% of the selling price of the property. Under this bill, the tax will be paid to and collected by the recorder of the recording district in which the real property was conveyed. Before any conveyance could be recorded, the recorder would be required to affix a stamp to the instrument as evidence of payment of the tax.

This bill requires the Department of Revenue to prescribe standards for collecting and reporting the tax, and specifications for a tax affidavit to be filed with the recorder. The department would also be required to establish regulations in regard to determination of the sales price for conveyances.

Administratively, the recorder would account for and deposit all conveyance tax receipts and then periodically report to the Department of Revenue the total taxes collected along with a schedule of the locations of the conveyances for tax sharing purposes.

The Department of Revenue would assess and collect delinquent state conveyance taxes, penalties and interest as authorized under AS 43.05 and AS 43.10 respectively. Because the municipal and borough conveyance taxes are codified under AS 29 in this bill, the department would not have authority to assess and collect local taxes.

Tax Sharing

Under section 1 of this bill, 50% of revenues collected by the state will be shared to communities where the conveyances were located. For those cases in which the city is located in an organized borough, the department would share the 50% amount equally between the city and the borough, thus the city would receive 25% and the borough 25% of the tax receipts.

The department would annually share the state taxes to the municipalities and boroughs after the close of the fiscal year ending June 30. For municipal or borough conveyance taxes, the recorder would directly remit those taxes collected to the respective municipality or borough.

Penalties and the amount spent by the state in collection of the conveyance taxes would be excluded from the amount shared to municipalities and boroughs.

Fiscal Note Analysis, 'B 522
Income and Excise Audit Division
Prepared by Paul Dick
March 31, 1992
Page 2

Operating Costs

The Department of Natural Resources (recorders) will collect and account for the conveyance taxes. The Department of Revenue's involvement in administering the tax program will be limited to sharing taxes and collecting delinquent taxes. Accordingly, the personal services costs in this fiscal note reflect the apportioned time needed for the department to administer its duties.

Personal Services			<u>\$5.8</u>
Accounting Technician II	Tax Sharing	75 hours	2.2
Accounting Technician I	Collections	150 hours	3.6

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 522

Revision Date: 1-Apr-92 Department Affected: Natural Resources
 Title: Real Estate Conveyance Tax BRU: Management & Administration
 Components: Recorder's Office
 Sponsor: Representative Koponen
 Requestor: House Community & Regional Affairs COMPONENT SERIAL NO. 802

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	307.3	240.8	240.8	240.8	240.8	240.8
TRAVEL	15.0	15.0	15.0	15.0	15.0	15.0
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	9.0	9.0	9.0	9.0	9.0	9.0
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	336.3	269.8	269.8	269.8	269.8	269.8

CAPITAL	* 3,000.0					
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REVENUE						
Funding Source:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER GF/PR						
Funding Source: 1007	3,336.3	269.8	269.8	269.8	269.8	269.8
TOTAL	3,336.3	269.8	269.8	269.8	269.8	269.8

POSITIONS:

FULL-TIME	4.0	4.0	4.0	4.0	4.0	4.0
PART-TIME	2.0	2.0	2.0	2.0	2.0	2.0
TEMPORARY	1.0					

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

* Revolving Loan Fund for Appraisal.
See Attached

Prepared by: Cindy Wilkinson Phone: 465-3425
 Division: Management and Administration Date: 1-Apr-92

Approved by Commissioner: Harold C. Heinz Date: 1-Apr-92
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB,
& Impacted Agency(ies).

FISCAL NOTE HB 522

This bill would change the procedures for the recording of conveyance documents in the Recorder's/UCC Section, Commissioner's Office, Department of Natural Resources.

EFFECTS OF ENACTMENT ON RECORDER'S/UCC SECTION:

Sec. 43.33.010. TAX IMPOSED. This bill imposes an excise tax upon each conveyance of real property at the rate of 1% of the selling price of the real property.

Sec. 43.33.020. TAX CONSTITUTES LIEN. Interest and penalties would have to be figured by someone other than the Recorder's office for collection.

Sec. 43.33.040. EVIDENCE OF PAYMENT. The excise tax will be collected by the recorder's office in which the real property being conveyed is located. According to this section of the bill, a receipt will be issued by the recorder for the payment of the tax, and is evidence of the satisfaction of the lien of the tax, and may be recorded in a manner prescribed for recording satisfactions of mortgages. The statewide total of all deeds and sales contracts for calendar year 1991 was 28,356 documents. This figure does not include leases with option to purchase, or notices of interest in real property. Currently, the recording and receipting time for a conveyance averages 5 to 10 minutes. With the state excise tax, the time to record the tax affidavit (Sec. 43.33.050) and the conveyance concurrently, will increase the recording time by another 15 minutes. At an estimated 30,000 conveyances, the total time for recording and receipting will increase by 7,500 hours. This will create the need for an additional 4 full time recorder positions.

Sec. 43.33.060. DETERMINING SELLING PRICE. The Department of Natural Resources will be responsible for writing regulations to determine the selling price of real property. This will require a Certified Public Accountant position at a Range 20 for one year.

Sec. 43.33.070. DISTRIBUTION OF REVENUE. Costs to load data on to the table file will be an initial \$1200, and \$2000 a year to generate checks to the municipalities for one or both taxes.

Sec. 29.45.750. REAL ESTATE CONVEYANCE TAX AUTHORIZED. A unified municipality and a first or second class borough may impose an excise tax of up to 1% to be collected by the recorder in the recording district where the real property is being conveyed. With a state and municipal/borough tax, the time to record and receipt the taxes will increase the recording time for a conveyance by 20 minutes. At an estimated 30,000 conveyances, the total time for recording and receipting will increase for the year by 12,500 hours. This will create the need for an additional 7 full time positions.

Increased revenue: There will be an increase in revenue in the recording fees created by this bill. With the state tax affidavit recorded as a separate document from the conveyance, an extra \$15 per affidavit will be generated. At an estimated 30,000 conveyance documents, the increased revenue would be \$450,000.

Personal Services (100)				\$307.3
Auditor (CPA)	20A	Anchorage	66.5	(1 year only)
Recorder II (0339)	10F	Bethel	19.9	(4 mo.)
Recorder II (0333)	10J	Nome	20.0	(4 mo.)
Recorder II (0364)	10E	Sitka	15.0	(4 mo.)
Recorder II (0329)	10B	Ketchikan	19.7	(6 mo.)
Recorder I	8A	Anchorage	32.8	
Recorder I	8A	Fairbanks	33.9	
Recorder I	8A	Fairbanks	33.9	
Recorder I Part time	8A	Kenai	16.4	
Recorder I Part time	8A	Ketchikan	16.4	
Recorder I	8A	Palmer	32.8	

A Certified Public Accountant position, Range 20, will need funding for one year. This position will write the regulations needed under Sec. 43.33.060.

Travel (200)

15.0

Travel is needed for Regional Manager's to travel to satellite offices for training in new procedures. Travel for public meetings to be held in all locations. CPA travel to unified municipalities and first/second class boroughs during the regulation writing process.

Contractual (300)

5.0

Courier services in Anchorage and Fairbanks only for transportation of bank deposits.

Commodities (400)

9.0

State tax stamps

State excise stamps will have to be printed in different values to equal the amount of the tax paid. If municipal/borough taxes are imposed, stamps for these taxes will also have to be printed. A mechanical hand stamp could be procured to take the place of regular stamps.

Capital

Revolving loan fund

3,000.0

A 3,000.000 revolving loan fund will be established for appraisal fees. These fees will be reimbursed to the recorder at the time the excise tax is paid.

TOTAL

\$3,336.3

NOTES:

1. State tax, Sec. 43.33.040 will require additional recorder positions. The following Recorder II's will be reinstated to full time from part time positions:

Bethel, Range 10F

Nome, Range 10J

Sitka, Range 10E

Ketchikan, Range 10B

The following offices will need one full time Recorder I:

Fairbanks, Range 8A

Anchorage, Range 8A

Formula for figuring extra positions: 30,000 documents X 15 minutes extra time = 450,000 minutes. 450,000 minutes divided by 60 minutes = 7,500 hours. 7,500 hours divided by 7.5 = 1,000 days. 1,000 days divided by 250 working days = 4

Municipal/borough tax, Sec. 29.45.750 will require an additional 3 Recorder positions together with the 4 positions needed for the state tax. The following offices will need one full time Recorder I positions:

Anchorage, Range 8A
Fairbanks, Range 8A

Palmer, Range 8A
Fairbanks, Range 8A
Kenai, Range 8A, Part time
Ketchikan, Range 8A, Part time

Formula for figuring extra positions: 30,000 documents X 25 minutes = 750,000. 750,000 divided by 60 minutes = 12,500 hours. 12,500 hours divided by 7.5 hours = 1,667 days. 1,667 working days divided by 250 working days = 7 employees.



ALASKA ASSOCIATION OF REALTORS, INC.
741 Sesame Street, Suite 100 • Anchorage, Alaska 99503
Telephone 907-563-7133

March 18, 1992

Representative Niilo Koponen
Room 503, Capitol
P.O. Box V
Juneau, AK. 99811

Dear Sir,

I am writing on behalf of the Alaska Association of REALTORS® concerning H.B. 522, the Real Estate Conveyance Tax bill. The Association, by an action of the Board of Directors, is opposing passage of H.B. 522.

To impose a conveyance tax for the transfer of real property in a barely recovering real estate market does nothing but hamper that recovery. Many Alaskan homeowners are still saddled with a negative home equity, making it difficult to sell, if not impossible.

In addition, although H.B. 522 provides only for a 1% tax, historically opening the door on this type of tax is just the beginning! Several other states, such as Connecticut, have seen the reconveyance tax rise from 1% to 7% or 8%. (Or in real dollar terms, from \$1,000 on a \$100,000 home sale to \$7,000 or \$8,000 on a \$100,000 sale.)

The State of Alaska has made a commitment to safe, affordable housing for all its citizens; the Association requests reconsideration of H.B. 522 in light of its effect on that goal and the ultimate results.

Sincerely,



Dale Price
President

cc: AAR Board of Directors
CRA Committee





DON BRENDGARD
CRB, ASSOCIATE BROKER

3/5/92

Representative Jerry Mackie
Alaska State Legislature
State Capitol Room #110-C
Juneau, AK 99801-1182

Dear Representative Mackie,

I am writing to express my objection to HB #522, a bill to allow the imposition of a real estate conveyance tax.

This bill will have an impact on the buyers of real estate in the state of Alaska that will be very negative to the economy. On a home valued at only \$100,000 it could have the affect of adding an extra \$2,000.00 in closing costs and there by eliminate a large group of people from buying homes. I think this is counter productive to getting the state into a healthy economy.

The thing to do, instead of raising taxes like this bill would do, would be to broaden the tax base by encouraging people to buy homes, not hinder them from buying.

I feel very strongly we as a state must reduce our spending, not raise more taxes.

Sincerely,

A handwritten signature in cursive script, appearing to read "Don".

Don Brendgard

3230 "C" Street #102
Anchorage, AK 99503
FAX (907) 273-2473

HERITAGE
REAL ESTATE
(907) 562-1222 Office

3431 Harrier Cir
Anchorage, AK 99504
(907) 337-0687 Home

February 28, 1992

Jerry Mackie
Ch:Community and Regional Affairs
Room 124 Capital Building
Juneau, AK 99801-1182

Dear Honorable Jerry Mackie,

In regards to HB 522;

I am in favor in the passage of this bill. It should come as no surprise to any of your constituents that the North Slope Gravy Train is nearing its economic life span. After examining the bill in its present form it would appear that Municipalities with no tax base except for real property belonging to native corporations could at least potentially participate in paying for their share of education and other essential services now provided at no cost.

Full disclosure and a public record of the sales price would be a tremendous value to the Fairbanks North Star Borough for purposes of accurate property tax assessment. It would also assist appraisers, real estate salespersons, and lenders in determining fair market value for real property.

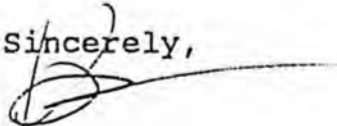
I suggest that there be an exemption for single family houses and duplexes. rather than pick a dollar number out of the air I recommend using the Acquisition cost limits that Alaska Housing Finance uses for their Tax-exempt financing program as the amounts of the exemption.

Single family - new	\$146,610
Single family - existing	\$93,780
Duplex - existing	\$105,596

These limits are increased from time to time to inflation proof the program. An amendment using these limits as the exemption amount would help to mollify expected howls of protest from the real estate community as well as not making it difficult for a home-buyer to purchase a modestly priced home.

Please distribute copies of this letter to your committee members

Sincerely,


Karl Schroeder
Sales Associate

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
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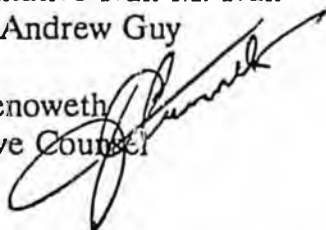
MEMORANDUM

March 17, 1992

SUBJECT: House Bill 522: Impact of real estate conveyance tax on land conveyances and exchanges under Alaska Native Claims Settlement Act (Work Order No. 7-LS2077/D)

TO: Representative Ivan M. Ivan
ATTN: Andrew Guy

FROM: Jack Chenoweth
Legislative Counsel



House Bill 522 would impose a state real estate conveyance tax and would authorize municipal governments to impose a similar tax. You have asked whether any of the following land transactions would be subject to taxation under a state real estate conveyance tax or under a real estate conveyance tax levied by a local government:

- (1) conveyances from the Bureau of Land Management to the regional and village corporations pursuant to the Alaska Native Claims Settlement Act;
- (2) conveyances from village corporations to individuals under sec. 14(c) of that Act (43 U.S.C. 1613(c)); and
- (3) land exchanges between regional and village corporations.

Under 43 U.S.C. 1620(d), protection against taxation is given to undeveloped land that is "conveyed under [the Alaska Native Claims Settlement Act] to a Native individual, Native Group, Village, or Regional Corporation . . ." A state statute, AS 43.80.015(b), currently provides:

(b) The receipt of land or an interest in it under the [Alaska Native Claims Settlement] Act or of cash in order to equalize the values of property exchanged under Sec. 22(f) of that Act or AS 38.50 is not subject to any form of state or local taxation. The basis for computing gain or loss on subsequent sale or other disposition of this land or interest in land for purposes of a state or local tax imposed on

or measured by income is the fair value of the land or interest in land at the time of receipt.

(Emphasis added.) To my mind, these federal and state provisions are sufficient to protect from taxation, either by the state or by a local government, the original conveyances that are required by the Alaska Native Claims Settlement Act from the Bureau of Land Management to the regional and village corporations.

Since the land conveyances by regional and village corporations to individuals are also directed by the federal Act, the federal Act and the state statute would also be sufficient to protect against state or local real estate conveyance taxation the section 14(c) conveyances to individuals.

While, as a matter of corporate authority, the regional and village corporations may enter into land exchange agreements, I did not find explicit authority for two-party land exchanges between the regional and village corporations in the Alaska Native Claims Settlement Act. I checked with the Land Division of the Alaska Federation of Natives and learned that the most common land exchange transactions have typically involved three parties--the village corporation, the regional corporation, and an agency. Land exchanges involving the a Native corporation with the federal government or the State of Alaska are addressed in the original Alaska Native Claims Settlement Act. See 43 U.S.C. 1621(f).

Broad protection for two-party land exchanges is provided under 43 U.S.C. 1620(d)(2), added by the Alaska National Interest Lands Conservation Act. Under that subsection:

Any real property interest, not developed or leased to third parties, acquired by a Native individual, Native Group, Village or Regional Corporation, or corporation established pursuant to [43 U.S.C. 1613(h)(3)] in exchange for real property interests which are exempt from taxation pursuant to [43 U.S.C. 1620(d)(1)] shall be deemed to be a property interest conveyed pursuant to this Act and shall be exempt from taxation as if conveyed pursuant to this Act, when such an exchange is made with the Federal Government, the State government, a municipal government, or another Native Corporation

And, under 43 U.S.C. 1602(m), "Native corporation" means any village, regional, urban, or group corporation. So, it appears to me that this provision of the federal Act provides protection against taxation of the land exchange conveyances. ^{1/}

In summary, none of the land exchange transactions you have identified should be subject to taxation under the provisions of HB 522. Federal and state law together would prohibit imposition of taxes on direct conveyances and reconveyances, while the federal provision cited, alone, provides similar protection to land exchanges.

I trust this is sufficient for your purposes.

JBC:gc
92-239.glc

^{1/} There was similar protection against taxation as a part of state law. AS 43.80.015(b), quoted in the memo, directs that receipt of cash in order to equalize values in a land exchange authorized under 43 U.S.C. 1621(f) is not taxable. The underlying land exchange itself is, under AS 43.80.015(c), also to be treated as a transaction that, before December 18, 1991, could not be taxed:

(c) A real property interest conveyed under the federal Act, AS 38.50, or AS 38.95.050, including land received in an exchange under Sec. 22(f) of the federal Act or AS 38.50, to a Native individual or corporation incorporated under Alaska law pursuant to the federal Act, which interest is not developed or leased to third parties, is exempt from state and local real property taxes and local assessments until December 18, 1991. . . . In Sec. 21(d) of the federal Act, the exemption of real property interests from local real property taxes includes exemption from local assessments and extends to land received in an exchange under Sec. 22(f) of the federal Act or AS 38.50.

Representative MacLean is sponsoring legislation to revise and extend the tax exemption identified in state law in order to give it effect after the December 18, 1991, deadline date. See House Bill 451.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

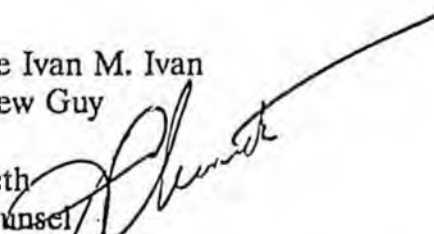
240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

March 20, 1992

SUBJECT: House Bill 522, imposing a real estate conveyance tax and authorizing municipalities to do so (Work Order No. 7LS-2077D)

TO: Representative Ivan M. Ivan
ATTN: Andrew Guy

FROM: Jack Chenoweth
Legislative Counsel 

I read Mr. Neimeyer's March 20 letter--particularly the last part of the second paragraph--as addressing lands that are being given up by a Native corporation (in exchange for "chits" or credits to acquire other (federal) assets) rather than land that is being acquired by a Native corporation.

For all the reasons set out in my memo, if the land is being acquired by the Native corporation, it would not be subject to the proposed conveyance tax.

However, I read the letter as describing a different situation. Depending on the actual circumstances of the land exchange, then I agree with Mr. Neimeyer that a Native corporation's giving up title to its land is a transaction subject to the conveyance tax.

If you believe that the March 20 letter of counsel outlines a situation that deserves change, you should be prepared to offer an amendment to HB 522 to make sure that these land transactions are exempted from taxation under the proposed conveyance tax. May I suggest something like the following:

Page 4, following line 31, after "municipality;"

Insert: "(xv) a conveyance of land or an interest in land by a Native corporation, as that term is defined in 43 U.S.C. 1602, to the United States if the conveyance of the land or the interest by the Native corporation is made for cash or credit."

JBC:pl
92-196.plm

Calista Corporation

601 W. 5th Avenue, Suite 200, Anchorage, Alaska 99501-2225 ♦ (907) 279-5518 ♦ FACSIMILE (907) 272-5080

March 20, 1992

Representative Ivan M. Ivan
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Representative Ivan:

Thank you for your prompt response concerning our questions on HB 522's affect on ANCSA land issues.

There apparently is some confusion, however, in the third question we posed to you. The response you received from the Legislative Counsel, dated March 17, answered the question dealing solely with land exchanges. This addresses only half of our concerns.

Section 22(f) of ANCSA provides specific authority to the Secretary of Interior to engage in land exchanges with ANCSA corporations. This form of acquisition has fallen out of public and, apparently congressional favor. Use of exchanges has become the exception rather than the rule for federal acquisitions. Public and congressional debate has focused on cash acquisitions of ANCSA lands of high public interest. Due to the scarcity of public funds available for this purpose, in Alaska, much additional consideration has been given to the concept of exchanging ANCSA lands for "chits" that can be used as script to purchase surplus federal assets.

I believe public acquisitions of ANCSA lands either by cash purchase or "chit" packages would be subject to the 1% excise tax imposed by HB 522. Most ANCSA corporations would generally prefer land exchanges as the most desirable method of public interest acquisitions. Some corporations statewide, including Calista and several of its village corporations, have opted to participate in cash or "chit" package acquisitions.

An excise tax would reduce the benefits to ANCSA corporations involved in these transactions. Since these seem to be the preferred acquisition methods at this time, it may have a chilling effect on public acquisitions of lands with high public value. Many acres of ANCSA lands have such values to the public.

More important to us, however, is the reduction in benefits the ANCSA corporations receive as a result of the tax. Many ANCSA corporations are only

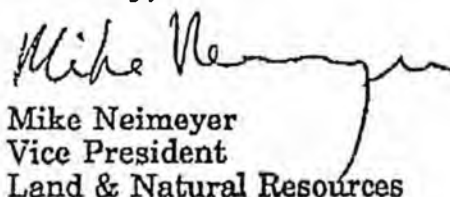
Representative Ivan M. Ivan
March 20, 1992
Page two

hanging on by a thread. Several are even in bankruptcy court. One to two percent of a sale could mean a great deal to these corporations survival.

Like any other business in the state, ANCSA corporations are currently faced with poor economic conditions. Unlike many other businesses in Alaska, however, ANCSA corporations operate in bush Alaska where the economy is always poor. This state must do something to help stimulate the sagging economy of the rural areas. It should not be placing additional roadblocks like this excise tax in rural Alaska.

As you can see, the opinion from the Legislative Counsel did identify and resolve some potential problems that HB 522 may pose for ANCSA corporations. It failed, however, to address the preferred alternatives currently being used to address land status and acquisition problems associated with ANSCA lands. I believe HB 522 would provide a chilling effect on land acquisitions that are in the public interest, as well as, place unacceptable burdens on many ANCSA corporations that already face enormous pressures and burdens associated with operating in rural Alaska.

Sincerely,


Mike Neimeyer
Vice President
Land & Natural Resources

lj

(att. 2)

NFIB Alaska

National Federation of
Independent Business

POSITION PAPER

OF

NATIONAL FEDERATION OF INDEPENDENT BUSINESS
(NFIB/ALASKA)

ON

TAXES

HB 522 - REAL ESTATE CONVEYANCE TAX.

HB 523 - CONVERTING THE BUSINESS LICENSE FEE TO A GROSS
BUSINESS LICENSE TAX.

HB 524 - A TAX ON TRANSFERS OF LIMITED ENTRY PERMITS.

HB 525 - PERSONAL INCOME TAX.

State Office
9159 Skywood Lane
Juneau, AK 99801
(907) 789-4278



The Guardian of
Small Business

CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS RESA JERREL, AND I AM THE STATE DIRECTOR FOR NATIONAL FEDERATION OF INDEPENDENT BUSINESS - NFIB/ALASKA.

NFIB/ALASKA IS COMPRISED OF 5,292 SMALL AND INDEPENDENT BUSINESS OWNERS. THE LEGISLATIVE AGENDA OF NFIB/ALASKA IS DETERMINED BY OUR BALLOT. THE BALLOT IS OUR ANNUAL POLL OF OUR MEMBERS ON A SERIES OF ISSUES DEEMED CRITICAL TO SMALL BUSINESS. A MAJORITY VOTE, OF THE MEMBERS IN RESPONSE TO THE POLL, SETS OUR POLICY AND POSITION ON LEGISLATIVE ISSUES. WE THEN SHARE THE RESULTS OF OUR POLL WITH THE LEGISLATURE AND ADMINISTRATION. THERE IS NOT ENOUGH SPACE ON THE ANNUAL POLL TO PLACE EVERY POSSIBLE ISSUE BEFORE OUR MEMBERS. THEREFORE, WE ALSO USE THE PREVIOUS YEARS BALLOT RESULTS AS GUIDANCE ON ISSUES.

ON THE 1986 STATE BALLOT THE MEMBERS OVERWHELMINGLY VOTED, (96%) TO REDUCE STATE GOVERNMENT BEFORE INCREASING PRESENT TAXES OR IMPOSING NEW TAXES.

ALSO, IN 1990 THE MEMBERS VOTED CLEARLY TO REJECT, (80%) THE REINSTATEMENT OF THE STATE PERSONAL INCOME TAX.

ADDITIONALLY, ATTACHED ARE THE RESULTS OF SEVERAL BALLOT QUESTIONS REGARDING GOVERNMENT COMPETITION.

NFIB/ALASKA OPPOSES HB 522, HB 523, HB 524 AND HB 525 BECAUSE THE STATE BUDGET NEEDS TO BE CUT BEFORE IMPOSING NEW TAXES. IF YOU SINCERELY WANT TO CUT THE BUDGET THEN PROHIBIT OR REDUCE THE COMMERCIAL ACTIVITIES OPERATED BY STATE AND LOCAL AGENCIES. SMALL BUSINESSES IN ALASKA FACE COMPETITION FROM STATE AND LOCAL GOVERNMENT AGENCIES IN A WIDE VARIETY OF COMMERCIAL ACTIVITIES. THE MANY SMALL BUSINESSES FACING GOVERNMENT COMPETITION ARE:

- PRINTING FIRMS
- GIFT SHOPS
- VIDEOTAPE OUTLETS
- DAY-CARE CENTERS
- SERVICE STATIONS
- LANDSCAPING
- ROAD REPAIR AND MAINTENANCE
- LABORATORIES
- MEDICAL CARE PROVIDERS
- PHARMACIES
- ARCHITECTURE AND ENGINEERING FIRMS
- OFFICE FURNITURE
- AUTO BODY REPAIR

GETTING GOVERNMENT OUT OF BUSINESS WOULD GO A LONG WAY TO BRINGING THE SIZE AND COST OF STATE AND LOCAL GOVERNMENT DOWN TO REASONABLE AND AFFORDABLE LEVELS - WITHOUT RAISING TAXES OR IMPOSING NEW TAXES.

NFIB/ALASKA THANKS YOU FOR THE OPPORTUNITY TO COMMENT ON THIS LEGISLATION. IF YOU HAVE ANY QUESTIONS I WOULD BE HAPPY TO TRY AND ANSWER THEM.

ATTACHMENT

The following is the result of the 1988 NFIB/Alaska ballot question regarding unfair competition:

Should legislation be enacted to restrict the commercial activities of government entities so they are not permitted to compete with existing private enterprises?

Yes 78%

No 12%

Undecided 10%

The following is the result of the 1990 NFIB/Alaska ballot question regarding government competition:

Should legislation be passed that would restrict government agencies from competing with private business in Alaska?

Yes 83%

No 6%

Undecided 11%

More recently, the following is the result of the 1991 NFIB/Alaska ballot question on this issue:

Should the legislature establish a Private Enterprise Preservation Task force in order to study and recommend legislation to limit competition with private business by state and local government?

Yes 67%

No 23.1%

Undecided 9.9%



Att 3.

March 30, 1992

TO: Representative Jerry Mackie, Chair,
and
Members, House Committee on Community and Regional Affairs

FROM: Scott A. Burgess, Executive Director

RE: HB 522 - Imposing a real estate conveyance tax; providing for sharing with municipalities; authorizing certain municipalities to levy and collect a real estate conveyance tax; amending the requisites of recording a conveyance

The Alaska Municipal League supports the concept of HB 522, which would authorize the imposition of a state-collected real estate conveyance tax, half of which would be shared with municipalities. Not only would such a tax provide additional revenue to Alaska's municipalities through the sharing mechanism and by specifying that certain types of municipalities could impose a local real estate conveyance tax, it could also make data on real estate selling prices available to municipal tax assessors, thus enabling them to do their jobs better, more equitably, and more accurately. An amendment to HB 522 to require that sales price data be made available to municipalities is requested. Banks and other lending institutions would also benefit from information on real estate values based on actual sales.

The 1992 Alaska Municipal League Policy Statement includes the following statement: "The League urges the Alaska Legislature to enact legislation requiring that real property transaction values be reported and these reports be shared with the appropriate municipalities" (Part I, D.7). Alaska is one of only fourteen states in the nation that do not require recording of real property transaction values. Lack of market data has been linked to failures of financial institutions nationwide, and many feel Alaska should require recording for the benefit of the banking and real estate communities. Since municipalities are required to base local property taxes on full and true value, it is equally important that any data collected on real estate transactions be made available to municipalities if uniformity and equity in assessment are to be maintained.

Under the provisions of HB 522, one-half of the revenue received by the state from the real estate conveyance tax (net of the costs of collecting it) would be paid to municipalities, thus providing an additional source of revenue to support governmental services. The bill also provides that a unified municipality or a first or second class borough could impose an additional real estate conveyance tax. Unified municipalities would be limited to a tax of not more than 1 percent of the selling price. However, by limiting the authority to impose a real estate conveyance tax to unified municipalities and first and second class boroughs and by imposing a maximum tax of 1 percent, the bill limits the taxation power and authority of municipalities. The League is concerned about "clarifying" existing powers of municipalities and how that might affect the courts' interpretation of Alaska's broad grant of powers to municipal governments.

The League supports the concept of HB 522 because it could provide both additional revenue and additional information to local governments. The League requests an amendment specifically requiring reporting of real property transaction values to the municipalities in which the transaction took place.

C92test:HB522mem.330

CS FOR HOUSE BILL NO. 522 (CRA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE KOPONEN

A BILL
FOR AN ACT ENTITLED

1 "An Act imposing a real estate conveyance tax; providing for sharing with municipalities
2 of a portion of the revenue obtained from the tax; authorizing certain municipalities to
3 levy and collect a real estate conveyance tax; adding to the duties of the recorder
4 applicable to disclosure of information involving certain public records, and amending the
5 formal requisites of recording a conveyance; and providing for an effective date."

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

7 * Section 1. AS 43 is amended by adding a new chapter to read:

8 **CHAPTER 33. REAL ESTATE CONVEYANCE TAX.**

9 Sec. 43.33.010. TAX IMPOSED. There is imposed an excise tax upon each conveyance
10 of real property at the rate of one percent of the selling price of the real property.

11 Sec. 43.33.020. TAX CONSTITUTES LIEN. The tax imposed by AS 43.33.010 and the
12 interest or penalties on the tax are a specific lien upon each piece of real property conveyed from
13 the time of conveyance until the tax has been paid.

1 Sec. 43.33.030. SELLER'S OBLIGATION TO PAY TAX. Payment of the tax imposed
2 by this chapter is the obligation of the seller.

3 Sec. 43.33.040. EVIDENCE OF PAYMENT. (a) The tax shall be paid to and collected
4 by the recorder of the recording district in which the real property that was conveyed is located.
5 The recorder shall affix a stamp evidencing satisfaction of the lien to the instrument of
6 conveyance before its recording. A receipt issued by the recorder for the payment of the tax
7 imposed under this chapter is evidence of the satisfaction of the lien of the tax and may be
8 recorded in the manner prescribed for recording satisfactions of mortgages.

9 (b) An instrument evidencing a conveyance subject to the tax may not be accepted by
10 the recorder for recording under AS 40.17 until a tax affidavit form has been completed, the tax
11 has been paid, and the stamp affixed. In a case in which the tax is not due on the transfer, the
12 instrument may not be accepted for recording until suitable notation of the exception has been
13 made on the instrument by the recorder.

14 Sec. 43.33.050. REPORTING REQUIREMENTS FOR CONVEYANCE. The department
15 shall prescribe

16 (1) minimum standards for uniformity in reporting, application, and collection of
17 the tax;

18 (2) a tax affidavit form that must contain, at least, the following:

19 (A) identification of the seller and purchaser;

20 (B) description of the property involved, including the tax parcel or
21 account number;

22 (C) date of conveyance, type of instrument of conveyance, and nature of
23 transfer;

24 (D) gross sales price of the parcel, or the appraised market value of the
25 property if the transaction is an exchange; and

26 (E) signatures of both the purchaser and seller, under oath.

27 Sec. 43.33.060. DISTRIBUTION OF REVENUE. Subject to legislative appropriation,
28 from the proceeds of the tax collected under this chapter, excluding penalties and the amount
29 determined to have been spent by the state in its collection, the department shall pay one-half of
30 the revenue received

31 (1) to each unified municipality, each city in the unorganized borough, and each

1 borough for the area outside cities, in proportion to the revenue that was earned within them; and
 2 (2) to cities and boroughs for the area of each borough that is inside cities, in
 3 proportion to the revenue that was earned within them; the payment under this paragraph shall
 4 be divided equally between the city and the borough.

5 Sec. 43.33.10(f). DEFINITIONS. In this chapter,

6 (1) "conveyance"

7 (A) means

8 (i) a grant, assignment, quitclaim, sale, or transfer of the ownership
 9 of or title to real property, or any estate or interest in real property for a valuable
 10 consideration;

11 (ii) a contract for a conveyance, grant, assignment, quitclaim, or
 12 transfer of real property;

13 (iii) a lease with an option to purchase real property, or any estate
 14 or interest in real property; or

15 (iv) a contract under which possession of the property is given to
 16 the purchaser, or another person at the purchaser's direction, and title is retained
 17 by the seller as security for the payment of the purchase price;

18 (B) does not include

19 (i) a lease, except a lease under (A)(iii) of this paragraph;

20 (ii) a transfer by gift, devise, or inheritance;

21 (iii) a cancellation or forfeiture of a purchaser's interest in a
 22 contract for the conveyance of real property, whether or not the contract contains
 23 a forfeiture clause;

24 (iv) a deed in lieu of foreclosure of a mortgage or the assumption
 25 by a grantee of the balance owing on an obligation that is secured by a mortgage
 26 or deed in lieu of forfeiture of the purchaser's interest in a contract of sale of real
 27 property, where no consideration passes;

28 (v) a partition of property by tenants in common by agreement or
 29 as the result of a court decree;

30 (vi) a transfer, conveyance, or assignment of property or interest
 31 in property from one spouse to the other under the terms of a decree of divorce

1 or in fulfillment of a property settlement agreement;

2 (vii) the assignment or other transfer of a seller's interest in a
3 contract for the sale of real property, even though accompanied by a conveyance
4 of the seller's interest in the real property involved;

5 (viii) a transfer by appropriation or decree in condemnation
6 proceedings brought by the United States, the state, or a municipality;

7 (ix) a mortgage or other transfer of an interest in real property to
8 secure a debt or the assignment of a debt, or a document that reconveys or
9 releases an interest that was held to secure a debt;

10 (x) a transfer or conveyance made under an order of sale by the
11 court in a mortgage or lien foreclosure proceeding or upon execution of a
12 judgment, or deed in lieu of foreclosure to satisfy a mortgage;

13 (xi) a conveyance to the Federal Housing Administration or the
14 United States Department of Veterans Affairs by an authorized mortgagee made
15 under a contract of insurance or guaranty with the Federal Housing Administration
16 or the United States Department of Veterans Affairs;

17 (xii) a transfer in compliance with the terms of a lease or contract
18 upon which the tax as imposed by this chapter has been paid or where the lease
19 or contract was entered into before January 1, 1993;

20 (xiii) the sale of a grave or lot in an established cemetery;

21 (xiv) a sale by or to the United States, the state, or a municipality;

22 (xv) a conveyance of land or an interest in land by a Native
23 corporation, as that term is defined in 43 U.S.C. 1602, to the United States if the
24 conveyance of the land or the interest by the Native corporation is made for cash
25 or credit;

26 (2) "real property" means an estate in land, and includes mobile homes;

27 (3) "selling price"

28 (A) means the consideration, including money or anything of value, paid
29 or delivered or contracted to be paid or delivered in return for the conveyance of the real
30 property or an estate or interest in real property;

31 (B) includes the amount of a lien, mortgage, contract indebtedness, or

1 other encumbrance, either given to secure the purchase price or as a part of the purchase
2 price, or remaining unpaid at the time of conveyance of the real property or an estate or
3 interest in real property;

4 (C) does not include the amount of an outstanding lien or encumbrance
5 in favor of the United States, the state, or a municipality for taxes or special assessments;

6 (4) "tax" means the real estate conveyance tax imposed by AS 43.33.010.

7 * Sec. 2. AS 29.10.200 is amended by adding a new paragraph to read:

8 (51) AS 29.45.750 (real estate conveyance tax)

9 * Sec. 3. AS 29.45 is amended by adding a new section to read:

10 ARTICLE 6. REAL ESTATE CONVEYANCE TAX.

11 Sec. 29.45.750. REAL ESTATE CONVEYANCE TAX AUTHORIZED. (a) A unified
12 municipality and a first or second class borough may impose an excise tax upon each conveyance
13 of real property within the municipality. If the unified municipality imposes a tax, the rate of
14 the tax may not exceed one percent of the selling price of the real property.

15 (b) The tax levied by a unified municipality or first or second class borough under (a)
16 of this section shall be paid to and collected by the recorder of the recording district in which
17 the real property that was conveyed is located. The recorder shall affix a stamp evidencing
18 satisfaction of the lien to the instrument of conveyance before its recording. A receipt issued by
19 the recorder for the payment of the tax imposed under this chapter is evidence of the satisfaction
20 of the lien of the tax and may be recorded in the manner prescribed for recording satisfactions
21 of mortgages.

22 (c) The recorder shall remit payment of the tax imposed by a unified municipality or a
23 first or second class borough under (a) of this section to the municipality in which the real
24 property that was conveyed is located.

25 (d) An instrument evidencing a conveyance subject to the tax may not be accepted by
26 the recorder for recording under AS 40.17 until the tax has been paid and the stamp affixed. In
27 a case in which the tax is not due on the transfer, the instrument may not be accepted for
28 recording until suitable notation of the exception has been made on the instrument by the
29 recorder.

30 (e) In this section,

31 (1) "conveyance" has the meaning given in AS 43.33.100;

- 1 (2) "selling price" has the meaning given in AS 43.33.100;
2 (3) "tax" means the real estate conveyance tax authorized by (a) of this section.

3 (f) This section

- 4 (1) applies to home rule boroughs and general law boroughs;
5 (2) does not apply to third class boroughs, whether home rule or general law.

6 * Sec. 4. AS 40.17.030(a) is amended to read:

7 (a) To be eligible for recording, a document must be

8 (1) legible or capable of being converted into legible form by a machine or device
9 used in the recording office;

10 (2) capable of being copied by the method used in the recording office;

11 (3) accompanied by the proper fee for recording and include or be accompanied
12 by information, stamps, certificates, taxes, or fees that under AS 29.45.750, AS 43.33, and other
13 laws are necessary to qualify the document for recording;

14 (4) accompanied by or include the information needed to index the document
15 under regulations of the department;

16 (5) accompanied by or include the name and address of the person to whom the
17 document is to be returned after recording; and

18 (6) accompanied by or include the mailing addresses of all persons named in the
19 document who grant or acquire an interest under the document if it is a conveyance; this
20 paragraph does not apply to a release of a security interest.

21 * Sec. 5. AS 40.17.070 is amended by adding a new subsection to read:

22 (j) After recording, the recorder shall report to the assessor of a municipality in which
23 property subject to the tax imposed by AS 43.33 is located the gross sales price, as stated in the
24 tax affidavit prescribed under AS 43.33.050, of each parcel of property that is conveyed within
25 the municipality and that is subject to that tax.

26 * Sec. 6. This Act takes effect January 1, 1993.

(Attachment #1)


DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

April 7, 1992

SUBJECT: Draft CS#B 522 () (Work Order No. 7-LS2077\J)
TO: Representative Niilo Koponen
ATTN: Ron Clarke
FROM: Jack Chenoweth
Legislative Counsel 

Since I've not heard from the House Community and Regional Affairs Committee staff, I am sending the draft to you. You may offer it to the Community and Regional Affairs Committee.

While there is a sound argument to be offered in support of removal of sections 2 and 3 of the bill, caution suggests that explicit municipal authority to levy and collect this tax remain. Under AS 29.35.010(6), all municipalities have the right to "levy a tax or special assessment" The breadth of the grant is consistent with article X, section 1's directive that "[a] liberal construction shall be given to the powers of local government units." Liberati v. Bristol Bay Borough, 584 P.2d 1115, 1120 (Alaska 1978) (municipal levy of raw fish tax upheld). There are no prohibitions in AS 29 as to a municipality's levying and collecting a real estate conveyance tax. Those who argue that state law need not explicitly authorize the levy and collection of this kind of tax by municipalities have the weight of that argument in their favor.

However, the subject matter does involve a tax and, at least in other jurisdictions, historically courts have usually tended to construe the authority to levy and collect taxes narrowly. While there is every good reason to believe that the courts would follow the constitutional directive and the general statutory grant to uphold a municipality's levy and collection of a conveyance tax without the enactment of these two sections, that conclusion is not certain. Moreover, by implication, the provisions in this bill would preclude cities from the levy and collection of the tax.

So, in my view, the provision probably should remain. It must remain if, as you have sought, only certain unified municipalities and boroughs are to levy the tax (leaving third class boroughs and all cities without the ability to levy). But even if you were

Representative M. Koponen
April 7, 1992
Page 2

to allow all municipalities to levy and collect the conveyance tax, putting the authority into the statutes probably forecloses litigation as to whether these municipalities may do so. Out of an abundance of caution, I would retain the provisions but, based on the justification set out above, their removal would not necessarily preclude municipalities from enacting an ordinance to impose the levy at the local level.


JBC:pl
92-246.plm



April 7, 1992

MEMORANDUM

TO: Representative Jerry Mackie, Chair,
and
Members, House Committee on Community and Regional Affairs

FROM: Scott A. Burgess, Executive Director 

RE: HB 522 - Imposing a real estate conveyance tax; providing for sharing with municipalities; authorizing certain municipalities to levy and collect a real estate conveyance tax; amending the requisites of recording a conveyance

Following my testimony before the Committee on March 31, 1992, I want to clarify the position of the Alaska Municipal League on HB 522. The Alaska Municipal League supports HB 522, which would authorize the imposition of a state-collected real estate conveyance tax, to the degree that 1) half of which would be shared with municipalities and 2) it could provide a mechanism to make data on real estate selling prices available to municipal tax assessors. The AML believes all municipalities have the ability to impose such a tax locally and, therefore, believes the references in the bill are at best unnecessary and, worse, could be restrictive. The AML does not have a position, positive or negative, on whether the state should impose a real estate conveyance tax.

The *1992 Alaska Municipal League Policy Statement* includes the following statement: "The League urges the Alaska Legislature to enact legislation requiring that real property transaction values be reported and these reports be shared with the appropriate municipalities" (Part I, D.7). Alaska is one of only fourteen states in the nation that do not require recording of real property transaction values. Lack of market data has been linked to failures of financial institutions nationwide, and many feel Alaska should require recording for the benefit of municipalities and the banking and real estate communities. Since municipalities are required to base local property taxes on full and true value, it is equally important that any data collected on real estate transactions be made available to municipalities if uniformity and equity in assessment are to be maintained. An amendment to HB 522 to require that sales price data be made available to municipalities is requested.

Under the provisions of HB 522, one-half of the revenue received by the state from the real estate conveyance tax (net of the costs of collecting it) would be paid to municipalities, thus providing an additional source of revenue to support governmental services. The bill also provides that a unified municipality or a first or second class borough could impose an additional real estate conveyance tax. Unified municipalities would be limited to a tax of not more than 1 percent of the selling price. However, by limiting the authority to impose a real estate conveyance tax to unified municipalities and first and second class boroughs and by imposing a maximum tax of 1 percent, the bill limits the taxation power and

House CRA Committee - HB 522
April 7, 1992
Page 2

authority of municipalities. The League is concerned about "clarifying" existing powers of municipalities and how that might affect the courts' interpretation of Alaska's broad grant of powers to municipal governments. We believe this language can and should be deleted.

The League supports HB 522 to the degree it could provide a mechanism to provide useful information to local governments. If the Committee approves of legislation to enable the state to impose a real estate conveyance tax as a mechanism to finance public services in light of declining oil revenues, the AML would support sharing that revenue with municipalities. The League requests amendments to 1) specifically require reporting of real property transaction values to the municipality in which the property is located and 2) to delete the language "clarifying" a municipality's power to impose a similar tax as unnecessary. Thank you.

cc: Representative Niilo Koponen

C92test:HB522mem.407

H B

5 2 6

(7)

Date Referred: February 18, 1992

FURTHER REFERRALS:

State Affairs
Finance

Date of Committee Action: 4/1/92

The COMMUNITY AND REGIONAL AFFAIRS Committee considered:

HB 526

HOUSE BILL NO. 526

CONTRACTORS AND LOCAL PUBLIC WORKS

"An Act relating to certain public construction contracts and contractors and to certain procurements."

RECOMMENDATIONS:

be replaced with CS HB 526 (C&RA) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (pt)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact C&ED 4/1/92

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	<u>OTHER</u> RECOMMENDATIONS	DNP	NR	AM
		<i>J.C. Bonville</i>		<input checked="" type="checkbox"/>	
		<i>Cheri Davis</i>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	
<i>Betty Davis</i>	<input checked="" type="checkbox"/>	<i>Neil Phillips</i>		<input checked="" type="checkbox"/>	
<i>Richard [Signature]</i>	*				

[Signature]
CHAIRMAN'S SIGNATURE

HESS Committee, Co-Chair
Resources Committee, Vice-Chair

Budget Subcommittees
Health and Social Services
Revenue



P.O. Box V
Juneau, Alaska 99811

Phone: (907) 465-3732
FAX: (907) 465-2652

Alatna
Allakaket
Aniak
Anvik
Arctic Village
Beaver
Bettles
Birch Creek
Chalkyitsik
Chuathbaluk
Crooked Creek
Evansville
Fort Yukon
Galena
Grayling
Holy Cross
Hughes
Huslia
Kalskag
Kaltag
Koyukuk
Lake Minchumina
Lime Village
Lower Kalskag
Manley Hot Springs
Marshall
McGrath
Minto
Mountain Village
Nikolai
Nulato
Pilot Station
Pitkas Point
Rampart
Red Devil
Ruby
Russian Mission
Shageluk
Sleetmute
St. Mary's
Stevens Village
Sony River
Takatna
Tanana
Telida
Tuluksak
Tyonek
Venetie
Wiseman

SPONSOR SUMMARY FOR HOUSE BILL 526

An Act relating to certain public construction contracts and contractors and to certain procurements

Background

Compared with other states, the construction industry in Alaska is virtually unregulated. The contractor licensing process has few requirements, and license renewal is almost guaranteed. For large-scale projects administered by state agencies, residents of the community where the construction is to take place have little say in how the contractor does business within their boundaries.

Administration of large-scale public projects for the State of Alaska is generally handled by the Department of Transportation and Public Facilities. While the department has made a creditable attempt to deal with its responsibilities as the contracting agency, there have been problems. Concern has been expressed that contractors do their work with little sensitivity to local concerns, and no accountability to the local government. The only binding relationship that exists is between the state contracting agency and the contractor.

REAA's and incorporated municipalities have limited authority to take on all or part of the administration of large publicly funded capital projects, but this provision excludes unincorporated communities. Further, the request to assume all or part of the project administration may be unilaterally denied by the commissioner.

Final project inspection is conducted by state agencies whose inspectors are often temporary or seasonal employees with little vested interest in the final outcome of the project.

There are many small construction contracts awarded by the state that could be performed by businesses in more remote areas of the state. However, even where these small

contracts are let for projects in remote communities, they are often awarded to contractors from outside the region or outside the state.

CONTRACTOR LICENSING

At present, all a contractor has to do to get an Alaskan contractor's license is pay the \$210 fee, post a surety bond (\$10,000 for general contractors and \$5,000 for mechanical contractors) and take a 16 hour course or demonstrate experience in, arctic construction. Public projects do not require a performance bond on any contract of less than \$100,000. If a contractor does not perform according to the terms of these small contracts, the only recourse is through the courts.

HB 526 would allow both urban and rural communities, whether incorporated or unincorporated, the opportunity to participate in the capital projects process as a partner with state agencies and contractors through the licensing process. These communities would be authorized, but not required, to form local citizen's commissions which would monitor contracts in progress and evaluate contractor performance.

Other states require business, legal and/or professional certification in order to obtain a contractor's license. These requirements are administered and enforced by multiple boards and commissions, some of which have subpoena and injunctive powers.

House Bill 526 proposes a simpler and more effective approach through a process involving the contractor's renewal of registration. When the Commissioner of the Department of Commerce and Economic Development determines whether to renew a certificate of registration of a contractor who has worked on a public construction project in a particular community, the commissioner shall base his decision on the recommendations of local commissions which may be established by that community's local government. It is up to the community to determine if they wish to participate in this process.

The recommendation by the local commission must be supported by a preponderance of evidence in order for the decision to stand. The contractor has the right to appeal the action taken by the commissioner based on the recommendation, and take this into a hearing. If after a hearing it is determined there is not a preponderance of evidence, the commissioner may renew the certificate. Title 8 would be amended so the commissioner would suspend a contractor's registration if the local commission recommends revocation. The commission's recommendation must be based on serious misconduct or failure of performance by the contractor.

PUBLIC PARTICIPATION IN CONTRACT ADMINISTRATION

HB 526 would give unincorporated communities the same opportunity to participate in contract administration that is already enjoyed by municipal governments throughout the state under AS 35.15.080. It requires that both contractors and state agencies to accept direct public participation in contract administration if requested. This may be accomplished by two different approaches.

The local government in either incorporated or unincorporated communities may request assumption of all or part of the department's administrative responsibilities relating to the public works project funded by the state, and located within the local government jurisdiction. Upon receipt of the request, the department shall provide for transfer to, and assumption by, the local government of the department's responsibilities relating to the project. The bill also provides for the option of cooperative administration of projects between the department and local government or between local governments. When a community requests the assumption of these administrative duties, it is with the understanding the local capabilities exist to administer the project, and the local government is aware of the legal responsibilities that go along with this. This would be a major determining factor for a community to consider when making that request.

SMALL PROCUREMENT REQUIREMENTS

Unemployment is a chronic problem in rural Alaska. One of the best long term approaches to this problem is to foster business opportunities in rural areas, thereby creating jobs. HB 526 relieves small communities (under 2,000 residents) from the competitive bid process on contracts for goods and services on small projects (under \$100,000), creating opportunities for small business in "bush" Alaska.

SUMMARY

House Bill 526 provides for increased local control in the administration and evaluation of large publicly funded capital projects. The bill would give unincorporated communities the same opportunity to participate in contract administration that is already enjoyed by municipal governments throughout the state. It expands the powers of both urban and rural local communities to protect their interests.

Those contractors who have not performed satisfactorily as determined in the provisions of this bill, would not have their certificate renewed. Project inspection would be done by both the state and by the local inspection commission.

Contractor evaluation would be done by the local inspection commission, whose members would be able to observe contractor performance on a daily basis and who will live with the final product.

In days of declining revenues, we need to look at creative ways to make sure our dollars are spent wisely and will bring the highest benefits to the state's residents. We can no longer afford to have contractors whose poor performance has resulted in shoddy construction continue to do business in the State of Alaska. We can no longer afford to have projects constructed in our communities that won't work and that create more problems than they solve due to a lack of involving those individuals with the most knowledge of what will or will not work in their communities. House Bill 526 is a beginning in trying to reform how construction is done in our communities by involving our local governments.

How HB 526 Works

What it does:

1) --HB 526 would give unincorporated villages the same opportunity to participate in contract administration that is already enjoyed by municipal governments throughout the state under AS 35.15.080.

2) --HB 526 allows both urban and rural communities the opportunity to participate in the capital projects process as an equal partner with the state agencies and contractors through the licensing process.

--It would give the both urban and rural Alaskans a better chance to participate directly in capital projects by giving them the opportunity to form local citizen's commissions which would monitor contracts in progress and evaluate contractor performance.

--Under present law, the public's only recourse for redress of grievances against contractors is through law suits. Regulation of an industry by law suit is not good business.

--The bill gives local government the option to form local inspection commissions to protect state and local interests as stated by existing laws, regulations and the terms of the contract.

--It relieves small communities (under 2000 residents) from the competitive bid process on small projects (under \$100,000) thereby creating opportunities for small businesses in the bush.

What it Doesn't Do

--HB 526 does not mandate the formation of local inspection and evaluation commissions. It gives local government the option to form local inspection and evaluation commissions if they feel it useful to do so.

--HB 526 does not leave contractors at the mercy of recommendations made by local commissions. The contractor may appeal the local evaluation to the commissioner of DC&ED. If the commissioner determines that a preponderance of evidence does not support allegations of misconduct, he may renew the registration. Contractors who perform in good faith are unlikely to ever have a problem getting reregistered.

--It will not perpetuate a system that allows contractors who don't fulfill contract terms to continue to work in Alaska. Local contractors who are incompetent will no longer enjoy the protection of an indifferent bureaucracy and will be held accountable.

--It will not create more bureaucracy. Unpaid local commissions will be based on the model of borough service area commissions, a concept that has served the public well. In the long run, it should save contractors from the proliferation of legislation, boards, commissions and police powers that have grown up in other states to regulate their activities.

HB 526

Sectional Analysis

Section #1 - AS 08.18.031 - Amended

--Amended so that commissioner may not renew contractor license without a hearing if the contractor has received a negative evaluation from a local inspection commission.

--Commissioner may renew if recommendation is not supported by a "preponderance of evidence."

Section #2 - AS 08.18.121 - Amended

--If local commission recommends revocation, commissioner shall suspend contractor's registration.

--If, after a hearing, the commissioner determines that serious misconduct or failure to perform occurred, commissioner shall revoke registration.

Section #3 - As 35.15.080(a) - Amended

--Gives unincorporated villages powers equivalent to those already granted to municipalities in this statute.

--Mandates that the commissioner must surrender authority requested by local government.

--Establishes authority of local government to form a commission to inspect projects for compliance with state and local statute and terms of contract.

--Establishes local authority to approve final documents.

--Establishes local authority to make recommendations regarding contractor license renewal and sets standards for these recommendations.

Section #10 - AS 35.15.120(2) - Amended

--Expands definition of "governing body" to include, for a village, its village council or other appropriate entity.

Section #11 - AS 35.15.120 - Amended

--Defines "village" as a contiguous rural community of 25 or more residents.

Section #12 - AS 36.30.305(a) - Amended

--Contracts for goods and services under \$100,000 in remote areas may be awarded without use of the competitive sealed bidding process.

--Existing law provides that procurements must be made with whatever competition is practicable under the circumstances.

Section #7 - As 35.15.100 - Amended

--Includes unincorporated villages in existing law.

--Existing law provides that the department is relieved of responsibility to the extent that local government assumes it, that department may provide technical assistance to the extent requested by local government and that the department will be reimbursed for services from escrow account established in AS 35.15.090.

Section #8 - AS 35.15.110(a) - Amended

--Includes unincorporated villages in existing statute.

--Existing subsection (a) gives local government right to site approval before contracts are let.

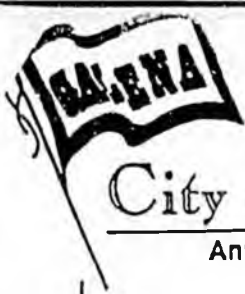
-AS 35.15.110(b) - Amended

--Gives local government right to participate with department in final approval of project and documents.

--Reflects the provisions of subsection (c), added by this bill in section #9, that local commission and control are optional, not mandatory.

Section #9 - AS 35.15.110(c) - Amended

--Complements existing statute AS 35.15.080



City of Galena

Antoski Hall • P.O. Box 149 • Galena, Alaska 99741 • Telephone (907) 656-1301

3/12/92

Rep. Georgianna Lincoln
Rm. 112 Capitol Building
P.O. Box V
Juneau, AK 99811

Dear Rep. Lincoln,

This letter is written in support of House Bill 526 which would give local governments more control over State funded capital projects in their communities. This Bill would hold contractors accountable for the work that they perform on a local level, which is in keeping with the Governors goals of increased local control.

The amount of State monies that have been squandered through poor performance by contractors, in the State of Alaska on capital projects, is sinful. Presently when a community witnesses such atrocities their options to act upon the situation are limited to letter writing to state and congressional officials. By the end of the construction season the contractor is off to another project leaving the community "holding the bag" as it were. It appears that this bill could give some teeth to local control where it needs it most; within the words that keep rising as of late, accountability and responsibility. These words go hand in hand with the "do more with less" message that is being sent out from Juneau at present.

I am also in agreement with relieving the community from the competitive bid process for small projects. It is very costly, in the Bush, to fly in three prospective bidders on a project under \$100,000K. In some cases it would cost more to get the bids than to do the project; with the increased costs in travel as of late, the deletion of this requirement will surely save the State money.

Required contractor liscencing can only help to ensure that State funds are spent by competent buisness firms and disenchant the fly by night operators. I encourage that this Bill be passed by the Legislature this session.

Sincerely,

Chris Hladick
City Manager

END

HB 526

Sectional Analysis

Section #1 - AS 08.18.031 - Amended

--Amended so that commissioner may not renew contractor license without a hearing if the contractor has received a negative evaluation from a local inspection commission.

--Commissioner may renew if recommendation is not supported by a "preponderance of evidence."

Section #2 - AS 08.18.121 - Amended

--If local commission recommends revocation, commissioner shall suspend contractor's registration.

--If, after a hearing, the commissioner determines that serious misconduct or failure to perform occurred, commissioner shall revoke registration.

Section #3 - As 35.15.080(a) - Amended

--Gives unincorporated villages powers equivalent to those already granted to municipalities in this statute.

--Mandates that the commissioner must surrender authority requested by local government.

Section #4 - AS 35.15.080(c) - Amended

--Includes unincorporated villages in existing local government authority for the purposes of this statute.

--Provides for cooperative administration of project between department and local government or between local governments.

--Limits commissioner's power to resolving jurisdictional disputes between local governments.

--Provides for appeal of commissioner's decision by judicial review (superior court).

Section #5 - AS 35.15.080(d) - Amended

--Includes unincorporated villages with municipalities and REAA's in existing law governing public works.

--Statute's provisions supercede conflicting local ordinances.

Section #6 - As 35.15.090 - Amended

--Includes unincorporated villages in existing statute.

--Existing statute provides escrow account for local government to draw on for expenses incurred while administering contract.

Section #7 - As 35.15.100 - Amended

--Includes unincorporated villages in existing law.

--Existing law provides that the department is relieved of responsibility to the extent that local government assumes it, that department may provide technical assistance to the extent requested by local government and that the department will be reimbursed for services from escrow account established in AS 35.15.090.

Section #8 - AS 35.15.110(a) - Amended

--Includes unincorporated villages in existing statute.

--Existing subsection (a) gives local government right to site approval before contracts are let.

-AS 35.15.110(b) - Amended

--Gives local government right to participate with department in final approval of project and documents.

--Reflects the provisions of subsection (c), added by this bill in section #9, that local commission and control are optional, not mandatory.

Section #9 - AS 35.15.110(c) - Amended

--Complements existing statute AS 35.15.080

--Establishes authority of local government to form a commission to inspect projects for compliance with state and local statute and terms of contract.

--Establishes local authority to approve final documents.

--Establishes local authority to make recommendations regarding contractor license renewal and sets standards for these recommendations.

Section #10 - AS 35.15.120(2) - Amended

--Expands definition of "governing body" to include, for a village, its village council or other appropriate entity.

Section #11 - AS 35.15.120 - Amended

--Defines "village" as a contiguous rural community of 25 or more residents.

Section #12 - AS 36.30.305(a) - Amended

--Contracts for goods and services under \$100,000 in remote areas may be awarded without use of the competitive sealed bidding process.

--Existing law provides that procurements must be made with whatever competition is practicable under the circumstances.

Section # 13 - AS 36.30.305(d)

--Sole source procurements may not be made under under this section except for communities of less than 2,000 residents.

Section #14 - AS 36.30.320(c) - Amended

--Commissioner shall exempt small procurements in rural areas from competition requirements.

Section #15 - AS 35.15.080(b) - Repealed

--Repeals commissioner's authority to deny local government's request for full or shared control because he deems it not "practicable" or "in the best interests of the state."

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BULL NO. HB 526

Revision Date: _____

Department Affected: Administration

Title: An Act relating to certain public construction contracts.

BRU: General Services

Component: Purchasing

Sponsor: Lincoln

Requestor: _____

COMPONENT SERIAL NO.

6	0		
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0


POSITIONS:

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

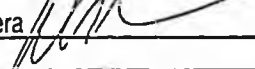
Estimate of current year impact: None.

ANALYSIS: (Attach a separate page if necessary.)

This bill revises sections of the procurement code which would restrict limited competition procurements to \$100,000 or less, and diminish competition for small procurements in rural areas. It has no fiscal impact on the activities of the division.

Prepared by: Anne McCord, Director 
Division: General Services

Phone: 465-2250
Date: February 28, 1992

Approved by Commissioner: Nancy Bear Usura 
Agency: Administration

Date: 3/13/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Commerce & Economic Development
 Title: Relating to certain public construction BRJ: Occupational Licensing
contracts and contractors and to certain procurements. Component: Administration
 Sponsor: Rep. Lincoln
 Requestor: House C&RA COMPONENT SERIAL NO.

0	3	5	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	81.3	81.3	81.3	81.3	81.3	81.3
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	11.6	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	99.9	88.3	88.3	88.3	88.3	88.3

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	99.9	88.3	88.3	88.3	88.3	88.3
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	99.9	88.3	88.3	88.3	88.3	88.3

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME	1.0	1.0	1.0	1.0	1.0	1.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

HB 526 places new conditions on the renewal or issuance of a construction contractor's certificate of registration. Only Sections 1 and 2 directly affect the construction contractor registration program. (Continued on the attached)

Prepared By: Jennifer Strickler Phone: 465-2144
 Division: Occupational Licensing Date: 03/12/92
 Approved by Commissioner: Glenn A. Olds
 Agency: Commerce & Economic Development Date: 3/13/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Continuation of Fiscal Note Analysis - HB 526

The bill creates an additional requirement upon the issuance or renewal of a construction contractor's certificate of registration by requiring that consideration be given to recommendations of local commissions from municipalities and villages in which the work was performed. The bill also states that a registration may not be renewed if recommendations are against the renewal unless, after a hearing, evidence determines otherwise.

Presently there are over 3,349 construction contractors registered with the State. Although the expiration date of the certificate of registration is slightly different for the individual categories of construction contractor registrations (General, Specialty, Residential, and Mechanical), the added requirement in the bill will require additional staff to process and evaluate additional paperwork and to coordinate the need for any hearings when needed. Since hearings must be conducted in accordance with the Administrative Procedure Act which provide for due process, and which must occur before a license can be issued or renewed, additional staff will be necessary to administer the provisions of the bill in a timely manner. Therefore, this fiscal note is based on the following:

Personal Services: \$ 81.3

- 1 - Licensing Examiner I, Range 12A
GGU, 12 months (\$40.1)
- 1- Hearing Examiner, Range 24A
XE, 6 months (\$41.2)

Contractual Services: \$ 5.0

This funding will provide for public notices of the new requirement, printing costs, and communication costs involved with providing notices to all contractors.

Supplies: \$ 2.0

This funding provides for daily operating supplies (paper, desk supplies, etc.).

Equipment: (One-time costs) \$ 11.6

This funding will provide equipment for the new positions requested, including furniture.

TOTAL: \$ 99.9