ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7530 SENATE LABOR & COMMERCE

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

M E M O R A N D U M

February 6, 1991

SUBJECT: Municipal Taxation of Property of Governmental Entities (SB 70)

TO: Senator Drue Pearce

FROM: Tamara Brandt Cook
Director TBC

Here is the sectional summary you requested for SB 70.

Sec. 1. Removes the exemption from municipal taxation for property of a state entity acquired through foreclosure or deed in lieu of foreclosure and retained as an investment. This provision does not apply to property of the Teachers' Retirement Fund or the Public Employees' Retirement System. Provides that property of an entity of the United States is exempt from municipal taxation only to the extent required by federal law.

Sec. 2. Foreclosure procedures do not apply to property of governmental entities that is taxable under the first section of the bill. A municipality may bring an action in superior court to compel payment of the taxes.

Sec. 3. Modifies the current tax exemption provision of the statutes dealing with the Alaska Industrial Development and Export Authority to recognize the power of a municipality to impose taxes on some property under the first section of the bill. Although other exemption statutes are not specifically modified in the bill, the taxing authority granted to municipalities under the first section of the bill will have priority over those statutes. For example, property of the Alaska Permanent Fund Corporation that is taxable under section 1 will be taxable despite the general exemption for the corporation contained in AS 37.13.180.

Sec. 4. The bill takes effect January 1, 1992 to coincide with the beginning of the tax year.

TBC:gc
91-058.glc

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

☑ P.O. BOX B
JUNEAU, ALASKA 99811-2100
PHONE: (907) 465-4700

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

February 19, 1991

POSITION PAPER

RE: CS Senate Bill 70 (C&RA)

SPONSOR: Senator Pearce

DEPARTMENTAL POSITION: Support

Program Effects

Senate Bill 70 would provide for certain federal, state, and municipal properties to become taxable by municipal governments as follows:

1. Federal Property

At the present time Farm Home Administration properties (and possibly other federal properties) are taxable by local governments under federal law. The federal government argues, however, that Alaska's statues preclude municipalities from levying against these taxable federal properties. In Section 2 of the bill, AS 29.45.030 (a)(8)is "housekeeping" language necessary to clear up that problem.

2. State Property

Sections 1, 2. 4, and 5 of the bill provide language which would make state-held investment property taxable if the property were acquired through foreclosure or deed in lieu of foreclosure. Known properties under this category include certain properties held by the Teacher's Retirement System (TRS), the Public Employees Retirement System (PERS), and the Alaska Industrial Development Authority (AIDA).

3. Municipal Property

In Section 2 of the bill , AS 29.45 (a)(C) provides for property which is owned by one municipality, but is located in another, to become taxable. The amendment precludes taxation by a borough of property which is located within its jurisdiction and is owned by a city within the borough. Within boroughs, however, property belonging to one city and located in another, would become taxable by the city within which it is located.

Taking Fairbanks North Star Borough as an example of this:

If the City of North Pole owned property which were located in the City of Fairbanks, the Fairbanks North Star Borough would not be allowed to levy a tax against the property because the property would be "located within a borough and owned by a city within that borough." That feature of the amendment would not alter existing law. At the present time, no borough levies property taxes against property owned by a city which is located within that borough.

On the other hand, using the same example, any property tax rate levied by the City of Fairbanks would be levied against the property owned by the City of North Pole because "municipal real property located outside the municipality is taxable by another municipality." In this example, the real property of the City of North Pole is located outside of North Pole and is, therefore, taxable by the City of Fairbanks.

Comments

The primary reason publicly owned property is typically exempted from property taxation is because the property normally belongs to the people who pay for the provision of municipal services to the property, and who would receive the payment of tax revenues from a levy against the property. In other words, in a case were property is owned by and located in the same municipality, all residents of the municipality would be the taxpayers, the service providers, and the recipients of the resulting revenues. Clearly, it would simply be a waste of time and money to levy against and collect property taxes from such property.

In the case addressed by the amendment, however, there are two distinctly separate groups of people involved. In the example cited above, the people of the City of North Pole receive services such as police protection, etc. for their property which is located in the City of Fairbanks. The people of the City of Fairbanks pay for and provide those services to the property owned by North Pole. The proposed amendment would provide for the people of North Pole to reimburse the City of Fairbanks through property taxation for the services provided to the North Pole property.

The Department supports the passage of Senate Bill 70. Whenever practicable, the Department believes municipal services provided to property and to people should be paid for by the recipients of the services. Senate Bill 70 directly addresses that concept.

Edgar Blatchford, Commissioner

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

☑ P.O. BOX B
JUNEAU, ALASKA 99811-2100
PHONE: (907) 465-4700

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

February 8, 1991

POSITION PAPER

RE: Senate Bill 70

SPONSOR: Senator Pearce

Program Effects

Section one of the bill provides for property which is retained by the State for investment purposes to become taxable by municipal governments. Section one also makes it clear in state law that federal property which is taxable under federal law is taxable as well under Alaska Statutes.

The proposed amendment to the bill (7-LS0420A.1 Cook) provides for property which is owned by one municipality, but is located in another, to become taxable. The amendment precludes taxation by a borough of property which is located within its jurisdiction and is owned by a city within the borough. Within boroughs, however, property belonging to one city and located in another, would become taxable by the city within which it is located.

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Comments

The primary reason publicly owned property is typically exempted from property taxation is because the property normally belongs to the people who pay for the provision of municipal services to the property, and who would receive the payment of tax revenues from a levy against the property. In other words, in a case were property is owned by and located in the same municipality, all residents of the municipality would be the taxpayers, the service providers, and the recipients of the resulting revenues. Clearly, it would simply be a waste of time and money to levy against and collect property taxes from such property.

In the case addressed by the amendment, however, there are two distinctly separate groups of people involved. In the example cited above, the people of the City of North Pole receive services such as police protection, etc. for their property which is located in the City of Fairbanks. The people of the City of Fairbanks pay for and provide those services to the property owned by North Pole. The proposed amendment would provide for the people of North Pole to reimburse the City of Fairbanks through property taxation for the services provided to the North Pole property.

The Department supports the passage of Senate Bill 70. Whenever practical, the Department believes municipal services provided to property and to people should be paid for by the recipients of the services. Senate Bill 70 directly addresses that concept.

Remond Henderson for
Edgar Blatchford, Commissioner

217 Second Street, Suite 200 ■ Juneau, Alaska 99801 ■ Tel (907)586-1325, Fax (907)463-5480

March 1, 1991

POSITION PAPER

CS FOR SENATE BILL NO. 70 (CRA)

The Alaska Municipal League supports CS for Senate Bill No. 70 (CRA). The legislation would require certain public entities to fairly compensate municipalities through the payment of property taxes on certain properties which benefit from municipal services. The AML urges the passage of the legislation to protect fiscal stability at the local level. The bill would do three important things:

1. It would make state agency property which is acquired through foreclosure or deed in lieu of foreclosure and retained as an investment subject to local taxation. Currently, AHFC pays local taxes on investment property but PERS, TRS and AIDEA do not.

2. It would make property owned by a municipality subject to taxation by the municipality in which the property is located except a borough could not tax property owned by a city within that borough. Without the legislation, the residents of the municipality in which the property of another municipality is located receives no benefit in exchange for the tax revenue it must forego.

3. It would clarify that property owned by the federal government is subject to local taxation to the extent required by federal law. Currently, the FDIC, FSLIC, HUD and VA pay taxes or payments in lieu of taxes, but the FHA has chosen not to because state law is not clear.

While, traditionally, property owned by a public entity is tax exempt, the line between private and public has become less clear recently. Certain public property is held not for administrative or public service purposes but for investment purposes, intentionally or unintentionally. These properties generate income and compete with property owned by the private sector and which is subject to local taxation. The property or investment is enhanced, or at least protected, by the municipal services provided to it, such as fire and police protection. Therefore, such property should be subject to local taxes to protect a municipality's tax base and its ability to provide services, especially as state oil revenues decline.

The AML supports CSSB 70 (CRA) and urges its passage. Thank you.

Scott A. Burgess
Executive Director

FEB 4 1991

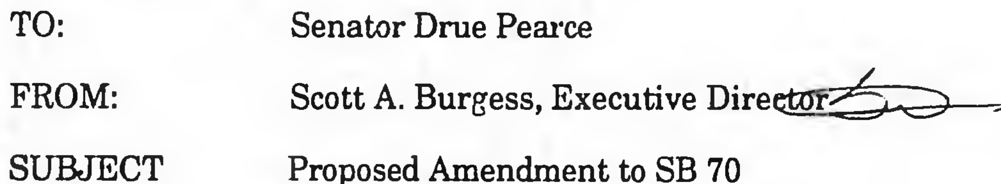
217 Second Street, Suite 200 ▪ Juneau, Alaska 99801 ▪ Tel (907)586-1325, Fax (907)463-5480

February 4, 1991

MEMORANDUM

TO: Senator Drue Pearce

FROM: Scott A. Burgess, Executive Director



SUBJECT Proposed Amendment to SB 70

The Alaska Municipal League supports SB70 with the addition of the sponsor's amendment (7-LS0420A.1 Cook) which provides that municipal real property located outside the municipality is taxable by another municipality. The amendment makes clear, however, that real property owned by a city is not taxable by a borough when it is owned by a city in that borough.

This proposed change in Title 29 was adopted as part of the AML 1991 Municipal Platform in response to a concern that the real property tax base in a number of municipalities could be eroded by the ownership and acquisition of real property by municipalities located outside the city or borough required to provide services. The host municipality providing services such as roads, utilities, and police and fire protection for these properties will need, particularly as state revenues decline, a stable rather than a declining tax base.

In other words, without this limited exception to municipal tax immunity, real property which would otherwise be taxed would continue to be exempt from taxes even though the outside municipality owning the real property has no governmental responsibilities or obligations to the citizens of the municipality required to provide services.

As a matter of policy and equity this amendment is consistent with the principal goal of SB 70 that property which is protected and enhanced by the services of a local government should, in the absence of some overriding policy consideration, bear some obligation to support these services.

The AML supports SB 70 with the proposed amendment. Thank you.

JAN 3 1 1991

Matanuska-Susitna Borough

350 EAST DAHLIA AVE, PALMER, ALASKA 99645-6488 • PHONE 745-9680
BOROUGH ATTORNEY'S OFFICE PHONE 745-9679

January 28, 1991

The Honorable Drue Pearce
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

ATTENTION: Talley Johnson

Dear Senator Pearce:

SUBJECT: **Taxation of Farmers Home Administration Properties**

I have enclosed information related to the Matanuska-Susitna Borough's disagreement with Farmers Home Administration (FmHA) regarding the taxability of properties held by that agency. As you can see from the packet of information enclosed, Representative Larson has requested the attorney general's office to provide an opinion on the taxability of the property.

Please call if I can be of further assistance or if you require additional information on this matter.

Sincerely,
MATANUSKA-SUSITNA BOROUGH

MICHAEL GATTI
Borough Attorney

MG:sah
16\012891-2

enclosures w/index

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

☐ *1031 W 4th AVENUE*
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

☐ *1st NATIONAL CENTER*
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

☐ *P.O. BOX K—STATE CAPITOL*
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

December 5, 1990

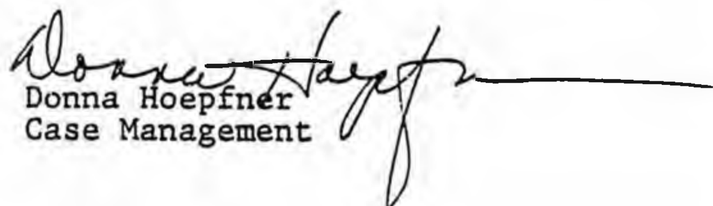
The Honorable Ronald Larson
Alaska State Legislature
House of Representatives
P.O. Box V
Juneau, AK 99811

Re: Attorney General's file # 663-91-0223

Dear Representative Larson:

This is to acknowledge receipt of your opinion request. We have assigned the request to Marjorie Odland and titled our file "Taxability of FmHA properties held for resales." Please refer to the file number listed above if you need to contact the attorney regarding this request.

Sincerely,



Donna Hoepfner
Case Management

03-C5LH

Al-ska State Legisla ure

Session Address:
STATE CAPITOL BUILDING
BOX V
JUNEAU, ALASKA 99811
(907) 465-3727

Interim Address:
BOX 53
PALMER, ALASKA 99645
(907) 745-3826 - Palmer
(907) 376-6626 - Wasilla

Representative Ronald L. Larson
District 16B

November 29, 1990

Douglas B. Baily, Attorney General
PO Box K
Juneau, Alaska 99811

Dear Mr. Baily:

A question has arisen regarding the local taxability of property held by the federal Farmers Home Administration (FmHA). At least two local governments assert that FmHA property, which reverts back to the federal government due to foreclosure or otherwise, is taxable while it is held by the federal government prior to resale. Conversely, the federal government claims that AS 29.45.030 exempts the FmHA from taxation notwithstanding the last sentence of Alaska State Constitution, Article IX, Section 4, and Article XII, Section 9.

I have attached a series of correspondence from various local governments and the U.S. Department of Agriculture which outline the positions on this issue.

Please provide me with a legal opinion as to the taxability of FmHA properties held by the agency for resale. I would appreciate your response within 30 days of the date of this letter. Please call if you have any questions or require any further information.

Sincerely,

Ronald L. Larson
State Representative

enclosures

November 28, 1989 letter
To: Douglas B. Bailey
Re: Local Taxation of FmHA Property

INDEX TO ATTACHMENTS

1. November 6, 1990 letter of Timothy J. Binder (U.S. Dept/Agriculture) re: local taxation of FmHA property.
2. November 6, 1989 memorandum of Mary K. Osowski (Community Development Division) re: taxation of SFH inventory in Alaska.
3. October 6, 1989 letter of Michael Gatti (Matanuska-Susitna Borough) re: taxation of FmHA property.
4. July 24, 1989 letter of Michael E. Trow (U.S. Dept/Agriculture) re: local taxation of FmHA property.
5 May 31, 1989 letter of Michael E. Trow (U.S. Dept/Agriculture) re: local taxation of FmHA property.
6. May 23, 1989 letter of Michael Gatti (Matanuska-Susitna Borough) re: local taxation of FmHA property.
7. May 8, 1989 letter of Wayne Haerer, Jr. (Kenai Peninsula Borough) re: placement of FmHA properties on 1989 assessment roll.
8. May 20, 1988 memorandum of Roger E. Willis (U.S. Dept/Agriculture) re: payment of real property taxes FmHA Instruction 1955-B.
9. May 10, 1988 memorandum of Michael E. Trow re: payment of real property taxes - Alaska, FmHA Instruction 1955-B.
10. May 2, 1988 Memorandum of Kristine A. Schmidt (Kenai Peninsula Borough) re: tax exemption of FmHA.
11. November 19, 1987 memorandum of Kristine A. Schmidt re: tax status of property owned by certain federal and state loan agencies.
12. May 5, 1987 memorandum of Deborah Vogt, Asst. AG re: tax-exempt status of state foreclosed upon properties.

United States Department of Agriculture

Office of General Counsel

1734 Federal Building
1220 S.W. Third Avenue
Portland, Oregon 97204
(503) 326-3115 (FTS 423)
(FAX) 326/423-3807

November 6, 1990

Michael Gatti
Borough Attorney
Matanuska-Susitna Borough
P. O. Box 1608
Palmer, Alaska 99645-1606

RE: Local Taxation of Farmers Home Administration Property

Dear Mr. Gatti:

Back in October I contacted the Matanuska-Susitna Borough Assessment Office (Borough) concerning the assessment of taxes on property held by FmHA. They said that they would be talking with you about this matter. Since I have heard nothing back, I have taken the liberty to write to you directly. I understand that you have been involved in this matter, having written at least one letter to Michael E. Trow detailing your position on this matter.

Since that time, this office has sent the question back to our Washington, D.C. office to obtain an independent view of the subject. The Washington, D.C. office has stated that under the present law, FmHA is not authorized to pay taxes assessed by the Borough in Alaska. As I understand the present situation, FmHA, upon such advise, has refused to pay such taxes. The Borough has continued to issue assessment notices relating to taxes assessed for periods during which FmHA held title to the real property. This has caused some degree of consternation to purchasers of FmHA property.

Under the Supremacy Clause of the Federal Constitution, the United States is immune from taxes imposed by State or local authorities. *McCulloch v. Maryland*, 4 Whet. 316 (1819); See *Minneapolis Star v. Minnesota Comm. of Rev.*, 460 U.S. 575, 589 n. 12 (1983) ("[t]he Supremacy Clause has prohibited . . . any direct taxation of the Federal Government."). This immunity may be waived by Congress but any such waiver must be "narrowly construed because it defeats the immunity shielding the federal government." *National R.R. Passenger Corp. v. Pa. P.U.C.*, 848 F.2d 436, 439 (3rd Cir. 1988), *cert. denied* ___U.S.___, 102 L.Ed.2d 220 (October 11, 1988). Accordingly, the first question to be answered is whether and to what extent Congress has waived the sovereign immunity of the United States. The answer to this question must be narrowly construed against such waiver.

In 1977, Congress passed a provision which waived the Federal sovereign immunity from State and local taxes for certain property held by FmHA. 42 U.S.C. 1490h. However, in accordance with the narrow construction given to such statutes, this statute has been interpreted to grant authority to States and local governments to tax rural housing projects, but it does not, by itself, impose taxes. *Dawson v. Childs*, 665 F.2d

705, 711 (5th Cir. 1982). One must look to State law to determine whether the property, in fact, is subject to taxes.

I note that in your letter on this subject, you distinguish the *Dawson* case and conclude that our reading of the case was in error. However, I note that our reading of the case is identical to that given to the case by the Court of Appeals for the Seventh Circuit. *United States v. County of Cook, Ill.*, 725 F.2d 1128, 1131 (7th Cir. 1984). The Court, in that case, interpreting a different statutory waiver of tax immunity, followed the rationale of the *Dawson* case, in holding that the statute did not supersede a state law prohibiting such taxation. The applicable statute in that case stated: "With respect to any interest in real property acquired under the provisions of this section, the same shall be subject to State and local taxes until title to the same shall pass to the Government of the United States." 40 U.S.C. 602a(d). The Defendants argued that this provision superseded a State law which exempted such property from taxation. The Court rejected this argument, stating:

> Section 602a(e) (sic) opens United States property to taxation, but it does not *require* local taxation of United States property. If the state of Illinois statutorily exempts from local taxes property being acquired under purchase contract by the United States, then the United States is certainly entitled to take advantage of that exemption.

(Emphasis in the original.)

Based upon the above opinions, it is my view that the Congressional waiver of sovereign immunity does nothing more than open the Government property to taxation. One must look to the applicable State law to determine whether Government property, indeed, is subject to local taxes.

The applicable State law begins with the Constitutional provision found in Article IX, Section 4. That provision provides that the valid existing exemptions are retained "unless otherwise provided by law." You raised an argument that the Federal statute is other "law" for purposes of this provision. However, the Federal statute does not purport to address the matter of State exemptions. Nowhere in that statute is there any intimation that Congress intended to waive a valid exemption provided by Alaska law. The Federal statute addresses the issue of sovereign immunity, not State exemptions. See *County of Cook, supra*. Thus, although sovereign immunity has been waived, the question remains as to whether the State has chosen to tax such property.

The answer to this question is "no." Like Texas in the Fifth Circuit opinion and Illinois in the Seventh Circuit opinion, the State of Alaska has enacted a law granting immunity from taxes to property held by the Federal Government. AS 29.45.030(a)(1). That statute provides in relevant part: "The following property is exempt from general taxation: (1) municipal, state, or federally owned property . . . ." I have been unable to find any State law waiving this exemption. Under the rule of the above opinions, this State law effectively bars local governments from taxing Federal property, notwithstanding the existence of a Federal

statute making such property subject to taxation. (I note that there is an explicit State statute that makes property held by the Alaska Housing Finance Corporation subject to local taxation. AS 18.56.190.)

For the above reasons, would it be possible for you to revisit this issue. I would be happy to discuss the matter with you over the telephone. Or would it be possible for you to request an opinion from the State Attorney General's Office. I know that this issue has wider implications than your Borough, although it is your Borough that has continued to hold a view divergent from that of the FmHA.

I am concerned because it appears to me that the people we are attempting to help are being caught in the middle of this matter. FmHA borrowers often lack the resources to pay for the back taxes assessed against their property. I do not believe that they should be the ones who are required to bear the burden of resolving this matter. Yet, the taxes are being assessed against them because the United States does not believe it has the authority to pay such taxes under the present law. Since the dispute, if there is one, is between the United States and the Borough, it seems that we are the parties who should bear the burden of resolving the dispute.

In any event, I am looking forward to your reply. If I can be of any assistance to you in this matter, please contact me at the number listed above.

Sincerely,

ARNO REIFENBERG
Regional Attorney

Timothy J. Binder
Attorney

TJB/jc

Reifenberg
Portland, Oregon

6 - NOV 1989

Our Ref: LEG 5-2-1

TO: Ronnie O. Tharrington
Assistant Administrator - Housing
Farmers Home Administration

FROM: Mary K. Osowski, Attorney MARY K. OSOWSKI
Community Development Division

SUBJECT: Taxation of SFH Inventory in Alaska

We have reviewed your October 24, 1989 memorandum and its attachments on the above-captioned subject and have also spoken to Michael Trow in our Portland OGC office. We agree with the position of our Portland office that the Matanuska-Susitna Borough has no authority to impose property taxes on FmHA SFH inventory property. While § 528 of Title V of the Housing Act of 1949 waives the Federal Government's sovereign immunity from taxation of FmHA housing property in its possession, this waiver is not an unconditional one. It is conditional and the condition that applies here is the statement that the property shall be subject to State and local taxation "in the same manner and to the same extent as other property is taxed." Therefore, for example, if a State law exempts Federally owned property from taxation, our position has been that § 528 does not operate to negate or override this exemption.

Section 29.45.030(a)(1) of the Alaska Statutes clearly exempts Federally owned property from general taxation. Neither we nor our Portland office read the somewhat confusing language in Article IX, § 4 of the Alaska Constitution[1] as changing the meaning of § 29.45.030(a)(1) or somehow affecting (as the Borough's attorney contends) the conditional waiver in § 528 of Title V of the Housing Act of 1949.

Your memorandum asked us to inform you of what course we thought prudent for FmHA to follow in this matter. Apparently the Borough's attorney has threatened to bring a declaratory judgment action against FmHA if it continues to refuse to pay property taxes on its housing inventory properties. Your memorandum indicates that

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[1] The last sentence of this section states that "[a]ll valid existing exemptions shall be retained until otherwise provided by law." Our Portland office's October 13, 1989 memorandum to Darwin Betts points out that this language is not self-executing and that § 29.45.030(a)(1) of the Alaska Statutes in fact does exempt Federally owned property from general taxation.

RECEIVED
NOV 1 1989
Office of the General Counsel U.S.D.A.

our Portland office questions whether such an action could be successfully defended. Actually they are worried about the situation in which the Borough would not sue but would instead start to file tax liens against the property, forcing FmHA to sue to stop the practice. They wondered whether the United States Attorney's office would be willing to file such a suit. Nonetheless, we cannot advise FmHA to pay taxes under the circumstances in this matter because of the language in § 528 and the Alaska statute. We do wonder, however, why the Borough's attorney did not seek an Alaska Attorney General's opinion on the issue, especially on the effect of the Alaska Constitutional provision. While FmHA cannot ask for such an opinion itself, we know that in other situations FmHA has asked a sympathetic party such as a State legislator to request such an opinion. We suggest that avenue be explored here because, if the Alaska Attorney General agrees with our position, then the Borough's taxation efforts should cease and a lawsuit will have been avoided.

If you have any questions about this memorandum, please call me on 447-5220.

cc: Arno Reifenberg, Associate R/A, Portland, Oregon Attn: Michael Trow

Note to Reifenberg: Nice job done on the research memos on this issue

OGC:CD:MKOSOWSKI:11/3/89:CD-95:Ak-Tax:5.0-A

Matanuska-Susitna Borough

P.O. BOX 1608, PALMER, ALASKA 99645-1608 • PHONE 745-9680

BOROUGH ATTORNEY'S OFFICE

October 6, 1989

Michael E. Trow, Attorney
U.S. Dept. of Agriculture
Office of General Counsel
1734 Federal Building
1220 S.W. Third Avenue
Portland, Oregon 97204

RE: **Taxation of Farmers Home Administration Property**

During the assessment cycle for fiscal year 1989/1990, the question of taxation of Farmers Home Administration (FmHA) property has been raised. Previously such property was omitted from the Borough tax rolls for an indiscernible reason. On May 20, 1988 a memorandum from the United States Department of Agriculture, Farmers Home Administration, Roger E. Willis, State Director, asserts that property held by FmHA is not taxable. Director Willis' conclusion is based upon a May 10, 1988 legal memorandum from attorney, Michael E. Trow of the Office of General Counsel for the U.S. Department of Agriculture. In that memorandum Mr. Trow concludes that AS 29.45.030(a)(1) does not pre-empt 42 U.S.C. §1490h waiving FmHA's sovereign immunity from taxation. (The memo incorrectly cites the federal statute as §1491h.) It is my understanding that the FmHA holds approximately 90 properties in the Borough for a total assessed valuation of $3,486,500 which equals approximately $23,952 of real property tax revenue for fiscal year 1989 at a mill rate of 6.87 and $32,075 of real property tax revenue for fiscal year 1990 at a mill levy of 9.2.

ANALYSIS

A general rule of law associated with the taxation of property agencies and instrumentalities of the United States government is that in the absence of a Congressional waiver of sovereign immunity, there is immunity from state and local taxation of these areas. 70 Am.Jur.2d, State and Local Taxation, §221. In determining whether there is any governmental tax immunity for an agency or instrumentality of the federal government, one court has pointed out that:

> In considering the immunity of federal instrumentalities from state taxation, two factors may

> be of importance which are lacking in the case of claimed immunity of state instrumentalities from federal taxation. Since the acts of Congress . . . constitutional powers are supreme, the validity of state taxation of federal instrumentalities must depend (a) on the power of Congress to create the instrumentality and (b) its intent to protect it from state taxation. Helvering v. Gerhardt, 304 U.S. 405, 82 L.Ed. 1427, 58 S.Ct. 969, Rehearing denied 305 U.S. 669, 83 L.Ed. 434, 59 Sup.Ct. 56. 19___.

Even though the instant case deals with local government taxation of property held by an agency of the federal government by analogy, the same principle expressed in the foregoing case should apply.

With respect to the first prong of the test annunciated above, clearly Congress has the power to create the Farmers Home Administration. The second prong of the test, that is Congress' intent to protect Farmers Home Administration from state taxation may be determined from the provisions of 42 U.S.C. §1490h which provides for the taxation of Farmers Home Administration-held property. It provides:

> All property subject to a lien held by the United States or the title to which is acquired or held by the Secretary under this title other than property used for administrative purposes shall be subject to taxation by a State, Commonwealth, territory, possession, district, and local political subdivisions in the same manner and to the same extent as other property is taxed: Provided, that no tax shall be imposed or collected on or with respect to any instrument if the tax is based on--
>
> (1) the value of any notes or mortgages or other lien instruments held by or transferred to the Secretary;
>
> (2) any notes or lien instruments administered under this title which are made, assigned, or held by a person otherwise liable for such tax; or
>
> (3) the value of any property conveyed or transferred to the Secretary, whether as a tax on the instrument, the privilege of conveying or transferring, or the recordation thereof; nor shall the failure to pay or collect any such tax be a ground for refusal to record or file such instruments, or for failure to impart notice, or prevent the enforcement of its provisions in any state or federal court.

The preamble to 42 U.S.C. 1490h provides that all Farmers Home property is subject to taxation by a state or political subdivision in the same manner and to the same extent as other property is taxed. There are three exceptions to the general rule, all of which apparently are concerned with the taxation of the value of any notes or mortgages or lien instruments held or assigned to the Secretary or the value of any property conveyed or transferred to the Secretary, whether a tax on the instrument, the privilege of conveying or transferring or the recordation thereof. It is important to note that the exceptions are based on the value of any property conveyed or transferred to the Secretary and not the property itself. The plain meaning of the phrase "value of any property" means that proceeds generated from the conveyance or transfer of the property to the Secretary are not taxable. This phrase does not exempt from taxation the property itself, whether held by a private individual or FmHA.

The waiver of intergovernmental tax immunity set forth in 42 U.S.C. §1490h means exactly what it says. FmHA property is taxable but the monetary value derived therefrom is not.

THE DOCTRINE OF PRE-EMPTION IS IRRELEVANT TO THE QUESTION OF EXPRESSED CONGRESSIONAL WAIVER OF SOVEREIGN IMMUNITY FROM TAXATION OF FmHA PROPERTY

AS 29.45.030(a) provides the following property is exempt from general taxation:

> 1. Municipal, state or federally-owned property, except that a private leasehold interest, or other interest in the property is taxable to the extent of the interest.

The enabling authority for AS 29.45.030(a) is set forth in Alaska Constitution, Article IX, Sec. 4, Exemptions. This article provides:

> The real and personal property of the state or its political subdivision shall be exempt from taxation under conditions and exceptions which may be provided by law. All, or any portion of property used exclusively for non-profit, religious, charitable, cemetery, or educational purposes, as defined by law, shall be exempt from taxation. Other exemptions of like or different kind may be granted by general law. All valid existing exemptions shall be retained unless otherwise provided by law. (Emphasis added.)

Article IX of the Alaska Constitution states that private leasehold interests and contracts or interest in land or property owned or held by the United States, the state, or its political subdivisions shall be taxable to the extent of those interests. The last sentence of Article IX, Sec. 4 provides that "all valid existing exemptions shall be retained until otherwise provided by law." The constitutional framers thus saw fit to authorize the waiver of governmental sovereign immunity from taxation if "otherwise provided by law." 42 U.S.C. §1490h waives sovereign immunity from local taxation of FmHA property since it is a statute which is "otherwise provided by law" and within the contemplation of the exception to the general exemption rule. This provision must be strictly construed against the property holder and in favor of the taxing authority. McKee v. Evans, 490 P.2d 1222 (1971). A federal statute is law as is a state statute or local ordinance. In other words, a law is a law whether it is federal, state or local law. 42 U.S.C. 1490h clearly provides that, within three narrowly crafted exceptions, FmHA property is taxable by a local government.

DAWSON v CHILDS DOES NOT STAND FOR THE PROPOSITION EXPRESSED IN THE GENERAL COUNSEL'S MEMORANDUM OF MAY 10, 1988

The General Counsel cites the case of Dawson v. Childs, 665 F.2d 705 (1982) for the proposition that 42 U.S.C. 1490(h) does not pre-empt the general exemption from general taxation contained in As 29.45.030(a). A close reading of Dawson clearly establishes that the General Counsel's conclusion is erroneous. In Dawson, FMHA acquired property it had made direct loans on through foreclosure or by a voluntary conveyance in lieu of foreclosure. The property remained in FmHA's inventory for awhile pending sale. In 1977 the FmHA conveyed the property to the Dawsons with a provision in the warranty deed related to the payment of taxes which effectively amounted to a contract whereby the government agreed to pay any taxes against the property during the time of its ownership, provided that the property was subject to Texas local statutes and taxes. The corollary to this proposition is that government would have no liability if the property were not subject to Texas local statutes. In October 1977, Congress amended the Housing Act of 1949, 42 U.S.C. §1472 et seq., waiving sovereign immunity from taxation on certain property, including Farmers Home Administration held property. 42 U.S.C. 1490h. The amendment was retroactive to January 1, 1977. The Dawsons tendered payment for a portion of the 1977 property taxes when they owned the property. The local taxing authority refused the payment and demanded payment for the entire year as for tax year 1976 during which the United States

possessed title. The court held that the amendments to 42 U.S.C. 1471 et seq. did not take effect until January 1, 1977, therefore, sovereign immunity before that date shielded the FmHA property from local taxation. The court further held that the Texas statutory exemption exempted "all property" from taxation. The Texas exemption cited in Dawson is substantially distinguishable from the Alaska exemption contained in As 29.45.030(a) and the express language of Article IX, Sec. 4 of the Alaska Constitution authorizing exceptions to the exemption of federal property from local taxation in its last sentence. FmHA property is therefore subject to Borough property taxes.

UNEQUAL TREATMENT

The Borough disagrees with FmHA's position that taxation of Farmers Home property results in unequal treatment. There are numerous examples of local taxation of state and federally held property within the state. FmHA property is subject to taxation just as other federally and state held property is subject. Alaska Constitution, Article IX, §1,4,5.

ESCAPED PROPERTY

In Municipality of Anchorage v. Alaska Distribution Company, 725 P.2d 692 (Alaska 1986), the Alaska Supreme Court held that public policy required all taxpayers to bear their fair share of taxes and thereby disallow windfalls due to the tax assessor's errors. This principle is known as the recapture of escaped property and it authorizes a municipality to seek back taxes on property that escaped taxation for up to six years. AS 09.10.120; AS 29.45.100(a); AS 29.45.110(a); AS 29.45.220; Municipality of Anchorage v. Alaska Distribution Company, supra. Accordingly, the Borough Assessor may assess taxes against FmHA property that were not paid for the last six years.

CONCLUSION

For the reasons cited above, FmHA property is subject to real property taxation by the Matanuska-Susitna Borough. Even though the subject FmHA property is subject to taxation by the Borough, my client has authorized me to tender an offer to you to compromise a disputed claim. The Borough will forebear from filing a declaratory judgment action for delinquent taxes, penalties and interest, including the assessment of FmHA for six years of escaped property in exchange for FmHA tendering payment to the Borough for delinquent 1988 and 1989 taxes, penalty and

interest on the property. The 1988 and 1989 delinquent taxes, penalty and interest on the subject property are as follows:

	Taxes	Interest	Penalty
1988	$ 818.69	$ 57.57	$ 81.87
1989	$30,922.12	$102.22	$2,514.94

Please advise the Borough of your client's position on this matter within thirty days.

Sincerely,
MATANUSKA-SUSITNA BOROUGH

MICHAEL GATTI
Borough Attorney

cc: Gary Lewis, Borough Assessor

MG:sah

5-092689-1

United States
Department of
Agriculture

Office of
General
Counsel

1734 Federal Building
1220 S.W. Third Avenue
Portland, Oregon 97204
(503) 326-3115
(FTS) 423-3115
(FAX) 326/423-3807

July 24, 1989

Michael Gatti
Borough Attorney
Matanuska-Susitna Borough
P. O. Box 1608
Palmer, Alaska 99645-1608

RE: Local Taxation of Farmers Home Administration Property

Dear Mr. Gatti:

Please refer to my letter of May 31, 1989. Farmers Home Administration has expressed concern because your assessor has begun to levy taxes on its inventory property. Where that property is now in the process of being sold to low income third parties, the end result will only be to preclude sale because neither those parties nor the agency has funds with which to pay the taxes.

I must reiterate the agency's position that while it holds title to the subject properties, they are immune from local taxation. I have again reviewed Alaska General Law, AS 29.45.030(a)(1), together with the constitutional and federal statutory law applicable to taxation of federal entities. There are two reasons why I conclude that Farmers Home Administration inventory property continues to be exempt from the imposition of these taxes. First, AS 29.45.030(a)(1) expressly exempts property of the United States from taxation. Second, because the statute exempts state and municipal property too from general taxation, the Borough may not discriminate by taxing only property of the United States.

Under the Supremacy Clause of the Federal Constitution, the United States is immune from taxes imposed by State or local authorities. McCulloch v. Maryland, 4 Whet. 316 (1819); see also Minneapolis Star v. Minnesota Comm. of Rev., 460 U.S. 575, 589 n.12 (1983) ("[t]he Supremacy Clause has prohibited... any direct taxation of the Federal Government"). This immunity may be waived by Congress but any such waiver must be "narrowly construed because it defeats the immunity shielding the Federal Government." National R.R. Passenger Corp. v. PA. P.U.C., 848 F.2d 436, 439 (3rd Cir. 1988), cert denied __ U.S. ___, 102 L.Ed.2d 220 (Oct. 11, 1988).

In 1977, Congress amended the Housing Act of 1949, adding a provision which waived the federal sovereign immunity from State and local taxes for certain property held by Farmers Home Administration. 42 U.S.C. §1490h. This waiver was limited in three respects: (1) federal property used for administrative purposes could not be taxed, (2) federal property could be taxed only in the same manner and to the same extent as other properties were taxed, and (3) no tax could be assessed on instruments or the privilege of conveying or transferring or the liquidation thereof, if that tax is based on the value of the property conveyed.

The second of these restrictions, at issue here, is in line with the general constitutional standard that discriminatory taxes are not permitted. As stated in Memphis Bank & Trust Co. v. Garner, 459 U.S. 392, 397 n.7 (1983): "[S]tate taxes are constitutionally invalid if they discriminate against the Government." The point of comparison in determining whether taxes discriminate against the federal government is not the general public, but the state. A state constitutionally may not enact laws granting to itself or those in privity with it privileges with respect to tax laws which it does not also grant to the Federal Government. Davis v. Michigan Department of Treasury, ___ U.S. ___ ____ ___, 103 L.Ed.2d 891, 905, n.4 (March 28, 1989); Phillips Chemical Company v. Dumas Independent School District, 361 U.S. 376 (1960).

However, before Farmers Home Administration property can be made subject to non-discriminatory state and local taxation, Alaska must enact enabling legislation. It has not done so. To the contrary, AS 29.45.030(a)(1) expressly exempts the agency's property from taxation. In Dawson v. Childs, 665 F.2d 705, 711 (5th Cir. 1982) the court considered this very issue. The appellant argued that the waiver of federal sovereign immunity provided by 42 U.S.C. §1490h pre-empted the state's exemption of United States property from taxation under Texas statute. The court was unpersuaded, finding that the exemption granted by Texas statutes prevented the taxing of Farmers Home Administration property even though the federal government had removed the constitutional barrier to such taxation.

Turning to the discrimination issue, AS 29.45.030(a)(1), in a straight forward manner, appears to grant immunity equally to municipal, state, and federally-owned property. Under Davis, Alaska and the Matanuska-Susitna Borough may not exempt the property owned by them from taxation, while at the same time taxing the property of Farmers Home Administration. 42 U.S.C. §1490h states that federal property may be taxed "in the same manner and to the same extent as other property is taxed." As with the state statute at issue in the Davis case, it is safe to assume that this language also was designed to incorporate the constitutional doctrine of non-discrimination in defining the scope of immunity in 42 U.S.C. §1490h. Having reached this conclusion, we must reach the further conclusion that under

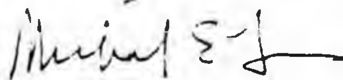
Davis, Farmers Home Administration property is subject to taxation only in the same manner and to the same extent that state or borough property is subject to taxation. Because the state of Alaska retains tax immunity for itself and its municipalities property, see AS 29.45.030(a)(1), tax immunity for Farmers Home Administration property is also retained. The State may not favor itself in its taxing scheme in relation to the federal government. Davis, 103 L.Ed.2d at 903-905.

Please advise your assessor that under Davis and Dawson, Farmers Home Administration inventory property is not subject to taxation until Alaska enacts a statute to the effect that the United States and its agencies and instrumentalities and their property are declared to be taxable to the extent permitted under the laws of the United States and to the extent that State and municipal properties are taxed.

Your assessor needs to be advised at once that there is simply no basis in law for the borough to tax Farmers Home Administration inventory property.

Sincerely,

ARNO REIFENBERG
Regional Attorney



Michael E. Trow
Attorney

cc: Darwin Betts
FmHA - Alaska

MET/jc:8907073

United States Department of Agriculture

Office of General Counsel

1734 Federal Building
1220 S.W. Third Avenue
Portland, Oregon 97204
(503) 326-3115
(FTS) 423-3115
(FAX) 326/423-3807

—Law Office
Received

May 31, 1989

Michael Gatti
Borough Attorney
Matanuska-Susitna Borough
P. O. Box 1608
Palmer, Alaska 99645-1608

RE: Local Taxation of Farmers Home Administration Property

Dear Mr. Gatti:

I have reviewed your letter of May 23, 1989 and my May 10, 1988 letter to Roger E. Willis, State Director, FmHA, Alaska. My position remains that, while Congress has waived FmHA's sovereign immunity from taxation, see 42 USC 1490h, FmHA inventory property is not subject to local taxation because Alaska General Law, AS 29.45.030(a)(1) expressly exempts "[f]ederally owned property, except that a private leasehold, contract, or other interest in the property is taxable to the extent that the interest."

Alaska Constitution Article IX, Section 4 provides, in pertinent part:

> Other exemptions of like or different kind may be granted by general law. All valid existing exemptions shall be retained unless otherwise provided by law.

You feel that 42 USC 1490h which waives the federal government's sovereign immunity from taxation of FmHA property somehow is other law which removes that property from within the "valid existing exemption" provided by AS 29.45.030(a)(1).

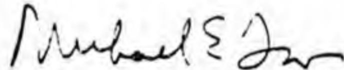
Notwithstanding the 42 USC 1490h waiver of sovereign immunity, until the cited state statute is amended, FmHA owned property is within the existing state law exemption. This was exactly the issue decided in Dawson v. Childs, 665 F2d 705, 711 (5th Cir. 1982): 42 USC 1490h does not preempt valid existing state law

exemptions. Accordingly, it remains FmHA position that until Alaska repeals its statute, your borough has no authority to tax FmHA's property.

Please call me if you wish to discuss this matter further.

Sincerely,

ARNO REIFENBERG
Regional Attorney



Michael E. Trow
Attorney

cc: Darwin Betts
FmHA - Alaska

MET/jc:8905139

Matanuska-Susitna Borough

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

May 23, 1989

Mr. Michael Trow
U.S. Department of Agriculture
Office of General Counsel, Rm. 1734
1220 S.W. Third Avenue
Portland, Oregon 97204

Dear Mr. Trow:

Subject: **Local taxation of Farmers Home Administration Property**

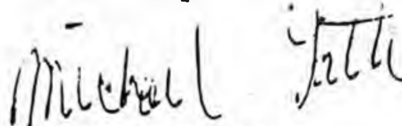
In your opinion of May 10, 1988, you conclude that Farmers Home Administration property is exempt from taxation notwithstanding 42 U.S.C. 1490(h). Your conclusion is based, in part, on the case of Dawson v. Childs, 665 F.2d 205 (1982) which stands for the proposition that congress has waived Farmers Home Administration's sovereign immunity from taxation pursuant to 42 U.S.C. 1490(h). Since your opinion does not cite Alaska Constitution Article IX, Section 4 exemption, you may wish to re-evaluate your position in light of this section which provides:

> "The real and personal property of the state or its political subdivision shall be exempt from taxation under conditions and exceptions which may be provided by law. All, or any portion of property used exclusively for non-profit, religious, charitable, cemetery, or educational purposes, as defined by law, shall be exempt from taxation. Other exemptions of like or different kind may be granted by general law. All valid existing exemptions shall be retained unless otherwise provided by law." (Emphasis added.)

Clearly 42 U.S.C. 1490(h), which is otherwise provided by law, waives the federal government's sovereign immunity from taxation of Farmers Home Administration property in its possession. Please re-evaluate your opinion in light of this new information. Since this property is taxable, the assessor has placed it upon the Borough's assessment rolls. Your representative in Palmer has been previously supplied with a Notice of Taxation.

Please call if you have any questions or require any further information on this issue. I look forward to your response which I expect to receive in approximately five days of receipt of this letter. Also, please notify your client agency that the property is subject to taxation.

Sincerely.



Michael Gatti
Borough Attorney

cc: Gary Lewis, Borough Assessor

MG:sah

L\52389-3

KENAI PENINSULA BOROUGH

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

DON GILMAN
MAYOR

May 8, 1989

Matanuska-Susitna Borough
P.O. Box B
Palmer, AK. 99645

Att: Karl D. Borglum

Dear Karl:

I am responding to your inquiry of May 3, 1989, wherein you asked if the Kenai Peninsula Borough has placed Farmers Home Administration properties on the assessment roll for 1989.

The answer is no, not the original roll. It was an inadvertent oversight and the plan is, to place these (six total) properties on the 1989 supplemental roll.

I have elected to place these properties on the assessment roll as taxable for two reasons.

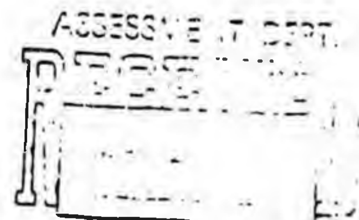
(1) My legal staff, through exhaustive research, feel very confident as to our legal authority to tax. Oral and written communication from them has instilled my confidence in their findings.

(2) In the spirit of equality and fairness, I cannot maintain taxability of all the other State and Federal agencies that qualify and overlook Farmers Home Administration.

I hope this clarifies my position on this matter and serves some positive reinforcement to your endeavors. I might suggest that, perhaps you should have your legal counsel contact Kristine Schmidt, Kenai Peninsula Borough, Deputy Borough Attorney on this matter.

With Best Regards,

Wayne D. Haerer, Jr.
Director of Assessing



WDH/mch

cc: Lenny Reagin, Assessor
Fairbanks North Star Borough

Steve Van Sant, Assessor
Municipality of Anchorage

Mike Worley, State Assessor
Community and Regional Affairs

For Administrative Use Only Alaska AN No. 67(1955)

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION
PALMER BUSINESS PLAZA
634 SOUTH BAILEY, SUITE 103
PALMER, ALASKA 99645

Subject: Payment of Real Property Taxes
FmHA Instruction 1955-B

May 20, 1988

To: Area Loan Specialists
Assistant Area Loan Specialists
Loan Assistants
Alaska

The Office of General Counsel for the Department of Agriculture on May 10, 1988 issued an opinion concerning local taxation of FmHA inventory properties.

Simply stated, AS 29.45.030(a)(1) exempts from general taxation all federally owned property in Alaska. Unless this statute has recently been amended (in 1988) local boroughs are precluded from taxing FmHA owned inventory property. If you are approached by the local authorities concerning taxation, you should ask for the citation authorizing that action. Also, in that event, feel free to contact the RH section for further guidance.

Roger E. Willis

ROGER E. WILLIS
State Director

EXPIRATION DATE: 05-23-89

FILING INSTRUCTIONS: PRECEEDING
FmHA Instruction 1955-B

MAY 20 1988

United States Department of Agriculture

Office of General Counsel

1734 Federal Building
1220 S.W. Third Avenue
Portland, Oregon 97204
(503) 221-3115
(FTS) 423-3115

May 10, 1988

TO: Roger E. Willis
State Director
FmHA - Palmer, Alaska

FROM: Michael E. Trow
Attorney

SUBJECT: Payment of Real Property Taxes - Alaska
FmHA Instruction 1955-B

Please refer to your memorandum of May 3, 1988. The local boroughs tell you they plan to begin taxing FmHA on its inventory real property. In 1977 Congress waived FmHA's sovereign immunity from taxation. See 42 U.S.C. §1491h, copy attached. However, as far as I can tell Alaska has exempted from general taxation all federally-owned property. See AS §29.45.030(a)(1) (1986). I have looked through the 1987 amendments to the Alaska statutes and find this statute to still be good law. I do not have any 1988 Alaska legislative materials from which to discern whether the statute has recently been changed.

Even though Congress has consented to the taxation of FmHA held property by local political subdivisions, in Dawson v Childs, 665 F.2d 705, 711 (5th Cir. 1982) the Fifth Circuit held that FmHA property was taxable only if the Congressional waiver pre-empted the Texas statutory exemption at issue. The Texas statute exempted "[a]ll property, whether real or personal, belonging exclusively to this state, or any political subdivision thereof, or the United States . . . ." As the Fifth Circuit held the statute says "all." Until the state repealed its statute the local political subdivision had no authority to tax FmHA's property. In other words, the state statute was not pre-empted by 42 U.S.C. §1490h.

Likewise, unless AS §29.45.030(a)(1) has recently been amended, the local boroughs are without power to tax FmHA-held property. This is simply for the reason that §29.45.030(a)(1) precludes them from doing so. Please ask one of the local boroughs that has advised you that it will be begin to tax FmHA-held property to cite you some authority for it to do so. If it only cites you to 42 U.S.C. §1490h, cite Dawson v Childs as authority for the proposition that it is without power to tax FmHA property.

MET/jc

- 5 1988

MEMORANDUM

TO: Jack Cline, Borough Appraiser

FROM: KAS Kristine A. Schmidt, Deputy Borough Attorney

DATE: May 2, 1988

SUBJECT: Tax Exemption of Farmers Home Administration ("FMHA")

I understood that Farmers Home Administration foreclosed property was TAR'd last fall, based on a letter from Leland Aley dated October 19, 1987 (copy attached). Subsequently, Don Thomas asked me for a legal opinion on the taxability of several state and government agencies, including the Farmers Home Administration.

I sent my opinion November 19, 1987 (copy attached). In that opinion I stated that: "... property foreclosed on pursuant to a loan agreement with [Farmers Home Administration] under 42 U.S.C. Sec. 1471, et seq., and acquired or held by FMHA, even if the foreclosure deed states that the grantee is the United States on behalf of [Farmers Home Administration], is taxable, as intended by Congress when it enacted 42 U.S.C. Sec. 1490(h)."

The FMHA tried to assert that its foreclosed property was tax exempt from municipal taxes in the case of Dawson v. Childs, 665 F.2d 705, 708 (5th Cir. 1982). The federal court in that case ruled that Congress specifically waived tax immunity for FMHA property acquired at foreclosure and held by FMHA. Although AS 29.45.030(a)(1) exempts federal property, it does so based on the immunity of the federal government from taxes in general. Where the federal government has waived its tax exemption, then federal property is taxable.

This analysis is similar to the state tax situation. The Alaska Constitution and state law (AS 29.45.030(a)(1)) provide that state property is exempt; however, where the state statutes provide that state property is taxable, they have waived this exemption.

At a March meeting between Don Thomas, you and myself, we discussed the FMHA tax exemption and I though we were agreed that these properties were to be returned to the tax rolls.

On April 29, 1988, I received a phone call from Debra Braga, Asst. Borough Attorney of the Fairbanks North Star Borough. She said that her opinion was the same as mine, and that the FNSB intended to tax FMHA on its tax rolls (see attached letter). Based on what I thought was my understanding, that we

also had put FMHA-foreclosed property back on the tax rolls, I informed her that we also do not exempt such property. However, when I asked Wendy Kitchens to confirm this, she said that you had decided to continue to give FMHA a tax exemption.

It is the Borough's responsibility to strictly interpret tax exemptions. Where there is a question about whether property qualifies for tax exempt status under law, we should decide against tax exemption. Therefore, I strongly recommend that you return FMHA-foreclosed properties to the tax rolls, and send a 1988 Notice of Assessment to FMHA. I would also recommend that you reverse the TARs done in the fall of 1987, so that FMHA does not escape liability for 1987 taxes. Although it is too late to put the property in this year's foreclosure judgment, the 1987 liability will show up on next year's foreclosure list, if not paid.

KAS/bg
attachments
cc/attach: Thomas R. Boedeker, Borough Attorney

MEMORANDUM

TO: Don Thomas, Borough Assessor
Bob Walston, Asst. Borough Assessor

FROM: KAS Kristine A. Schmidt, Deputy Borough Attorney

DATE: November 19, 1987

SUBJECT: Tax Status of Property Owned By Certain Federal and State Loan Agencies.

You have requested an opinion on the taxability of property acquired in foreclosure actions and owned or held by various state and federal agencies. Based on my research of federal and state statutes, my opinion is as follows:

1. Alaska Housing Finance Corporation (AHFC). This agency is liable for taxes on real property of which it is fee owner. A.S. 18.56.190(a).

2. Farmers Home Administration (~~FHA~~ "FMHA" KAS). Property subject to a lien held by the United States or the title to which is acquired and held by the FHA under the farm housing loan statutes, other than property used for administrative purposes, is subject to local property taxes to the same extent as any other property. 42 U.S.C. Sec. 1490(h).

I understand that FHA claims exemption based on the fact that the trustee's deed to the property was in the name of the United States. I would argue for taxability based on 42 U.S.C. Sec. 1490(h), even in this situation, because Congress intended to tax property acquired and held by the FHA, whether the grantee of the property is the United States on behalf of the FHA or not.

In addition, at least one Federal appeals court has ruled that 42 U.S.C. Sec. 1490(h) is a waiver of tax exemption for property acquired at foreclosure and held by the FHA. Dawson v. Childs, 665 F.2d 705, 708 (1982). Therefore, it is my opinion that property foreclosed on pursuant to a loan agreement with FHA under 42 U.S.C. Sec. 1471, et seq. and acquired or held by FHA, even if the foreclosure deed states that the grantee is the United States on behalf of FHA, is taxable, as intended by Congress when it enacted 42 U.S.C. Sec. 1490(h).

3. Federal Deposit Insurance Corporation (FDIC). Real property of the Corporation is subject to local taxation to the same extent as other real property. 12 U.S.C. Sec. 1825.

4. Federal Home Loan Mortgage Corporation (~~FHMA~~ "Freddie Mac" KAS). Real property of the Corporation is subject to local taxation to the same extent as other real property. 12 U.S.C. Sec. 1452(d).

5. Federal Land Banks or Federal Land Bank Associations. Real property held by land banks or land bank associations are taxable to the same extent as other property. 12 U.S.C. Sec. 2055.

6. Federal Savings and Loan Insurance Corporation (FSLIC). Real property of the Corporation is subject to local taxation to the same extent as other real property. 12 U.S.C. Sec. 1725(e).

7. Department of Housing and Urban Development (HUD). The Secretary is authorized to enter into payments in lieu of tax agreements with respect to property acquired or owned under any loan or grant by the Department. 42 U.S.C. Sec. 3535(i).

8. National Housing Act. Property acquired and held by the Secretary of HUD pursuant to the National Housing Act, 12 U.S.C. Sec. 1701, et. seq., especially housing renovation and modernization projects (42 U.S.C. Sec. 1701-1706) and mortgage insurance projects (42 U.S.C. Sec. 1707-1715) is taxable. See especially 42 U.S.C. Sec. 1706(b) and 42 U.S.C. Sec. 1714.

Property of the Government National Mortgage Association ("Ginnie Mae") and Federal National Mortgage Association ("Fannie Mae") is similarly taxable. 42 U.S.C Sec. 1723(a)(c).

9. Small Business Administration (SBA). Property held by the SBA in fee simple is exempt from taxation. U.S. v. City of Roanoke, 258 F. Supp. 415 (W.D.Va. 1966); U.S. v. Schwartz, 278 F. Supp. 328 (S.D.N.Y. 1968); U.S. v. Joe Murray's Point Lookout, Inc., 359 F. Supp 335 (D.C.N.Y. 1973).

Property may be taxable when it is held as security by the SBA (but not owned in fee simple). U.S. v. City of Roanoke, supra, p. 418.

Municipal tax liens have priority over SBA loans on property mortgaged to the SBA. 15 U.S.C. Sec. 646. Therefore, delinquent property tax liens can be enforced on property currently owned by the SBA but formerly owned by someone else, as long as the liens attached before the SBA acquired title.

10. Veteran's Administration (VA). The Veteran's Administration may purchase or take title to property, including through foreclosure, and property acquired or held under the VA loan statutes is subject to state civil laws, including tax laws. 38 U.S.C. Sec. 1820(a)(6). Therefore, the VA-foreclosed property is taxable by the Borough.

I understand the VA has sent an opinion to the Borough that states that the VA is not liable for late penalties or interest on property taxes. I disagree with that opinion based on the intent of Congress in 38 U.S.C. 1820(a)(6) that all state civil laws apply to VA-acquired property, including tax laws; and state civil tax laws include tax penalties and interest provisions. It is therefore my opinion that VA-acquired property should be treated like all other property; and if penalties and interest accrue on a VA-held parcel, that the VA is liable.

Last, there is an issue about an apparent conflict between the Alaska Constitution, Art. IX, Sec. 4 (exempting state property from taxes unless the legislature provides otherwise), A.S. 29.45.030(a)(1) (exempting municipal, state, and federal property from taxes), and the state and federal statutes above that specifically make state and federal loan agency property taxable. It is my opinion that A.S. 29.45.030(a)(1) can be interpreted to allow a waiver of that exemption by state or federal law; and that the statutes specifically allowing taxation are such waivers. Therefore, it is not a conflict, in my opinion, to tax state or federal property where specifically allowed to by statute; regardless of A.S. 29.45.030(a)(1).

KAS/bg/bl

MEMORANDUM State of Alaska

TO: Milt Barker
Deputy Commissioner
Department of Revenue

DATE: May 5, 1987

FILE NO.: 663-86-0528

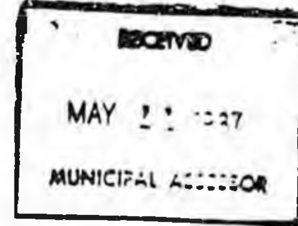
THRU:

TELEPHONE NO.: 465-3600

SUBJECT: Tax-exempt status of state foreclosed upon properties

FROM: Grace Berg Schaible
Attorney General

By: Deborah Vogt
Assistant Attorney General
Department of Law



You have asked for an analysis of the municipal tax liability on real property that is foreclosed upon by the state. 1/

As a general rule, municipal property taxes are a lien on the property involved. If the state forecloses upon property on which a lien has arisen, the property is taken subject to the lien. 2/ I understand that there is no dispute regarding prior years: if the state takes property, for example, in April of 1986 and the 1985 taxes have not been paid, the tax lien must be satisfied before the state can give clear title to the property to a third party. 3/

1/ The property at issue has been foreclosed upon by the Public Employees Retirement System (PERS) and the Teachers' Retirement System (TRS). Property foreclosed upon by the Alaska Housing Finance Corporation (AHFC) is subject to the provisions of AS 18.56.190, which states that such property is exempt from taxation "except taxes on real property of which the corporation is fee owner." Thus, AHFC pays municipal property tax on property owned by the corporation.

2/ AS 29.45.300(b) provides that "[p]roperty taxes, together with penalty and interest, are a lien upon the property assessed...."

3/ The existence of a lien does not imply that a municipality may enforce a lien against the state during the period that the state owns the property. Although we have not analyzed this question, it is likely that the state's sovereign immunity would prohibit a municipality from enforcing a lien against the state.

RECEIVED
MAY 05 1987
MRAD
DEPT OF COMMUNITY
AND REGIONAL AFFAIRS

02-001 A (Rev. 10-84)

Nor should there be any dispute about the fact that municipalities cannot tax the property when it belongs to the state. The Alaska Constitution provides that "[t]he real and personal property of the State or its political subdivisions shall be exempt from taxation under conditions and exceptions which may be provided by law." Art. IX, sec. 4. AS 29.45.030 provides for required exemptions from municipal property taxation, and exempts "state ... property, except that a private leasehold, contract, or other interest in the property is taxable to the extent of the interest...." AS 29.45.030(a)(1). Although it might be argued that property owned by PERS or TRS is not state property, we have previously advised that such property is nonetheless statutorily exempt from property taxes. 1984 Inf. Att'y Gen. Op. (July 31; 663-84-0327). Thus, if the state owns property throughout an entire year, there can be no municipal tax liability for that year.

You question is how to handle the current year's property taxes when the state becomes the owner mid-year. You have asked whether the property tax liability can be prorated between exempt and non-exempt status during a year, and if not, when the tax liability arises. Our answers are that the tax liability may not be prorated, and that exempt status should be determined as of January 1 of the tax year.

Courts that have faced these issues have come to wide ranging conclusions. Only two principles emerge: first, in the absence of specific statutory authority to do so, proration cannot be implied. Second, the time that the tax liability arises is determined by the applicable statute.

Although proration of taxes is certainly the custom in transfers of land between two private owners, and although it would certainly seem logical to do so when the state acquires property, I have found no case in which, in the absence of statutory authority, a court has permitted proration. The cases hold that the tax liability for a year either exists or does not exist; it does not partly exist. 4/

4/ In rejecting the proration of taxes, one court noted that "[a] power in the courts to relieve against property taxes lawfully assessed under explicit legislative authority is, at the least, not a familiar weapon in the judicial arsenal..." District of Columbia v. Sussman, 352 F.2d 683, 685 (D.C. Cir. 1965).

The question then becomes, when does the tax liability for a year arise; or, when does an exemption from taxation attach. Unfortunately, the cases here are of little help. They are unanimous only in that they look to the relevant statute for guidance. Again unfortunately, our statute does not address the question of when the lien for property taxes arises or when an exemption attaches.

Our statutes require that property be assessed at full and true value as of January 1 of the assessment year. AS 29.45.110. A municipality must determine the rate of levy by June 15, and mail tax statements setting out the rate and the date when taxes become delinquent by July 1. AS 29.45.250. Property taxes are a lien upon the property assessed. AS 29.45.300. AS 29.45.320 and 29.45.330 deal with the enforcement of "delinquent real property tax liens." No provision states clearly the date on which the lien arises.

The only provision of the statutory scheme dealing with the timing of an exempt status is AS 29.45.030(f), which deals with the senior citizen and disabled veteran exemption. That provision requires that an application be filed for the exemption by January 15 "of the assessment year," and similarly requires separate applications for each "assessment year." Although the provision does not explicitly state that the exempt status should be determined as of January 1 for the entire assessment year, that interpretation is apparently universally applied by assessing officers.

Some courts that have addressed this question have held that the tax liability is enforceable against the government only if the liability has ripened into a lien. Of these cases, some hold that a lien cannot arise until the tax rate has been set, or until the time that the taxes are due. Utah Parks Co. v. Iron County, 380 P.2d 924 (Utah 1963), Adams Co., Inc. v. Nist, 411 N.Y.S.2d 504 (1978), Rochester Housing Authority v. Sibley Corp., 351 N.Y.S.2d 934 (1974), City of St. Louis v. Ford Motor Co., 158 F.2d 354 (8th Cir. 1946). Others hold that the lien relates back to the assessment date. See e.g., State v. Snohomish County, 128 P. 667 (Wash. 1912), Huntington City v. Peterson, 518 P.2d 1246 (Utah 1974). Other courts have found the tax liability to depend not on the formal existence of a lien, but rather simply on whether the property was exempt as of a "tax status" date, or the assessment date. Lutheran High School Ass'n v. City of New York, 288 N.Y.S. 855 (1968), Appeal of Title Services, Inc., 252 A.2d 585 (Pa. 1969).

The two most helpful cases that we have located focus, in the absence of clear statutory guidance, on the practical realities of municipal budgeting. These cases, District of Columbia v. Sussman, 352 F.2d 683 (D.C. Cir. 1965) and City of East Orange v. Palmer, 220 A.2d 679 (N.J. 1966) each involve controversies between the local government and the state -- or the district (which the court found to be in the same status as a state). In each case the court points out that a municipal government sets the tax rate to be levied on real property as a function of its revenue needs; it may set its budget to stay within certain rates, or establish rates to generate a certain amount of revenue, but in either case the rate is a direct function of the taxable value of property within its jurisdiction. The municipality needs to know with certainty what that value is. If property changes from taxable to exempt status within a tax year, the municipality will have miscalculated its revenue. For largely this reason, both courts conclude that the tax status at the beginning of the tax year is determinative for the entire year.

In the District of Columbia case, the tax year ran from July 1 through June 30. Assessments were made beginning in the preceding January, and finalized in May. The assessment role was finalized on July 1. The United States had condemned property as of July 26, and had argued that taxes were due only for the period between July 1 and July 26. The appeals court held that the taxes were due for the entire tax year. This statutory scheme differs slightly from Alaska's in that there assessments are made and finalized before the tax year begins while in Alaska assessments are made and finalized within the tax year.

The New Jersey statutory scheme is more similar to Alaska's. There, the tax year runs from January 1 through December 31. The assessment date is the preceding October 1, with the assessment role being finalized in January. The tax rate is set in July and taxes are due in February, May, August and November. Since two installments of taxes are due before the rate is set, the previous year's levy is used as an estimate. The court held that a transfer of property after January 1 would not affect the tax liability for that year. It reserved its opinion on property acquired between October 1 and December 31.

Since Alaska's statutory scheme is silent on the question at issue, and since it is not identical with the statutes of other jurisdictions that have faced this question, it is not possible to predict with any degree of certainty how Alaska's court would answer the question. Since a variety of answers seemed at least arguably permissible, I suggested that

the Commissioners of the Departments of Revenue and Community and Regional Affairs meet and discuss the policy implications. The commissioners met on March 23, 1987, and agreed that a January 1 "tax status" date should be used. In addition, the State Assessor indicated that this question had been raised at a meeting of the Alaska Association of Assessing Officers, and that the members of that body agreed that a January 1 "tax status" date should be used. In our opinion, that result may be legally required under existing law; if it is not required, it is certainly legally permissible.

Thus, unless and until the legislature provides otherwise, the state should treat property acquired after January 1 of a year as taxable property for that entire year. Conversely, when selling or disposing of property that has attained tax-free status because it was owned by the state on January 1, that status for the current tax year should be reflected in the sales price.

DV:jf

cc: David Hoffman
Commissioner
Department of Community & Regional Affairs

Karen Carlson
Division of Treasury
Department of Revenue

Mike Worley
State Assessor
Department of Community & Regional Affairs

SB
73

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB No. 73

Revision Date:
Title: An Act Relating to Public Health Insurance and providing for an effective date
Sponsor: Kertulla
Requestor:

Department Affected: Health and Social Services
BRU: Medicaid
Component: Medicaid Non-Facility

COMPONENT SERIAL NO 2-2-9

Expenditures/Revenues: Thousands of Dollars

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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	0.00	0.00	0.00	0.00	0.00	0.00
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0.00	0.00	0.00	0.00	0.00	0.00

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.)

See attached note

Prepared By: Kimberly B. Busch
Phone: 465-3355
Division: Medical Assistance
Date: 2-25-91

Approved by Commissioner: [signature]
Agency: Health and Social Services
Date:

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

Rev 10/90

FISCAL NOTE ATTACHMENT 2-25-91

SB 73

Sec. 21.55.060 prohibits Medicaid recipients from participating in the insurance offered under SB 73. In our view, it would make little fiscal sense not to exclude the few Medicaid recipients who would qualify as plan eligibles, as each person who has, if even for a short period of time, overlapping dual coverage would result in the state plan making some payments in lieu of Medicaid payments. This would produce small Medicaid program savings, but would result in the loss of the 50% federal funds employed in the Medicaid program.

Even with this prohibition, there may be a small number of persons for whom the plan may pay for medical expenses which could have been paid for by Medicaid. Medicaid provides for coverage of unpaid medical bills for a period of up to three months prior to the month of application, provided that the recipient would have been eligible in any of those months and that unpaid bills exist for covered services provided in that month. Anyone who had bills paid by the plan during this retroactive Medicaid period would not have Medicaid payment for these bills.

The Medicaid application provides none of the information that is necessary to determine whether a recipient would be a plan eligible, and even if it did, we would be unable to accurately assess the average costs such potential dual eligibles might shift from Medicaid to the plan (and therefore the savings to the Medicaid program). Therefore, this fiscal note presents no calculation of potential savings from this cost shift.

For many years, staff in public assistance programs have seen applications being made by people who have had to quit their work in order to qualify for medical assistance when they or their dependents have become seriously ill. Similarly, we also see people who have left assistance for full employment having to return to the rolls to regain medical coverage. (This latter phenomenon occurs despite up to a 12-month post-employment coverage available to some Medicaid recipients under federal law.) While we cannot quantify this cost-avoidance effect SB 73 would have on Medicaid for these cases, there is no question that there SB 73 would produce some beneficial effects on some of our clients, past and future and on the program's expenditures.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 73

Revision Date: 1/22/91
Title: An Act relating to health insurance
Sponsor: Senator Kerttula
Requestor: Senator Kerttula

Department Affected: Commerce & Economic Dev.
BRU: Insurance
Component: Operations

COMPONENT SERIAL NO. 0 3 5 4

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	200.5	0	0	0	0	0
TRAVEL	21.3	0	0	0	0	0
CONTRACTUAL	50.6	0	0	0	0	0
SUPPLIES	5.0	0	0	0	0	0
EQUIPMENT	30.5	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	200.0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	507.9	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
GENERAL FUND	507.9	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	507.9	0	0	0	0	0

POSITIONS:

	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
FULL-TIME	3	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:

ANALYSIS: (Attach a separate page if necessary.)

SEE ATTACHED

Prepared By: Don Koch, Chief of Market Surveillance OK
Phone: 465-2572
Division: Insurance
Date: 3/4/91
Approved by Commissioner: Glenn A. Olds [signature] Spec. Asst II
Agency: Department of Commerce & Economic Development
Date:

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

Rev 10/90
DK/dg19050D-1/030491a

FISCAL NOTE - SB 73

ANALYSIS:

SB 73 would establish a one-year pilot health insurance project in a small Alaska community. The authority established in the legislation would monitor the pilot project for statewide applicability and feasibility. That pilot project would take place in a community where there is one resident hospital. The hospital and physicians would agree to offer a 20% discount to members of the plan. The pilot community would have a higher than average uninsured population.

The following assumptions have been used in arriving at the fiscal impact of this legislation:

- The seven-member board would have five meetings in Juneau, each of two days' duration, including travel.
- The three public employee members would be Juneau-based and, therefore, not subject to travel and per diem.
- The insurance industry representative would be from Seattle.
- The health care provider representative and enrollee representative would be based on Anchorage since the selected community is unknown.
- The travel for the Executive Director is based on Anchorage since the selected community is unknown. Six trips for negotiation + monitoring are planned.
- The subsidy amount would be $200.0. Some of this may be recoverable, but there is no way to quantify the amount.
- The authority administration is bare bones consisting of an Executive Director, Deputy Executive Director, and a Secretary.
- The authority and its administrators will need assistance in establishing rates and plan. Travel to a representative state is planned for the Executive Director. Two trips of five days' duration to Denver, Colorado.
- Three work stations at $15.0 and a file cabinet at $.6. Three PC's, software, and a letter quality printer at $14.9.

9050D/030491a

MAY 1 1991

Alaska State Legislature

Senate

Committee on Finance

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Senator Pearce, Chair
Senate Labor & Commerce Committee

FROM: Senator Kerttula Jay

SUBJ: Senate Bill 73 & 74 --
Health Insurance

DATE: April 26, 1991

Thank you for postponing the scheduled hearing on Senate Bill 74. I would appreciate it if you would reschedule both Senate Bill 73 and 74. Thank you.

JK:kh

Rod -
scheduling

Alaska State Legislature

Official Business

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

MEMORANDUM

TO: Senator Drue Pearce, Chair
Senate Labor and Commerce
Committee

FROM: Senator Jay Kerttula

SUBJ: Senate Bill 73 --
Health Insurance

DATE: January 30, 1991

I would appreciate your scheduling Senate Bill 73, relating to health insurance.

Senate Bill 73 provides for the creation of a state health insurance authority whose purpose is to provide a program of health insurance coverage for state residents who are not otherwise covered. The focus of Senate Bill 73 is to expand the availability of affordable health insurance to all Alaskans. Currently, consumers in Alaska are paying higher health care costs resulting from so many Alaskans being uninsured. The purpose of this bill is to reduce health care expenditures, by expanding health insurance coverage.

Three-quarters uninsured Alaskans live in families of employed workers, and more than half of this group live in families of full-year, full-time workers. This bill would provide low-cost employee and individual health insurance to people who are currently delaying health care until their health problems become severe. Uncompensated care of severe health problems then becomes an expensive proposition for all Alaskans, the insured as well as the uninsured. This bill has been modelled on several different approaches which have been used in other states and municipalities.

One major cost-containment provision contained in Senate Bill 73 is that the health insurance plan shall emphasize preventative and primary care by requiring nominal copayments for that coverage, and shall de-emphasize expensive hospital stays by requiring a large deductible and copayment for that coverage. Another cost-containment provision is that the entity is given the authority to negotiate with hospitals in the state to obtain a discount on charges for inpatient and outpatient care. A further cost-containment provision is that this insurance will only be available for low-risk individuals. I introduced a separate bill, Senate Bill 74, which will focus on high-risk health coverage.

The point of these cost-containment mechanisms in the bill, is that the cost of the premium will be lowered, and that any state subsidy will be minimal. Under this bill, the schedule of premium contributions, copayments, etc., must require enrollees to pay 100 percent of the premium contributions if their income substantially exceeds the nonfarm poverty guidelines of the United States Office of Management and Budget. Otherwise, the schedule of contributions will be based on a sliding scale depending upon family income, size, and other appropriate factors.

I have attached further information for your consideration.

JK:kh

Information provided by Senator Kerttula:

SENATE BILL 73 and SENATE BILL 74
BACKGROUND

The common goals of Senate Bill 73 and Senate Bill 74 is to expand insurance coverage among Alaskans through a combination of forming new large groups of insured, lowering insurance costs and public and private subsidization of a portion of premium costs for low income Alaskans. Other states' initiatives to expand health insurance coverage have focused on the same three approaches which are structured in SB 73 and SB 74.

1) Forming new large groups or including more people in existing groups, under the assumption that the same insurance product will be less costly and more accessible in a large group than in a small one. Some state insurance pools provide comprehensive coverage, some offer catastrophic protection only. Senate Bill 74 would establish a high-risk health insurance pool.

2) Public or private subsidies to further reduce costs for the individual employer or employee.

a) Private Subsidy: One very common form of private subsidy in state and local initiatives is substantial discounting by providers. For example, hospitals in Flint, Michigan have reportedly agreed to accept 20 percent less than the customary Medicaid reimbursement levels for their Health Care Access Project. Senate Bill 73 has a provision authorizing the Health Insurance Authority to contract with hospitals for lower rates.

b) Public Subsidy: While private subsidies and donations can lower premium costs somewhat, the sizeable gap between the cost of coverage and the available resources of currently-uncovered workers (and their employers) has led many developers of state and local initiatives to conclude that it will be impossible to make a real dent in the employed uninsured problem without using public subsidies. For example, in Maine's Robert Wood Johnson Foundation-funded program, the state will provide subsidies for small employers unable to meet the full cost of premiums, and will also subsidize the premiums of individual enrollees, using a

sliding fee scale based upon income and assets. SB 73 takes the sliding fee scale approach.

3) Changing the Product or its Delivery to design a special, less expensive, product or delivery mechanism in order to make coverage more accessible to employers and their workers. One approach is to focus on primary and preventative care, omitting or discouraging more expensive services such as inpatient care. The rationale is that providing preventative and primary care is less expensive, and will result in healthier patients. Plans in Alabama, Denver, and Utah emphasize preventative or primary care, but offer inpatient care as well. For example, the Denver plan is expected to provide broad primary care coverage. This is an approach taken in Senate Bill 73.

The major advantage of a plan which restricts coverage to special products is that it can be much less expensive than a traditional comprehensive package. For those who cannot afford the higher premiums associated with a richer package, a limited product plan with low cost premiums may be the answer.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

M E M O R A N D U M — January 24, 1991

SUBJECT: Health insurance - SB 73 (7-LS0009/A)

TO: Senator Jay Kerttula

FROM: Michael F. Ford M.F.
Legislative Counsel

The following is a sectional analysis of SB 73:

Section 1 - Findings and purpose.

Section 2

Sec. 21.55.010 - Establishes the health insurance authority and provides that the purpose of the authority is to provide health insurance to eligible residents of the state.

Sec. 21.55.020 - Establishes the board of directors of the health insurance authority, sets terms for board members, and requires compliance with the conflict of interest law (AS 39.50).

Sec. 21.55.030 - Establishes an executive director of the authority, qualifications for the position, and provides certain powers.

Sec. 21.55.040 - Establishes a deputy executive director of the authority, and the qualifications for and duties of the position.

Sec. 21.55.050 - Establishes the general powers of the authority.

Sec. 21.55.060 - Requires the authority to provide health care insurance by purchasing insurance from a private insurance company and making the insurance coverage available to eligible residents of the state. Requires the authority to provide group health insurance to certain employers. Establishes conditions for group health insurance premiums and enrollment.

Sec. 21.55.070 - Requires the authority to purchase insurance and establishes specific criteria concerning the health insurance provided to eligible residents and employers. Establishes minimum benefits that must be provided.

Sec. 21.55.075 - Establishes a premium subsidy for certain employers.

Sec. 21.55.080 - Establishes the health insurance fund. Provides that the fund consists of appropriations by the legislature and is used to purchase state health insurance.

Sec. 21.55.090 - Definitions.

Section 3 - Requires the health insurance authority to establish certain procurement procedures.

Section 4 - Exempts contracts of the authority from the procurement code (AS 36.30).

Section 5 - Places employees of the authority in the exempt class.

Section 6 - Provides that the conflict of interest law (AS 39.50) applies to the authority.

Section 7 - Requires state health insurance coverage to be provided on a phase-in basis designed to test the relative advantages and disadvantages of different plans.

Section 8 - Creates a commission on health insurance reform and provides duties for the commission. Requires recommendations from the commission be made by October 1, 1992 and a final report by November 15, 1992.

Section 9 - A transition section regarding the terms of board members of the authority.

Section 10 - Repeals the law establishing the commission on health insurance reform.

Section 11 - Effective date.

MFF:mi
91-013.mai

February 2, 1991

Drue -

Met with Rick Urion yesterday on SB73, SB74 & SB84.

His clients are not hot on any of these bills...
*Called Health Containment Task Force a farce
*Has problems with anyone setting provider rates
*Thinks that Eliason opposes all three
*Public employers need to control cost of HI benefits but should be through employee negotiation and cost sharing
*Suggested that Duncan has Malek wired for exec director of HI Authority and so questions validity of Malek's opinion.

Rod

Rate setting w/ regard to private sector -

Department of Commerce & Economic Development / POSITION PAPER

SB 73: "An Act relating to health insurance; and providing for an effective date."

SB 73 would create a Health Insurance Authority (HIA) in the Department of Commerce and Economic Development. The Authority is to provide a program of health insurance for eligible residents who are not covered by a health insurance plan or program.

SB 73 seeks to resolve the unavailability of adequate health care insurance by creating a state authority, HIA, to address the issue. It does this by utilizing economies of scale in the bulk purchase of insurance for individuals and small groups and by subsidizing the cost of coverage. It appears that this approach places the full faith and credit of the state behind the plan or program HIA develops. It also establishes a temporary commission to look at health insurance reform.

The Department of Commerce and Economic Development does not have demographic and actuarial information that would enable it to attempt an evaluation of the cost of this legislation. It is neither possible to forecast how many persons and groups would avail themselves of an available subsidy nor what kind of experience would arise from such a group

The Department of Commerce and Economic Development cannot take a position on this legislation until more concrete pricing data can be developed and the following changes are made in the bill:

1. Move Section 2 of the bill from Title 21 to another Title.

   Moving Section 2 of the bill to another Title would avoid conflict with the content and purpose of Title 21. Title 21 is designed for the regulation of the business of insurance. Section 2, on the other hand, is designed as a provider or purchaser mechanism. These functions tend to be in conflict with each other. The regulator of provider/purchaser mechanisms should not be a part of the mechanism. It is recommended that these provisions be placed in Title 45.

2. Clarify the reserve fund mechanism.

   It is not clear how HIA will be able to "maintain a prudent level of reserve funds to protect the solvency of the health insurance fund" as required in Sec. 21.55.050(11). Such action would necessarily cross fiscal years which would conflict with the constitutional prohibition for dedicated funds. We assume that monies remaining at the end of the fiscal year would be subject to reappropriation.

3. Expand composition of the Commission on Health Insurance Reform.

   The Commission on Health Insurance Reform is comprised of the following interests appointed by the governor:

   A. a hospital or medical service corporation (the only one we have is Blue Cross of Washington and Alaska, a Washington corporation),

   B. a representative of the Department of Law,

   C. a representative of health care consumer groups,

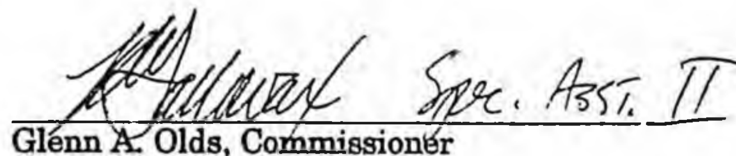
   D. a representative of health maintenance organizations (we are aware of none currently in Alaska), and

   E. a chair.

   The major portion of health insurance in this state is written by "commercial" insurers. Their interests should be included on the Commission.

4. Correct the definition of "health insurance."

   Under the Alaska Insurance Law, the correct term of art for health insurance is disability insurance which is defined in AS 21.12.050. In Sec. 21.55.250(6) on page 7, line 14 the phrase "'health insurance' includes disability insurance under AS 21.12.050" should read "disability insurance under AS 21.12.050 includes 'health insurance'."



Glenn A. Olds, Commissioner

Date: 2-25-91

GAO/DK/dgl8989D
022591a

APR 8 1991

Sharon Paige
Box 114
Gustavus, AK 99826-0114

Senator Pearce -

I am writing to express my support for bill # SB-73 and ask that it be scheduled for a hearing.

Thank you.

Sharon Paige

MAY 6 1991

Box 871865
Wasilla, Ak. 99687
May 2/91

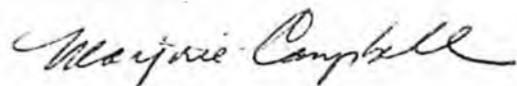
Senator Drue Pearce, Chair
Senate Labor and Commerce Committee P.O. Box V
Juneau, Ak. 99811

To find a way to offer the most basic preventive health care for an uninsured adult in the Mat-Su Valley is often dependent on finding a compassionate provider, and even then the service is limited.
A mammogram may mean waiting for the hospital to offer a sale price of $65.00, which is still unaffordable to some. Compared to some states which have come up with some innovative ways to make these services available we lack the density of population to make some of these ideas cost effective. For example in Florida the University of Miami purchased a van and equipped it with a mammography unit and staffed it with licensed radiology technicians. This unit was then available to offer service to a target population. The mammograms were provided at low, or no cost with a maximum charge of $25.00. I use this example of what other states are doing to respond to the need for improved methods of delivering health care to the uninsured but would not be economically feasible in our sparsely populated State.

Underwriting insurance for our uninsured population is much more feasible in Alaska. The uninsured in Alaska are most likely to go without any health care that is not an emergency -and if it is an emergency that is just the beginning of their troubles.

I would urge you to move SB 73 and SB 74 out of committee so that some action can be taken on this urgently needed health insurance legislation.

Sincerely,



Marjorie Campbell

cc: Senator Jay Kertula

**PROPOSAL BY SENATOR KERTTULA
FOR EXPANDED AVAILABILITY OF
HEALTH INSURANCE FOR ALASKANS**

HIGH RISK POOL SENATE BILL 74	EXISTING PLAN	SB 73/74 PLAN	PROJECTED STATE COST	PROJECTED PREMIUMS	PROJECTED INS. IND. COST	PROJ. HOSP/DR.
(Montana's plan is used to given an idea of potential impact in Alaska. Montana's plan is more restrictive than proposed in SB 74. Montana's 1990 population was 803,655 compared to Alaska's 1990 population of 551,947.	$1,000 Deductible	$200, $500 & $1,000 deductibles. Premium Cap of 125%. $1 million lifetime benefit.	$30,000 Admin. start-up costs	*(Montana's prem. schedule + 35 % added costs)* <17: 100.60 <24: 150.05 <29: 161.87 <34: 179.46 <39: 202.18 <44: 229.51 <49: 255.67 <54: 284.27	No more than 1 % of total health ins. premiums sold.	0
SENATE BILL 73 *(The SCOPE plan offered in Denver is used to give an idea of the potential impact in Alaska. The SCOPE plan does not have a public subsidy, the proposal in SB 73 would include a sliding scale for the low income. The cost projections are based on a pilot project in a community of 2,110 with 30% uninsured;an average premium cost of $65 per month, an average state subsidy of $20 per month, per participant.*	$250 Deductible for hospital care. 0 deductible for preventative care. 50% copay. of first $5,000 for hospital care, 100% thereafter. $15 copayment for Dr. visit, not a preventative visit. 0 copay. for Dr. preventative visit. Unlimited lifetime benefit for under 70. $50,000 lifetime benefit for over 70.	Emphasize . prev. care/ nominal copay,. deemphasize hosp. care with a large deductible & copayment.	$200,000	*(Premiums based SCOPE premiums + 35 percent)* <30: 44.31 <34: 55.37 <39: 65.58 <44: 78.66 <49: 94.58 <54: 114.47 <59: 139.39 <64: 171.95	0	20 % discount

* SUBJECT: 91-02-151;PL;S.L&C;3-4-91 *
* PRINT DATE: 03/04/91 TIME: 15:25 *
*
****

SUBJECT LINE TO READ: TC NO.;PL/FS;SHORT SUBJECT;DATE

T/C NO: 91-02-151
DATE: MARCH 4, 1991
SPONSOR: SENATE LABOR AND COMMERCE
SUBJECT: SB70, SB83, SB73, SB74, SB76
MODERATOR: OFFNET: HOMER SENIOR CENTER
SITE: HOMER

PARTICIPANT LIST

TO TESTIFY

****

~~TESTIFIED~~

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. VELMA ELLYSON, SENIOR CENTER			SB76
2. [illegible]			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

****

OBSERVED

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1.			
2.			
3.			
4.			

SUBJECT LINE TO READ: TC NO.;PL/FS,SHORT SUBJECT,DATE

T/C NO: 91-02-151
DATE: 03-04-91
SPONSOR: S LABOR & COMMERCECE
SUBJECT: SB70, SB83, SB73, SB74, SB76
MODERATOR: SUE
SITE: GLENNALLEN

TO TESTIFY

****

T[illegible]

NAME/REPRESENTING ADDRESS PHONE BILL NO.
1. BOB NIEBRUGGE, P.O. BOX 365 GLENNALLEN, 822-3256 SB74
2.
3.
4.
5.

self employed diabetic
nothing out there for them.

****

OBSERVED

NAME/RERESENTING ADDRESS PHONE BILL NO.
1.
2.
3.
4.
5.

****

TESTIFIED:

UNABLE:
OBSERVED:
TOTAL:

START TIME: END TIME:

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****************************************************************
*                                                              *
* DELIVER TO: LIOCACB                                          *
*                                                              *
*                                                              *
* ORIGINAL                                                     *
* SENT:           03/04/91  TIME: 15:37                        *
* FROM:           LTCCMAT                                      *
* SUBJECT:        151 PL S LAB HEALTH INS 3/4/91               *
* PRINT DATE:     03/04/91  TIME: 15:37                        *
*                                                              *
****************************************************************
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SUBJECT LINE TO READ: TC NO,; PL/FS,SHORT SUBJECT;DATE

T/C NO: 91-02-151
DATE: 3/4/91
SPONSOR: S L&C
SUBJECT: S BILLS 70,83, 73, 74, 76
MODERATOR: MARY
SITE: MAT-SU LIO

PARTICIPANT LIST NUM 1 FROM MAT-SU

****

~~TO TESTIFY:~~

NAME	ADDRESS	PHONE	BILL #
1			

****

OBSERVING:

NAME/REPRESENTING	ADDRESS	PHONE	BILL#
1 ROBERT W ROBINSON			
2			
3			

****

TO TESTIFY: 0
UNABLE:
OBSERVING: 1
TOTAL:

START TIME: 3 PM END TIME:

Dr. Stanley Jones

from Haines is now on line.

To Testify. ~~[illegible]~~ SB 74 BUT

PERHAPS 73, 74 + 83

(Give him 5 minutes)

Rural practice

SB
74

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB No. 74

Revision Date: ____________ Department Affected: Health and Social Services

Title: An Act Relating to Pooled health Insurance for individuals who are uninsured or denied adequate coverage; and providing for an effective date.

BRU: Medicaid

Component: Medicaid Non-Facility

Sponsor: Kertulla

Requestor: ____________

COMPONENT SERIAL NO 2-2-9

Expenditures/Revenues: Thousands of Dollars

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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	0.00	0.00	0.00	0.00	0.00	0.00
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0.00	0.00	0.00	0.00	0.00	0.00

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.)

See attached note

Prepared By: Kimberly B. Busch Phone: 465-3355

Division: Medical Assistance Date: 2-25-91

Approved by Commissioner: [signature]

Agency: Health and Social Services Date: ____________

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

Rev 10/90

FISCAL NOTE ATTACHMENT 2-25-91

SB 74

We believe it is the intent of SB 74 at Sec. 21.55.300(b) that coverage under the plan proposed by this bill would cease when Medicaid eligibility was found to exist. We recommend, if this is correct, that this section be amended to specifically exclude Medicaid recipients from coverage in order to prevent confusion on this point. In our view, it would make little fiscal sense not to exclude the few Medicaid recipients who would qualify as "high risk" state plan eligibles, as each person who has, if even for a short period of time, overlapping dual coverage would result in the state plan making some payments in lieu of Medicaid payments. This would produce small Medicaid program savings, but would result in the loss of the 50% federal funds employed in the Medicaid program.

Even if this assumption is correct, there may be a very small number of persons, possibly fewer than 200 per year, for whom the plan may pay for medical expenses which could have been paid for by Medicaid. Medicaid provides for coverage of unpaid medical bills for a period of up to three months prior to the month of application, provided that the recipient would have been eligible in any of those months and that unpaid bills exist for covered services provided in that month. Anyone who had bills paid by the plan during this retroactive Medicaid period would <u>not</u> have Medicaid payment for these bills.

The Medicaid application provides none of the information that is necessary to determine whether a recipient would be a plan eligible, and even if it did, we would be unable to accurately assess the average costs such potential dual eligibles might shift from Medicaid to the plan. Therefore, this fiscal note presents no calculation of potential savings from this cost shift.

Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO:	Senator Pearce, Chair Senate Labor & Commerce		**RE:**	SB 73 & SB 74 Health Insurance
FR:	Senator Kerttula		**D:**	May 1, 1991

Thank you for postponing the recent hearing for SB 74. I would appreciate it if you would reschedule SB 73 and SB 74. Thank you very much.

JK:kh

APR 9 1991

Alaska State Legislature

Senate

Committee on Finance

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO:	Sen. Pearce, Chair Senate Labor and Commerce Committee	**SUBJ:**	Senate Bill 74- High Risk Ins.
FROM:	Senator Jay Kerttula	**DATE:**	April 9, 1991

I would appreciate it if you would reschedule Senate Bill 74, establishing a high-risk health insurance pool.

I have been contacted by many individuals who are desperate for the opportunity to purchase health insurance. Some of these Alaskans are considered high-risk, and therefore uninsurable, because of disease -- lupus, cerebral palsy, diabetes, PKU. Some of these Alaskans are considered high-risk, and therefore uninsurable, because they have developed a medical condition such as a heart murmer. Many elderly would also benefit from a high-risk health insurance pool. Many of the people who contacted me were informed of Senate Bill 74 by insurance agents.

As you know, Senate Bill 74 is based on model legislation which has been approved by 24 states, and would require all health insurance companies to join a health risk pool. Senate Bill 74 currently places a cap on the high-risk premium of 125 percent of the "average" health insurance premium in the state.

I am aware that the 125 percent provision is opposed by insurance companies. I would support raising the cap to 200 percent. This would ensure financial viability of the plan -- the pool would have the flexibility to raise the price of their premium to correspond to the claims paid. Attached is analysis from an Indiana actuary concluding that the typical mature plan in other states is financially viable with a premium price around 140 percent of the average health insurance premium.

I do not support a tax offset for the assessments on the insurance companies for the cost of the pool. I feel that tax offsets are generally poor public policy. In addition, I believe that a tax offset is unnecessary since we have every reason to believe that claims can be handled within the flexibility of a 200 percent premium cap.

I appreciate your consideration of this request.

JK:kh

Alaska State Legislature

SENATE

Official Business

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

MEMORANDUM

TO: Senator Drue Pearce, Chair
Senate Labor and Commerce
Committee

FROM: Senator Jay Kerttula

SUBJ: Senate Bill 74 --
High Risk Health Insurance Pool

DATE: January 30, 1991

I would appreciate your scheduling Senate Bill 74, establishing a high-risk health insurance bill.

This bill, which is based on model legislation which has been approved by 24 states, would require all health insurance companies, hospitals and medical service corporations (that offer subscriber contracts for major medical coverage) to join a high risk pool. All state residents who are "high risk" would be eligible for insurance through this pool, at a "reasonable rate." Other states place a limit on the amount of premiums of between 125 percent and 200 percent of the "average" health insurance premium in the state. Alaskans who have had their health insurance terminated once they have become "high risk" would be eligible for this health insurance, also.

Costs: In theory, premiums cover the majority of claims paid by the pool. In practice, however, premiums are generally insufficient, because of a premium cap, and the poor health status of the insured. A 1988 GAO study concluded that for every $1.00 received in premiums by the current operating pools, $1.60 is paid out in claims. This bill takes the approach taken in most states with pools -- to assess the pool members the excess costs in proportion to their share of the state health insurance market. Experience in most states indicates that plans lose money over the course of a year. While losses can at times be large, the cost has

been in the range of 1 percent of the total amount of premiums collected from all health insurance policies sold in those states.

I have attached further information. I appreciate your consideration of this bill.

JK:kh

Information provided by Senator Kerttula:

SENATE BILL 73 and SENATE BILL 74
BACKGROUND

The common goals of Senate Bill 73 and Senate Bill 74 is to expand insurance coverage among Alaskans through a combination of forming new large groups of insured, lowering insurance costs and public and private subsidization of a portion of premium costs for low income Alaskans. Other states' initiatives to expand health insurance coverage have focused on the same three approaches which are structured in SB 73 and SB 74.

1) Forming new large groups or including more people in existing groups, under the assumption that the same insurance product will be less costly and more accessible in a large group than in a small one. Some state insurance pools provide comprehensive coverage, some offer catastrophic protection only. Senate Bill 74 would establish a high-risk health insurance pool.

2) Public or private subsidies to further reduce costs for the individual employer or employee.

a) Private Subsidy: One very common form of private subsidy in state and local initiatives is substantial discounting by providers. For example, hospitals in Flint, Michigan have reportedly agreed to accept 20 percent less than the customary Medicaid reimbursement levels for their Health Care Access Project. Senate Bill 73 has a provision authorizing the Health Insurance Authority to contract with hospitals for lower rates.

b) Public Subsidy: While private subsidies and donations can lower premium costs somewhat, the sizeable gap between the cost of coverage and the available resources of currently-uncovered workers (and their employers) has led many developers of state and local initiatives to conclude that it will be impossible to make a real dent in the employed uninsured problem without using public subsidies. For example, in Maine's Robert Wood Johnson Foundation-funded program, the state will provide subsidies for small employers unable to meet the full cost of premiums, and will also subsidize the premiums of individual enrollees, using a

sliding fee scale based upon income and assets. SB 73 takes the sliding fee scale approach.

3) Changing the Product or its Delivery to design a special, less expensive, product or delivery mechanism in order to make coverage more accessible to employers and their workers. One approach is to focus on primary and preventative care, omitting or discouraging more expensive services such as inpatient care. The rationale is that providing preventative and primary care is less expensive, and will result in healthier patients. Plans in Alabama, Denver, and Utah emphasize preventative or primary care, but offer inpatient care as well. For example, the Denver plan is expected to provide broad primary care coverage. This is an approach taken in Senate Bill 73.

The major advantage of a plan which restricts coverage to special products is that it can be much less expensive than a traditional comprehensive package. For those who cannot afford the higher premiums associated with a richer package, a limited product plan with low cost premiums may be the answer.

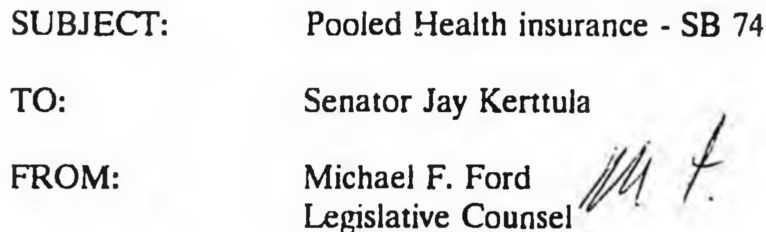
DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

<u>M E M O R A N D U M</u> January 24, 1991



SUBJECT: Pooled Health insurance - SB 74

TO: Senator Jay Kerttula

FROM: Michael F. Ford
Legislative Counsel

The following is a sectional analysis of SB 74:

<u>Section 1</u> - Purpose.

<u>Section 2</u>

Sec. 21.55.010 - Establishes the comprehensive health insurance association and provides that membership in the association consists of certain insurers.

Sec. 21.55.020 - Establishes the board of directors of the health insurance association and provides for voting rights of members.

Sec. 21.55.030 - Establishes the general powers of the association.

Sec. 21.55.040 - Requires the association to submit a plan of operation. Establishes specific items that the plan of operation must include.

Sec. 21.55.050 - Exempts the association from the Administrative Procedure Act.

Sec. 21.55.060 - Provides that the association is exempt from taxation, except for taxes on real or personal property.

Sec. 21.55.100 - Requires the association to make insurance available to residents who are high risks. Specifies the type of deductible to be offered and requires that a medicare supplement plan also be provided to certain residents.

Sec. 21.55.110 - Establishes the minimum benefits that must be offered under a state health insurance plan. Establishes a maximum lifetime benefit of $1,000,000 per individual.

Sec. 21.44.120 - Establishes the deductible and copayment amounts for a state health insurance plan.

Sec. 21.55.130 - Limits the use of a preexisting condition to exclude coverage under state health insurance.

Sec. 21.55.140 - Establishes that certain care and benefits are not covered.

Sec. 21.55.150 - Provides that premium rates for state health insurance may not be excessive, inadequate, or unfairly discriminatory. Requires that premium rates be based on the age and geographic location of the insured. Limits the amount that can be charged as a premium.

Sec. 21.55.200 - Establishes criteria for selection of a writing carrier.

Sec. 21.55.210 - Provides the duties to be performed by the writing carrier and provides for reimbursement of expenses.

Sec. 21.55.220 - Provides for enrollment, for sharing losses, and for determining each member's liability.

Sec. 21.55.300 - Provides that a state resident who is a high risk is eligible to enroll in the state insurance plan. Prohibits enrollment if other coverage exists.

Sec. 21.55.310 - Specifies the procedure for enrollment and the contents of the application.

Sec. 21.55.320 - Requires acceptance or rejection of an enrollment application within 30 days.

Sec. 21.55.330 - Establishes the date that insurance will become effective.

Sec. 21.55.340 - Requires the association to solicit eligible persons for enrollment, by increasing public awareness of the state health insurance plan.

Sec. 21.55.400 - Establishes the duties of the director of the division of insurance.

Sec. 21.55.410 - Provides that the state is not liable for acts of the association.

Sec. 21.55.500 - Definitions.

Section 3 - Requires the association to make insurance available to eligible residents by January 1, 1992.

Section 4 - Effective date.

MFF:pl
91-024.plm

February 26, 1991

Drue -

Had a meeting with Gordon Evans & Jan Meisel yesterday. One of the bills we discussed was Kerttula's SB74, Pooled Health Insurance.

They say its patterned after Coghill's SB 304 from last year. That passed out of L&C 4DP and HES 5NR.

They have four concerns:

1. State plan premium maximum is lowered from 150% to 125% of average of 5 estimates. (pg 8, ln 17)

2. Deductible lowered from $1,000/$5,000 to $200/$500/$1,000. The industry considers these deductibles to be too low. (pg 5, ln 26)

3. Includes a Medicare supplemental coverage section that is considered to unnecessary.(pg 3, ln 27)

4. National Association of Insurance Commissioners is on the verge of adopting new regulations, should be in next 6 months, which will override this legislation. Would like amended effective date.

SB 73

Health insurance authority in Commerce
Provides health insurance for uninsured only.
Board of Directors
- Commissioner of Commerce
- Commissioner of H&SS
- Director of Insurance
- Insurance industry rep
- Provider rep
- Enrollee reps?

Executive and Deputy Executive Directors in exempt service and employees.
Design healthcare package
Purchase managed health care package
Provide healthcare group plans
Allow PFD checkoff for premium pmts. — EXEMPT FROM ADMIN PROCEDURES ACT.
Coverage required:
- acute hospital care
- in/out patient physician services
- diagnostics & screening tests
- preventive care
- pre-natal & well baby care
- Pedically necessary emergency svcs

Subsidized premiums for small employers
Creates HI reform commission
- Membership:
  - Nonprofit hosp rep
  - Dept of Law employee
  - health care consumer rep
  - health maintenance org rep
  - chair apptd by Gov (unspecified catagory)
- Sunsets 11/15/92

MARY PEARCE

HE CONSULTANT.

SB 74

Creates HI Association
Membership:
- Hospitals & service corps offering major med coverage
- Insurers offering major med on expense incurred basis
- Mandatory membership

Board of Directors seven members of association.
- Weighted votes based on fees and/or premiums

Mandatory plan of operations
Exempt from Admin Procedures Act
Tax Exempt
Must offer high risk HI
Must offer Medicare supplement
Lifetime max of 1mm
- hospital services
- no dental or mental but all other administered by doc of nurse
- mental diag or treatment up to $4m per year
- legend drugs
- nursing facility up to 120 days
- home health agency service including terminal ill
- hospice service - six month max
- radium or other radioactive
- chemotherapy
- oxygen
- anesthetics
- prothesis
- medical equipment
- x rays & lab tests
- oral surgery
- physical therapist
- ambulance services
- drug & alcohol treatment - 45 days
- alternative inpatient services
- second surgical opinions
- other doctor prescribed services

varied deductibles and double credited deductibles
special pre-existing condition provisions
services not covered:
- conditions covered by worker's comp or other coverage
- cosmetic surgery
- travel not previously covered
- private rooms
- charges exceeding usual & customary
- services not medically necessary
- unlicensed services
- service government covered
- custodial care
- services performed because of presence of insurance
- eyeglasses, contacts or hearing aids
- dental care not previously covered
- related registered nurse
- experimental services

uncharged services
premiums may not exceed 125 of usual and customary average rates
provisions for writing carriers
Operation of plan provides for year end assessment but excess premiums are held in trust
everyone with no health insurance coverage is eligible
plan may be advertised
State not liable