

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8237 SENATE COMMUNITY & REGIONAL AFFAIRS

Alaska State Legislature

Senator Al Adams



Official Business

WHILE IN SESSION
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Juneau, Alaska 99801-1182
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OUT OF SESSION
P.O. Box 353
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August 6, 1993

Charles E. Cole
Attorney General
Box 110300
Juneau, Alaska 99811-0300

Dear Charlie:

I am writing to generate your interest in a problem dealing with local option statutes. My awareness of the problem stems from complications the City of St. Mary's has encountered during the past 6 months with applying existing statutes to local option election procedures. Although several departments need to be involved, I am hoping that your department will take the lead on developing legislation to correct the problem.

The City of St. Mary's made concerted efforts to correctly respond to local option petitions. The city's administrator worked with the Department of Community and Regional Affairs, the Alcohol Beverage Control Board, and members of your staff. Despite these efforts, and in large part due to clumsily written statutes, the city has repeatedly run into legal challenges that it might well lose.

In order to prevent reoccurrence of this dilemma for other cities who are certainly going to encounter the same problem, a group of people need to sit down and figure out exactly what the problems are and how to solve them. It appears these discussions should include the departments that the City of St. Mary's already tried to work with as well as the Division of Elections.

Please let me know if you are willing to take on this responsibility. I know the Northwest Arctic Borough earlier tried to elicit your interest in this problem and apparently has not heard from you. Thank you for your time and energy on this matter.

Sincerely,

Senator Al Adams

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF REVENUE550 W. 7TH AVE
ANCHORAGE, ALASKA 99501-6698

ALCOHOLIC BEVERAGE CONTROL BOARD

March 24, 1994

The Honorable Robin Taylor
Alaska State Legislature
State Capitol, Room 30
Juneau AK 99801-1182

Re: Legislation proposed by the Alcoholic Beverage Control Board

Dear Senator Taylor:

During my phone discussion last Tuesday with Joe Ambrose, I told him I would send the enclosed sectional analysis of the local option legislation proposed by the ABC Board. Primarily, the bill does two things:

- 1 - rewrites the alcohol local option law. Current law providing for local option questions has been confusing for several villages and small communities. The bill is supported by the Division of Elections and the Department of Community and Regional Affairs. There is also a letter attached from Senator Al Adams who expressed concern about problems with current law.
- 2 - makes some long-needed technical and corrective amendments that appear in Sections 1-4, 6, 12, 25, 26, 42, 43 and 44.

A similar attempt to change the law was contained in legislation (SB 297) introduced by former Senator John Binkley in the Sixteenth Legislature.

Thank you very much for your consideration of this legislation. I will be happy to provide testimony or information at any time.

Sincerely,



Patrick L. Sharrock
Director
(907) 277-8638

PLS/akj
94-062
enclosures

SC&RA 9am 4/12
TESTIMONY

Analysis of SB 372

Teresa Williams - 269-5203 1031 W 4TH #200 99501
Department of Law

This bill repeals the current local option provisions, AS 04.11.490 - 04.11.506 and replaces them with provisions which have been reorganized and simplified. Section 14 outlines all of the local options available. Section 15 allows the community to change from one local option to another; section 16 allows the community to remove the local option. Implementation of the particular prohibitions and restrictions allowed as local options is set out in sections 17 - 21. In sections 22 - 23, procedures for local option elections and notice provisions are established. A section-by-section analysis of the bill follows:

Sec. 1. AS 04.11.010(b) has been conformed to the new local option provisions and the language has been simplified. Additionally, package store licensees who ship alcohol into local option areas are specifically prohibited from soliciting in the area or receiving orders through an agent or employee in the area.

Sec. 2. AS 04.11.010(c) has been conformed to the new local option provisions. Because malt beverages are still sold in the United States Customary System of measurement, the quantity measurement has been converted to that system for ease of use.

Sec. 3. The requirement that military personnel be in uniform in order to be served on special occasions as nonmembers in certain clubs has been deleted from AS 04.11.110(d) in recognition of current military dress practice.

Sec. 4. AS 04.11.150(a) has been repealed and reenacted to simplify the language. The quantity limits have been conformed to those in AS 04.11.010(c) and AS 04.16.200(e). A licensee will be required to provide advance and biennial notice if engaged in shipping alcoholic beverages in response to a written order. Licensees are precluded from shipping alcoholic beverages to persons other than the purchaser.

Sec. 5. AS 04.11.150(h) has been repealed and reenacted to reorganize it. It has been conformed to the new local option provisions. Also, package stores are prohibited from shipping alcoholic beverages containing more than 75 percent (150 proof) alcohol by volume.

Sec. 6. The penalty for late filing of the renewal application has been raised to \$500. This section should be read in conjunction with sec. 24, that allows continued operation of the license until February 28 after the biennial period.

Secs. 7 - 10. Language governing board denials of applications has been conformed to the new local option provisions. References to community liquor licenses are deleted. Municipal liquor licenses are addressed in secs. 21 and 51.

Sec. 11. A new provision is added that states the inherent authority of the board, in the best interests of the public, to impose conditions or restrictions on a license or permit.

Sec. 12. AS 04.11.400(a) has been conformed to the new local option provisions. Additionally, the subsection has been broken down into subparagraphs for clarity and nonessential language has been removed.

Sec. 13. Inconsistency in terminology between AS 04.11.480(a) and AS 04.11.340 has been corrected. Also, AS 04.11.480(a) has been amended to retain a local governing body's power to annually review and protest the operation of a liquor license. This power was altered from annual to biennial under the biennial renewal bill passed last session.

Sec. 14. AS 04.11.491 provides a "shopping list" of all the options which are available within a municipality and within an established village. The only material changes to existing options are 1) to allow for a municipal restaurant or eating place license (beer and wine only); 2) to limit the types of licenses that could be available if a community opts to restrict licenses; and 3) to allow communities to opt for sales under a permit issued under AS 04.11.230 by a beverage dispensary licensee who operates a premises outside of the area. Additionally, if the community has placed restrictions on sale, but allows importation, it may designate a delivery site under this section.

The local community is given more flexibility in drafting the wording of the ballot question. When a local option is proposed that will restrict but not prohibit the sale of alcohol, an explanation is required of the authority to sell alcoholic beverages under the allowed types of licenses. Local options adopted by a municipality will continue in effect in the area after the dissolution of the municipality under AS 29.06.450(a) or (b).

Sec. 15. AS 04.11.493 is a new provision that makes it much easier for a community to change from one local option to another.

Sec. 16. AS 04.11.495 is a simplified version of existing AS 04.11.504, establishing procedures for the removal of a local option.

Sec. 17. AS 04.11.497 addresses the prohibition on sale contained in several of the local options; it is a simplified version of AS 04.11.490.

Sec. 18. AS 04.11.499 addresses the prohibition on importation contained in several of the local options; it is a simplified version of existing AS 04.11.496. AS 04.11.499 will be applied in conjunction with the prohibition on sale addressed in sec. 17.

Sec. 19. AS 04.11.501 addresses the prohibition on possession; it is a simplified version of existing AS 04.11.498. AS 04.11.501 will be applied in conjunction with the prohibition on sale addressed in sec. 17 and the prohibition on importation addressed in sec. 18.

Sec. 20. AS 04.11.503 addresses a restriction to certain types of licensees and permit holders; it is a simplified version of existing AS 04.11.500.

Sec. 21. AS 04.11.505 addresses a restriction to certain types of licenses operated by a municipality; it is a simplified version of existing AS 04.11.190 and 04.11.492(b).

Sec. 22. AS 04.11.507 establishes the procedures for local option elections; it is taken from existing AS 04.11.502.

Sec. 23. AS 04.11.509 establishes notice requirements for election results; it is taken from existing AS 04.11.504.

Sec. 24. In conjunction with sec. 6, this section allows licenses that are not renewed by December 31 of the biennial period to be operated until the following February 28. This amendment is proposed because of uneven enforcement of the present requirement that the premises close on December 31. Some law enforcement agencies are unwilling to enforce the requirement, especially due to other demands on New Year's Eve. Other changes are made to make the section consistent with sec. 25 and biennial renewal.

Sec. 25. This section provides for biennial renewal of seasonal licenses (presently known as half-yearly licenses), to allow the renewals to be handled in the same manner as all other licenses.

Sec. 26 - 27. AS 04.16.125 has been conformed to the new local option provisions. Additionally, the invoice on the outside of a shipping container is required to show the quantity, as well as purchase value, of the alcohol to allow enforcement of AS 04.11.010 and 04.11.150(h). Transportation to a licensee in the area and transportation of not more than one gallon of malt beverages are added to the exemptions from the labeling requirements.

Secs. 28 - 32. Language governing criminal sanctions for violations of AS 04.11.010 has been conformed to the new local option provisions.

Sec. 33. The "governing body" which is to direct community work service in an established village is not presently defined. In the May 29, 1986 bill review by the Attorney General's Office of the existing language, the lack of a definition was noted and the proposed language suggested. A body traditionally performing public functions for the community could include the entity designated to receive and disburse revenue-sharing funds under AS 29.60.140 or the entity designated to administer Village Safe Water Facilities under AS 46.07.010, et seq.

Secs. 34 - 39. Language governing sanctions for violation of a ban on possession has been conformed to the new local option provisions.

Sec. 40. AS 04.21.010 addressing municipal regulation has been conformed to the new local option provisions. Additionally, municipalities are given the authority to adopt ordinances limiting the monthly amount a person can import.

Secs. 41 - 42. Language has been conformed to the new local option provisions.

Sec. 43. The perimeter of an established village had not been defined in the existing statutes, although the various local option prohibitions apply within the perimeter. This definition provides that the perimeter can be no larger than 10 miles in diameter and requires the perimeter to be clearly designated on a map.

Secs. 44 - 49. Language has been conformed to the new local option provisions.

Sec. 50. This section sets out the repealed provisions, which are all of the existing local option laws at AS 04.11.490 - 04.11.506 and 04.11.510(d) and the community license designation under AS 04.11.190.

Sec. 51. Local options adopted under existing and prior local option laws are continued in effect.

Sec. 52. Community liquor licenses are converted to their appropriate counterpart.

Sec. 53. The effective date is set for July 1, 1994 in order to provide a definite date for implementation by municipalities and established villages and enforcement by law enforcement officers.

SECTION ANALYSIS - PROPOSED LEGISLATION
ALCOHOL LOCAL OPTION & OTHER TECHNICAL AMENDMENTS

Section 1. AS 04.11.010(b) would be amended to conform to the new local option provisions of this bill, and the language has been simplified. Additionally, package store licensees who ship alcohol into local option areas are specifically prohibited from soliciting in the area or receiving orders through an agent or employee in that area.

Section 2. AS 04.11.010(c) would be amended to conform to the new local option provisions of this bill. Because malt beverages are still sold in the United States Customary System of measurement, the measurement of quantity would be converted to that system for ease of use.

Section 3. AS 04.11.110(d) would be amended to delete the requirement that military personnel be in uniform in order to be served on special occasions as nonmembers in certain clubs in recognition of current military dress practice.

Section 4. AS 04.11.150(a) would be repealed and reenacted to simplify the language. The quantity limits for alcoholic beverages would be modified to conform to those in AS 04.11.010(c) and AS 04.16.200(e). A licensee would be required to provide advance and biennial notice if engaged in shipping alcoholic beverages in response to a written order. Licensees would be precluded from shipping alcoholic beverages to persons other than the purchaser.

Section 5. AS 04.11.150(h) would be repealed and reenacted to conform to the new

local option provisions of this bill. Also, this section would prohibit package stores from shipping alcoholic beverages containing more than 75 percent (150 proof) alcohol by volume.

Section 6. AS 04.11.270(b) would be amended to raise the penalty for late filing of the renewal application to \$500. This section should be read in conjunction with sec. 25, that allows continued operation of the license until February 28 after the biennial period for licensure.

Section 7 - 10. AS 04.11.320, 04.11.330(a), 04.11.340, and 04.11.360 would be amended to conform to language governing board denials of application to the new local option provisions. These provisions also delete any references to community liquor licenses. Municipal liquor licenses are addressed in secs. 22 and 52.

Section 11. This section amends AS 04.11.370 to clarify and make necessary revisions to provisions for suspension and revocation of licenses to conform to other changes in the bill.

Section 12. This section adds a new provision that states the inherent authority of the board, in the best interests of the public, to impose conditions or restrictions on a license or permit.

has placed restrictions on sale, but allows importation, that community may designate a delivery site under this section.

Section 16. AS 04.11.493 would be a new section to make it much easier for a community to change from one local option to another.

Section 17. AS 04.11.495 is a simplified version of existing AS 04.11.504, which establishes the procedures for the removal of a local option.

Section 18. AS 04.11.497 addresses the prohibition on sale contained in several of the local options. Also, this section is a simplified version of existing AS 04.11.490.

Section 19. AS 04.11.499 addresses the prohibition on importation of alcoholic beverages contained in several of the local options. Also, this section is a simplified version of existing AS 04.11.496. AS 04.11.499 would be applied in conjunction with the prohibition on sale addressed in sec. 18.

Section 20. AS 04.11.501 addresses the prohibition on possession of an alcoholic beverage. Also, this section simplifies existing AS 04.11.498. AS 04.11.501 would be applied in conjunction with the prohibition on sale addressed in sec. 18 and the prohibition on importation addressed in sec. 19.

Section 13. AS 04.11.400(a) would be amended to conform to the new local option provisions and to simplify language.

Section 14. This section corrects an inconsistency in terminology between AS 04.11.480(a) and AS 04.11.340. Also, AS 04.11.480(a) would be amended to retain a local governing body's power to annually review and protest the operation of a liquor license. This power was altered from annual to biennial under the biennial renewal bill passed last session.

Section 15. AS 04.11.491 would be added to provide a "shopping list" of all the options which are available within a municipality and within an established village. The only material changes in the section to existing options would be 1) to allow for a municipal restaurant or eating place license (beer and wine only); 2) to limit the types of licenses that could be available if a community opts to restrict licenses; and 3) to allow communities to opt for sales under a permit issued under AS 04.11.230 by a beverage dispensary licensee who operates a premises outside of the area. This section gives the local community more flexibility in drafting the wording of the ballot question. Also, when a local option is proposed that will restrict but not prohibit the sale of alcohol, this section would require an explanation of the authority to sell alcoholic beverages under the allowed types of licenses. This section also would allow local options adopted by a municipality to continue in effect in the area after the dissolution of the municipality under AS 29.06.450(a) or (b). Finally, if the community

Section 21. AS 04.11.503 addresses a restriction to certain types of licensees and permit holders. This section is a simplified version of existing AS 04.11.500.

Section 22. AS 04.11.505 addresses a restriction to certain types of licenses operated by a municipality. This section simplifies existing AS 04.11.190 and 04.11.492(b).

Section 23. AS 04.11.507 establishes the procedures for local option elections. This section simplifies existing AS 04.11.502.

Section 24. AS 04.11.509 establishes notice requirements for election results. This section simplifies existing AS 04.11.504.

Section 25. In conjunction with sec. 6 of this bill, this section allows licenses that are not renewed by December 31 of the biennial period to be operated until the following February 28. This amendment is proposed because of uneven enforcement of the present requirement that the premises close on December 31. Some law enforcement agencies are unwilling to enforce the requirement, especially due to other demands on New Year's Eve. Other changes are made to make the section consistent with sec. 26 of this bill and biennial renewal of existing statutes.

Section 26. This section provides for biennial renewal of seasonal licenses (presently known as half-yearly licenses), to allow the renewals to be handled in the same

manner as all other licenses.

Sections 27 and 28. AS 04.16.125 would be amended to conform to the new local option provisions of this bill. Additionally, the invoice on the outside of a shipping container would be required to show the quantity, as well as purchase value, of the alcohol to allow enforcement of AS 04.11.010 and 04.11.150(h). Under this section, transportation to a licensee in the area and transportation of not more than one gallon of malt beverages would be added to the exemptions from the labeling requirements.

Sections 29 - 33. These sections conform language governing criminal sanctions for violations of AS 04.11.010 to the new local option provisions.

Section 34. The "governing body" which is to direct community work service in an established village is not defined in existing statutes. This section would recognize that a local governing body traditionally performing public functions for the community could serve in this role.

Sections 35 - 40. These sections conform language governing sanctions for violation of a ban on possession to the new local option provisions of this bill.

Section 41. AS 04.21.010 would address municipal regulation to conform to the new local option provisions. Additionally, this section would give municipalities the

authority to adopt ordinances limiting the monthly amount of alcoholic beverages that a person can import.

Sections 42 and 43. This section would amend existing AS 04.21.015 and 04.21.080 (b)(1) to conform to the new local option provisions of this bill. Additionally, this section clarifies the definition of alcoholic beverage concerning the intent required to meet that statutory definition.

Section 44. This section would modify the definition of an "established village" in Title 4. The perimeter of an established village had not been defined in the existing statutes, although the various local option prohibitions apply only within the perimeter of an established village. This section would provide that, in most instances, the perimeter can be no larger than 10 miles in diameter and requires the perimeter to be clearly designated on a map.

Sections 45 - 50. These sections would conform existing statutes to the new local option provisions of this bill.

Section 51. This section sets out the repealed provisions, which consist of all of the existing local option laws at AS 04.11.490 - 04.11.506 and 04.11.510(d) and the community license designation under AS 04.11.190.

Section 52. This section would preserve local options adopted under existing and prior local option laws before the effective date of the Act.

Section 53. This section would convert community liquor licenses to their appropriate counterpart established in this bill.

Section 54. This section would set the effective date for July 1, 1994 in order to provide a definite date for implementation by municipalities and established villages and enforcement by law enforcement officers.

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

COPY

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 4, 1994

SUBJECT: Sectional Summary of SB 372.
TO: Senator Robin Taylor
FROM: Michael F. Ford
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Prohibits a person from soliciting or receiving orders for delivery of an alcoholic beverage in local option areas. Allows a package store licensee who is located outside of certain option areas to receive orders for sales. Allows a package store located in certain local option areas to solicit or receive sales orders.

Section 2. Provides that possession of 12 gallons or more of malt beverages in a local option area where sale is restricted or prohibited creates a presumption that the alcohol was possessed for sale.

Section 3. Repeals a provision requiring that military personnel be in uniform in order to purchase alcohol in certain clubs.

Section 4. Technical amendment.

Section 5. Authorizes a package store licensee to sell alcoholic beverages to a person present on the premises or a person known to the licensee who makes a written solicitation. Imposes restrictions on liquor shipments, requires certain notice to the board, and requires certain health information be included in liquor shipments.

Section 6. Restricts liquor shipments to certain local option areas.

Section 7. Requires the director to give renewal notices to licensees whose licenses are expiring, requires the licensee to file a renewal application by January 1, and increases the penalty for late applications to \$500.

Section 8. Repeals provisions regarding denial of a new license in a municipality that has prohibited sale except by a municipal owned liquor store. Prohibits issuance of a new license or permit in certain cities or in an established village when certain local options are approved.

Section 9. Technical amendment.

Section 10. Repeals authority to deny relocation of a licensed premise when the relocation is to an area that has limited sales to community run licensees.

Section 11. Repeals authority to deny transfer of a licensed premise to another person when the relocation is to an area that has limited sales to community operated licensees.

Section 12. Amends the authority of the board to suspend or revoke a license or permit.

Section 13. Allows the board to impose conditions or restrictions on a license or permit.

Section 14. Amends provisions relating to population restrictions applicable to issuing or relocating a license.

Section 15. Authorizes local governments to impose restrictions on the sale, importation, or possession of alcoholic beverages through a local option election. Specifies the contents of the ballot question. Allows the municipality or established village to designate a delivery site for alcoholic beverages.

Section 16. Establishes a procedure for changing a local option.

Section 17. Establishes a procedure for removing a local option. Provides a priority for certain licensees for reissuing a license not renewed because of a local option election.

Section 18. Establishes the effect of a vote to prohibit the sale of alcoholic beverages. Provides for elimination of existing licenses.

Section 19. Establishes the effect of a vote to prohibit the importation of alcoholic beverages.

Section 20. Establishes the effect of a vote to prohibit the possession of alcoholic beverages. Provides for elimination of existing licenses.

Section 21. Establishes the effect of a vote to restrict the sale of alcoholic beverages. Provides for elimination of existing licenses that do not meet the restriction.

Section 22. Establishes the effect of a vote to prohibit the sale of alcoholic beverages, except on premises operated by the municipality. Provides for elimination of existing licenses that are not operated by the municipality.

Section 23. Establishes a procedure for adopting, changing, or removing a local option. Requires that notice of the results of the local option election be given.

Section 24. Provides for renewal and for specific expiration of a liquor license.

Section 25. Provides for issuance of a seasonal license.

Section 26. Prohibits a person from using a common carrier to transport liquor in an area with certain local option restrictions. Requires the shipping invoice to reflect the quantity and purchase value of specific beverages.

Section 27. Allows a person to transport certain quantities of liquor by common carrier and allows certain licensees to use a common carrier for transporting liquor into a local option area.

Section 28. Provides that a violation of AS 04.11.010 in an area that has adopted a local option is a class C felony.

Section 29. Technical amendment.

Section 30. Technical amendment.

Section 31. Technical amendment.

Section 32. Technical amendment.

Section 33. Allows community work to be performed at the direction of the body that has traditionally performed public functions on behalf of the entire community, when a local governing body does not exist.

Section 34. Technical amendment.

Section 35. Technical amendment.

Senator Robin Taylor

April 4, 1994

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Section 36. Provides that liquor or material and equipment used in selling liquor, in an area that has adopted a local option is subject to forfeiture.

Section 37. Technical amendment.

Section 38. Technical amendment.

Section 39. Technical amendment.

Section 40. Provides that an ordinance that limits the monthly amount of liquor that a person can import into the municipality is not inconsistent with AS 04.

Section 41. Allows a municipality that adopts a local option to make sale or importation of alcoholic beverages a misdemeanor.

Section 42. Technical amendment.

Section 43. Technical amendment.

Section 44. Provides that in a local option area, "alcoholic beverage" means certain liquids intended for human consumption by the person who possesses or attempts to possess it.

Section 45. Amends the definition of "established village".

Section 46. Technical amendment.

Section 47. Technical amendment.

Section 48. Technical amendment.

Section 49. Technical amendment.

Section 50. Technical amendment.

Section 51. Technical amendment.

Section 52. Technical amendment.

Section 53. Technical amendment.

Section 54. Repealers.

Section 55. Transition section for prior local options.

• Senator Robin Taylor
April 4, 1994
Page 5

Section 56. Transition for community liquor licenses.

Section 57. Effective date.

MFF:pl
94-278.plm

4/12/94

SB 372
Alcoholic Beverage Control Board

1. LOCAL OPTION

- | | |
|---------------|------------------------------|
| Sec 16, pg 12 | a. menu of options |
| Sec 17, pg 14 | b. change an option |
| Sec 17, pg 14 | c. remove an option |
| Sec 16, pg 14 | d. new |
| | 1 - delivery site - regs |
| | 2 - catering permit - option |

2. TECHNICAL AMENDMENTS

- | | | |
|---------------|------|---|
| Sec 1, pg 1 | New | a. package store may not solicit or receive orders through an agent in a local option area. |
| Sec 3, pg 2 | New | b. delete military uniforms in clubs - same as HB 504. |
| Sec 5, pg 2 | New | c. package store licensees can ship only to the purchaser. |
| Sec 6, pg 3 | New | d. may not ship 150 proof alcohol |
| Sec 7, pg 3 | New | e. non-renewal by 12/31 - stay open but penalty increases from \$100 to \$500 |
| Sec 24, pg 19 | | |
| Sec 13, pg 10 | New | f. board may impose restrictions on a license |
| Sec 15, pg 12 | Tech | g. local governing body may protest annually |
| Sec 25, pg 19 | Tech | h. makes half-year licenses biennial to agree with current law |
| Sec 23, pg 19 | Tech | i. notice of elections by certified, not "registered" mail |
| Sec 40, pg 25 | New | k. limit importation amount by ordinance |
| Sec 44, pg 26 | Tech | l. expands definition of alcohol to include any alcohol intended for consumption |

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 8, 1994

SUBJECT: Sectional Summary of SB 372

TO: Senator Randy Phillips

FROM: Michael F. Ford *MFF*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

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Section 2. Provides that possession of 12 gallons or more of malt beverages in a local option area where sale is restricted or prohibited creates a presumption that the alcohol was possessed for sale.

Section 3. Repeals a provision requiring that military personnel be in uniform in order to purchase alcohol in certain clubs.

Section 4. Technical amendment.

Section 5. Authorizes a package store licensee to sell alcoholic beverages to a person present on the premises or a person known to the licensee who makes a written solicitation. Imposes restrictions on liquor shipments, requires certain notice to the board, and requires certain health information be included in liquor shipments.

Section 6. Restricts liquor shipments to certain local option areas.

Section 7. Requires the director to give renewal notices to licensees whose licenses are expiring, requires the licensee to file a renewal application by January 1, and increases the penalty for late applications to \$500.

Section 8. Repeals provisions regarding denial of a new license in a municipality that has prohibited sale except by a municipal owned liquor store. Prohibits issuance of a new license or permit in certain cities or in an established village when certain local options are approved.

Section 9. Technical amendment.

Section 10. Repeals authority to deny relocation of a licensed premise when the relocation is to an area that has limited sales to community run licensees.

Section 11. Repeals authority to deny transfer of a licensed premise to another person when the relocation is to an area that has limited sales to community operated licensees.

Section 12. Amends the authority of the board to suspend or revoke a license or permit.

Section 13. Allows the board to impose conditions or restrictions on a license or permit.

Section 14. Amends provisions relating to population restrictions applicable to issuing or relocating a license.

Section 15. Authorizes local governments to impose restrictions on the sale, importation, or possession of alcoholic beverages through a local option election. Specifies the contents of the ballot question. Allows the municipality or established village to designate a delivery site for alcoholic beverages.

Section 16. Establishes a procedure for changing a local option.

Section 17. Establishes a procedure for removing a local option. Provides a priority for certain licensees for reissuing a license not renewed because of a local option election.

Section 18. Establishes the effect of a vote to prohibit the sale of alcoholic beverages. Provides for elimination of existing licenses.

Section 19. Establishes the effect of a vote to prohibit the importation of alcoholic beverages.

Section 20. Establishes the effect of a vote to prohibit the possession of alcoholic beverages. Provides for elimination of existing licenses.

Section 21. Establishes the effect of a vote to restrict the sale of alcoholic beverages. Provides for elimination of existing licenses that do not meet the restriction.

Section 22. Establishes the effect of a vote to prohibit the sale of alcoholic beverages, except on premises operated by the municipality. Provides for elimination of existing licenses that are not operated by the municipality.

Section 23. Establishes a procedure for adopting, changing, or removing a local option. Requires that notice of the results of the local option election be given.

Section 24. Provides for renewal and for specific expiration of a liquor license.

Section 25. Provides for issuance of a seasonal license.

Section 26. Prohibits a person from using a common carrier to transport liquor in an area with certain local option restrictions. Requires the shipping invoice to reflect the quantity and purchase value of specific beverages.

Section 27. Allows a person to transport certain quantities of liquor by common carrier and allows certain licensees to use a common carrier for transporting liquor into a local option area.

Section 28. Provides that a violation of AS 04.11.010 in an area that has adopted a local option is a class C felony.

Section 29. Technical amendment.

Section 30. Technical amendment.

Section 31. Technical amendment.

Section 32. Technical amendment.

Section 33. Allows community work to be performed at the direction of the body that has traditionally performed public functions on behalf of the entire community, when a local governing body does not exist.

Section 34. Technical amendment.

Section 35. Technical amendment.

Section 36. Provides that liquor or material and equipment used in selling liquor, in an area that has adopted a local option is subject to forfeiture.

Section 37. Technical amendment.

Section 38. Technical amendment.

Section 39. Technical amendment.

Section 40. Provides that an ordinance that limits the monthly amount of liquor that a person can import into the municipality is not inconsistent with AS 04.

Section 41. Allows a municipality that adopts a local option to make sale or importation of alcoholic beverages a misdemeanor.

Section 42. Technical amendment.

Section 43. Technical amendment.

Section 44. Provides that in a local option area, "alcoholic beverage" means certain liquids intended for human consumption by the person who possesses or attempts to possess it.

Section 45. Amends the definition of "established village".

Section 46. Technical amendment.

Section 47. Technical amendment.

Section 48. Technical amendment.

Section 49. Technical amendment.

Section 50. Technical amendment.

Section 51. Technical amendment.

Section 52. Technical amendment.

Section 53. Technical amendment.

Section 54. Repealers.

Section 55. Transition section for prior local options.

Senator Randy Phillips
April 8, 1994
Page 5

Section 56. Transition for community liquor licenses.

Section 57. Effective date.

MFF:mi
94-084.mai

Alaska State Legislature

Senator Al Adams



Official Business

WHILE IN SESSION
State Capitol
Juneau, Alaska 99801-1182
(907) 465-3707
Fax 463-4867

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

August 6, 1993

Charles E. Cole
Attorney General
Box 110300
Juneau, Alaska 99811-0300

Dear Charlie,

I am writing to generate your interest in a problem dealing with local option statutes. My awareness of the problem stems from complications the City of St. Mary's has encountered during the past 6 months with applying existing statutes to local option election procedures. Although several departments need to be involved, I am hoping that your department will take the lead on developing legislation to correct the problem.

The City of St. Mary's made concerted efforts to correctly respond to local option petitions. The city's administrator worked with the Department of Community and Regional Affairs, the Alcohol Beverage Control Board, and members of your staff. Despite these efforts, and in large part due to clumsily written statutes, the city has repeatedly run into legal challenges that it might well lose.

In order to prevent recurrence of this dilemma for other cities who are certainly going to encounter the same problem, a group of people need to sit down and figure out exactly what the problems are and how to solve them. It appears these discussions should include the departments that the City of St. Mary's already tried to work with as well as the Division of Elections.

Please let me know if you are willing to take on this responsibility. I know the Northwest Arctic Borough earlier tried to elicit your interest in this problem and apparently has not heard from you. Thank you for your time and energy on this matter.

Sincerely,

A handwritten signature in cursive script that reads "Al Adams".

Senator Al Adams

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF REVENUE

550 W. 7TH AVE
ANCHORAGE, ALASKA 99501-6698

ALCOHOLIC BEVERAGE CONTROL BOARD

March 24, 1994

The Honorable Robin Taylor
Alaska State Legislature
State Capitol, Room 30
Juneau AK 99801-1182

Re: Legislation proposed by the Alcoholic Beverage Control Board

Dear Senator Taylor:

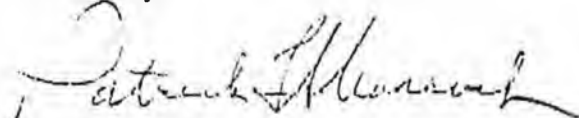
During my phone discussion last Tuesday with Joe Ambrose, I told him I would send the enclosed sectional analysis of the local option legislation proposed by the ABC Board. Primarily, the bill does two things:

- 1 - rewrites the alcohol local option law. Current law providing for local option questions has been confusing for several villages and small communities. The bill is supported by the Division of Elections and the Department of Community and Regional Affairs. There is also a letter attached from Senator Al Adams who expressed concern about problems with current law.
- 2 - makes some long-needed technical and corrective amendments that appear in Sections 1-4, 6, 12, 25, 26, 42, 43 and 44.

A similar attempt to change the law was contained in legislation (SB 297) introduced by former Senator John Binkley in the Sixteenth Legislature.

Thank you very much for your consideration of this legislation. I will be happy to provide testimony or information at any time.

Sincerely,



Patrick L. Sharrock
Director
(907) 277-8638

PLS/akj
94-062
enclosures

SB

375

FISCAL NOTE

STATE OF ALASKA

BILL NO. SB375

1994 LEGISLATIVE SESSION

Revision Date: <u>REVISED ORIGINAL on 4/19/94</u>	Dept Affected: <u>Natural Resources</u>
Title: <u>"An Act relating to general grant land entitlements."</u>	BRU: <u>Resource Development</u>
Sponsor: <u>Senate Judiciary Committee</u>	Component: <u>Land Development</u>
Requestor: <u>Senate Judiciary Committee</u>	Component Serial No. <u>431</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	350.0	350.0	350.0	350.0	350.0	350.0
	10.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL	15.0	15.0	15.0	15.0	15.0	15.0
SUPPLIES	5.0	5.0	5.0	5.0	5.0	5.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	380.0	380.0	380.0	380.0	380.0	380.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	380.0	380.0	380.0	380.0	380.0	380.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	380.0	380.0	380.0	380.0	380.0	380.0

Estimate of any current year (FY94) cost. \$ None

POSITIONS

FULL-TIME	6	6	6	6	6	6
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

OPPOSED.
SEE ATTACHED.

Prepared by: <u>Ron Swanson, Director</u>	Phone: <u>762-2692</u>
Division: <u>Land</u>	Date: <u>19-Apr-94</u>
Approved by Commissioner: <u>Harry A. Noah</u>	Date: <u>19-Apr-94</u>
Agency: <u>Natural Resources</u>	

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

We oppose this bill because it is not in the best interest of the state.

The present Municipal Land Act limits what lands can be used to calculate municipalities' entitlement and, more importantly, what type of land is suitable to be conveyed to municipalities. The present definition limits this to land classified agricultural, grazing, material, public recreation, or settlement. It does not include land classified for forest, geothermal, heritage resources, oil and gas, reserved use, resource management, transportation corridor, or wildlife habitat.

These land classifications, that could be used to determine entitlements and eventual ownership were carefully decided in 1978, when the Municipal Land Act became law. The classifications were individually looked at and put into categories that were in the states interest to retain, and those that were appropriate for local ownership to support local activities and revenue generation.

If this bill becomes law, municipalities will be able to select and obtain ownership over any state land, including land within legislatively designated areas such as parks, game refuges, sanctuaries, and recreational areas. This will leave the state in a position of not being able to protect the overall interest of all its citizens.

The following chart depicts the additional land that would need to be conveyed, just to boroughs:

Boroughs	State Land	10% State Land	Present Entitlement
Aleutians East Borough	1,184,113	118,411.3	Not Certified
Municipality of Anchorage	543,184	54,318.4	44,893
Bristol Bay Borough	105,213	10,521.3	2,898
Denali Borough	3,017,661	301,766.1	Not Certified
Fairbanks North Star Borough	2,973,355	297,335.5	112,000
Haines Borough	155,171	15,517.1	2,800
City and Borough of Juneau	40,069	4,006.9	19,584
Kenai Peninsula Borough	2,171,394	217,139.4	155,730
Ketchikan Gateway Borough	27,692	2,769.2	11,593
Kodiak Island Borough	628,817	62,881.7	56,500
Lake and Peninsula Borough	4,198,660	419,866.0	Not Certified
Matanuska-Susitna Borough	9,881,324	988,132.4	355,210
North Slope Borough	8,644,282	864,428.2	89,850
Northwest Arctic Borough	3,242,039	324,203.9	285,000
City and Borough of Sitka	15,499	1,549.9	10,500
Yakutat	5,000	500.0	Not Certified

In some cases, such as for the Municipality of Anchorage, the State does own enough land to convey the additional entitlement unless land is removed from legislatively designated areas (Chugiak State Park). In addition, there are 29 cities that presently have an entitlement of 26,810 acres. All of the boroughs, plus all cities that have state land within their boundaries, will have to be recertified. It should also be noted that all entitlements are vested property rights that must be full-filled. It should also be noted that we currently have a back log of unprocessed applications for 20 municipalities that total 620,000 acres.

Current law, AS 29.65.030 (b), requires that municipal entitlements be certified within two years and six months of incorporation, or within six months if a municipality requests certification on an expeditious basis. Current law, AS 29.65.040 (d), also requires that municipalities must select land within one year after certification. Finally, AS 29.65.050(c), requires that all selections must be approved or disapproved within nine months of selection.

This fiscal note reflects these requirements. If a more moderate approach is adopted this fiscal note needs to be amended.

Revision Date: _____ Dept. Affected: Community & Regional Affairs
 Title: "An Act relating to general grant land BRU: _____
entitlements." Component: _____
 Sponsor: Senate Judiciary Committee by Request
 Requestor: Senator Phillips COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

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

Estimate of current (FY94) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Remond Henderson *Remond Henderson* Director Phone: 465-4708
 Division: Administrative Services Date: *4/19/94*
 Approved for the Commissioner by: Bruce Geraghty *Bruce Geraghty* Deputy Commissioner Date: *4-19-94*
 Agency: Community & Regional Affairs

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Bill Amendments

Delete "vacant, unappropriated, unreserved" wherever it occurs and insert "state general grant land".

Section 6, pertaining to AS 29.65.050(b) should be deleted in its entirety. Some amendments are proposed in Section 6 of the bill. This section orders the director to rescind~~ed~~ conveyances that were made for land that was not VUU. Once land is conveyed by tentative approval or interim conveyance title has passed and can not be rescinded by the director.

Section 7 of the bill should be amended to eliminate the requirement for the director to approve or disapprove each selection for patent within nine months of its selection by a municipality. With these new entitlements, combined with our existing backlog of over 600,000 acres this requirement is impossible to meet.

In section 10, if VUU is deleted the definition for vuu should also be deleted. In Instead AS 29.65.130(3) should be amended to read:

"general grant land"

(A) means land patented or tentatively approved to the state from the United States under Section 6(a) or (b) of the Alaska Statehood Act;

(B) does not include university or mental health land;

(C) has not been set aside by statute for one or more particular uses or purposes; or

(D) has not been approved for conveyance to a municipality under this chapter, AS 38.05.810, or former AS 29.18.190 or 29.18.200.

Alaska State Legislature

Senator Al Adams

WHILE IN SESSION
State Capitol
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OUT OF SESSION
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(907) 442-3245

Official Business

TO: Senator Randy Phillips, Chair and members
Senate Community and Regional Affairs Committee

FROM: Senator Al Adams

DATE: April 18, 1994

RE: Senate Bill 375

Thank you for hearing the aforementioned legislation.

The basic premise of this bill is that municipal ownership of up to 10 percent of the state land within municipal boundaries, when it is available, would promote strong local governments as provided for in Alaska's Constitution, would provide municipalities with the opportunity to stimulate economic development, could potentially increase tax revenues through an expanded tax base and an overall improved ability to provide quality public services. By retaining ownership to 90 percent of the state land within municipal boundaries, the state retains the ability to provide for statewide public interests.

The bill sections with most import are sections eight and ten. Section eight deletes the word newly formed from the policy statement regarding the 10 percent designation so that the policy applies across the board to all municipalities. Section 10 changes the designation of VUU land so that it now would include land that had been classified as unobtainable for municipal selection.

This legislation is particularly timely considering the present proposals to decrease municipal assistance and revenue sharing by Governor and certain members of the Alaska Legislature. By increasing the land base available to municipalities, we would be offsetting the negative effects of diminishing the revenue stream flowing from the state to our local governments.

Attached is a sectional summary, a supporting resolution by the Alaska Municipal League, and an approximate breakdown as of March of 1993 of the additional land that would be available to certain municipalities as a result of this legislation.

A fiscal note has been requested and will be forthcoming.

Thank you for your consideration of this bill.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 12, 1994

SUBJECT: General grant land entitlements (Work Order 8-LS1883E)

TO: Senator Al Adams

FROM: Tamara Brandt Cook
Director *TBC*

Here is the sectional summary you requested.

Sec. 1. Establishes the general grant land entitlement of a municipality at a level of ten percent of the maximum total acreage of vacant, unappropriated, unreserved land within its boundaries, or, if the municipality is a borough, the amount designated in former AS 29.65.010 (repealed in this bill). This section applies to both cities and boroughs, existing and newly formed.

Sec. 2. Inserts the word "former" in front of two sections repealed in this bill.

Sec. 3. Inserts the word "former" in front of a section repealed in this bill.

Sec. 4. Deletes periods within which selections had to be made under former law and the period within which a new selection had to be made if an original selection was rejected. No time limit is placed on the selection of land to fulfill the entitlements provided for in sec. 1 of this bill.

Sec. 5. The entitlements provided for in sec. 1 are vested property rights that must be fulfilled as provided in AS 29.65.050. This existing section on deficiency payments is repealed in this bill and will not apply to the new entitlements.

Sec. 6. A municipality is not entitled to receive patent to more than its entitlement determined under sec. 1. Patents received under repealed provisions of the general grant land entitlement program shall be credited toward fulfillment of the municipality's entitlement.

Sec. 7. A reference to sections repealed in this bill is replaced with a reference to the section added in sec. 1.

Senator Al Adams

April 12, 1994

Page 2

Sec. 8. Deletes the words "newly formed" from the existing statement of policy that the state provide to each municipality no less than 10 percent of vacant, unappropriated, unreserved land within its boundaries thus, this policy now applies to both existing municipalities and those that are organized in the future.

Sec. 9. Provides that general grant land does not include mental health land or school land. The statute now provides that university land is excluded, and that exclusion is retained.

Sec. 10. Changes the definition of vacant, unappropriated, unreserved land to include land classified by the Department of Natural Resources that is now excluded from that definition. This has the effect of increasing the types of state land that will be considered in setting the amount of a municipal entitlement and increasing the types of land that may be selected in fulfillment of that entitlement.

Sec. 11. Makes technical changes to reflect the repeal of sections cited and the addition of a new section.

Sec. 12. Repeals the section setting out the entitlements for boroughs and unified municipalities, the section on determining entitlements for cities, the section on determining entitlements for newly incorporated municipalities (all replaced by the entitlement under sec. 1), subsections dealing with time limits within which selections could be made under former law (there is no time limit for making selections in this bill), the section dealing with school and mental health land (these lands are no longer available for selection), the section dealing with payment for land deficiency, and definitions of university land, school land, and mental health land (these definitions have been rolled into the paragraph defining general grant land).

TBC:gc
94-252.glc

Resolution of the Alaska Municipal League

Resolution No. 94-8

**A RESOLUTION URGING PASSAGE OF
LEGISLATION RELATED TO
GENERAL MUNICIPAL LAND GRANT ENTITLEMENTS**

WHEREAS, the municipal land entitlements provided for in AS 29.65.010 result in an entitlement of as little as one percent of the state land within some municipalities; and

WHEREAS, under the AS 29.65.130 (10) definition of what is Vacant, Unappropriated, and Unreserved (VUU) land available for municipal ownership, the resulting entitlement is as little as one tenth of one percent of the state land within some municipalities; and

WHEREAS, although there are millions of acres of state-selected federal lands within municipalities, when the state receives title to these lands, the municipal land entitlements will not increase accordingly because of certification deadlines, vesting dates, and application deadlines currently contained in AS 29:

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League supports legislation that would promote strong local government and increase local control by entitling all municipalities to an equitable, standard formula of 10 percent of the VUU state land within their boundaries.

BE IT FURTHER RESOLVED that the Alaska Municipal League supports legislation changing the definition of VUU lands to allow selection of lands by the municipality subject to a final determination by the legislature as to whether the lands are of such importance to statewide interests that they are not available for municipal ownership.

BE IT FURTHER RESOLVED that the Alaska Municipal League supports legislation that would make municipal land entitlements flexible so municipalities' land entitlements would increase when the amount of state land within municipalities increases.

Adopted at Annual Business Meeting on November 12, 1993 in Soldotna, Alaska

PURPOSE OF ADAMS AMENDMENT ON GENERAL GRANT LAW)

MUNICIPAL ENTITLEMENT & EFFECT STATEWIDE ON MUNICIPALITIES

1. Establish a single, simple formula to calculate municipal land entitlements which is applicable to all cities, boroughs and unified municipalities.

2. Make the formula flexible enough for the municipal land entitlement to increase whenever there is an increase in the amount of state owned land within a municipality.

3. Return to the legislature the authority for designating lands which are of such paramount importance to statewide interests that they are not available for municipal ownership.

1. Establish a single, simple formula to calculate municipal land entitlements which is applicable to all cities, boroughs and unified municipalities. This is achieved in the following sections:

Sections - of the legislation repeal the entitlement calculation methods which have evolved to date.

Section establishes municipal entitlements to be 10 % of vacant, unappropriated and unreserved (VUU) lands. The only instance when this 10 % method would not apply is when it equated to be less than the entitlement contained in former AS 29.65.010; this would be the case in the Municipality of Anchorage, The City and Borough of Juneau, City and Borough of Sitka, and the Ketchikan Gateway Borough (based on figures received from Division of Land in March 1991). The entitlement for all other cities and boroughs would be 10 % of VUU lands.

Section establishes that the procedure to be used in fulfilling land entitlements under Section 4 is that contained in AS 29.65.050, and that the municipal land deficiency payment provisions of AS 29.65.080 do not apply to the entitlement created under this legislation.

Section clarifies that the entitlement created under Section 4 is the maximum total entitlement a municipality may receive under AS 29, and that it includes those acres already received under AS 29.

Section applies the 10 % of VUU land policy of the state equally to all municipalities, not just to new municipalities.

The main premise upon which this legislation is based is that municipalities should be entitled to 10 % of the state land within their boundaries. One can look at the resulting entitlements in

the hundreds of thousands of acres that some municipalities with large state land bases would be entitled to and say that amount was too generous. Can it really be considered too generous when the state will still end up owning 90 % of the land?

A standard argument that always comes into play whenever it is proposed to establish municipal land entitlements with a standard 10 % formula is that some municipalities with large populations receive small entitlements, while some municipalities with small populations receive large entitlements. This issue has no easy answer. In general, land is worth more per acre in areas with large populations, and worth less per acre in areas with small populations. This is a tremendous simplification of a complex subject, but to come up a solution that would be completely equitable to every municipality would take many, many years to appraise and adjust. Additionally, the issue is not limited to economic value alone, but also to the fostering of local control and managing lands to enhance local public interests.

It is true that in some municipalities the presence of federal, native and other private lands dictate land use patterns and limit the amount of state land available for municipal entitlements. It is still for the good of their sister municipalities and the state as a whole that municipalities be entitled to 10 % of the state land where it is available.

Other arguments used in the past by the Division of Lands is that municipalities have not demonstrated a need for any more land, and therefore should not be entitled to any more. Is it too much for municipalities to ask for just 10 % of the land on which they can make their own decisions and not be subject to the whims of the Division of Land?

If Alaska is to have strong and independent self governing municipalities as called for in the State Constitution, it should be willing to provide them with a fair and equitable land base when available. Putting 10 % of Alaska's state owned land under local government control is clearly a way to promote strong municipal governments. Municipalities should be given a chance to stimulate their own economies, and should be able to determine the size of their tax bases. Should the state have to initiate all economic development?

Mere municipal or even private ownership of 10 % of state lands does not mean that they will not be protected. They will still be subject to environmental regulation by the state and the federal governments, and fish and game regulation by the state.

2. Make the formula flexible enough for the municipal land entitlement to increase whenever there is an increase in the amount of state owned land within a municipality. This is achieved in the following sections:

Section 4 is silent on certification deadlines, and also on establishing vesting dates on which to calculate the total amount of available state owned VUU land. Entitlements would therefore increase as the state acquires more land from the federal government within a municipality.

Section 5 deletes deadlines for selection of lands to satisfy entitlements by a municipality. Whenever the amount of state land within a municipality increased, the municipality would then be able to apply for its increased entitlement at that time.

Existing entitlement acreages are based on a vesting date tied to their date of incorporation, or set in 1978. In some municipalities the state has pending selections of federal lands totalling in the millions of acres. Although the state will be acquiring much more land within some municipalities, those municipalities are not able to share in the wealth of this increased state land ownership. When the state receives new lands within municipalities, it would be fair to allow municipalities to correspondingly receive 10 % of that new state land.

3. Return to the legislature the authority for designating lands which are of such paramount importance to statewide interests that they are not available for municipal ownership. This is achieved in the following section:

Section 6 changes the definition of VUU lands (which are not available for municipal selection or ownership) to include only legislatively designated areas, and not include lands classified administratively by the Division of Lands.

Under the existing definition of VUU in AS 29, lands which are administratively classified by the Division of Land into classifications such as wildlife habitat, forestry and resource management are not considered VUU lands and are not available for municipal selection or ownership. The impact of this to some borough's land entitlements is dramatic:

Lake and Peninsula Borough, currently entitled to 10 % of VUU lands under AS 29.65.030, has over 5 million acres of state land within its boundaries, but because of administrative classifications by the Division of Land, it only has 35,000 acres that are considered not VUU lands. 10 % of this 35,000 acres is an entitlement of 3,500 acres in a borough with more than 5 million acres of state lands! This is an entitlement of less than one tenth of one percent of the state land in this municipality!

Not allowing municipal ownership of these lands through the administrative classification process of the Division of Land as non-VUU implies that municipalities are not capable of managing lands in the public interest. This is an insult to local government. Municipal or even private ownership of land does not mean that it will not be protected. The land will still be subject

to environmental regulation by the state and the federal governments, and fish and game regulation by the state.

The Division of Land is given too broad a discretion in determining which lands will be available for municipal ownership; their discretion amounts to a contradiction of the purposes for which the Municipal Entitlement Act was created. Since the amount of land available for municipal ownership determines the effectiveness of the Municipal Entitlement Act, the real authority for determining which lands should not be available for municipal ownership should rest with the legislature. If the statewide interest in keeping state land in state ownership is paramount to allowing the land to be municipally owned, then it should be made not available by the legislature through the creation of a state wildlife refuge, park, forest, etc., and not by the Division of Land through an administrative land classification.

The Division of Land is not responsive to the needs of local government, and they are unwilling to give the Department of Community and Regional Affairs any more than a token opportunity for the input required under AS 29.65.050.

(4)

EFFECT OF THIS LEGISLATION ON MUNICIPALITIES

The figures used to determine the effect of this legislation were taken from a chart prepared by the Division of Land in March 1993. All figures given, with the exception of the municipal entitlements specifically listed in AS 29.65.010, are approximations. With the constant flux in land ownership between the federal, state and local governments, it is understood to be a nearly impossible task to come up with completely accurate acreages. As land status in Alaska becomes more settled through the years, and as computer mapping technologies continue to improve, computations of these acreages can be accomplished with more precision in the future.

Statewide - Entitlements existing under current AS 29.65.010 - .030 for all municipalities statewide are 1.2 million acres, which is 1 % of all state land within the state. Under this legislation, entitlements created for all municipalities statewide at this time would be 3.4 million acres, which is 3 % of all state land within the state. Some day after the state receives its entire 104 million acre entitlement of land from the federal government, and after all currently unorganized areas of the state incorporate, and if the current 10.7 million acres (10 %) of Alaska's legislatively designated areas such as game refuges, forests and parks don't increase, the entitlements created under this legislation would equal 9.3 million acres, which is 9 % of all state land within the state.

1. Aleutians East Borough - Although their entitlement as set out in AS 29.65.030 is 10 % of state VUU land, and their borough contains 1.3 million acres of state land, they have an entitlement of only 7,600 acres, which is one half of one percent of the state land within their boundaries. This is because the Division of Land has classified most of the state land within this borough as non-VUU land and therefore not available for municipal ownership. Under the provisions of this legislation which authorize the legislature, not the Division of Land, to designate what is non-VUU land, their entitlement would increase to 130,000 acres. If the state receives title to the 150,000 acres of state selected federal lands within their boundaries, their 130,000 acre entitlement would increase by another 35,000 acres.

2. Municipality of Anchorage - contains over one half million acres of state land, most of which is not vacant, unappropriated, unreserved (VUU) land because it is in Chugach State Park. Since 10 % of VUU lands in this municipality would be less than the acreage contained in their original AS 29.65.010 entitlement amount of 44,893 acres, their entitlement under this legislation would be an amount equal to the AS 29.65.010 entitlement of 44,893 acres. With about 20,000 acres already conveyed to them, they were not able to find any additional VUU state land within their boundaries to satisfy their remaining entitlement. They entered an agreement with the state to zero out their unfulfillable entitlement, and in return receive of up to 1,000 acres of national forest land if the state ever acquired it. The state recently received title to

20,000 acres of national forest land in Girdwood and Portage. This legislation would create a new entitlement equal to their previous entitlement of 44,893 acres, allowing them to acquire most, if not all, of that 20,000 acres. When added to the 20,000 acres they have previously received, this legislation makes enough new lands available at Girdwood and Portage to nearly satisfy their 44,893 acre entitlement, which equals about 7 % of all the state land within their boundaries, inclusive of Chugach State Park. Furthermore, the provisions of this legislation which do away with certification deadlines, vesting dates and application deadlines will allow this municipality to receive title to any national forest land the state may acquire within their boundaries at any time in the future to use in fulfilling their entitlement.

3. Bristol Bay Borough - Their entitlement as set out in AS 29.65.010 is 2,898 acres. With 86,000 acres of state land within their boundaries, their entitlement as provided by the 10 % formula in this legislation would increase to 8,600 acres. If the state receives title to the 86,000 acres of state selected federal land within their boundaries, their 8,600 acre entitlement would increase by an additional 8,500 acres.

4. Denali Borough - Although their entitlement as set out in AS 29.65.030 is 10 % of state VUU land, and their borough contains 3.1 million acres of state land, they have an entitlement of only 15,000 acres, which is one half of one percent of the state land within their boundaries. This is because the Division of Land has classified most of the state land within this borough as non-VUU land and therefore not available for municipal ownership. Under the provisions of this legislation which authorize the legislature, not the Division of Land, to designate what is non-VUU land, their entitlement would increase to 310,000 acres. If the state receives title to the 575,000 acres of state selected federal lands within their boundaries, their 310,000 acre entitlement would increase by another 57,500 acres.

5. Fairbanks North Star Borough - Their entitlement as set out in AS 29.65.010 is 112,000 acres. However, even with the 1.8 million acre Tanana Valley State Forest, there are still another 1.7 million acres of other state lands. Their entitlement as provided by the 10 % formula in this legislation would increase to 170,000 acres. If the state receives title to the 1 million acres of state selected federal lands within their boundaries, their 170,000 acre entitlement would increase by another 100,000 acres.

6. Haines Borough - Their entitlement as set out in AS 29.65.010 is 2,800 acres. However, even with the 250,000 acre Haines State Forest, there are still another 185,000 acres of other state lands. Their entitlement as provided by the 10 % formula in this legislation would increase to 18,500 acres. If the state receives title to the 420,000 acres of state selected federal lands within their boundaries, their 18,500 acre entitlement would increase by another 42,000 acres.

7. City and Borough of Juneau - Since 10 % of VUU lands in this municipality would be less than the acreage contained in their original AS 29.65.010 entitlement amount of 19,584 acres, their entitlement under this legislation would be an amount equal to the AS 29.65.010 entitlement of 19,584 acres. Thus the total entitlement for this borough under all past and present provisions of AS 29 would continue to be 19,584 acres. The provisions of this legislation which do away with certification deadlines, vesting dates and application deadlines will allow this municipality to receive title to any state land contained within any expanded municipal boundaries, or to receive title to any national forest land the state may acquire within their boundaries at any time in the future, to use in fulfilling their entitlement.

8. Kenai Peninsula Borough - Their entitlement as set out in AS 29.65.010 is 155,780 acres. Even with over a million acres of legislatively created game refuges, sanctuaries, critical habitat areas and state parks, there are still another 1.6 million acres of other state lands. Their entitlement as provided by the 10 % formula in this legislation would increase to 160,000 acres. If the state receives title to the 1.6 million acres of state selected federal lands within their boundaries, their 160,000 acre entitlement would increase by another 150,000 acres.

9. Ketchikan Gateway Borough - Since 10 % of VUU lands in this municipality would be less than the acreage contained in their original AS 29.65.010 entitlement amount of 11,593 acres, their entitlement under this legislation would be an amount equal to the AS 29.65.010 entitlement of 11,593 acres. Thus the total entitlement for this borough under all past and present provisions of AS 29 would continue to be 11,593 acres. While the predominance of federal land in the vicinity makes it unlikely that this entire entitlement will be fulfilled any time soon, the provisions of this legislation which do away with certification deadlines, vesting dates and application deadlines will allow this municipality to receive title to any national forest land the state may acquire within their boundaries in the future to use in fulfilling their entitlement.

10. Kodiak Island Borough - Their entitlement as set out in AS 29.65.010 is 56,500 acres. With 370,000 acres of state land within their boundaries, their entitlement as provided by the 10 % formula in this legislation would increase to 37,000 acres. Although the borough entered an agreement with the state to zero out its entitlement in return for lands selected by ANCSA corporations if the state ever acquired them, this legislation would create a new entitlement of 37,000 acres. The provisions of this legislation which do away with certification deadlines, vesting dates and application deadlines will allow this borough to receive title to any federal wildlife refuge lands, ANCSA corporation selected lands, that the state may acquire within their boundaries at any time in the future to use in fulfilling their entitlement.

11. Lake and Peninsula Borough - Although their entitlement as set

out in AS 29.65.030 is 10 % of state VUU land, and their borough contains 5 million acres of state land, they have an entitlement of only 3,500 acres, which is less than one tenth of one percent of the state land within their boundaries. This is because the Division of Land has classified most of the state land within this borough as non-VUU land and therefore not available for municipal ownership. Under the provisions of this legislation which authorize the legislature, not the Division of Land, to designate what is non-VUU land, their entitlement would increase to 500,000 acres. If the state receives title to the 1.5 million acres of state selected federal lands within their boundaries, their 500,000 acre entitlement would increase by another 150,000 acres.

12. Matanuska-Susitna Borough - Their entitlement as set out in AS 29.65.010 is 155,210 acres. Even with over 3.5 million acres of legislatively created game refuges, public use areas and state parks, there are still another 6.8 million acres of other state lands. Their entitlement as provided by the 10 % formula in this legislation would increase to 680,000 acres. If the state receives title to the 3.3 million acres of state selected federal land within their boundaries, their 680,000 acre entitlement would increase by another 330,000 acres.

13. North Slope Borough - Their entitlement as set out in AS 29.65.010 is 89,850 acres. With 8.9 million acres of state lands, this is an entitlement of 1 % of the state land within their boundaries. Furthermore, their entitlement is only one tenth of one percent of all the land within their boundaries when the large federal holdings in NPRA, ANWR and the national parks are factored in. Their ability to acquire state lands with any chance of economic potential is further limited because the Division of Land has classified all of the state land in the Prudhoe/Kuparuk industrial development area as non-VUU land and therefore not available for municipal ownership. Their entitlement as provided by the 10 % formula in this legislation, and also including the provisions of this legislation which authorize the legislature, not the Division of Land, to designate what is non-VUU land, would increase to 890,000 acres, which would still be less than 2 % of all the land within their boundaries including federal holdings. If the state receives title to the 5.3 million acres of state selected federal lands within their boundaries, their 890,000 acre entitlement would increase by another 530,000 acres.

14. Northwest Arctic Borough - Their entitlement as set out in AS 29.65.030 is 10 % of state VUU land, their borough contains 3.3 million acres of state land, and they have an entitlement of 285,000 acres, or 8 % of the state land within their borough. Under the provisions of this legislation which authorize the legislature, not the Division of Land, to designate what is non-VUU land, their entitlement would increase to 330,000 acres. If the state receives title to the 3.1 million acres of state selected federal lands within their boundaries, their 330,000 acre entitlement would increase by another 310,000 acres.

15. City and Borough of Sitka - Since 10 % of VUU lands in this municipality would be less than the acreage contained in their original AS 29.65.010 entitlement amount of 10,500 acres, their entitlement under this legislation would be an amount equal to the AS 29.65.010 entitlement of 10,500 acres. Thus the total entitlement for this borough under all past and present provisions of AS 29 would continue to be 10,500 acres. While the predominance of federal land in the vicinity makes it unlikely that this entire entitlement will be fulfilled any time soon, the provisions of this legislation which do away with certification deadlines, vesting dates and application deadlines will allow this municipality to receive title to any national forest land the state may acquire within their boundaries at any time in the future to use in fulfilling their entitlement.

16. Yakutat Borough - Their entitlement as set out in AS 29.65.030 is 10 % of state VUU land, however, most of the state land within their boundary has already gone to the City of Yakutat. At this time, the entitlement created under this legislation does not have much effect on this borough. However, the provisions of this legislation which do away with certification deadlines, vesting dates and application deadlines will allow this municipality to receive title to state lands contained within any future expansion of municipal boundaries.

Resolution of the Alaska Municipal League

Resolution No. 94-8

**A RESOLUTION URGING PASSAGE OF
LEGISLATION RELATED TO
GENERAL MUNICIPAL LAND GRANT ENTITLEMENTS**

WHEREAS, the municipal land entitlements provided for in AS 29.65.010 result in an entitlement of as little as one percent of the state land within some municipalities; and

WHEREAS, under the AS 29.65.130 (10) definition of what is Vacant, Unappropriated, and Unreserved (VUU) land available for municipal ownership, the resulting entitlement is as little as one tenth of one percent of the state land within some municipalities; and

WHEREAS, although there are millions of acres of state-selected federal lands within municipalities, when the state receives title to these lands, the municipal land entitlements will not increase accordingly because of certification deadlines, vesting dates, and application deadlines currently contained in AS 29;

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League supports legislation that would promote strong local government and increase local control by entitling all municipalities to an equitable, standard formula of 10 percent of the VUU state land within their boundaries.

BE IT FURTHER RESOLVED that the Alaska Municipal League supports legislation changing the definition of VUU lands to allow selection of lands by the municipality subject to a final determination by the legislature as to whether the lands are of such importance to statewide interests that they are not available for municipal ownership.

BE IT FURTHER RESOLVED that the Alaska Municipal League supports legislation that would make municipal land entitlements flexible so municipalities' land entitlements would increase when the amount of state land within municipalities increases.

TO: Senate CRA Comm
From: Keith Quintaveil, NSB
Re: Attached AML
Resolution # 94-8 in
Support of SB 375
legislation

NORTH SLOPE BOROUGH

OFFICE OF THE MAYOR

P.O. Box 68
Barrow, Alaska 99723

Phone: 907-852-2611

George N. Ahmaogak, Sr., Mayor



POSITION OF THE NORTH SLOPE BOROUGH ON SB 375

The General Grant Land Municipal Entitlement Program has had an inequitable effect on Alaska's municipalities. While it may be almost impossible to come up with a formula that treats all municipalities exactly the same, the Alaska Municipal League, through AML Resolution 94-8, has reviewed and unanimously endorsed a proposal that would be the most equitable to Alaska's municipalities. This proposal, which would establish a single, simple formula to calculate municipal land entitlements, has been introduced as SB 375. Since SB 375 would go the farthest toward curing existing inequities to all of Alaska's municipalities, the North Slope Borough strongly supports SB 375.

The problems with the existing municipal land entitlement program are threefold: first - the entitlement acreages called out in AS 29.65.010 result in some municipalities receiving entitlements of only one percent of the state land within their boundaries; second - by allowing the Division of Land through land classifications as defined under AS 29.65.130(10)(C & D) to determine what lands are available for ownership by municipalities, it results in some municipalities receiving entitlements of less than one tenth of one percent of the state land within their boundaries; and third - through a rigid set of certification deadlines, vesting dates and application deadlines, municipalities cannot obtain title to National Forest or Bureau of Land Management lands which the state may obtain in the future.

SB 375 would change these three problem areas as follows: first - it would establish a single, simple formula to calculate municipal land entitlements which is applicable to all cities, boroughs and unified municipalities; second - it would return to the legislature, not the Division of Land, the authority for designating lands which are of such paramount important to statewide interests that they should not be made available for economic development by municipalities but instead should be designated state parks, refuges, etc.;

and third - by deleting certification deadlines, vesting dates and application deadlines, it would make the formula flexible enough for the municipal land entitlement to increase whenever there is an increase in the amount of state owned land within a municipality.

Following is a summary of the North Slope Borough's attempts to obtain land under the General Grant Land Municipal Entitlement Program. This summary clearly demonstrates how the inequities in the program affect one local government.

Upon incorporation in 1972, the NSB was entitled to receive 10% of the state land within its boundaries. On August 10, 1973 the North Slope Borough filed its first municipal land entitlement selection applications with the Alaska Division of Land for the surface estate to lands in the vicinity of the Prudhoe Bay industrial development area. The Division of Land denied these applications as not being in the state's best interests for municipal ownership. The NSB appealed the Division of Land decision through the courts. In 1978 the municipal entitlement act reduced the NSB entitlement to 89,850 acres, or to zero acres if the NSB did not withdraw its litigation; the Division of Land's decision was later upheld in Alaska Supreme Court.

Through the Division of Land's refusal to approve these NSB land claims, the amount of the NSB's entitlement dropped from 10% of state lands, down to 89,850 acres (1% of state land), and then down to zero acres. The Division of Land then went on to sell tens of millions of dollars worth of gravel from these very same lands, even though other municipalities are given title to gravel pits and allowed to sell their own gravel.

In 1987 the legislature restored the NSB entitlement of 89,850 acres. By October 1, 1990 the NSB timely filed another round of land selection applications with the Division of Land. On August 10, 1993 the Division of Land attempted to transfer title to the Prudhoe Bay Landfill to the NSB, even though the NSB never selected it. It is no small coincidence that this attempted transfer of the landfill happened exactly on the 20th anniversary of the day the NSB filed its first land selection applications! More than twenty years has passed and the NSB has yet to receive a single acre from the Division of Land. It is clear to the NSB that the Division of Land is not responsive to the needs of local government.

In conclusion, the three corrective features of SB 375 would serve to correct the following specific inequities of the current General Grant Land Municipal Entitlement Program as it affects the NSB:

First - The NSB entitlement of 89,850 acres contained in AS 29.65.010 equals only one percent of the state land within the NSB, and equals less than one

tenth of one percent of all lands within the NSB when the large federal holdings in NPRA, ANWR and the Brooks Range national parks are included. This is not nearly enough of a land base to provide the economic development necessary to sustain the NSB in the future. SB 375 would cure this problem through the enactment of a single, simple formula which would be applicable not only to the NSB, but to all cities, boroughs and unified municipalities.

Second - Under the definition of Vacant, Unappropriated, Unreserved (VUU) land in AS 29.65.130, the Division of Land is given broad direction to decide what lands are non-VUU and therefore not available for municipal ownership. This also serves to severely restrict the amount of a land base available to the NSB for future economic development. Under SB 375, only those lands which have been designated by the legislature as a state park, refuge, etc. would be unavailable for municipal ownership. This would result in a more equitable entitlement for not only the NSB, but for all municipalities.

Third - There are 5.3 million acres of state selected federal lands within the NSB from which under current AS 29 the NSB cannot receive any entitlement once the state acquires title. These lands, which may be obtained by the state in the future, could likewise provide the NSB with the opportunity for economic development in the future. SB 375 would remove the certification deadlines, vesting dates and application deadlines which currently do not allow municipalities to obtain any of the National Forest or Bureau of Land Management lands which the state may acquire in the future. This would promote future economic development not only in the NSB, but for municipalities around the state.

The North Slope Borough applauds the legislature's actions to restore equity to the General Grant Land Municipal Entitlement program, and supports passage of SB 375.


George N. Akmaogak, Sr.

Mayor 25 April 1994

Date

TEL No.

Apr 25,94 17:33 P.01

FAX TRANSMISSION

TO: Senator Randy Phillips Office
Attn: Shirley Armstrong
465-4979

FROM: Sue Flensburg
Bristol Bay CRSA
Box 849
Dillingham, Ak. 99576
Phone: 842-2666/2667
Fax: 842-2438

DATE: April 25, 1994

NO. OF PAGES (including cover sheet): 4

Please provide the attached correspondence on HB 259 and SB 375 to the Senate CRA committee members for the hearing on these bills tomorrow morning.

Thank you.



Coastal Resource Service Area

P.O. Box 849, Dillingham, Alaska 99576

(907) 842-2666-842-2167

April 25, 1994

Senator Randy Phillips, Chair
Senate Community & Regional Affairs Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

RE: HB 259 - General Grant Land Entitlement for the Lake and Peninsula Borough
SB 375 - General Grant Land Entitlements

Dear Senator Phillips,

Attached is a copy of the Bristol Bay CRSA's testimony provided at the previous committee hearing on HB 259 last thursday. We would appreciate if this cover letter and written testimony are included in the committee packet for tomorrow's hearing on HB 259 and SB 375.

Both bills are strong statements that the current formula for municipal entitlements is inadequate and needs to be revamped. We agree but do not believe that HB 259 or SB 375 address the substantive concerns tied to this important public policy issue. This issue deserves careful consideration and deliberation to ensure the land entitlement needs of boroughs are met but balanced against the public's interest in protecting critical fish and wildlife habitats and areas important for public access.

We ask that you hold both bills until next session to allow municipalities, resource agencies, and the general public the time to recommend statutory criteria that provides clear guidance on (1) evaluating the entitlement needs of boroughs, (2) determining what lands are suitable for private ownership, and (3) of the state's land base, what lands have important resource and public values that should be retained in state ownership.

Sincerely,

Susan Flensburg, Director
Bristol Bay CRSA

Enclosure: Bristol Bay CRSA Testimony Dated April 21, 1994

**ALICE RUBY/BRISTOL BAY CRSA TESTIMONY ON HB 259
SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE HEARING
April 21, 1994**

Good morning Chairman Phillips and committee members. My name is Alice Ruby; I am testifying on behalf of the Bristol Bay Coastal Resource Service Area (CRSA) Board which oversees the coastal management program for ten communities, including Dillingham, that are located within the Nushagak and Toglak drainages. As I mentioned in my testimony on Tuesday (4/19), I also serve on the Dillingham City Council and have been the Land Manager for Chogglung Ltd, one of the larger and more successful ANSCA village corporations with an active land management program in place.

My previous testimony centered on the fact that people in the region have had virtually no opportunity to find out about this bill and future implications it will have on this area, including the lawsuit currently pending before the Supreme Court over the northwest boundary of the LPB. I trust the committee has a copy of the April 13 and April 20 letters on this matter which I faxed to Senator Phillips office last night. We also noted that residents of the entire Bristol Bay region fought hard to get the land use management protections in the state's Bristol Bay Area Plan and Nushagak Mulchatna Rivers Recreation Management Plan, and our concern that this bill along with SB 217, the Mental Health Trust Settlement, a prospective borough for this area and other potential land exchanges could fragment landownership and management of important resource values in Bristol Bay.

We would like to explain today how this bill affects our area and why we believe the legislature needs to consider the bigger picture of what this legislation means.

The northwest boundary of the Lake & Peninsula Borough dissects the Mulchatna River and important salmon spawning tributaries that support the Nushagak commercial fishing district. As you know, the commercial fisheries of Bristol Bay are the economic mainstay of this region. Any development on the Mulchatna within the borough has great potential for impacting the Nushagak drainage and our commercial fishery, as well as subsistence and recreation activities. The Lake and Peninsula Borough has identified a 22 mile corridor of the Mulchatna River corridor which is of great concern to us, and one of several tracts that the Departments of Natural Resources and Fish and Game have also objected to. Again, I think it is important for this committee to understand that while the upper Mulchatna is located in the LPB, what happens in the way of future development up there will have a direct affect on the residents in the Nushagak and others that fish the Nushagak commercial fishing district.

We also concur with the statements made by Ron Swanson with the Department of Natural Resources and others last Tuesday that the current formula for determining municipal land entitlements is inadequate and does not work well for rural boroughs. Both SB 375 and HB 295 are strong statements that the 10% VUU formula doesn't work in every case and that the municipal entitlement program needs to be revamped.

HOWEVER, we strongly recommend that this committee delay action on both bills until next session. If municipal entitlements are to be set in statute, similar to what HB 259

Alice Ruby/BBCRSA Testimony on HB 259

April 21, 1994

does, there also needs to be broad criteria established in statute for determining what this entitlement should be based on. Statutory criteria should be developed that provides guidance on (1) evaluating the entitlement needs of boroughs, (2) what lands are suitable for private ownership, and (3) of the state's land base, what lands have important resource and public values that should be retained in state ownership.

HB 259 will set a precedent that will be difficult to reverse. We encourage this committee to delay action on HB 259 and work with municipalities, the resource agencies, and the public on developing sound policy in statute that more appropriately addresses this important issue.

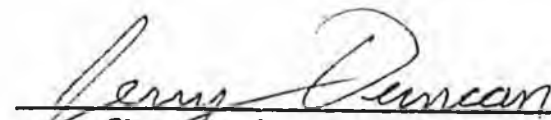
Thank you for the opportunity to testify.

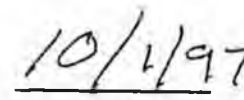


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Signature of Camera Operator


Date

SCR

14

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 2/4/94
2/22/94--SS introduced

FURTHER: Resources

Date of 5-Day Notice: 2/24/94
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: _____

CRA Committee considered SCR 14

Relating to the naming of the Harold Z. Hansen Hatchery at Fort Richardson, Alaska.

and recommends:

replace with _____ CS _____

same title
 new title
 technical title change (HB only)

attaches amendment(s)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
DEPT	3/2/94	0	

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

Kevin A. Leman

Al Adams

Paul E. C. [unclear]

Kevin L. Taylor

Paul E. C. [unclear]

OTHER RECOMMENDATIONS:

Chair: Signature and Recommendation

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SSSCR 14

Revision Date: _____
Title: Name Main Bay Hatchery
Sponsor: Senator Kerttula
Requestor: Senate Community and Regional Affairs

Dept. Affected: Fish and Game
BRU: Commercial Fish Manage and Development
Component: Development

COMPONENT SERIAL NO. 1942

Expenditures/Revenues

(Thousands of Dollars)

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ()	0	0	0	0	0	0

FUND SOURCE

(Thousands of Dollars)

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: \$ 0

POSITIONS

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Geron Bruce Phone: 465-6143
 Division: Commissioner's Office Date: 3/2/94
 Approved by Commissioner: [Signature]
 Agency: Alaska Department of Fish and Game Date: 3/2/94

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Alaska State Legislature

SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Senator Randy Phillips, Chair
Senator Robin Taylor, Vice Chair
Senator Loren Leman
Senator Al Adams
Senator Fred Zharoff

SESSION:
State Capitol
Juneau, Ak 99801-1182
(907) 465-4989

INTERIM:
P. O. Box 142
Eagle River, Ak 99577
(907) 694-4949

AGENDA

March 3, 1994
9:00 AM

Butrovich Room
Room 205

1. Call to Order (time and members present)
2. SSSCR14 - Name Hatchery at Main Bay: H. Z. Hansen
Sponsor - Senator Kertula
Staff - Bill Kelder
Dept Fish & Game = Geron Bruce to answer questions
3. Adjourn

Homer, Alaska
February 7, 1994

Senator Randy Phillips
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1132

Dear Randy,

I understand that Senator Jay Kertulla plans to introduce a resolution to name the Ft. Richardson Hatchery after an old time politician named Harold Hanson.

In all the years I worked in and around the Ft. Richardson facility, I never heard of the man, and I know that he didn't have anything to do with the facility.

I know it is common practice to honor various dignitaries by naming things after them - I have no problem with that. However, I feel that they should have been at least remotely involved with the named structure or facility.

I know that many years ago you worked at the Ft. Rich cooling pond at least from time to time, and I thought it would be appropriate to contact you.

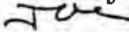
I was superintendent of the Fire Lake Hatchery from 1966 to 1977. During that time, I worked with the Army at first, then when the State assumed operational control, it came under my supervision.

During those years, it became obvious that if it had not been for the interest, hard work, dedication and passion of Bill Hernandez that facility simply would not have worked! Many other people certainly were involved (myself included), but it was Bill's idea and vision, he made it work, and without him the whole thing would have fallen apart.

If it is necessary or desirable to call the hatchery anything other than the Ft. Rich Hatchery, it should be the William J. Hernandez Hatchery. Any other name would be a travesty.

I hope that you will take an interest in this matter, and if I can be of any assistance, please call me. I have also sent a similar letter to Senator Kertulla.

Sincerely,


Joe Wallis
P.O. Box 1126
Homer, Alaska 99803
Phone: (907) 235-8037

SPONSOR STATEMENT OF

SEN. JAY KERTTULA

On The

Sponsor Substitute For

Senate Concurrent Resolution No. 14

Naming of the Harold Z. Hansen Hatchery at Main Bay

Before The Senate Committee On

Community and Regional Affairs, Sen. Randy Phillips, Chair

March 4, 1994

Good morning. I'd like to begin by thanking the Committee Chair, Sen. Randy Phillips, and Committee Members for scheduling the Sponsor Substitute for Senate Concurrent Resolution No. 14 for a public hearing today.

I believe the resolution speaks for itself. Essentially, the Sponsor Substitute for SCR 14 seeks to name the state's hatchery at Main Bay in Prince William Sound after the late Harold Z. Hansen.

Mr. Hansen was an early leader, supporter, and developer of commercial fishing in Southeastern Alaska, the Kodiak Island area, in the Prince William Sound area,

and in Cordova, where Mr. Hansen was a leader of the Cordova Fish and Game Advisory Board.

A strong supporter of the democratic process in Alaska, Mr. Hansen served with great ability and distinction in the Alaska House of Representatives and in the Alaska State Senate from statehood in 1959 until 1967. During this period, he helped develop and implement the state's fish hatchery program in the Prince William Sound region.

From 1971 to 1974, Mr. Hansen continued his active interest in Alaska's fishing resources and industry by serving as Director of the Office of International Fisheries in the Office of the Governor.

Because of his keen interest, participation in, and leadership of the state's fishing resources and industry, and because of his guidance in helping establish the Alaska's fish hatchery program, it seems only fitting that the state's Main Bay Hatchery in Prince William Sound be named after Mr. Harold Z. Hansen.

SSSCR14, Sponsor Statement, Page 3

Accordingly, I respectfully urge the Chairman and Members of the Senate Committee on Community and Regional Affairs to move the SS for SCR 14, and with "do pass" recommendations.

Thank you for considering this resolution today.



Alaska State Legislature

FEB. 25 1993

SENATE

Official Business

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

Randy
MEMO TO: Sen. Randy Phillips, Chairman
Senate Community & Regional Affairs Committee

FROM: Sen. Jay Kerttula

DATE: February 25, 1994

Jay
SUBJECT: Sponsor Substitute for SCR 14

I would appreciate it if you would replace SCR 14 on the Committee's March 3, 1994, hearing schedule with the Sponsor Substitute for SCR 14, which would name the state's Main Bay Hatchery in Prince William Sound after the late Harold Hansen, a former legislator who was very active in helping develop fishing resources and the PWS fishing industry.

Thanks in advance for your consideration of this request.

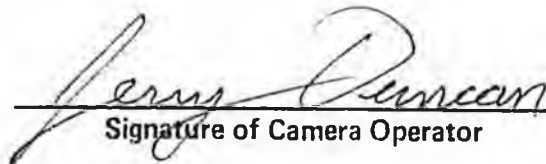


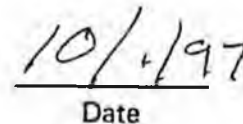
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Signature of Camera Operator


Date

SJR

20

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 2/10/93

FURTHER: *has no further referral*

Date of 5-Day Notice: 2/11/93
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2-16-93

CRA Committee considered SJR 20

Disapproving the Local Boundary Commission recommendation regarding the annexation of territory to the City of Palmer.

and a majority of the committee recommends do pass

and recommends:

replace with _____ CS _____ ()

attaches amendment(s)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

DFM

- same title
- new title
- technical title change (HB only)

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
CRA	2/15/93	<i>0</i>	

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

Rich Halford
Adrian L. Taylor

OTHER RECOMMENDATIONS:

2nd reading - no rec

ROD E. GARDNER 2/16/93 Do Pass

Chair: Signature and Recommendation

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. STR 20

Revision Date: _____ Dept. Affected: Comm & Regional Affairs
 Title: Disapproving the Local Boundary Comm BRU: Local Boundary Commission
 Recommendation regarding the Annexation of territory Component: _____
 Sponsor: to the City of Palmer SCRA Committee
 Requestor: SCRA Committee COMPC# _____ BILL NO. _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

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

REVENUE FUND SOURCE:						
-----------------------------	--	--	--	--	--	--

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact \$ NONE

ANALYSIS: (Attach a separate page if necessary)

This resolution disapproves the Local Boundary Commission's report approving annexation of additional territory to the City of Palmer.

Prepared by: Shirley Armstrong Phone: 465-2661
 Division: Senate Community and Regional Affairs Committee Date: 2/15/93
 Approved by ~~Commissioner~~: Senator Randy Phillips *Randy Phillips* 2/15/93 Date: 2/15/93
 Agency: Chair, Senate Comm & Regional Affairs Comm

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PHONE: (907) 443-5457

January 15, 1993

Ms. Shirley Armstrong
Senator Randy Phillips Office
State Capitol Bldg.; Room 103
Juneau, AK 99811

Dear Ms. Armstrong:

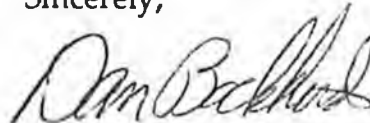
Per your request, enclosed are the following:

City of Palmer's Petition for Annexation (7.5 acres);
the Local Boundary Commission's Statement of Decision; and
Request for Reconsideration by Mr. Robert Ed. Bailey.

Also enclosed are DCRA's draft and final *Report and Recommendation Regarding the Petition of Palmer to Annex Approximately 7.5 Acres.*

If you should need additional information, please contact me.

Sincerely,



Dan Bockhorst
Local Boundary Commission Staff

Enclosures: a/s

**STATE OF ALASKA
LOCAL BOUNDARY COMMISSION**

STATEMENT OF DECISION

IN THE MATTER OF THE)
FEBRUARY 21, 1992 PETITION)
OF THE CITY OF PALMER FOR)
THE ANNEXATION OF)
APPROXIMATELY 7.5 ACRES)

**SECTION I
INTRODUCTION AND DESCRIPTION OF AREA**

In February 1992, the City of Palmer petitioned the Alaska Local Boundary Commission to annex approximately 7.5 acres.¹ The territory petitioned for annexation included portions of the Pribyl, Grasse, and Grasse Subdivision, a portion of the Riverside Subdivision and a portion of the right-of-way of the Alaska Railroad.

The territory was described in the City of Palmer's petition as follows:

. . . .there are four houses and one garage, of which one is inhabited by the owner; of record of the largest number of lots described above while three remaining houses are inhabited from time to time by various people. The City was informed by the resident that there is no water or sewer services to the property at this time.

The property fronts a major arterial street as designated in the 1985 City of Palmer Traffic Study. The City of Palmer's petition estimates that the territory is inhabited by seven individuals.

**SECTION II
PROCEEDINGS**

The City of Palmer initiated its petition on February 21, 1992. The petition was filed with the Alaska Department of Community and Regional Affairs (DCRA) on February 28, 1992.

On March 13, 1992, DCRA notified the City of Palmer that the form and content of its petition were found to be in substantial compliance with the requirements of law and that the petition had been accepted for filing. The deadline for filing briefs and written comments relating to the annexation proposal was set for May 29, 1992.

By April 6, 1992, DCRA had mailed notice of the filing of the petition to 56 interested parties, including property owners in and adjacent to the territory proposed for annexation. On April 30, 1992, notice of the filing of the petition was conspicuously posted by the Palmer City Clerk at the Palmer City Hall.

¹ During the proceedings, questions were raised over the exact size of the territory. Rodney Schullig, an official with the Matanuska-Susitna Borough (the platting authority in which the territory is located) determined that the size of the territory proposed for annexation is 7.5128 acres.

STATEMENT OF DECISION
CITY OF PALMER ANNEXATION
PAGE 2

Notice of the filing of the petition was published by the City of Palmer in The Frontiersman, a newspaper of general circulation in the territory, on the following dates:

- April 3, 1992;
- April 10, 1992;
- April 17, 1992.

The City of Palmer provided a copy of the petition to the Matanuska-Susitna Borough at the time the petition was filed with the Department.

No briefs were filed opposing the annexation as of the May 29, 1992 deadline. However, written comments were submitted by 36 individuals. Additional informal petitions were submitted bearing the signatures of 77 individuals. One individual objected to *The City of Palmer's forced annexation of any and all properties outside current city limits. . .* The City of Palmer responded on June 12 to the issues raised by the interested parties opposed to the annexation.

On September 18, 1992, DCRA published and distributed its draft report on the annexation proposal. A copy of the draft report was distributed to 136 individuals. Parties were invited to comment on the draft by October 21, 1992.

Timely comments were filed by more than twenty-five individuals. Certain of those submissions were quite extensive. One 149-page submission included an informal petition with nearly 10 pages of signatures of individuals (mostly living in other communities) opposed to annexation.

After considering the comments, DCRA issued its final report and recommendation to the Local Boundary Commission concerning the matter. The final report was distributed to 143 individuals on October 30, 1992.

The Local Boundary Commission scheduled a public hearing on the annexation to be held in Palmer on November 20, 1992. Notice of the hearing was published in The Frontiersman on the following dates:

- October 16, 1992;
- October 23, 1992; and
- October 30, 1992.

DCRA requested that radio station KSKA-FM broadcast public service announcements regarding the hearing from October 31 through November 21. DCRA also mailed notice of the hearing to 110 parties on October 13. Information concerning the date, time and place of the hearing was also included in DCRA's final report which, as noted earlier, was distributed to 143 parties on October 30.

Notice of the hearing was also posted at the Palmer City Hall and Matanuska-Susitna Borough Administration Building in Palmer on October 16 and at the Palmer Post Office on October 17, 1992.

On November 20, four members of the Commission traveled to Palmer. Prior to conducting the hearing, these four members toured the area proposed for annexation. The Commission held its hearing at the date and time scheduled.²

The Commission heard testimony on the issues relating to annexation for nearly five hours. Substantial written materials were submitted to the Commission at the hearing. Even though no responsive briefs had been filed in the matter, the Commission treated Mr. Bob Knight (consultant to Ed Bailey, the major property owner in the territory) as a respondent during the hearing.

² Commission members Hargraves, Dugan, Hallgren and Johnson toured the area on November 20 and were present at the hearing. Although Commissioner Cotten was not present at the hearing, he reviewed DCRA's tape recording of the hearing and also reviewed all of the written material submitted to the Commission prior to the Commission's decisional session on the petition. Additionally, Commissioner Cotten independently toured the area proposed for annexation prior to acting on the petition.

At the close of the hearing, the Commission announced that it would accept additional written comments through November 30, 1992. The Commission also announced that it would meet on December 4, 1992 to act on the petition.

Notice of the continuance and the December 4 decisional session was mailed to 13 parties. Notice was also posted at the Palmer City Hall on November 26, at the Matanuska-Susitna Borough Administration Building in Palmer on November 27 and at the Palmer Post Office on November 28, 1992.

Substantial additional written materials were filed with the Commission during the ten day period following its hearing. These materials included a sixteen page "final brief" from the City of Palmer. The brief included thirty-five pages of attachments. Forty-seven pages of materials were filed in opposition to the annexation by various parties.

On December 3, Mr. Knight wrote to the Commission objecting to the "last minute submission of new materials by the City of Palmer". When the Commission met on December 4, it deferred action on the City of Palmer's petition in response to the concerns of Mr. Knight. The Commission then allowed Mr. Knight ten days to address the City of Palmer's final brief. The Commission asked Mr. Knight to address only those issues in the City of Palmer's final brief which he believed was "new material."

On December 14, 1992, Mr. Knight filed a thirty-three page response with more than 150 pages of attachments. A copy of the material was mailed to each Commission member.

The Commission met by teleconference on December 18 to act on the petition. However, one member of the Commission had not received the December 14 material filed by Mr. Knight. Another Commission member had not finished reviewing the material. Consequently, the Commission recessed the meeting until December 21, 1992.

On December 21, the Commission reconvened the meeting and approved the petition.³

SECTION III FINDINGS AND CONCLUSIONS

On the basis of the petition and briefs of the City of Palmer, the report and recommendation of the Department of Community and Regional Affairs, all of the written comments, and the testimony received at its hearing, the Local Boundary Commission makes the following findings and conclusions.

1. REGARDING THE WILLINGNESS AND ABILITY OF THE CITY OF PALMER TO EXTEND "FULL MUNICIPAL SERVICES" (AS DEFINED BY FORMER 19 AAC 10.080) TO THE AREA PROPOSED FOR ANNEXATION.⁴

³ Commissioners Hargraves, Cotten and Johnson voted to approve the petition. Commissioners Dugan and Hallgren voted against the petition, expressing the belief that the annexation proposal did not meet applicable standards to the extent that annexation by the legislative review method was warranted. In particular, Commissioners Dugan and Hallgren did not believe that it had been demonstrated that the territory proposed for annexation represented a threat to the health, welfare or safety of City residents. Additionally, Commissioners Dugan and Hallgren indicated the belief that annexation was not an appropriate response to the circumstances in the territory.

⁴ Due process considerations compel the Commission to use the standards for annexation set out in former 19 AAC 10.065 - 090 while acting on this petition (as opposed to the standards set out in the new regulations which took effect September 14, 1992). The former regulations were in place at the time the petition was prepared and filed by the City of Palmer. They were also in place during the period of public review and comment on the

Because the law permits parties other than a city government to petition for annexation, it is necessary to ensure that the City of Palmer is actually willing to extend services to the territory proposed for annexation. In this instance, however, the City of Palmer initiated the petition for annexation. This establishes the obvious presumption that the City is willing to serve the area. The Commission has found no credible indication that this presumption is invalid.

Examination of this standard also requires consideration of the financial impacts to the City of Palmer which are likely to result from annexation. In this instance, it is estimated that the City would gain approximately \$3,000 annually in property taxes, utility fees and State financial assistance as a result of annexation. The territory proposed for annexation carries with it added responsibilities for the City of Palmer. These responsibilities include utility service and public safety services (police and fire). The City's burden for planning and land use regulation in the area will also increase.

In the context of its overall operations, this annexation will have no significant impact on the financial ability of the City to extend services to the area proposed for annexation. For example, the estimated \$3,000 annual increase in City revenues represents less than six one-hundredths of one percent (0.00057) of the total revenues of the City of Palmer in 1991⁵.

The Commission has found no obstacles which will prevent the City of Palmer from extending full municipal services to the area proposed for annexation.

CONCLUSION: Because the City of Palmer initiated the annexation proposal, the Commission concludes that the City is willing to serve the area proposed for annexation. The Commission also concludes that the City has the financial capacity to extend full municipal services to the area in accordance with former 19 AAC 10.080. Thus, the standard set out in former 19 AAC 10.080 is satisfied.

2. REGARDING WHETHER THE CITY OF PALMER PROVIDES SERVICES TO THE TERRITORY WITHOUT COMMENSURATE PROPERTY TAX CONTRIBUTIONS.

The standard set out in former 19 AAC 10.070(a)(8) is met if "*residents or property owners within the territory receive or may be reasonably expected to receive, directly or indirectly, the benefit of city government without commensurate property tax contributions, whether city services are rendered or received inside or outside the territory*".

Evidence sustains the City's assertion that it maintains that portion of East Eagle Avenue within the territory proposed for annexation. This avenue is an arterial street leading to the Sherrod and Swanson elementary schools. Property owners and residents of the territory proposed for annexation receive benefit from this city road maintenance.

petition. Further, those standards were used by the Department of Community and Regional Affairs to evaluate the petition and to make its recommendation to the Commission.

⁵ According to the City of Palmer's Audit for 1991, the City had general revenues of \$3,458,375, special revenues of \$60,029, capital projects revenues of \$89,361, enterprise revenues of \$1,263,196 and internal service revenues of \$314,191; these revenues totalled \$5,185,152.

It is not suggested that residents of the area outside the City's boundaries do not contribute in some manner to support City services. Clearly, one of the most substantial avenues of support results when non-City residents purchase goods and services which are subject to the City's 2% sales tax. Sales taxes are the single largest source of locally generated revenue received by the City of Palmer. However, road maintenance is paid by the City's general fund which is supported by property taxes levied by the City of Palmer.

CONCLUSION: The Commission concludes that this standard is met because the City of Palmer provides road maintenance to the area proposed for annexation and the City's road maintenance is supported by property taxes levied by the City of Palmer. Thus, the Commission concludes that the standard set out in former 19 AAC 10.070(a)(8) is satisfied.

3. REGARDING WHETHER THE TERRITORY IS "URBAN" IN CHARACTER.

The standard set out in former 19 AAC 10.070(a)(3) is met if the Local Boundary Commission concludes that the area proposed for annexation is "urban" in character. Factors to be considered in this regard include, without limitation, whether:

- the property is platted;
- the property is suitable for residential or commercial purposes;
- the population density approximates that of the annexing city;
- the population stems from actual growth of the city beyond its legal boundaries;
- whether the property is valuable by reason of its suitability for prospective urban purposes.

The Commission finds that all of the property in question is platted. The majority of the property is in the Riverside Subdivision. The legal boundary of the City of Palmer bisects the Riverside Subdivision. Much of the subdivision has been inside the boundaries of the City of Palmer since it was incorporated in 1951.

The Commission finds that the property is suitable for residential or commercial purposes. The property contains a number of dwellings which are inhabited.

The Commission finds that the population density of the territory proposed for annexation reasonably approximates that of the City of Palmer. The petitioner estimated that the area is inhabited by seven individuals. However, the respondent indicates that the territory is currently inhabited by "four full-time persons". Testimony at the hearing indicated that the population of the territory fluctuates.

Based on the total 7.5128 acres, the various population figures indicate a population density ranging from 0.93 to 0.53 persons per acre. The record shows that 3,006 persons reside within the estimated 2,444 acres currently within the boundaries of the City of Palmer. That figure equals 1.23 persons per acre. The relative difference in the population densities of the two areas must be viewed in the context of the small size of the territory proposed for annexation. While, the population density of the territory may be as little as 43 percent of population density of the City of Palmer, the addition of only six people (e.g., one large family) would cause the population density of the territory to exceed that of the City (using the respondent's lower population figure).

Far more important than the results of any arcane statistical analysis, the Commission finds that the territory proposed for annexation is clearly part of the compact community of Palmer. Apart from the invisible corporate boundaries of the City of Palmer, the area proposed for annexation shares many social, economic, political, scholastic, recreational and other interests with residents and property owners inside the boundaries of the City of Palmer.

CONCLUSION: The Commission concludes that the area proposed for annexation is similar in character to the territory within the current boundaries of the City of Palmer. For purposes of the standard in question, the area proposed for annexation is considered "urban" in character. Thus, the Commission concludes that the standard set out in former 19 AAC 10.070(a)(3) is satisfied.

4. REGARDING THE HEALTH, WELFARE AND SAFETY OF CITY RESIDENTS.

The standard set out in former 19 AAC 10.070(a)(6) is met if *"the health, welfare, or safety of city residents is endangered by conditions existing or developing in the territory and annexation will enable the city to remove or relieve those conditions."*⁶

The annexation proposal was predicated in large part by complaints over numerous loose dogs in the neighborhood. Submissions by the petitioners describe conditions allegedly existing in the area that threaten the health, welfare or safety of individuals presently residing within the boundaries of the City of Palmer. These include "loose dogs going onto adjoining property and getting into garbage cans, dogs harassing school children waiting for the school bus at a designated pick-up site"

The petitioner's final brief included two reports from the Matanuska-Susitna Borough Animal Control office documenting dog problems stemming from Mr. Bailey's property (one was dated June 15, 1989 and the other was dated February 25, 1988). The February 1988 report stated ". . . there was approx. 25 dog running loose - puppies and adults. 8 dogs were tied to car parts and cars. Owner pulled up into drive way - when I got out to talk to owner - I was bitten by a black/white australian shepherd . . . The owner Mr. Bailey had not voice command to advert dog fights or control the dogs from leaving property . . ." (sic).

The petitioner also provided an affidavit from a property owner adjoining the territory proposed for annexation stating that "[I]n the winter of 1980 one of Ed Baileys tenants' 100 pound dog came across the street attacked and killed my 5 lb. Picapoo."

⁶ The phrase "health, welfare, and safety" is very broad. The City's final brief states that the phrase is used in 57 Alaska Supreme Court cases and many statutes. Definitions of the nouns were provided by DCRA at the November 20 hearing. The Commission used those same definitions provided by DCRA in its December 18, 1992 Statement of Decision concerning the annexation of 7 square miles to the City of Haines. The Definitions provided by DCRA at the November 20 hearing were:

HEALTH. State of being hale, sound, or whole in body, mind or soul, well being. Freedom from pain or sickness; the most perfect state of animal life. Not synonymous with "sanitation". The right to the enjoyment of health is a subdivision of the right of personal security, one of the absolute rights of persons (Black's Law Dictionary, 1968).

PUBLIC WELFARE. The prosperity, well being, or convenience of the public at large, or of a whole community, as distinguished from the advantage of an individual or limited class. It embraces the primary social interests of safety, order, morals, economic interests, and non-material and political interests. In the development of our civic life, the definition of "public welfare" has also developed until it has been held to bring within its purview regulations for the promotion of economic welfare and public convenience (Black's Law Dictionary, 1968).

SAFETY. Freedom from danger, injury or damage; security (Webster's New World Dictionary, 1982).

STATEMENT OF DECISION
CITY OF PALMER ANNEXATION
PAGE 7

These incidents occurred several years ago. While Mr. Bailey has acknowledged past difficulties, he claims that the animal control problems were addressed long ago and that he is not the source of any current problems.

However, written comments and testimony at the hearing indicated that residents adjacent to the area proposed for annexation continue to experience animal control problems. For example, Richard and Elenor Vogt wrote on October 27, 1992:

"We don't think it is his dogs, we know it. We have recorded them barking and howling at any hour of the day or night and submitted this evidence to the City Council at one of the meetings and have walked up to the edge of his property to be very sure. Have seen his dogs rip apart ours and our neighbors garbage and harass our chained dog (as recent as 1992) and return to HIS yard. Mr. Bailey is the only one in our neighborhood who has these "dingo type" dogs. We were able to give very accurate descriptions to Animal Control and they found them to be Mr. Bailey's."

Additionally, Ronald Otte, Chief of the Palmer Police Department since 1989, signed an affidavit on November 30, 1992, indicating the "the middle of Riverside Subdivision generates far more complaints and problems than any other area on the boundary of the city. . . The City Police Dispatch has received complaints concerning dogs from the Bailey property in 1992". While Mr. Otte does not provide specific information about the number of complaints, he clearly suggests that concerns over animal control continue to exist in the area.

The Commission is persuaded by the argument put forth in the City of Palmer's final brief that these sorts of dog problems constitute a threat to the health, welfare and safety of City residents. The City cited the standard treatise on municipal law as follows:

Dogs have been viewed as constituting nuisances, at least where they are ferocious or have the habit of jumping and biting at children or other people. Indeed, such a dog is a nuisance of the worst sort Furthermore, the keeping of dogs may be a public nuisance by reason of their howling, barking and whining, the stench they cause, unsanitary conditions in which they are kept, or their disturbing of people in the reasonable use and enjoyment of property, or where any of these factors cause annoyance, discomfort or injury to the health or welfare of persons. 7 McQuillir, Municipal Corporations, §24.284 at 195, 196 (3d ed. 1989). See also 4 Am. Jur. 2d, Animals, §63 at 312; and 66 C.J.S., Nuisances, §32 at 786.

Mr. Bailey presently has some fifteen dogs on his property. If the area were annexed, the Palmer City Code would allow him to keep no more than three. Additionally, it is evident from documents and testimony that the City of Palmer has far greater resources than the Matanuska-Susitna Borough to provide animal control services for this urban area.

Other potential health, welfare and safety concerns relate to the existence of some fifty unlicensed vehicles and other "junk" on Mr. Bailey's property. The City's final brief characterizes this circumstance as "an accident waiting to happen for City families to live next to an unregulated junkyard full of attractive nuisances" The City's final brief also stated that "[W]hile the Borough law, which is written for rural areas, allows this unsafe and unhealthy condition, the City Code requires its abatement. Cleaning up will not be unduly expensive . . ."

STATEMENT OF DECISION
CITY OF PALMER ANNEXATION
PAGE 8

Additionally, it has been noted that all of the dwellings in the territory use pit privies. The City of Palmer's final brief noted in this respect that *"It is unhealthy and unsafe for the City residents to live downhill from lots containing a dense population using privies for a sewerage system when such lots could not lawfully be established under current health and subdivision laws. These dangers would be eliminated by annexation as the property would be connected to the City's water and sewerage systems, which are DEC and EPA approved. The City has the capacity and is willing to serve the territory; and City water and sewer services presently abut the territory."*

Mr. Bailey suggests that there is no need for utility services or other services of the City of Palmer. During the proceedings, Mr. Bailey retained the services of the Alaska Health Project (AHP), whose letterhead indicates the organization provides "information and advocacy on occupational and environmental health." In a letter dated October 16, 1992, Catherine A Hummel, an Environmental Health Specialist for AHP, wrote that she had inspected Mr. Bailey's property and had concluded that "no conditions were observed [in the territory proposed for annexation] which would endanger the health or safety of Palmer residents."

The City of Palmer was critical of the letter from Ms. Hummel. In its final brief, the City of Palmer noted:

"[T]he Local Boundary Commission's Staff requested the DEC to inspect the Bailey property, but Mr. Bailey through Mr. Knight refused the DEC inspection. Bailey and Knight refused to allow the DEC inspection unless the LBC paid the cost of Bailey's sanitarian. Such refusal to public officers is characteristic of Mr. Bailey as he stated previously that the Borough Animal Control Officers were not allowed on his property.

Having prevented DEC from inspecting his property for free, Mr. Bailey hired the Alaska Health Project whose letterhead states it provides "advocacy" on environmental health.⁷ After spending 90 minutes on the Bailey property, his advocate reported no unsanitary conditions were "observed." Given the briefness of the visit, this unsettling qualification is probably proper; the in-City neighbors need only fear what the advocate missed, i.e., the "unobserved" problems. Since Mr. Bailey refused the DEC inspection, the brief review and peculiarly qualified report by his paid advocate is suspect at best and should be granted no weight.

Apart from her professional judgment, it appears that Ms. Hummel is personally against the annexation. The Commission received a personal letter from Cathy Hummel dated October 19, 1992. The distinctive signature of Catherine A. Hummel on the October 16 letter from the Alaska Health Project appears to be identical to the signature on the October 19 letter. The October 19 letter offers "comments to discourage this annexation" The comments questioned whether it was prudent for the City of Palmer to "expend the resources needed to 'abate the nuisance' of Mr. Bailey's property" (emphasis added).

CONCLUSION: It seems evident to the Commission that the large number of dogs kept by Mr. Bailey in an urban area are at least a major part of the long-continuing problems relating to animal control in and adjacent to the territory proposed for annexation. The multitude of unlicensed vehicles and other "junk" kept on Mr. Bailey's property as well as potential health problems stemming from the lack of water and sewer utilities in the territory contribute to the legitimate concerns of the City and its residents. Viewed collectively, the Commission concludes that these circumstances represent a threat to the health, welfare, and safety of city residents.

⁷ The arrangements for DEC to inspect Mr. Bailey's property were actually attempted after Ms. Hummel inspected Mr. Bailey's property.