

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8828 SENATE COMMUNITY & REGIONAL AFFAIRS

9-LS0751NC ✓

Cook

3/8/95

## CS FOR SENATE BILL NO. 96(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:

Referred:

Spensor(s): SENATOR KELLY

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to municipal activities or services mandated by the state and  
2 requiring increased costs to municipalities to be included in fiscal notes on  
3 regulations."

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

5 \* Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) In this state, the legislature  
6 has the power during each session to dramatically change the laws of the state. Statutes can  
7 be, and are, enacted, repealed, and amended each year. The law as it applies to citizens in  
8 this state is always changing. Additional changes in the law from year to year based upon  
9 the legislature's funding choices are not different in nature from legislative statutory  
10 amendments because both the statutory changes and the funding decisions are within the  
11 control of the legislature.

12 (b) The legislature finds that

13 (1) an "unfunded mandate" is any statute, administrative regulation, or order  
14 that demands action from a subordinate government without adequate provision for funding

1 the cost to the subordinate government of implementing the demanded action;

2 (2) unfunded mandates are a nationwide problem because federal or state  
3 governments have tended to balance their budgets on the backs of subordinate governments,  
4 thereby shielding themselves from taking the fiscal responsibility for their own policy and  
5 program decisions; from a purely political standpoint, an unfunded mandate can ensure that  
6 the blame for higher taxes or service cuts falls to local elected officials rather than the  
7 government that made the decision;

8 (3) the legislature has proposed strong measures against the imposition of  
9 unfunded mandates by the federal government on the state;

10 (4) in the United States, 16 states currently have legislation to limit or prohibit  
11 state governments from imposing unfunded mandates on municipalities; in addition, anti-  
12 mandates legislation was introduced in 22 state legislatures in the 1993 - 1994 legislative  
13 session to protect municipalities;

14 (5) according to a September 1994 research report by the National League of  
15 Cities titled "Anti-Mandates Strategies - Reimbursement Requirements in the States," it is  
16 difficult to quantify the overall effect of mandates because most municipalities are faced with  
17 hundreds of unfunded mandates, many of which have relatively low costs, but that together  
18 are very expensive and annually increasing in cost; the cost of unfunded mandates is partially  
19 covered by state revenue sharing or other state aid to municipalities; however, the problem is  
20 intensified because state governments often tend to cut funding programs as they shift services  
21 and new mandates to municipalities;

22 (6) state government has cut state aid to municipalities in this state far more  
23 deeply than any other major program (over 55 percent in the past 10 years) while it has  
24 significantly increased the number of unfunded mandates on municipal governments through  
25 statutes, appropriation bills, regulations, and administrative actions;

26 (7) the effects of unfunded mandates and decreased state aid on municipalities  
27 has substantially decreased the quality of life in most municipalities through decreases in  
28 municipal basic services such as public safety, road maintenance, culture and recreation  
29 services, social services, public education, and waste management;

30 (8) the imposition of new unfunded mandates on municipalities while  
31 incrementally decreasing state aid to municipalities to implement existing mandates has been

1 a major cause of increased property taxes and other local taxes, as well as a major cause of  
2 the destabilization of some communities that has lead, and will lead, to dissolution of  
3 municipalities.

4 \* Sec. 2. AS 01.10 is amended by adding a new section to read:

5 Sec. 01.10.075. MANDATED MUNICIPAL SERVICES. (a) Except as  
6 provided in (c) of this section, a bill enacted after January 1, 1996, that imposes or  
7 increases costs mandated by the state as a result of a new activity or service or an  
8 increase in the level of municipal funding for an activity or service required of  
9 municipalities by the bill is not effective unless it

10 (1) contains provisions for the reimbursement of those costs to affected  
11 municipalities; or

12 (2) grants to municipalities the discretion of electing whether to comply  
13 with the statutory change accomplished by the bill.

14 (b) Each bill enacted after January 1, 1996, and each regulation or other  
15 administrative order adopted after January 1, 1996, that applies to municipalities must  
16 include findings regarding its effect on municipalities. A bill, regulation, or order  
17 without findings required under this subsection is void. The findings must address  
18 whether

19 (1) the bill, regulation, or order mandates a new activity or service,  
20 significantly increases a current activity or service, or causes a significant increase in  
21 the level of municipal funding for an activity or service; and

22 (2) a mandate contained in the bill, regulation, or order will have a  
23 significant financial effect on municipalities.

24 (c) A bill enacted under (a)(1) of this section is not effective unless sufficient  
25 new funds are appropriated during the same session to fully fund the mandated service  
26 or activity and unless sufficient new funds continue to be appropriated in each  
27 successive session or otherwise provided annually.

28 (d) If a municipality disputes findings made under (b) of this section, it may,  
29 within 30 days after the effective date of the bill, regulation, or order, file a petition,  
30 in writing, with the legislative audit division for a determination of the accuracy of the  
31 findings. The legislative audit division shall make its determination public within 60

1 days after receipt of the petition.

2 (e) This section does not apply to a

3 (1) bill passed by two-thirds of the members of each house;

4 (2) mandate requested by the affected municipalities;

5 (3) bill that affirms existing law as it has been construed by the courts  
6 or enacts federal law or regulation in the form in which it was enacted or promulgated;  
7 or

8 (4) bill that creates, eliminates, or changes a crime or misdemeanor.

9 (f) A municipality may elect to provide a service or perform an activity in  
10 accordance with a bill that is ineffective under (a) - (e) of this section using local  
11 funds to pay costs mandated by the state. A municipality may enact ordinances  
12 providing for services or activities of the type addressed by a bill that is ineffective  
13 under (a) - (e) of this section; however, an ordinance adopted under the authority of  
14 this subsection may not conflict with the bill.

15 (g) For purposes of this section,

16 (1) "costs mandated by the state" means any increased cost creating a  
17 significant financial effect that a municipality is required to incur as a result of any bill  
18 that, when enacted, mandates a new activity or service, significantly increases a current  
19 activity or service, or causes a significant increase in the level of municipal funding  
20 for an activity or service; costs mandated by the state do not include costs of the type  
21 experienced equally by private and public entities that are incurred by a municipality  
22 in its proprietary capacity; costs mandated by a bill include any costs associated with  
23 regulations adopted under the authority of the bill if it is enacted;

24 (2) "increase in the level of municipal funding for an activity or  
25 service" means any change in a municipality's delivery of a current service or activity,  
26 or a reduction in the level of state funding for an activity or service that is required  
27 by either a new or amended statute or that would be required by a bill if it is enacted;

28 (3) "new activity or service" means an activity or service that is  
29 required as a result of a statute or bill that was not required before enactment of the  
30 statute or that is not required unless the bill is enacted and that results in costs  
31 mandated by the state;

1 (4) "new funding" means an appropriation that does not decrease  
2 previous state support for other municipal programs or general state aid to  
3 municipalities, or other state funds within an existing appropriation not previously  
4 provided to municipalities that are allocated to municipalities by contract or grant or  
5 other means;

6 (5) "significant financial effect" means the employment of additional  
7 personnel in one or more municipalities or an increase in expenditures for contracted  
8 services or equipment of more than \$20,000 in one or more municipalities.

9 \* Sec. 3. AS 44.62.195 is amended to read:

10 Sec. 44.62.195. FISCAL NOTES ON REGULATIONS. If the adoption,  
11 amendment, or repeal of a regulation would require increased appropriations by the  
12 state, or increased costs to municipalities, the department or agency affected shall  
13 prepare an estimate of the appropriation increase for the fiscal year following adoption,  
14 amendment, or repeal of the regulation and for at least two succeeding fiscal years.

# FISCAL NOTE

Revision Date: March 7, 1995 Dept. Affected: Community & Regional Affairs  
 Title: An Act relating to municipal activities or services mandated by state statute BRU: none  
 Component none  
 Sponsor: Senator Kelly  
 Requestor: Senate C & RA Committee COMPONENT SERIAL NO. \_\_\_\_\_

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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)

Under existing statutes, DCRA is required to prepare municipal fiscal notes in the event that a proposed bill could have significant fiscal impacts on municipalities. SB 96 does not appear to place any additional requirements on DCRA. Therefore, we anticipate no fiscal impact on DCRA from this bill.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708  
 Division: Division of Administrative Services Date: 3/7/95  
 Approved by Commissioner: *Mike Druehl* Date: 3/7/95  
 Agency: Community & Regional Affairs

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SENATE BILL NO. 96

IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - FIRST SESSION

BY SENATOR KELLY

Introduced:  
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to municipal activities or services mandated by state statute."

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

3 \* Section 1. AS 01.10 is amended by adding a new section to read:

4 Sec. 01.10.075. MANDATED MUNICIPAL SERVICES. (a) A statute enacted  
5 or amended after January 1, 1996, that imposes or increases costs mandated by the state  
6 as a result of a new activity or service or an increase in the level of municipal funding for  
7 an activity or service required of municipalities by the statute is not effective unless the  
8 bill under which the statute was enacted or amended

9 (1) contains an appropriation for the reimbursement of those costs to  
10 affected municipalities; or

11 (2) grants to municipalities the discretion of electing whether to comply  
12 with the statute.

13 (b) Each bill that applies to municipalities must include findings as to whether

14 (1) the bill would mandate a new activity or service or increase the level

1 of municipal funding required for an activity or service; and

2 (2) any mandate contained in the bill will have a significant financial  
3 effect on municipalities.

4 (c) If a municipality disputes findings on a bill made under (b) of this section, it  
5 may, within 30 days after the effective date of the bill, petition the legislative audit  
6 division for review of the action.

7 (d) A municipality may elect to provide a service or perform an activity in  
8 accordance with a statute that is ineffective under (a) of this section using local funds to  
9 pay costs mandated by the state. If a municipality voluntarily provides a service or  
10 performs an activity under this subsection, the municipality may modify the activity or  
11 service consistent with the policy and intent of the statute to the extent and in the manner  
12 necessitated by the limitations of the local funding available.

13 (e) If full state funding for an activity or service required under a statute that was  
14 enacted or amended in accordance with (b)(1) of this section is not provided to a  
15 municipality in a subsequent year, the municipality affected by the reduction in funding  
16 may modify the activity or service as permitted under (d) of this section.

17 (f) For purposes of this section,

18 (1) "costs mandated by the state" means any increased cost creating a  
19 significant financial effect that a municipality is required to incur after January 1, 1996,  
20 as a result of a statute enacted after January 1, 1996, or a regulation adopted after  
21 January 1, 1996, that mandates a new activity or service or a higher level of municipal  
22 contribution to an activity or service; costs mandated by the state do not include costs of  
23 the type experienced equally by private and public entities that are incurred by a  
24 municipality in its proprietary capacity or costs that result from activities or services that  
25 a municipality, although not required to do so, elects to provide;

26 (2) "new activity or service" means an activity or service that is required  
27 as a result of a statute, that was not required before the enactment of the statute, and that  
28 results in costs mandated by the state;

29 (3) "significant financial effect" means the employment of additional  
30 personnel or an increase in expenditures.

MEMBER

TENTH ALASKA LEGISLATURE  
ELEVENTH ALASKA LEGISLATURE  
TWELFTH ALASKA LEGISLATURE  
THIRTEENTH ALASKA LEGISLATURE  
FOURTEENTH ALASKA LEGISLATURE  
FIFTEENTH ALASKA LEGISLATURE  
SIXTEENTH ALASKA LEGISLATURE  
EIGHTEENTH ALASKA LEGISLATURE

ALASKA STATE SENATE



SENATOR TIM KELLY

*Ray D*  
*2/23/95*

STATE CAPITOL  
JUNEAU, ALASKA 99801-1182  
(907) 465-3822  
FAX (907) 465-3756

716 WEST 4TH, SUITE 400  
ANCHORAGE, ALASKA 99501  
(907) 258-8180  
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**MEMORANDUM**

**DATE:** February 23, 1995

**TO:** Senator John Torgerson, Chairman  
Senate Community & Regional Affairs Committee

**FROM:** Senator Tim Kelly *TDK*

**RE:** Scheduling of SB 96, Unfunded State Mandates on Municipalities

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I respectfully request you schedule SB 96, An Act relating to Unfunded State Mandates on Municipalities, for a hearing before the Senate Community & Regional Affairs Committee at the Committee's earliest convenience.

Much like the U.S. Congress is addressing the problem of unfunded federal mandates on States, this legislation was crafted to address the same problem municipalities are experiencing with unfunded State mandates. SB 96 is a legislative priority for the Alaska Municipal League.

A sponsor statement and additional back-up will be following.

Thank you in advance for your timely consideration.

MEMBER

TENTH ALASKA LEGISLATURE  
ELEVENTH ALASKA LEGISLATURE  
TWELFTH ALASKA LEGISLATURE  
THIRTEENTH ALASKA LEGISLATURE  
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ALASKA STATE SENATE



SENATOR TIM KELLY

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## Sponsor Statement & Bill Analysis

### SB 96: The Bill of Mandates

Just as the U.S. Congress is attempting to address the considerable financial hardship unfunded federal mandates place on state governments, many state legislatures are beginning to address the same financial hardships unfunded state mandates are placing on local governments. In fact, at present sixteen states currently have laws which either limit or prohibit state government from imposing unfunded mandates on municipalities. Additionally, more than 20 other state legislatures are actively considering such legislation.

SB96 was introduced this year to remedy the problem of unfunded state mandates here in Alaska. This legislation is a high priority for the Alaska Municipal League, the Municipality of Anchorage, the Fairbanks North Star Borough, and the Alaska Conference of Mayors.

Unfunded mandates cause cash-strapped cities to decrease basic municipal services such as public safety, road maintenance, and the local contribution to education to schools, to name a few, in order to pay for the unfunded mandates which most often are much lower priorities than these basic municipal government functions. Moreover, as these unfunded mandates increase for local governments, aid to municipalities has been cut more than 55%. A good example is the Senior Citizen's Property Tax Exemption which has increased 300% in cost to local governments in the last several years. As municipalities and local governments struggle to provide services mandated but not funded by the Legislature, increased property and other local taxes have been used as the funding vehicle.

The principle imperative of this legislation is that the state government should not require municipalities by statute, appropriation, regulation, or administrative action to implement any program, service, or activity which significantly impacts municipalities' budgets unless the legislature provides new funding to cover the costs of these mandates.

SB 96 sets up a mechanism, described below, which will go a long way to preventing State government from imposing new mandates without funding them. However, the Legislature is ultimately constitutionally capable of imposing such mandates if it desires. It is helpful to think of this legislation as establishing a moral imperative for the Legislature, as well as providing a mechanism for municipalities to raise questions on unfunded mandates while focusing public attention on this problem.

## Bill Analysis

Section 1: Legislative Findings and Intent

Section 2: Adds a new section to Title 24, the Legislature, Chapter 8, Enactments:

### AS 24.08.120: Mandated Municipal Services:

(a) Provides that a bill enacted after January 1, 1996, that imposes new or increases costs to municipalities is not effective unless funds are appropriated at the time of enactment to fully cover those new or increased costs resulting from the mandate. Further, unless sufficient funds continue to be appropriated each successive legislative session that the mandate is in effect, that mandate shall be repealed.

Exceptions to this, provided in (d), are as follows:

- 1) A bill passed by 2/3rds of the members of each house;
- 2) A mandate requested by the affected municipalities;
- 3) A bill that affirms existing law as it has been construed by the courts or enacts federal law or regulation;
- 4) A bill that creates, eliminates, or changes an offense, as defined in the definitions of Title 11, Criminal Law.

(b) Requires that each bill, regulation, or administrative order enacted after January 1, 1996, that applies to municipalities must include findings regarding its effects on municipalities prepared by the Legislative Audit Division. The findings must address the financial impact on municipalities, and

(b) - Continued

whether the bill, order, or regulation mandates a new activity, significantly increases a current activity, or causes a significant increase in the level of municipal funding of an activity;

- (c) Provides that if a municipality disputes findings made under (b), it may file a written petition within 30 days with Legislative Audit for a determination of the accuracy of the findings. Legislative Audit must then make its determinations public within 60 days.
- (d) Provides exceptions to section (a).
- (e) Definitions.

**Section 3:** Amends 44.62.195, Fiscal Notes on Regulations, to require that when adoption, amendment, or repeal of a regulation would increase costs to municipalities, the affected department or agency must prepare an estimate of those cost changes for the fiscal year following adoption and for at least two succeeding fiscal years.

**MUNICIPALITY OF ANCHORAGE  
1995 LEGISLATIVE PROGRAM**

**LEGISLATIVE ISSUES**

**TITLE:**      **Bill of Mandates Legislation or Constitutional Amendment**

The Municipality of Anchorage supports legislation (or a constitutional amendment) which would require the State to provide full funding for State mandated municipal activities or services. The most prominent and costly of existing State mandates is the Senior Citizens/Disabled Veterans property tax exemption, which underfunded Anchorage by \$7.7 million in 1994. Other examples of State mandates include: alcohol services, domestic violence writs, prisoner transportation costs, 1% for Art, Davis-Bacon wages, etc. State mandates have resulted in the Municipality assigning artificially high priority to mandated programs/services thereby superseding the funding of higher priority, fundamental local government services.

The Municipality is especially concerned about the potential escalation of unfunded State mandates resulting from the pressure of declining State revenues. Legislation is needed now so that future Legislatures will be discouraged from unfairly burdening local government with unfunded State mandates.

The proposed legislation would also require a State government agency which unilaterally transfers responsibility for a program to a municipality or imposes regulations on a municipality to reimburse the municipality for the costs of the transferred responsibility or the regulations.

Lastly, the Municipality also supports a local option section to be included with proposed legislation, which would allow a municipality faced with an unfunded mandate to decide whether it will provide the activity or service from local funds. Essentially, the unfunded mandate would become an authorization for a Municipality to provide a service or activity at whatever level it deems appropriate.

The propensity of state government to impose mandated programs on local government is by no means limited to the State of Alaska. The tax revolt in California in 1978 and 1979 was fueled, in part, by the state's transfer of certain responsibilities to the county level, placing an onerous tax burden on property owners.

(more)

**Bill of Mandates Legislation or Constitution Amendment**  
(continued)

California now has an active reimbursement program. Massachusetts appropriates money with the mandating law as it is passed. In all, fifteen states have statutory or constitutional requirements that payments be made on some level for the financial effects of state statutes. Some state constitutions stipulate that special acts necessitating appropriations by a local government do not become effective unless approved by a voter referendum.

We ask for your support for legislation addressing the issue of municipal fiscal mandates.

**Contact:** Gene Dusek, Budget Director  
Office of Management and Budget  
**Phone:** 343-4490

**CITY OF UNALASKA**

P.O. BOX 89  
UNALASKA, ALASKA 99685  
(907) 581-1251  
FAX (907) 581-1417



March 18, 1995

Senator Tim Kelly, Chairman  
Community and Regional Affairs Committee  
Room 101, State Capitol  
Juneau, Alaska 99801-1182

RE: Senate Bill 96, an Act relating to municipal activities or services  
mandated by state statute

Dear Senator Kelly:

Thank you for extending the opportunity to submit testimony on Senate Bill 96, relating to municipal activities or services mandated by state statute. The City of Unalaska is on record supporting this type of legislation on the federal level. We are extremely pleased that you have sponsored legislation at the state level to address the problem of unfunded state mandates on local governments.

This legislation would significantly relieve local governments of the financial burdens related to future state mandates. We are concerned, however, that the proposed language, as written, may not provide relief from *existing* state mandates. Like local governments across Alaska, the City of Unalaska is already facing potentially crippling financial impacts as a direct result of existing unfunded state and/or federal mandates. In Unalaska, the largest of the existing mandated, but unfunded or underfunded, projects include:

1. constructing a water filter plant at \$6 million (with an annual operating cost increase of \$400,000);
2. constructing an advanced primary or secondary wastewater treatment plant at \$5-10 million (with an annual operating cost increase of \$200,000);

Senator Kelly  
March 18, 1995  
Page 2

3. constructing a lined landfill and baler facility at \$6 million (with an annual operating cost increase of \$100,000); and
4. reducing emissions from our power generation facility (costs yet to be determined, but identified options range up to \$110 million).

As you know, the problem of complying with unfunded state and federal mandates is left largely to local government officials who must take the heat for increasing local taxes and utility rates. For many tax payers, the cause and effect relationships associated with complying with the myriad existing state and federal laws and regulations are not readily apparent.

Of course we are committed to providing public services that protect and enhance the health, safety, and welfare of our citizens. However, many existing mandates impose unrealistic time schedules for compliance and dictate specific actions when less costly alternatives might serve just as well. Additionally, they direct limited local resources away from other local priorities that could contribute *more* to the health, safety and welfare of local residents than the specific actions dictated by the mandates.

We do not seek to challenge the laudable goals of most state and federal mandates. Yet the accumulated weight of existing state and federal laws and regulations have made it nearly impossible for most local governments to prioritize among their most pressing needs. Solutions to the problems imposed by unfunded mandates must be based on a rational and balanced approach emphasizing outcome-oriented results. There must be greater political accountability at the state level, identification and appropriation of the resources required to pay for the mandates, and greater flexibility at the local level.

This is a national problem that has been dumped on local governments and their elected and appointed officials. We hope that the Alaska State Legislature will follow through with its good intentions and solve not only the problem of future mandates, but also address the onerous problem posed by existing mandates. We respectfully request that you and the Committee consider changes to the proposed legislation, or through other means, to obtain relief from existing unfunded state mandates.

Senator Kelly  
March 18, 1995  
Page 3

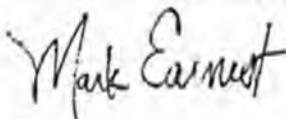
We would support the creation of a Commission on Unfunded State Mandates to review and investigate the impacts of existing state mandates on local governments. The purposes of this Commission would be to make recommendations to the Governor and Legislature regarding flexibility in local compliance, as well as terminating, suspending, or consolidating certain existing state mandates.

We would also support the creation of an advisory panel consisting of local government officials, perhaps coordinated through the Alaska Municipal League, to review and comment on proposed administrative regulations. State agencies should be required to consult with local officials during the development of administrative regulations that impact local governments. State agencies should also be required to prepare a written estimate, including the underlying analysis, of the cost impacts to local governments of administrative regulations.

Again, thank you for the opportunity to testify on this important issue and for your efforts to help local governments in Alaska. Senate Bill 96 represents an important step in addressing our concerns regarding the need for relief from unfunded and underfunded intergovernmental mandates.

Very truly yours,

CITY OF UNALASKA



Mark Earnest  
City Manager

Municipality  
of  
Anchorage



P.O. Box 1963150  
Anchorage, Alaska 99519-0350  
Telephone: (907) 343-3431  
Fax: (907) 343-4101

*Rick Mystrom, Mayor*

OFFICE OF THE MAYOR

March 10, 1995

The Honorable Tim Kelly  
Alaska State Senate  
State Capitol, Room 101  
Juneau, Alaska 99801-1182

Re: Senate Bill 96

Dear Senator Kelly:

Thank you for sponsoring SB 96 relating to municipal mandates.

Across the country unfunded mandates imposed by states upon their municipalities are a focus of legislative efforts. In the 1993-94 legislative session, anti-mandates legislation was introduced in 22 state legislatures. Sixteen states currently have legislation to limit or prohibit state governments from imposing unfunded mandates on municipalities.

The Municipality of Anchorage has previously estimated the burden on its budget of state unfunded mandates and municipally assumed responsibilities to be over \$26,000,000 in 1994.

The Municipality of Anchorage strongly supports CS SB 96 (CRA) as a reasonable and balanced approach to addressing the issue of unfunded mandates imposed by the state on municipalities.

Thanks again for your help on this issue.

Sincerely,

Rick Mystrom  
Mayor

## Anti-Mandates Strategies: Reimbursement Requirements In The States

### NEW JERSEY ✎

New Jersey localities are optimistic that the media attention to the issue of unfunded state mandates will produce both legislative and public support for their new proposed constitutional amendment.

(T)he state government shall not require the governing body of a county or municipality to perform any new or expanded program or service ... without full state funding for any net additional costs directly required for the actual performance for that program or service. Any provision of law, or of a rule, regulation or order issued pursuant to law, which has the effect of requiring a new program or service beyond that level ... shall be inoperative in its effect upon a county or municipality until sufficient state funds are provided ... to pay the net additional costs directly required for the actual performance of that program or service ....<sup>8</sup>

*THE MANDATED ACTIVITY, SERVICE OR PROGRAM.*

A two-thirds majority in both houses is required to make the mandate effective in absence of funding. ]

The proposed amendment appears quite strong, including administrative rules and regulations and not providing any of the typical exceptions found in similar amendments. On the other hand, only programs and services which require new net expenditures are covered. When resources can be redirected or used more intensively to affect compliance, state funding may not be necessary. Restrictive mandates such as limitations on tax rates and sources are also left uncovered by the amendment. However, many of these details may change as the bill goes through the legislative process.

### NORTH CAROLINA

During the 1993 legislative session, North Carolina local governments attempted reform of the fiscal noting process and a prohibition on unfunded state mandates in a constitutional amendment.

No county or municipality shall be bound by any general law requiring the county or municipality to spend funds unless funds have been appropriated by the General Assembly that have been estimated at the time of enactment to be sufficient to fund such expenditure....<sup>9</sup>

<sup>8</sup> Concurrent Resolution proposing to amend Article IV, Section IV, paragraphs 6 and Article VIII, Section II of the Constitution of the State of New Jersey.

<sup>9</sup> House Bill 434, 1993 Session, General Assembly of North Carolina.

SENATE BILL 96  
(Kelly)

Unfunded Mandates with Municipalities  
In: 2/22/95            Out:  
Further referral: Finance  
Request for hearing: 2/23/95  
Hearing date: 3/8/95

Remarks: Abbreviated version of this legislation introduced last session (HB 502 - Hanley)  
House Community & Regional Affairs Committee replaced with CS  
Died in House Finance

3/15/95 - S.C.P.A  
465-

By: Valerie Therrien  
Introduced: 03/09/95  
Adopted: 03/09/95

RESOLUTION NO. 95-017

A RESOLUTION SUPPORTING SENATE BILL 96, AN ACT RELATING TO MUNICIPAL ACTIVITIES OR SERVICES MANDATED BY STATE STATUTE

WHEREAS, municipal activities and services mandated by state statute require municipalities to expend great amounts of funds and hire employees who would not be necessary if it were not for the mandates; and

WHEREAS, unless the state funds these mandates, municipalities are and will be required to raise taxes in order to comply with the statutes; and

WHEREAS, Senate Bill 96, a bill which provides that any statute enacted or amended after January 1, 1996, that imposes or increases costs mandated by the state as a result of a new activity or service or an increase in the level of municipal funding for an activity or service required of municipalities by the statute is not effective unless the bill under which the statute was enacted or amended contains an appropriation for the reimbursement of those costs to affected municipalities or grants to municipalities the discretion of electing whether to comply with the statute; and

WHEREAS, should the legislature adopt this legislation, the burden of new state mandated requirements would not cost municipalities additional funds.

NOW, THEREFORE, BE IT RESOLVED that the Assembly of the Fairbanks North Star Borough supports SB 96 or any other bill which would relieve municipalities of the financial burden of future state mandates.

BE IT FURTHER RESOLVED that copies of this resolution shall be sent to the Honorable Tony Knowles, Governor, State of Alaska and all members of the Interior Delegation.

MAR 14 '95 05:50PM FNSB CLERK'S OFFICE

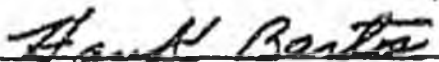
P.5/5

WHEREAS, Governor Tony Knowles has developed a plan to expend \$43 million of state money into the University of Alaska's neglected buildings and grounds with approximately \$20 million allocated for repairs and up-grading on the Fairbanks campus.


NOW, THEREFORE, BE IT RESOLVED that the Fairbanks North Star Borough Assembly appreciates and thanks the Governor for developing a maintenance and repair plan and strongly urges the Alaska State Legislature to take the action necessary to provide approval and the funding necessary to pay for the repair and rehabilitation of the facilities of the University of Alaska.

BE IT FURTHER RESOLVED that copies of this resolution shall be sent to the Honorable Tony Knowles, Governor, State of Alaska and all members of the Interior Delegation.

PASSED AND APPROVED THIS 9TH DAY OF MARCH, 1995.

  
Hank Bartos  
Presiding Officer

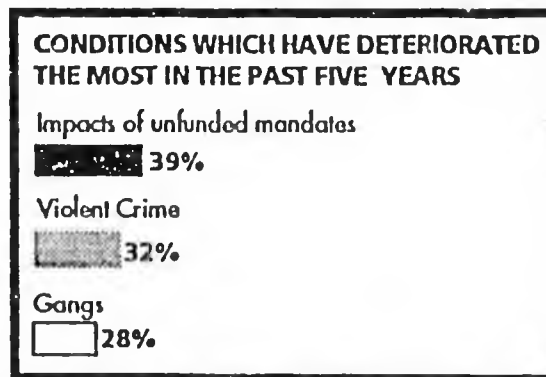
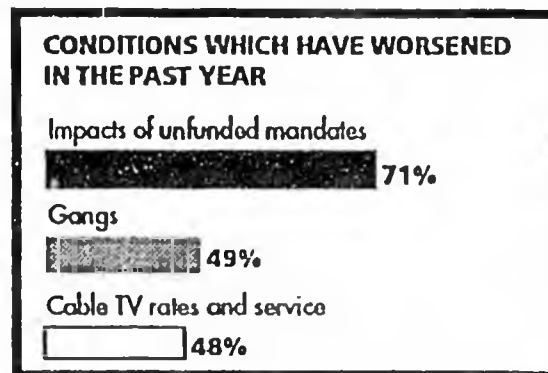
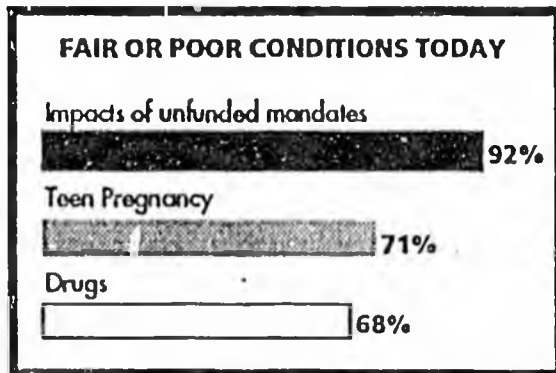
ATTEST:

  
Mona Lisa Drexler, CMC/AE  
Municipal Borough Clerk

Ayes: Logan, Hackenmiller, Jones, Hove, LaSota, St. John, Thamen, Kilgore and Bartos  
Noes: None

RESOLUTION NO. 95-018  
Page 2 of 2

# City Officials Understand the Impact of Unfunded Mandates...



Source: NLC Research Report,  
"The State of America's Cities," 1994



217 Second Street, Suite 200 • Juneau, Alaska 99801 • Tel. 907/586-4225 • Fax 907/463-5480

TO: Senator Tim Kelly  
FROM: Kevin Ritchie, Executive Director  
DATE: March 26, 1995  
RE: Examples of Unfunded Mandates

Legislative Research Agency (94.083) identified over 600 state mandates on municipal governments. According to Legislative Research (95.092) "Collectively, they (state mandates) account for a major portion of the workloads of local governments, which are under increasing fiscal pressure."

Recent examples of types of state unfunded mandates, both enacted and proposed, follow:

1. State statutory funded mandates which become unfunded mandates- The mandatory Senior Citizen Property Tax Exemption was originally a state funded mandate. Since its enactment, the state has largely withdrawn its funding for the program. The current HB 185 is an example of how state government can respond positively to mandates which become unfunded over time. HB 185 reduces the mandatory exemption from \$150,000 to \$75,000 and allows municipalities the option of granting the exemption over \$75,000.

2. State regulations that are unfunded mandates on local governments - The federal government requires states to establish minimum standards for water quality. The state is now considering adopting new water quality standards above those required by the federal government. The cost to a municipality of complying with the standards required by the federal government, even if the program is administered by the state, is NOT an unfunded state mandate under SB 96.

However, if the state decides to set standards above those required by the federal government, the cost to municipalities to comply with the additional state standards would be an unfunded state mandate created by state administrative regulation. Under SB 96 the administration would have to prepare a finding of the financial effect of this proposed regulation on municipalities.

3. A proposed state statute that could create an unfunded mandate on municipal government- HB 154 deals with regulatory "takings" by the state or municipal government. The bill defines a taking as any municipal government action that "regulates or imposes a restraint on private property". Under this definition, normal municipal powers such as zoning and subdivision regulations, would be considered compensable "takings". Under SB 96 a finding of the potential financial effect on municipalities would be prepared.

**PARTIAL LIST OF STATE MANDATES  
THAT INCREASE LOCAL COSTS**

<b>Sr. Citizens &amp; Disabled Veterans</b>	State mandates exemption from property tax for seniors and disabled veterans - AS 29.45.030 (e). The state has consistently underfunded the program, leaving municipalities to pick up the cost. For example, municipalities are being required to cover over 77 percent (nearly \$10 million) of the cost of the program during FY 93.
<b>Little Davis Bacon</b>	Little Davis-Bacon prevailing wages required to be paid on construction projects involving state funds (AS 36.95.010 - definitions) - AS 36.05.010
<b>Interest on Retainage</b>	10.5% interest required to be paid on retainage from contractors rather than use current market interest or negotiated figure for each contract - AS 36.90.010
<b>Procurement Preferences</b>	Local agricultural and fisheries products procurement preferences (7%) - AS 29.71.040  Recycled Alaska products procurement preferences (3-7%) - AS 29.71.050  A state procurement requirement requires municipalities to competitively bid for their insurance coverage if state funds are used - AS 36.30.850(e)
<b>Public Defender</b>	Public Defender does not defend municipal offenders - AS 18.85.155
<b>Road Redesignation</b>	State turning over road responsibility to local government via redesignation - AS 19.20.010 (General Powers); AS 19.05.040 (Chapter on state-local cooperation)
<b>State Audits</b>	State audits of construction grants (necessary to meet federal requirements) - AS 19.15.020. Often these are not done in a timely manner, and the local governments are required to duplicate efforts they made while the project was underway.
<b>Health Insurance</b>	Health insurance costs for alcoholism, drug abuse, and mammography coverage (applies to any employer of 5(?) or more people - AS 21.42.365

**State Tax Exemptions** State property and property of political subdivisions of the state are exempt from taxation unless otherwise specified by the legislature - AS 29.45.030. The list of authorities and political subdivisions includes:

AS 14.40	University of Alaska
AS 16.10.380	Regional Salmon Enhancement Authorities
AS 16.51	Alaska Seafood Marketing Institute
AS 18.26	Alaska Medical Facility Authority
AS 18.55	Alaska State Building Authority
AS 18.55.996(a)	Regional Native Housing Authorities
AS 18.56	Alaska Housing Finance Corporation
AS 18.57.030	Regional Electrical Authorities
AS 21.88	Medical Indemnity Corporation of Alaska
AS 30.13.010	Regional Resource Development Authorities
AS 37.13	Alaska Permanent Fund Corporation
AS 42.40	Alaska Railroad Corporation
AS 44.81	Commercial Fishing and Agriculture Bank
AS 44.83.150	Alaska Power Authority
AS 44.85.160	Alaska Municipal Bond Bank Authority
AS 44.88	Alaska Industrial Development Authority Teachers Retirement System and Public Employees Retirement System

Statute also limits a municipality's ability to tax property and facilities of utility cooperatives - AS 10.25.540.

*The items below are less clearly defined state-mandated programs or policies.*

**Environmental  
Regulations**

A whole host of regulations establish municipal responsibility for environmental planning and control. This includes such things as emergency response plans, hazardous waste collection and disposal, registration of and liability for underground storage tanks, meeting drinking water and storm water regulations, meeting standards for solid waste and landfill facilities, and many others. In addition, municipalities are required to meet DEC regulations prior to recording subdivision plats handled by local governments.

**Hazardous  
Materials**

Hazardous materials reporting as imposed by SARA & AS 29.35.500

<p>Reduction in Services and Transfers of Responsibility by State Agencies</p>	<p>There are numerous examples of the transfer of state responsibility and duty to local government without a clear definition and conscious decision about the desirability of the service or the appropriateness of the transfer. This includes, among other things, reductions in public safety, road maintenance and repair, harbor and airport maintenance, search and rescue, and shifts in responsibility for enforcement of state laws.</p>
<p>Traffic Court</p>	<p>Requirement to have local government collect and process uncontested traffic violations. Prior to 1987, this function was performed by the state court system. AS 12.25.210 (a)</p>
<p>State Harbors</p>	<p>The state constructs inner harbor facilities and then leases them to the municipalities, which have only use rights, not ownership rights. However, the municipality is responsible for all operations and maintenance costs and the state is held harmless. Title 30, Navigation, Harbors, and Shipping says nothing about the lease arrangement. Likewise, Title 17 AAC 80, Waters &amp; Harbors, is also silent.</p>
<p>Percent for Art</p>	<p>Applies to schools, which are predominantly state funded, and perhaps to transfer of responsibility agreements - AS 35.27.010</p>
<p>Utility Use of Right of Way</p>	<p>Public utilities - gas, television, communications, electric, etc. - have a right to use to the public right of way. In past cases, the state APUC and courts have ruled that municipalities must pay for damages/relocation costs if road improvements are made or if municipally owned construction disturbs non-municipally owned utilities. This "free" right of way to the non-municipal utilities can result in a significant cost to municipalities.</p>

RESOLUTION OF THE ALASKA CONFERENCE OF MAYORS

RESOLUTION 95-5

**A RESOLUTION URGING THE PASSAGE OF LEGISLATION REQUIRING THE STATE TO REIMBURSE MUNICIPALITIES FOR THE COST OF ANY NEW STATE-MANDATED PROGRAMS**

WHEREAS, "the League urges passage of legislation that would require a government agency unilaterally transferring responsibility for a program to a municipality or imposing regulations on a municipality to reimburse the municipality for the costs of the transferred responsibility or regulations" (*Alaska Municipal League Policy Statement 1994, Part 1 Taxation and Finance, F.2 Reimbursement for Responsibilities Transferred from State*); and

WHEREAS, state aid to municipalities in the form of Municipal Assistance and Revenue Sharing has been reduced by over 45 percent since FY 86, while during the same period the overall state general fund budget has been reduced by only 10 percent; and

WHEREAS, along with the reduction in state financial assistance there have been increases in state-mandated programs that take the form of increased costs, new programs, and funding shortfalls for existing programs that are costly for municipalities to administer and implement; and

WHEREAS, legislation affecting municipalities is considered and passed by the Alaska State Legislature without the benefit of knowing its fiscal impact on local governments; and

WHEREAS, these mandated programs, funding shortfalls, and shifts in responsibilities have required municipalities to increase local taxes and reduce services in order to balance their budgets and at the same time, the Legislature has ignored deficit spending while boasting that the State has no income or sales taxes and that operating budgets have been reduced; and

WHEREAS, costly state-mandated programs provide a significant additional disincentive for communities to incorporate; and

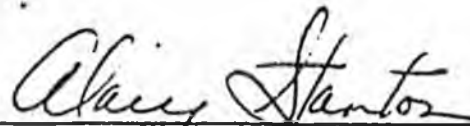
WHEREAS, the National Conference of State Legislatures in 1987 recommended that state legislatures consider relaxing or eliminating costly requirements on local governments or assuming the cost of complying with the requirements:

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League urges the Alaska Legislature and the Governor to pass legislation requiring the State to reimburse municipalities for the costs of any new state-mandated programs or regulations that increase the costs of local government operations.

SUPPORT:

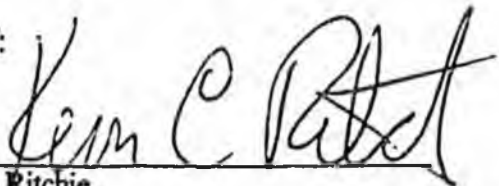
Alaska Conference of Mayors

This resolution was approved for submission to the Alaska Municipal League membership by the governing body of the Alaska Conference of Mayors on November 15, 1994.



Mayor Alaire Stanton, President

ATTEST:



Kevin C. Ritchie  
AML Executive Director

**Resolution of the Alaska Municipal League**

**Resolution No. 95-2**

**A RESOLUTION OPPOSING UNFUNDED STATE MANDATES AND  
URGING PASSAGE OF LEGISLATION REQUIRING THE STATE OF  
ALASKA TO REIMBURSE MUNICIPALITIES FOR THE COST OF  
ANY NEW STATE-MANDATED PROGRAM**

WHEREAS, "the Alaska Municipal League urges passage of legislation that would require a government agency unilaterally transferring responsibility for a program to a municipality or imposing regulations on a municipality to reimburse the municipality for the costs of the transferred responsibility or regulations" (Alaska Municipal League Policy Statement 1995, Part 1 Taxation and Finance, F.2 Reimbursement for Responsibilities Transferred from State); and

WHEREAS, state aid to municipalities in the form of Municipal Assistance and State Revenue Sharing has been reduced by over 55 percent since FY 88, while during the same period the overall state general fund budget has been reduced by only 10 percent; and

WHEREAS, along with the reduction in state financial assistance, there have been increases in state-mandated programs that take the form of increased costs, new programs, and funding shortfalls for existing programs that are costly for municipalities to administer and implement; and

WHEREAS, legislation affecting municipalities is considered and passed by the Alaska State Legislature without the benefit of knowing its fiscal impact on local governments; and

WHEREAS, these mandated programs, funding shortfalls, and shifts in responsibilities have required municipalities to increase local taxes and reduce services in order to balance their budgets and, at the same time, the Alaska Legislature has ignored deficit spending while boasting that the state has no income or sales taxes and that operating budgets have been reduced; and

WHEREAS, costly state-mandated programs provide a significant additional disincentive for communities to incorporate; and

WHEREAS, the National Conference of State Legislatures in 1987 recommended that state legislatures consider relaxing or eliminating costly requirements on local governments or assuming the cost of complying with the requirements:

**SUPPORT:**

**Alaska Municipal League**

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League urges the Alaska Legislature and the Governor to pass legislation requiring the state to reimburse municipalities for the costs of any new state-mandated programs or regulations that increase the costs of local government operations.

# A PRIMER ON MANDATES

Adapted from "Mandates: Keeping Citizens Aware," by Janet M. Kelly; *An Issues and Options report* by the National League of Cities

Of all the issues that engage local government officials, none is more contentious than mandates. Mandates go to the heart of what governing is all about—autonomy and money. Local officials recognize the need for the policies that ensure basic and equal protection for all citizens and are willing to help implement those policies. In return, they generally ask for two things. The first is the ability to implement the policy consistent with local needs and conditions, and the second is financial assistance to fund the requirement.

Unfunded mandates place additional burdens on already fiscally stressed local governments. They have also strained the intergovernmental relationship, making innovative partnership approaches to providing services and paying for them simultaneously more necessary and more difficult.

## What Is a Mandate?

The two most broadly used definitions are based on either cost or penalty. Cost-based definitions begin with some variation of the theme "any statute or rule requiring a local expenditure of funds or restricting local revenue rates or bases...."

A weakness of a simple cost-based definition is that it reduces important arguments about mandates to money. When the definition is cost-based, discussions will center on whether or not the mandate has a cost and what that cost will be. This is especially troublesome as many mandates require localities to use their existing resources differently or more intensively. Because of the proliferation of mandates, local governments bear very high cumulative costs but very low marginal costs. A cost-based definition might not recognize the burden of these mandates at all.

An alternative approach is a penalty-based definition. Rather than ask "will it cost money?" a penalty-based definition asks "must I comply?" The latter is much easier to answer decisively than the former. This test for the mandate is whether the locality can legally resist i

For instance, some would argue that if a law impacts the private sector as well as local governments, it cannot be considered a mandate. A penalty-based definition settles that argument in short order. The only disadvantage is that a definition based on penalty tends to reveal the volume of existing mandates, some of which are not important to the local government. However, there is a strong argument to be made that if you aggregate all the "little" mandates their cost would approach if not exceed the cost of the few "big" mandates.

## So What?

Is this whole issue, as some contend, really all about money? Well, yes and no. Money spent on compliance with federal mandates is money that cannot be spent on local priorities. So cost is a central issue, but it is opportunity cost displacement caused by the mandate that chafes—the preclusion of spending the money on programs or services valued by the local constituency. If local priorities were equivalent to federally mandated priorities, money spent on compliance with mandates would not be contested. In fact, localities willingly accept responsibility for programs and services when there is popular support for them at the local level. So the mandates issue is more accurately about different priorities and the foregone opportunities they create.

However, the fiscal implications are enormous. There is the loss of local tax dollars that might have been applied to other more pressing and popular uses. There are mandates that limit the ways in which localities raise revenue, putting some potentially lucrative and relatively pain free taxes off limits. These revenue exclusions and exemptions have the effect of forcing more intensive use of the much hated property tax.

Another serious and often ignored fiscal consequence of mandates is that of loss of flexibility. When mandates are procedural—telling the locality not what to do, but how to do it—it should not come as a surprise that Congress or federal agencies are not the best judge of how to run the business of local government. Some local

ciency"—the preclusion by law or rule from taking the most efficient path toward the service or program goal. Not surprising, the administrative routines mandated for a city of 500,000 may not be as workable for a city of 500. Even seemingly innocuous procedural mandates have their consequences. One law requires a social service agency to keep a copy of certain records. A copy is defined by statute in such a way as to prevent the use of computer records or microfiche, alternatives far less expensive than the maintenance of paper copies.

Finally, and most critically, the biggest "so what" of mandates is the loss of responsiveness in local government toward its citizens. Local governments have consistently been shown to be more responsive to citizen preferences for taxes and services than the federal government. Poll respondents are far more likely to say that their local government is more responsive to their needs and is more open to their input than federal government. Local officials often point out that they see their constituents on the street, dine with them, worship with them, and hear about problems daily. Governing, for these elected officials, is about the ability to respond to constituent demands or at least to engage constituents with conflicting goals in negotiation and compromise. When mandates preclude the use of local resources toward the essential function of government, local government loses the trust and the confidence of its people.

All that having been said, it is critical to note that mandates are a necessary part of intergovernmental relations. No locality should have the right to pollute the environment, deny adequate education to children, deny benefits to eligible residents, deny due process and voting rights to citizens, or operate a justice system that is not in conformance with other localities. Mandates are a necessary means by which to achieve these goals and are both the right and the obligation of Congress. However, the proliferation of mandates has also made it clear that local governments are being saddled with an ever expanding load of rules and requirements whose cost over

# Legislative Research Agency

Alaska State Legislature




130 Seward Street, Suite 218  
Juneau, Alaska 99801-2196

Phone: (907) 465-3991  
Fax: (907) 463-3351

February 3, 1995

## MEMORANDUM

TO: Representative Brian Porter

FROM: Gordon Harrison, Director 

RE: Unfunded State Mandates  
Research Request 95.092

You asked for information about unfunded mandates imposed by the state government on municipal governments in Alaska. Specifically, you asked for a list of all such unfunded mandates. Although there is a long list of statutory directives to local government, few of these are controversial or contentious when considered individually. Collectively, they account for a major portion of the workload of local governments, which are under increasing fiscal pressure. We believe that it is unproductive to attempt to classify these many, individual directives as either funded or unfunded. The term mandate has come to imply an onerous, expensive and perhaps capricious directive from a higher level of government to a lower level of government intended to accomplish a policy objective of the former. A mandate is a directive that has become a political problem, and a working definition of the term is necessarily political, not technical. This memorandum identifies the few unfunded state mandates that municipal officials have pointed out in recent years as problems for local governments. This is not a long list, however. The source of financial pressures on municipalities today are not individual statutory directives, but rather cutbacks in direct state aid to municipalities (revenue sharing and municipal assistance), and cutbacks in various state services that have required local governments to increase local expenditures.

### Defining Mandates

At the national level, the problem of unfunded federal mandates is a prominent political issue. Over the years, Congress has enacted many laws that require compliance, often expensive compliance,

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by state and local governments.<sup>1</sup> At the state level, many cities and counties have also complained about burdensome state mandates on municipal governments.<sup>2</sup> On close examination, many of these are actually directives of the state government necessitated by federal environmental laws such as the clean air and clean water acts. However, a number of purely state directives have been identified as especially burdensome.<sup>3</sup>

In Alaska, the issue of state mandates originally surfaced in connection with a specific grievance of several borough and city governments: the senior citizens' property tax exemption. State law requires municipal governments to exempt \$150,000 of real property owned by residents over 65 years of age (AS 29 4. 030 [e-g]). For many years the state reimbursed local governments for the revenue they lost by way of this exemption, but these reimbursements have all but dried up in recent years as the legislature found ways to reduce state spending. Consequently, local governments now bear the fiscal burden of the exemption, and, because state law preempts local ordinance, they have been barred as well from substituting their own senior property exemption tailored to local circumstances.

Beyond the senior's property tax exemption, however, there has not been strong agreement among the municipalities on *specific* onerous state mandates common to them, nor a focused lobbying effort to repeal or amend these particular mandates. Governor Hickel created a Task Force on Governmental Roles that included legislators and municipal officials from around the state. Early on, the group sought a definitive listing of all state mandates, but the effort was eventually

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<sup>1</sup>The National Conference of State Legislatures (NCSL) has monitored the issue of federal mandates, and it recently published a list of these federal directives to state and local government in the *Mandate Catalog*, NCSL, Washington, D.C., December 1994. To the best of our knowledge, only one effort has been made to estimate the cost of complying with federal mandates in Alaska. In 1993, the Municipality of Anchorage released a study of the cost of complying with federal environmental laws (Municipality of Anchorage, *Paying for Federal Environmental Mandates: A Looming Crisis for Cities and Counties*, January 1993).

<sup>2</sup>A number of articles on the subject have appeared in recent years. See, for example, articles in the following publications: *State Legislatures*, September, 1989, December, 1991; *Governing*, January, 1992; *State Government News*, April, 1993. Also, NCSL issued a *Legisbrief* entitled "Mandate Relief for Local Governments," June, 1994.

<sup>3</sup>Unfunded mandates frequently cited in other states are the requirement that counties provide free office space and supplies to local state agencies, and that the school district provide free transportation of pupils.

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dropped.<sup>4</sup> A legislative task force member requested from the Legal Services Division of the Legislative Affairs Agency a computer search of the Alaska constitution, statutes, and administrative code for pertinent sections using the key words "shall" and "must" in connection with such words as "local government," "municipality," "political subdivision," etc. The resulting list of twenty-three statutes was considered unenlightening and inconclusive.

During the second session of the Eighteenth Legislature, this agency was asked to compile a comprehensive list of all state directives to local governments. Legislative Research Agency Memorandum 94.083 was the result. While we presume that our list is reasonably comprehensive (we read some sections of the statutes page by page, other sections we searched by computer), we do not think that by itself it is particularly useful in clarifying the dimensions of the issue of mandates as a *political* problem. Municipal governments are creatures of state government. They do not possess inherent powers. In general, state governments may create, dissolve and realign local governments, and direct them to accomplish governmental objectives.<sup>5</sup> Thus, municipal corporations have a fundamentally different legal relationship to their state government than the states have to the federal government.

The Alaska statutes are full of major and minor directives to municipal governments. For example, Title 29 requires all boroughs and first class cities outside of boroughs to establish, operate, and maintain a system of public schools (AS 29.35.160 and 260). Much of Title 14 is devoted to telling the boroughs and cities how these school systems are to be administered, including where and when to fly the Alaska and United States flags (AS 14.03.130). Each such provision is, strictly speaking, a formal directive from the state to local governments. Similarly, the state criminal code (Title 12) constitutes a type of state-imposed mandate because local police departments are required to apprehend murders and robbers. But even if it were a simple matter to do so<sup>6</sup>, it does not

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<sup>4</sup>With regard to state mandates, the final report made this recommendation: "Policymakers should adopt a policy of deliberate restraint with respect to enacting mandates on local governments. The legislature should closely monitor Department of Community and Regional Affairs fiscal notes on legislation that affects municipalities and make a firm commitment to use the estimates in its deliberation." *Final Report; Task Force on Governmental Roles*, published jointly by the Governor's Office of Management and Budget and the Alaska Municipal League, July 10, 1992, p. 3.

<sup>5</sup>See discussion in David J. McCarthy, Jr. *Local Government Law*, 3rd ed. (St. Paul: West Publishing Co., 1990), p. 28 ff.

<sup>6</sup>Individual directives pertaining to local school districts might be said to be funded in the same proportion that district revenues are derived from state grants and entitlement programs. This may also be assumed for the various mandatory duties of the different classes of general government and home rule municipalities: they are funded to the same extent that the municipal revenues are derived from state sources. The percentage of state support for schools and local government generally

Representative Porter

February 3, 1995

Page 4

seem fruitful to categorize as "funded" or "unfunded" these and the many other noncontroversial arrangements that govern the fundamental relationship between Alaska's municipalities and the state. This is not to say that the level of state funding for education and state support for local government are not major political issues. They are major issues and everyone knows that they are. However, the debate over these issues is not advanced by a finding that the directive to display flags on the school house during school hours is funded, unfunded, or partially funded.

Certainly specific mandates that have become a particular source of political irritation to municipal governments deserve attention. The senior citizens tax exemption is one such mandate (unfunded). Municipalities have, from time to time, identified a few other such unfunded mandates. These are discussed below.

#### **Unfunded Mandates Identified by Municipalities**

From the information on this subject that we have located, four state mandates have been identified at one time or another as special problems for municipalities, in addition to the property tax exemption for senior citizens.

#### **Other Property Tax Exemptions**

State law exempts state-owned property (AS 29.45.030), including property owned by public corporations such as the Alaska Industrial Development and Export Authority (AS 44.88.140), the Alaska Permanent Fund (AS 37.13.180), the Alaska Energy Authority (AS 43.83.150), the Alaska Bond Bank (AS 43.85.160), regional electrical associations (AS 18.57.030), and electric and telephone cooperatives (AS 10.25.540[b]).

#### **PERS and TRS Contribution Rates**

Municipalities are members of the Public Employees' Retirement System (PERS) and school districts are members of the Teachers' Retirement System (TRS). Municipal employees and school teachers contribute a certain percentage of their base pay to their respective retirement system; their employer contributes the remainder. When the legislature changes the PERS and TRS statutes in a manner that causes the total contribution for each participant to increase--for example, by increasing benefits, liberalizing service credit rules, or raising contributions to maintain actuarial soundness of the system--the local governments and school districts must bear these higher costs. (AS 14.25, TRS; and AS 39.35, PERS)

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### "Little Davis-Bacon" Wages

The state version of federal Davis-Bacon Act requires that prevailing local wages be paid on all public construction projects. Thus, local governments must require contractors to pay local wage scales even if lower cost labor is available. (AS 36.05.010)

### Procurement Preferences

When municipal governments purchase fishery and agricultural products, they must give a 7 percent price preference to bidders who supply products harvested within Alaska. (AS 29.71.040)

In addition to these mandates, municipalities have opposed the shifting of various program costs onto local governments as state agencies reduce their services because of state budget cuts.

### The Local Fiscal Effects of State Budget Cuts

Virtually all state agencies have taken budget cuts of some kind in recent years. As a result, most have had to cut back their services. In some cases local governments have had to fill the void. Thus, for example, the City of Wasilla provided local police service when the Alaska State Troopers, for budgetary reasons, withdrew service from the area. The Alaska Department of Transportation and Public Facilities has threatened to turn over to the municipalities maintenance of Class III roads. The Department of Law has talked about local governments prosecuting violators of municipal codes. Shifting to local governments the cost of services now provided by the state is a serious problem for some communities and a major threat to all of them. Note, however, that strictly speaking the issue of "cost shifting" is not one of state mandates in the sense of mandatory statutory directives. It is rather the indirect result of state budget cuts that are made without consideration of their impact on local governments.

Of far greater significance to the municipalities, however, is the steady erosion of *direct* state support of local governments through the state revenue sharing and municipal assistance programs. The fiscal impact of cuts to these programs dwarfs the effect of all of the foregoing state mandates and agency belt tightening. Shoring up these two programs is the highest legislative objective of the Alaska Municipal League (AML).

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Page 6

### **Legislative Agenda of the Alaska Municipal League**

The overriding legislative priority of the AML is adoption of the league's proposal to combine the state revenue sharing and municipal assistance programs and to avoid further reductions in appropriations for these programs. This proposal, called the Alaska Municipal Basic Services Program, is designed to rationalize, simplify, and strengthen state support of local governments. A full description of the proposal and its rationale are beyond the scope of this memorandum. The point here is to emphasize that municipal officials see the legislative solution to their immediate problem as adequate direct state funding for local governments.

With regard to specific unfunded mandates, the AML is on record in support of legislation that would make senior citizens' tax exemption a matter of local option. More generally, the AML supports legislation that would prohibit the state from transferring any additional responsibilities to local governments through statute, regulation, or *budgetary measures* without commensurate funding. We suggest you contact Kevin Ritchie, Executive Director of the AML (586-1325), for a full discussion of the organization's proposals, legislative objectives, and position on the unfunded mandates identified above.

Although not exactly what you asked for, I nonetheless hope this information is useful. If you have questions about any of this, or would like follow-up information, please call.

**SB**

**107**

# Alaska State Legislature

SENATOR  
MIKE MILLER

P.O. Box 55094  
North Pole, Alaska 99705  
(907) 488-0867

Senate District 0

While in Juneau  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-4976

## Senate


March 13, 1995

RECEIVED

MAR 15 1995

Ans'd.....

TO: Sen. Torgerson, Chairman  
Community & Regional Affairs

FROM: Sen. Miller, Chairman   
Rules Committee  
Attention: Sharon Clark  
Legislative Aid

RE: SB 107

---

I would like to request scheduling in the Community & Regional Affairs committee SB 107 "An act relating to grant land entitlements for the Denali Borough" at your earliest convenience.

Thank you.

# Alaska State Legislature

SENATOR

MIKE MILLER

P.O. Box 55094

North Pole, Alaska 99705

(907) 488-0862

Senate District Q



Senate

While in Juneau

State Capitol

Juneau, Alaska

99801-1182

(907) 465-4976

## Sponsor Statement - Senate Bill No. 107

"An Act relating to general grant land entitlements for the Denali Borough."

SB 107 was introduced by request along with a resolution from the Mayor and the Denali Borough Assembly, constituents in Senate District Q.

The purpose of SB 107 is to amend present statute (AS 29.65.010) to include sub-section (13) a land grant entitlement for the Denali Borough.

The Denali Borough was incorporated in December 1990, the present population is 2,077 and is rapidly growing. The Borough assembly passed and approved a resolution on February 12, 1995, to seek 71,000 acres in the Municipal Land Entitlement for the Denali Borough.

The Land Entitlement expected acreage to be was, certified as insufficient for future growth and development of the Borough. The Borough residents have stated in public testimony that they desire more land to be made available for various reasons identified as essential to the Borough. The Borough through the Comprehensive Land Use Plan process, has identified 71,000 acres as the minimum necessary for autonomy.

Thank you for your consideration.

— SPONSOR STATEMENT —

DENALI BOROUGH, ALASKA

RESOLUTION NO. 95-05

A RESOLUTION TO SEEK 71,000 ACRES IN THE MUNICIPAL LAND ENTITLEMENT ACT FOR THE DENALI BOROUGH.

WHEREAS, the Municipal Land Entitlement Act was put in place by the Alaska State legislation to insure the resources are available for a Borough to be successfully independent; and

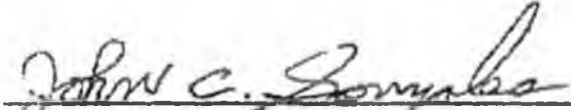
WHEREAS, the Denali Borough deems the Municipal Land Entitlement expected acreage to be certified as insufficient for future growth and development of the Borough; and

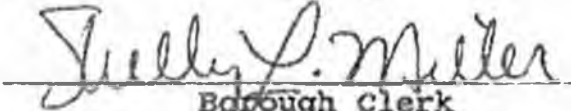
WHEREAS, Borough residents have stated in public testimony that they desire more land be made available for various reasons identified as essential to the Borough; and

AND WHEREAS, the Borough has through the Comprehensive Land Use Plan process identified 71,000 acres as the minimum necessary for autonomy.

NOW THEREFORE BE IT RESOLVED: The Denali Borough Assembly authorizes the Mayor to seek State Legislative intervention to acquire the 71,000 acres as the Denali Borough's Municipal Land Entitlement.

PASSED and APPROVED by the DENALI BOROUGH ASSEMBLY this 12th day of February, 1995.

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
Borough Clerk

ATTEST:

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

March 7, 1995

**SUBJECT:** Sectional Summary of SB 107

**TO:** Senator Mike Miller

**FROM:** Tamara Brandt Cook *TBC*  
Director of Legal Services

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

Section 1 Sets the general grant land entitlement of the Denali Borough at 71,000 acres. Without this provision the borough would qualify for 10 percent of the maximum total acreage of vacant, unappropriated, unreserved land within its boundaries between the date of incorporation and two years after that date. (See AS 29.65.030)

Section 2 Permits the Denali Borough to nominate land for selection to satisfy the general grant land entitlement before October 1, 1998.

TBC:lmb:klb  
95-140.lmb

Cross references. — For statement of purpose of 1978 Act that enacted the provisions from which this chapter derived. See § 1, ch 180, SLA 1978 in the Temporary and Special Acts.

Sec. 29.65.010. Determination of entitlement of boroughs and unified municipalities. (a) The general grant land entitlement of each of the municipalities in this subsection is the amount set out opposite each:

- (1) Municipality of Anchorage — 44,893 acres;
- (2) City and Borough of Juneau — 19,584 acres;
- (3) City and Borough of Sitka — 10,500 acres;
- (4) Bristol Bay Borough — 2,898 acres;
- (5) Fairbanks North Star Borough — 112,000 acres;
- (6) Haines Borough — 2,800 acres;
- (7) Kenai Peninsula Borough — 155,780 acres;
- (8) Ketchikan Gateway Borough — 11,593 acres;
- (9) Kodiak Island Borough — 56,500 acres;
- (10) Matanuska-Susitna Borough — 355,210 acres;
- (11) North Slope Borough — 39,350 acres.

(b) *[Repealed, § 12 ch 34 SLA 1987.]* (§ 17 ch 74 SLA 1985; am § 12 ch 34 SLA 1987)

Sec. 29.65.020. Determination of entitlement for cities. (a) The general grant land entitlement of a city formerly eligible to receive general grant land under the provisions of former AS 29.18.190 and 29.18.200 is 10 percent of the maximum total acreage of vacant, unappropriated, unreserved land in the boundaries of each city at any time between the initial date of eligibility under former AS 29.18.190 and 29.18.200 and January 1, 1988. Within six months after January 1, 1988, the director shall determine the entitlement for each city eligible to receive general grant land under this section and certify that entitlement to the city.

(b) *[Repealed, § 12 ch 34 SLA 1987.]* (§ 17 ch 74 SLA 1985; am §§ 1, 12 ch 34 SLA 1987)

Sec. 29.65.030. Determination of entitlement for newly incorporated municipalities. (a) The general grant land entitlement of a municipality incorporated after July 1, 1978, that does not qualify for an entitlement under AS 29.65.010 or 29.65.020 is 10 percent of the maximum total acreage of vacant, unappropriated, unreserved land within the boundaries of the municipality between the date of its incorporation and two years after that date.

(b) Within two years and six months after the date of incorporation of the municipality, the director shall determine the entitlement of

*Sectional  
Reference*

each municipality eligible to receive general grant land under (a) of this section and certify the entitlement to the municipality. However, the governing body of a city may, by resolution, request the director to certify the entitlement to the city on an expeditious basis. The director shall determine and certify the entitlement within six months after receipt of the resolution.

(c) [Repealed, § 12 ch 34 SLA 1987.] (§ 17 ch 74 SLA 1985; am §§ 2, 3, 12 ch 34 SLA 1987; am §§ 1, 2 ch 51 SLA 1991)

**Effect of amendments.** — The 1991 amendment, effective June 16, 1991, deleted the last two sentences in subsection (a) and added the last two sentences in subsection (b).

**Editor's notes.** — Section 11, ch. 34, SLA 1987 provides: "The general grant land entitlement authorized for the Northwest Arctic Borough under AS 29.65.030(a), as amended in sec. 2 of this Act, is a partial entitlement for the borough. After completion of the Northwest Area Plan prepared under AS 38.04.065, the governor shall submit to the legislature recommendations for additional general grant land entitlements for the Northwest Arctic Borough consistent with the general grant land entitlement policy developed by the governor. The governor shall also submit recommendations for additional general grant land entitlements for other newly-formed municipalities

consistent with the general grant land entitlement policy developed by the governor."

Section 9, ch. 51, SLA 1991 provides that, notwithstanding subsection (b), as amended by § 2, ch. 51, SLA 1991, "the director of lands may not certify an entitlement to a municipality until after January 2, 1994. Each entitlement for which certification is delayed under this section shall be certified by the director no later than January 1, 1996. The director shall by January 1, 1996, for each municipality incorporated after June 1, 1986, for which an entitlement was certified before June 16, 1991, redetermine and recertify the entitlement in accordance with AS 29.65.030(a), as amended in § 1, ch. 51, SLA 1991."

Under § 10, ch. 51, SLA 1991, the 1991 amendment to subsection (a) is retroactive to June 2, 1986.

**Sec. 29.65.040. Status of entitlements.** (a) After July 1, 1978, general grant land entitlements provided in former AS 29.18.201 and 29.18.202 are vested property rights that must be fulfilled as provided in AS 29.65.050 or 29.65.080. After January 1, 1988, general grant land entitlements provided in AS 29.65.010 are vested property rights that must be fulfilled as provided in AS 29.65.050 or 29.65.080.

(b) General grant land entitlements provided by AS 29.65.030 are property rights that vest on the date of incorporation of the municipality. The entitlement shall be fulfilled as provided in AS 29.65.050.

(c) Land may be selected or nominated for selection by a municipality to satisfy a general grant land entitlement under former AS 29.18.201 and 29.18.202 at any time before October 1, 1980. Land may be selected or nominated for selection by a municipality to satisfy a general grant land entitlement under AS 29.65.010 at any time before October 1, 1990. However, if a municipal selection or nomination or a part of a municipal selection or nomination is rejected by the director, the municipality may, not later than 90 days after receipt of the rejection or final decision on an appeal filed under AS 29.65.050(d), select additional state land as necessary to satisfy its entitlement.

(d) Land may be selected for general grant land entitlement one year after the date of incorporation.

(e) The time period for exercising a general grant land entitlement is:

(1) the period from the date of incorporation to the date because of the general grant land entitlement and industrial development;

(2) the period from the date of incorporation to the date of payment of the general grant land entitlement;

(3) the period from the date of incorporation to the date of the port of selection of the land selected to satisfy the entitlement;

(4) the period from the date of incorporation to the date of the port of selection of the land nominated for selection, if the nomination is approved for selection by the director under AS 29.65.030, AS 29.65.010, or AS 29.65.034 SLA 1987.

**Effect of amendment, effective June 16, 1991, to subsection (c), in AS 29.65.040.**

**Sec. 29.65.040.** The age of each municipality for which a general grant land entitlement is issued before the date of incorporation of the municipality is:

(b) All applications for general grant land entitlements under AS 29.18.200 for municipalities incorporated before July 1, 1978, shall be issued before July 1, 1978.

(c) All applications for general grant land entitlements under AS 29.18.201, 29.18.202, or 29.18.203 for municipalities incorporated after July 1, 1978, shall be issued before the date of incorporation of the municipality.

(d) All applications for general grant land entitlements under AS 29.65.010 for municipalities incorporated after July 1, 1988, shall be issued before the date of incorporation of the municipality.

(e) All applications for general grant land entitlements under AS 29.65.030 for municipalities incorporated after July 1, 1986, shall be issued before the date of incorporation of the municipality.

(f) All applications for general grant land entitlements under AS 29.65.034 for municipalities incorporated after July 1, 1991, shall be issued before the date of incorporation of the municipality.

(g) All applications for general grant land entitlements under AS 29.65.030 for municipalities incorporated after July 1, 1991, shall be issued before the date of incorporation of the municipality.

(h) All applications for general grant land entitlements under AS 29.65.030 for municipalities incorporated after July 1, 1991, shall be issued before the date of incorporation of the municipality.

(i) All applications for general grant land entitlements under AS 29.65.030 for municipalities incorporated after July 1, 1991, shall be issued before the date of incorporation of the municipality.

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the borough has received a grant for the same service. (§ 1 ch 74 SLA 1992; am § 1 ch 38 SLA 1993)

**Effect of amendments.** — The 1993 amendment, effective August 25, 1993, added subsection (c).

**Sec. 29.60.650. Definitions.** In AS 29.60.600 — 29.60.650,

(1) "essential human services" and "services" have the meaning given "social services" in AS 47.75.060 except that they include only services whose unavailability would subject persons needing the services to serious mental or physical hardship;

(2) "municipality" means a (A) city whose population is over 20,000; (B) unified municipality whose population is over 100,000; or (C) second class borough whose population is over 65,000; population for purposes of this paragraph shall be determined by the Department of Community and Regional Affairs. (§ 1 ch 74 SLA 1992; am § 2 ch 38 SLA 1993)

**Effect of amendments.** — The 1993 amendment, effective August 25, 1993, re-wrote paragraph (2).

### Chapter 65. General Grant Land.

**Section**

10. Determination of entitlement of boroughs and unified municipalities

**Section**

40. Status of entitlements

60. School and mental health land

**Sec. 29.65.010. Determination of entitlement of boroughs and unified municipalities.** (a) The general grant land entitlement of each of the municipalities in this subsection is the amount set out opposite each:

- (1) Municipality of Anchorage — 44,893 acres;
- (2) City and Borough of Juneau — 19,584 acres;
- (3) City and Borough of Sitka — 10,500 acres;
- (4) Bristol Bay Borough — 2,898 acres;
- (5) Fairbanks North Star Borough — 112,000 acres;
- (6) Haines Borough — 2,800 acres;
- (7) Kenai Peninsula Borough — 155,780 acres;
- (8) Ketchikan Gateway Borough — 11,593 acres;
- (9) Kodiak Island Borough — 56,500 acres;
- (10) Lake and Peninsula Borough — 125,000 acres;
- (11) Matanuska-Susitna Borough — 355,210 acres;
- (12) North Slope Borough — 89,850 acres.

(b) *[Repealed, § 12 ch 34 SLA 1987.]* (§ 17 ch 74 SLA 1985; am § 12 ch 34 SLA 1987; am § 1 ch 108 SLA 1994)

**Effect of amendments.** — The 1994 amendment, effective June 11, 1994, in subsection (a), added present paragraph (10) and redesignated former paragraphs (10) and (11) as present paragraphs (11) and (12), respectively.

**Sec. 29.65.040. Status of entitlements.** (a) After July 1, 1978, general grant land entitlements provided in former AS 29.18.201 and 29.18.202 are vested property rights that must be fulfilled as provided in AS 29.65.050 or 29.65.080. After January 1, 1988, general grant land entitlements provided in AS 29.65.010 are vested property rights that must be fulfilled as provided in AS 29.65.050 or 29.65.080.

(b) General grant land entitlements provided by AS 29.65.030 are property rights that vest on the date of incorporation of the municipality. The entitlement shall be fulfilled as provided in AS 29.65.050.

(c) Land may be selected or nominated for selection by a municipality to satisfy a general grant land entitlement under former AS 29.18.201 and 29.18.202 at any time before October 1, 1980. Land may be selected or nominated for selection by a municipality to satisfy a general grant land entitlement under AS 29.65.010(a)(1) — (9), (11), or (12) at any time before October 1, 1990. Land may be selected or nominated for selection by a municipality to satisfy a general grant land entitlement under AS 29.65.010(a)(10) at any time before October 1, 1996. However, if a municipal selection or nomination or a part of a municipal selection or nomination is rejected by the director, the municipality may, not later than 90 days after receipt of the rejection or final decision on an appeal filed under AS 29.65.050(d), select additional state land as necessary to satisfy its entitlement.

(d) Land may be selected by a municipality to satisfy a general grant land entitlement under AS 29.65.030 at any time within one year after the director certifies the entitlement to the municipality.

(e) The time limitations imposed by (c) and (d) of this section for exercising a vested general grant land entitlement do not apply to

(1) the portion of an entitlement that cannot be satisfied by that date because of a shortage of land suitable for residential, commercial, and industrial purposes that is vacant, unappropriated, unreserved land;

(2) payments for land deficiency under AS 29.65.080;

(3) the portion of an entitlement that cannot be satisfied because the land selected by a municipality has been selected by a party entitled to select land owned by the United States or the state; or

(4) the portion of an entitlement that cannot be satisfied because the land nominated for selection by the municipality is not tentatively approved for patent to the state. (§ 17 ch 74 SLA 1985; am §§ 4, 5 ch 34 SLA 1987; am § 3 ch 51 SLA 1991; am § 2 ch 108 SLA 1994)

**Effect of amendment,**  
subsection (c)

**Sec. 29.65.060.** (a) The purpose of this section is to determine the amount of land that must be set aside in the municipal land bank for the purposes of this chapter. (b) The amount of land shall be determined within the time period specified in AS 29.18.201 and 29.18.202. (c) Land may be selected or nominated for selection by a municipality to satisfy a general grant land entitlement under AS 29.65.010(a)(1) — (9), (11), or (12) at any time before October 1, 1990. Land may be selected or nominated for selection by a municipality to satisfy a general grant land entitlement under AS 29.65.010(a)(10) at any time before October 1, 1996. However, if a municipal selection or nomination or a part of a municipal selection or nomination is rejected by the director, the municipality may, not later than 90 days after receipt of the rejection or final decision on an appeal filed under AS 29.65.050(d), select additional state land as necessary to satisfy its entitlement.

(b) The amount of land shall be determined within the time period specified in AS 29.18.201 and 29.18.202.

(c) Land may be selected or nominated for selection by a municipality to satisfy a general grant land entitlement under AS 29.65.010(a)(1) — (9), (11), or (12) at any time before October 1, 1990.

(d) With the exception of land selected for a school or other public purpose, a general grant land entitlement shall be satisfied by the municipality. (e) The amount of land that must be set aside shall be determined by the board of land use planning. (f) The amount of land that must be set aside shall be determined by the board of land use planning. (g) The amount of land that must be set aside shall be determined by the board of land use planning.

(e) The amount of land that must be set aside shall be determined by the board of land use planning. (f) The amount of land that must be set aside shall be determined by the board of land use planning. (g) The amount of land that must be set aside shall be determined by the board of land use planning.

(f) For the purposes of this section, the amount of land that must be set aside shall be determined by the board of land use planning. (g) The amount of land that must be set aside shall be determined by the board of land use planning.

(g) Notwithstanding any other law, the amount of land that must be set aside shall be determined by the board of land use planning. (h) The amount of land that must be set aside shall be determined by the board of land use planning.

# FISCAL NOTE

STATE OF ALASKA

BILL NO. SB107

1995 LEGISLATIVE SESSION

Revision Date: Original Dept Affected: Natural Resources  
 Title: An Act relating to general grant land BRU: Resource Development  
entitlements for the Denali Borough. Component: Land Development  
 Sponsor: Senator Miller  
 Requestor: \_\_\_\_\_ Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES ( )</b>	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						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ None

POSITIONS

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)

There is no additional fiscal impact associated with this bill. Under the Municipal Entitlement Act (AS 29.65) all municipalities are entitled to 10% of all vacant, unappropriated, unreserved state land within their municipalities. This legislation would set that entitlement by law rather than an administrative certification process which is to be completed by December 31, 1995. If certified today the Denali Borough's entitlement would be approximately 51,000 acres.

This entitlement will be processed in the next ten years with existing resources. Municipalities can expedite their conveyances providing funding for the process. A rough estimate for an entitlement this size would be \$200.0.

Prepared by: Ron Swanson, Director Phone: 762-2692  
 Division: Land Date: 9-Mar-95  
 Approved by Commissioner: *Michael R. ...* Date: 3-9-95  
 Agency: Natural Resources

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# FISCAL NOTE

Revisi n Date: March 6, 1995 Dept. Affected: Community & Regional Affairs  
 Title: An Act relating to general land grant BRU: none  
entitlements for the Denali Borough Component none  
 Sponsor: Senator Miller  
 Requestor: Senator Miller COMPONENT SERIAL NO. \_\_\_\_\_

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

REVENUE FUND SOURCE: \_\_\_\_\_

FUNDING: (Thousands of Dollars)

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

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)

This legislation would provide for a land grant for the municipality of the Denali Borough of 71,000. Existing DCRA staff in the Fairbanks Regional Office could be called upon to assist the Borough in planning for such land selections. There is no incremental fiscal impact on DCRA from this bill.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708  
 Division: Division of Administrative Services Date: 3/6/95  
 Approved by Commissioner: *Mike Huva* Date: 3/6/95  
 Agency: Community & Regional Affairs

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# ALASKA STATE LEGISLATURE

## Senate Community & Regional Affairs Committee

State Capitol

Juneau, AK 99801-1182

(907) 465-4989

### MEMORANDUM

To: Members of the Senate Community & Regional  
Affairs Committee

From: Senator John Torgerson, Chairman *JT/sgn*

Subject: Senate Bill 107 (Land Grant for Denali Borough)

Date: April 14, 1995

---

During a hearing held by the Senate Community & Regional Affairs Committee on the above referenced legislation, several of you requested additional information as it pertains to the municipal entitlements program.

I have attached the background materials on this subject which have been provided by the Division of Lands in the Department of Natural Resources.

JT/sgn

cc: Senator Mike Miller

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND

3601 C STREET, SUITE 1122  
ANCHORAGE, ALASKA 99503-5947  
PHONE: (907) 762-2692

March 28, 1995

The Honorable John Torgerson  
Alaska State Senate  
State Capitol  
Juneau, Alaska 99801-1182

Re: SB 107

Dear Senator Torgerson:

At last weeks Community and Regional Affairs Committee hearing on SB 107, you asked for some background material on municipal entitlements. Enclosed is that information.

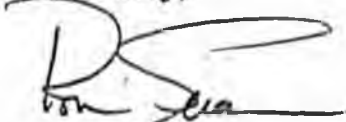
The first paper is a brief overview of the Municipal Land Act, how entitlements are determined, selection and conveyance process, history, and present entitlements.

Also included is a report on municipal entitlements done by a member of my staff in 1990. The Municipal Land Act was amended after this report was released so it is a bit dated.

I am also enclosing a report on the same subject done by the Legislative Research Agency in 1991.

Please feel free to contact me for additional information.

Sincerely,



Ron Swanson  
Director

cc: Committee Members  
Nico Bus

## MUNICIPAL ENTITLEMENT BACKGROUND INFORMATION

March 27, 1995

The Municipal Land Act has been amended by the legislature eight times since its inception in 1963. Most of the amendments were made in an effort to provide municipalities with more land (e.g., extension of deadlines or addition of new classifications to the land base from which selections could be made. Each municipality selects land for a different reason. The underlying reason for making land available, however, was to provide an economic base. The amount and quality of state land available for selection varies among municipalities. While one municipality may have a large amount of high-quality state land within its boundaries, another may have little or no state land from which to base an entitlement.

### HOW ENTITLEMENTS ARE DETERMINED

Under the 1978 Municipal Entitlement Act, boroughs and Home-Rule municipalities in existence in 1978 were granted a specific acreage of state land based on a formula that factored in population, areal extent of the municipality, and availability of state land within their boundaries.

Cities that existed in 1978 received ten percent of the vacant, unappropriated, unreserved (VUU) land within their boundaries. Because the areal extent of cities and the amount of state land within them varies, city entitlement have ranged from 0 acres (there is no state VUU land in many cities), to over 7,000 acres for both Valdez and Skagway.

The entitlement for cities and boroughs formed after 1978 is set in AS 29.65.020 as ten percent of the maximum VUU land that existed between the date of incorporation and two years thereafter.

The definition of vacant, unappropriated, unreserved (VUU) land has been changed by the legislature over time, the current definition includes all general grant land (land acquired by the state under section 6 of the Statehood Act) that is:

- unclassified land
- classified for agriculture, grazing, material, public recreation, resource management, or settlement
- has not been set aside by statute for public purposes (state parks, forests, etc.)

Classifications are based upon land use plans prepared by the department with local government participation.

VUU land does not include land acquired under the Mental Health, University, or School land grants. VUU does not include land acquired through purchase, donation, foreclosure, etc, these are known as Other State Lands. These Other State Lands can be acquired by municipalities for a specific public purpose under AS 38.05.810.

### SELECTION and CONVEYANCE PROCESS

Within 2 1/2 years after incorporation DNR determines the municipality's entitlement. The municipality then has one year to select their lands. AS 29.65.050(c) requires DNR to approve or disapprove each selection within nine months after it is selected by a municipality. DNR has not

been able to approve or disapprove all selections within this time-frame because of land status problems and lack of staff to adjudicate applications. If selections are disapproved, the municipality has 90 days to file a new selection.

Once the department approves a selection, management is transferred to the municipality. If the land is not yet patented from the federal government to the state, the state cannot issue a patent to the municipality. If the land is patented to the state but not surveyed sufficient for the state to issue a patent, the municipality is required to survey the land prior to receiving patent. Over 300,000 acres of selections have been approved to municipalities but not patented because of the lack of federal surveys or surveys by municipalities. While boroughs manage these unpatented lands, the lack of patent prevents many municipalities from selling these lands.

The total acreage committed by the legislature to municipalities under AS 29.65 is about 1.1 million acres. The state has conveyed approximately 430,000 acres. The department currently has about 315,000 acres of municipal selections from 21 municipalities pending adjudication. Boroughs have unselected obligations of over 333,000 acres.

Much of the department's current conveyance effort is directed at small, high value parcels where communities have an immediate need. These small parcels require extensive research into land title and often require DNR to mediate between conflicting claims for use of the land. At current rates of conveyance, it will be many years before all entitlement are fulfilled. Furthermore, most municipalities do not have money to conduct the surveys required to issue patents for the land.

## HISTORY

Since 1962, the legislature has granted state land to local governments. Reasons for these grants to municipalities include: to provide an incentive to form local governments, to raise money through sales or through a tax base to support local governments, and to provide land for community development and public facilities.

Early legislation that allowed for municipal entitlement to cities (1962) and later Boroughs (1963) provided little procedural guidance and resulted in many disputes between the state and municipalities over the acreage each municipality was entitled to and what lands could and could not be conveyed. The municipal entitlement issue was further compounded by the disputes between the state, Alaska Native Corporations, and the federal government regarding land claims. By 1978, thousands of acres of state land had been conveyed to some municipalities, but other conveyances were tied up in administrative and judicial appeals.

In 1978, the legislature amended the municipal entitlement act to resolve some of these disputes. Some of the major provisions of the 1978 act were:

- 1) unified and home rule municipalities were granted acreage specific land entitlement; 2) vacant, unappropriated, unreserved (VUU) land was defined;
- 3) entitlement were extended to municipalities incorporated after the act (the 10 % rule was established);
- 4) under certain circumstances, municipalities could select University, Mental Health, and School Grant lands.

In 1987, the act was amended to require recalculation of all past entitlement based upon the maximum amount of VUU lands between 1970 and 1988. This amendment was added because the state had acquired a significant amount of additional land from the federal government between 1970 and 1988. This resulted in increased entitlement for several cities. The 1987 amendments also changed the definition of VUU to include Public Recreation, Material, and Resource Management land. The act was amended again in 1990 to remove a 20 acre per capita cap, which resulted in a significant increase to the entitlement of the Northwest Arctic Borough.

### BOROUGH ENTITLEMENTS

The entitlement for all boroughs and home-rule municipalities follows. Keep in mind that the land area and the amount of land the state owns within each municipality varies significantly.

#### Legislative Entitlement established by the 1978 Act:

- Municipality of Anchorage - 44,893 acres
- City and Borough of Juneau - 19,584 acres
- City and Borough of Sitka - 10,500 acres
- Bristol Bay Borough - 2,898 acres
- Fairbanks - North Star Borough - 112,000 acres
- Haines Borough - 2,800 acres
- Kenai Peninsula Borough - 155,780 acres
- Ketchikan Gateway Borough - 11,593 acres
- Kodiak Island Borough - 56,500 acres
- Matanuska - Susitna Borough - 355,210 acres
- North Slope Borough - 89,859 acres

#### Entitlement for boroughs formed since 1978 <sup>1</sup>:

- Northwest Arctic Borough - 285,000 acres
- Aleutians - East Borough - 7,633 acres
- Lake and Peninsula Borough - 125,000 acres (set by legislation)
- City and Borough of Yakutat - 138 acres
- Denali Borough - est 51,000 acres

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<sup>1</sup> Boroughs incorporated after 1978 have generally found that the formula in AS 29.65.030 provides sufficient entitlement. The exception was the Lake and Peninsula Borough, where a large acreage of non-VUU land existed in the Borough, and the entitlement under AS 29.65.030 would have been under 29,000 acres.

# Alaska State Legislature



Legislative Research Agency

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September 26, 1991

## MEMORANDUM

TO:

FROM: Glenn T. Gray <sup>GTG</sup>  
Legislative Analyst

RE: An Overview of the Municipal Land Entitlement Program  
Research Request 92.008

You asked for an overview and analysis of the municipal land entitlement program. Specifically, you asked us to trace the history of the program back to statehood including a discussion of the rules that municipalities have had to follow to make land selections. You also asked if some municipal governments have been treated differently from others.

These matters are addressed below under seven subtopics: a summary, classification of Alaska municipalities, federal legislation that addresses municipal land selections, programs to distribute state land to municipalities, history of the municipal land entitlement program, current status of municipal land selections, and the question of whether municipalities may have received lands of different value.

### Summary

The state has utilized several programs to transfer land to municipalities, but the most renowned program is the municipal land entitlement program (AS 29.65). Through this program, the state has committed over 1,000,000 acres of land to municipalities. The Department of Natural Resources (DNR) has issued patents for about one-half of this land; the municipalities manage the remainder of the land until issued patents by the DNR.

The legislature has amended the municipal land entitlement program eight times since the inception of the program in 1963. Most of the amendments were made in an effort to provide municipalities with more land (e.g., extension of deadlines or addition of new classifications to the land base from which selections could be made).

We have no reason to believe that the Department of Natural Resources has treated any one municipality more favorably than another. The amount and quality of state land available for selection, however, varies among municipalities. While one municipality may have a large amount of high-quality

state land within its boundaries, another may have little or no state land from which to base an entitlement.

### Classification of Municipalities

Alaska statutes define a *municipality* as a "political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or a unified municipality" [AS 29.71.800(13)]. *General law municipalities* do not have a charter and include first and second class cities as well as first, second and third class boroughs.<sup>1</sup> *Home rule municipalities* are cities or boroughs that have adopted home rule charters through an election. Home rule municipalities have all powers not prohibited by statute or charter. *Unified home rule municipalities* result from the unification of a borough and all the cities within it into a single government entity (AS 29.06.190).

### Federal Legislation Concerning Land Grants For Alaska Municipalities

Several federal acts address municipal land grants in Alaska. The Alaska Statehood Act entitled the state to select up to 800,000 acres of federal land for community development and expansion (P.L. 85-508).<sup>2</sup> Another federal law (P.L. 85-303), passed in 1957, authorized conveyance of tidelands to the territory for several purposes including municipal uses. Section 14(c)(3) of the Alaska Native Claims Settlement Act (ANCSA) requires village corporations to convey land (improved land on which a Native village is located or land that is needed for expansion or rights-of-way) near Native villages to municipal corporations or to the state in trust for possible future municipalities.<sup>3</sup> This legislation was necessary because village Native corporations were required to select the core township in which they were located. The ANCSA required Native village corporations to transfer no less than 1,280 acres to a village, but this requirement was modified by the Alaska National Interest Land Conservation Act. This modification permitted the conveyance of fewer than 1,280 acres to a village with the consent of the village corporation or the state if no village corporation existed.

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<sup>1</sup>Each category of municipalities has different powers. A more complete explanation of each of these categories may be found in AS 29.04.

<sup>2</sup>Section 6(a) of the Alaska Statehood Act authorized the state to select up to 400,000 acres of national forest land and up to 400,000 acres of other vacant, unappropriated and unreserved public lands.

<sup>3</sup>The Department of Community and Regional Affairs (DCR&A) administers these lands in trust for future municipalities under the Municipal Trustee Lands Program.

### State Land Grant Programs for Municipalities

Since statehood, the Alaska State Legislature has created several means to transfer state land to municipalities. The Alaska Land Act in 1959 authorized the state to dispose of land to political subdivisions of state and federal government for public use (Section 4 Article III Chapter 169 SLA 1959).<sup>4</sup> The Alaska Land Act also gave municipalities preference rights to tidelands and submerged lands "occupied or developed for municipal business" (Section 5 Article III Chapter 169 SLA 1959). Alaska Statute 38.05.320 outlines the conditions under which tidelands may be conveyed to municipalities. Another state program, authorized in 1962, permitted any first class city to apply for conveyance of all surplus state lands within the city's boundaries (Chapter 168 SLA 1962).<sup>5</sup> Before it was repealed in 1976, this statute resulted in land grants of approximately 4,500 acres to a few municipalities. The municipal land entitlement program, enacted in 1963, is the focus of this memorandum. Most of the state land transferred to municipalities has been done through this program (AS 29.65). Attachment A contains the session laws relating to these programs.

### History of the Municipal Land Entitlement Program

The municipal land entitlement program has undergone many changes since its inception in 1963. It began as a vaguely defined program to supply communities with vacant, unappropriated and unreserved (VUU) general grant land for residential, commercial and industrial uses.<sup>6</sup> This program has since been amended eight times: in 1970, 1972, 1978, 1981, 1985, 1987 and 1991 (current statutory provisions are located in AS 29.65). The legislature enacted most of the amendments to provide more land to municipalities by extending selection deadlines, expanding the classifications of land that could be selected or by

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<sup>4</sup>Amendments to this statute changed its title from public use to public and charitable use (AS 38.05.810). While there is no limit to the amount of land that may be transferred to municipalities "for less than appraised value," land received under this authority is credited against a municipality's entitlement under the municipal land entitlement program (AS 29.65.100).

<sup>5</sup>The act defined surplus state lands as "all land owned by the state which is not presently used or for which there is no anticipated use by the state for governmental purposes" (AS 38.05.347).

<sup>6</sup>Alaska Statute 29.65.130 defines general grant land as "land patented or tentatively approved to the state from the United States under section 6(a) or 6(b) of the Alaska Statehood Act."

streamlining procedures.<sup>7</sup> Major statutory revisions to the entitlement program occurred in 1978 and 1987, but minor changes made to the statutes in other years have had important ramifications. For example, while initially only boroughs could obtain lands through the program, a minor revision of the statutes in 1972 entitled all municipalities to select a portion of the vacant, unappropriated and unreserved state land within their boundaries. Throughout the years, the amendments to the program have broadened its purpose to include the transfer of state land to municipalities for community expansion, local revenue production and local recreation opportunities.

The attached table summarizes the various changes made to the law since its adoption. The following history of the entitlement program may be supplemented by reading House Research Agency Memorandum 88.071 (Attachment B), the Governor's General Grant Land Entitlement Policy (Attachment C) and a 1990 Department of Natural Resources publication entitled Municipal General Grant Land Entitlement (Attachment D).

The 1963 legislation establishing the municipal land entitlement program authorized only organized boroughs to select 10 percent of the vacant, unappropriated and unreserved state lands located within its boundaries. The legislation specified that municipal selections were to be made "within five years after the date of availability of state lands in the borough" (Chapter 52 SLA 1963).<sup>8</sup> The legislation directed the Department of Natural Resources (DNR) to patent the land after it surveyed the exterior boundaries of the area requested for selection (at the expense of the borough). Selections were to be made in "reasonably compact tracts."

Two amendments during the next thirteen years made slight changes to the land selection program, but municipalities continued to perceive several problems with the program. Legislation enacted in 1970 removed the five-year selection deadline and opened up the program to first and second class cities (Chapter 213 SLA 1970).<sup>9</sup> In 1972, amendments combined Title 7 (Boroughs) and Title 29 (Municipalities) of the statutes into Title 29 (Municipal Government). The content of the municipal land selection statutes remained intact, but a new phrase was added:

In the selection of land under the Alaska Statehood Act, it is the policy of the state to make available to cities and boroughs the

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<sup>7</sup>Such procedures include the certification of a municipality's entitlement (i.e., the amount of acreage it could select), approval or disapproval of its selection and adjudication of selections not approved.

<sup>8</sup>Statutes authorizing the municipal land entitlement program were originally found in AS 07.10.150-160 but are now located in AS 29.65.

<sup>9</sup>A new section, AS 07.05.040, included first and second class cities in the program.

maximum land area from which to make selections under this section consistently with the best interests of the state (Chapter 118 SLA 1972).<sup>10</sup>

Some municipalities thought that a lack of a specified time frame for adjudication and conveyance resulted in the state unnecessarily delaying the transfer of land. Boroughs in Southeast Alaska wanted simpler procedures to obtain school, university and mental health trust lands. The North Slope Borough thought that it should be able to select 10 percent of the state land within its boundaries whether or not it was classified as VUU land. While municipalities wanted to speed up the selection process, the state thought that "land selections occurred on an ad hoc basis, often before the state could evaluate resources and perform its mandated land planning functions."<sup>11</sup>

The legislature further amended the law in 1978 in an effort to remove ambiguities and to accelerate the transfer of land under the municipal entitlement law (Chapter 180 SLA 1978). Before the 1978 amendments, the legislation stated that municipalities *may* select land; the new legislation considered general grant land entitlements as vested property rights. The 1978 amendments repealed the previous municipal land entitlement statutes (AS 29.18.190 and AS 29.18.200) and added 13 new sections. The new sections:

- entitled each of the eleven home rule municipalities to select a specific amount of acreage,
- permitted other existing cities to select up to 10 percent of the maximum total VUU land that was available within their boundaries between the date of their eligibility and July 1, 1978,
- entitled new municipalities to 10 percent of the VUU land within their boundaries at the date of incorporation,
- specified a deadline for obtaining entitlement (two years after expiration of the state's right to select land under the Alaska Statehood Act unless there is a shortage of VUU land available),
- directed the DNR to approve or disapprove selections and issue patents within certain time periods,
- directed the director of DNR to work with each eligible municipality to consider land which is appropriate for selection,

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<sup>10</sup>The municipal land entitlement statutes were reorganized into two new sections: AS 29.18.190 and AS 29.18.200.

<sup>11</sup>Dennis Daigger, January 1990, Municipal General Grant Land Entitlement, Department of Natural Resources.

- permitted municipalities to appeal denials of land selections,
- permitted municipalities with a per capita entitlement of less than one-half acre to select vacant school, university or mental health land,<sup>12</sup>
- provided a mechanism to give municipalities money if there is a deficiency of land available for selection or if lands selected by the municipality were also selected by a Native corporation,
- permitted municipalities to select lands that are tentatively approved for state selection by the federal government,
- stated that it is the policy of the state to select federal land to provide adequate grant land for a municipality with insufficient lands for settlement and development,
- directed municipalities in litigation with the state over previous selections to either accept the new provisions of the land grant program or to abide by the results of the litigation (thereby waiving entitlement claims under the new provision), and
- expanded the meaning of VUU land by adding new land classifications thereby making these lands eligible selection.

This legislation defined for the first time many of the pertinent terms used in the program.

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<sup>12</sup>The DNR did not consider mental health or university lands located within a municipality as VUU land and therefore did not use these lands to determine a municipalities entitlement (even though some communities were eligible to select this land). Therefore communities with university or mental health lands, but no other VUU state land received a zero entitlement. Two communities in Southeast Alaska administratively appealed the DNR's finding and one community filed suit in superior court. Although it is quite possible that a court would have ruled in favor of the state, the DNR settled the matter out of court giving these communities 10 percent of the mental health and university lands within municipal boundaries.

<sup>13</sup>The North Slope Borough decided to risk its entitlement and to continue its court action against the state. The courts decided in favor of the state and therefore the North Slope Borough lost its entire entitlement of 89,850 acres. In 1985 the legislature removed the provision in AS 29.18.211 that required a municipality to waive its entitlement if it continued to engage in an action against the state (thereby reinstating the North Slope Borough's land entitlement).

In 1979, the legislature further amended the law by changing the deadline for completion of most municipal land selections. In an effort to accelerate the process for municipal land selection, the legislature imposed a new deadline of October 1, 1980 (replacing the former deadline of two years after expiration of the state's right to select land under the Alaska Statehood Act--effectively 1996).<sup>14</sup> New municipalities or those without adequate land to select were not bound by this deadline in an effort to provide them with more time to settle their entitlement (Chapter 85 SLA 1979).

The requirement that all land had to be selected October 1, 1980 caused problems for municipalities that had selections rejected by the DNR. These municipalities were not able to select additional replacement land before the deadline. Therefore the legislature included those lands *nominated for selection* along with those lands actually selected in the 1980 deadline. The legislature also added a clause that permitted municipalities to select new land no later than 90 days after the DNR rejected other selections.

In 1985, legislation reorganized and renumbered the municipal code including the municipal land entitlement sections (Chapter 74 SLA 1985). To comply with a court decision resulting from litigation initiated by the University of Alaska Board of Regents, the legislation removed university lands from the pool of lands available to municipalities (for those municipalities with entitlements of less than one-half acre per capita).

The legislature completed the second major revision to the municipal land entitlement program in 1987 in an attempt to provide more land to municipalities and to bring the statutes in line with recent court decisions. The legislature extended the time period for calculating municipal entitlements ten years, from 1978 to 1988 (Chapter 34 SLA 1987). Extending the deadline ten years increased the entitlement for some municipalities because the state had selected more federal land during that decade. New municipalities could select 10 percent of the maximum acreage of VUU land within their boundaries from the date of incorporation until two years later. The legislation removed school and mental health lands from selections made after October 4, 1985 (this was the date of a court decision regarding mental health lands). The 1987 legislation also increased the amount of land that could be selected by a municipality by amending the definition of VUU land to include additional classifications of lands (material, public recreation, settlement, and resource management lands).<sup>15</sup> Some people feared, however, that without any restrictions, the inclusion of resource management land would encourage

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<sup>14</sup>The state's original deadline for selection of federal land was 25 years from statehood. This deadline was extended to 1994 by the Alaska National Interest Conservation Act.

<sup>15</sup>A 1985 statewide reclassification of lands changed the status of much of the unclassified lands (lands outside of boroughs or outside areas covered by an area plan) to a resource management category.

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sparsely populated areas to form boroughs solely for the purpose of obtaining land. The legislature therefore placed a 20 acre per person cap on land entitlements (the maximum that had ever been awarded to any municipality).<sup>16</sup>

The legislature removed the twenty acre per person cap during the 1991 legislative session. According to Dennis Daigger, a DNR municipal land entitlement program specialist, the Northwest Arctic Borough is the only municipality that was affected by the removal of the cap, and it is now entitled to 285,000 acres of land. The 1990 amendments direct the DNR to defer certification of entitlements until after January 2, 1994 but before January 1, 1996. After January 2, 1994 municipalities may request that certification of their entitlements be expedited. The legislation also permits the Department of Community and Regional Affairs (DCR&A) to review selections before a patent is issued, and it specifies that the DNR must consult with the DCR&A before adopting new regulations. This legislation expanded the appeal procedure by providing a hearing procedure to address selections that have been denied. It also required that selections be no longer than four times their width.

#### Current Status of Municipal Land Selection

The State of Alaska has certified land entitlements for over one million acres of land under the municipal land entitlement program (AS 29.65) and about one-half of this acreage has been patented to the municipalities. Between the time a selection is approved and a patent is issued, municipalities assume management responsibilities. According to Mr. Daigger, most of the selections from the 1978 and 1988 entitlement certification have been approved or rejected.

The 1987 amendments required the governor to establish a policy for determining additional land grant entitlements for the Northwest Arctic Borough [above the entitlement specified in AS 29.64.030(b)] and for municipalities that have been created since incorporation of the Northwest Arctic Borough. This policy, developed during the Cowper administration, restricts consideration of additional land entitlements to municipalities that have inappropriate lands in their VUU land base for purposes of expansion, revenue production, public recreation, or protection of cultural resources (Attachment C).

Land selections for new municipalities will not be certified until 1994 but will likely have either a zero entitlement or one that is far less than the

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<sup>16</sup>While the inclusion of resource management lands in definition of VUU land increased the Northwest Arctic Borough's entitlement from 13,000 to 285,000 acres, the 20 acre per person cap reduced the borough's entitlement to 133,920 acres. The 1987 legislation also contained a mandate for the governor to develop a policy for awarding additional lands to the Northwest Arctic Borough and other newly created municipalities.

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former ceiling of 20 acre per person cap. For example, the Aleutians East Borough has a large amount of state land classified for wildlife habitat and therefore it has an estimated entitlement of less than four acres per person. The Lake and Peninsula Borough entitlement will be approximately eight acres per person. The entitlement for the municipalities of Coffman Cove, False Pass and the Denali Borough are unknown but are expected to be less than the previous 20 acres per capita cap.

### Differential Treatment of Municipalities

The amount and quality of a municipality's land entitlement depends on several factors: the amount of land owned by the state within the municipality's boundaries, the quality of the land, and the acreage classified as VUU land (and therefore able to be selected). Consequently, boroughs with large amounts of VUU land within their borders (e.g., the Northwest Arctic and the Matanuska-Susitna Borough) have a proportionally larger entitlement than municipalities with smaller land bases from which to choose. Some cities have no VUU state land within their boundaries and therefore have no entitlement. The timing of a municipality's selection may have also affected its ability to select the highest quality land. As the state selected more land from the federal government, higher quality land may have become available, and municipalities which selected their full entitlement early on were prevented from selecting the higher quality land. Municipalities incorporated after the state has adopted an area plan will likely have less land to select (completion of an area plan generally reduces the amount of VUU land and therefore reduces the acreage a municipality is entitled to). According to the governor's policy,

Questions of equity often arise as specific entitlements for municipalities are compared. The municipal entitlement law was never intended to work equitably for all municipalities, but rather was a vehicle for the state to share its land wealth with communities that had state general grant land within their boundaries (p. 4).

We found no evidence the DNR has shown favoritism to certain municipalities. The department, however, did reach a compromise with some municipalities that contested the department's rejection of land selections rather than to continue court proceedings.

Almost any change to selection deadlines, time periods for determining entitlements, or the types of land that may be selected will affect municipalities selectively, which may give rise to the perception of differential treatment. For example, the 1963 statute permitted only boroughs to select land under the municipal land entitlement program (other municipalities were not included in the program until 1970). The 1978 amendments to the municipal land entitlement program gave the 11 unified home rule municipalities specific acreage entitlements while other municipalities

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were entitled to only 10 percent of the VUU land.<sup>17</sup> The 1978 amendments also treated some municipalities differently by permitting those municipalities with less than one-half acre per person to select university or mental health lands. Throughout the history of the program, the definitions of VUU land changed and generally municipalities fared better if they waited to select their land until these changes were made (e.g., inclusion of resource management lands as part of lands that could be selected).<sup>18</sup> Additionally, the twenty acre per capita cap instituted in 1987 treated the Northwest Arctic Borough differently in so far as it reduced the borough's entitlement to less than 10 percent of the VUU lands within its border. Likewise, the repeal of the 20 acre cap in 1990 might be perceived by some municipalities as special preference for the Northwest Arctic Borough because its entitlement increased from 133,920 to 285,000 acres.

A detailed analysis of the equity of the program is beyond the scope of this memorandum. It appears, however, that an equal distribution of similar quality land to all municipalities was not an objective of the municipal land entitlement program.

I hope that this memorandum answers your questions. Please contact this agency if we may be of additional assistance.

Attachments

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<sup>17</sup>Certain factors such as population size and the extent of state land available were part of a complex formula used to arrive at the acreage available to the eleven unified home rule municipalities. Two of these municipalities (Anchorage and the Kodiak Island Borough), however, did not have enough VUU land to select the amount of acreage specified.

<sup>18</sup>This action increased the amount of land that the Northwest Arctic Borough could select.

## Legislative History of the Municipal Land Entitlement Program

Year	Action	Session Law	Statute
1959	Alaska Land Act permits state to dispose of land at less than appraised value. The act also gives municipalities rights for certain tidelands.	Ch 169	38.05.810 38.05.320(b)
1962	Alaska Land Act amended to permit 1st class cities to acquire "surplus state lands."	Ch 168	38.05.347
1963	Mandatory Borough Act permits organized boroughs to select up to 10% of the vacant, unappropriated & unreserved (VUU) land within the borough within 5 years after the lands are available. This act creates the municipal land entitlement program.	Ch 52	07.10.150 07.10.160
1970	Five-year selection deadline removed. 1st and 2nd class cities also eligible to select land.	Ch 213	07.10.150 07.05.040
1972	Title 7 (Boroughs) & Title 29 (Municipal Corporations) combined into Title 29.	Ch 118	29.18.190 29.18.200
1976	Legislature repeals the 1962 program to transfer state land to municipalities (AS 38.05.347).	Ch 218 Ch 257	
1978	First major revision to the municipal land entitlement program. Land entitlements become a vested property right & some municipalities may be paid for land that they are unable to receive. The 11 unified home rule municipalities and boroughs are allotted specific acreages above the 10% limit. Some municipalities are permitted to select university & mental health trust lands. VUU lands are defined. Selections must be made within 2 years after state selection of federal lands.	Ch 180	29.18.201- 29.18.213
1979	A court decision cancels the North Slope Borough's selections. Several Southeast communities challenge the DNR determination that mental health lands not be used as part of entitlement calculation. DNR settles out of court.		
1979	Deadline for selections changed from 1996 to 1980.	Ch 85	29.18.204
1981	Selection deadline of 1980 amended to include parcels nominated for selection and that new selections be made up to 90 days after initial ones are denied by the DNR.	Ch 113	29.18.204

program. Land encumbrance becomes a right & some municipalities may be paid for land that they are unable to receive. The 11 unified home rule municipalities and boroughs are allotted specific acreages above the 10% limit. Some municipalities are permitted to select university & mental health trust lands. VUU lands are defined. Selections must be made within 2 years after state selection of federal lands.

1978 A court decision cancels the North Slope Borough's selections. Several Southeast communities challenge the DNR determination that mental health lands not be used as part of entitlement calculation. DNR settles out of court.

1979 Deadline for selections changed from 1996 to 1980.

Ch 85

29.18.204

1981 Selection deadline of 1980 amended to include parcels nominated for selection and that new selections be made up to 90 days after initial ones are denied by the DNR.

Ch 113

29.18.204

## Legislative History of the Municipal Land Entitlement Program

Year	Action	Session Law	Statute
1985	Municipal land entitlement statutes are reorganized & renumbered. Selection of university lands is no longer permitted.	Ch 74	29.65-010- 29.65.140
1985	DNR reclassifies state land outside boroughs & area plans as resource management lands.		
1987	Time period for determination of entitlements extended. Maximum of 20 acres per person may be selected by new municipalities. Northwest Arctic Borough's entitlement is a partial entitlement. Mental health lands selected after Oct. 4, 1985 are not approved. Resource management lands may be selected. North Slope Borough entitlement lost as a the 1978 court case is reinstated.	Ch 34	29.65
1991	Legislature repeals 20 acres per person limit. Hearing procedures are established.	Ch 51	29.65

Sources: Alaska Statutes, House Research Memorandum 88.071 and the Municipal General Grant Land Entitlements, January 1990, Department of Natural Resources

Prepared by the Legislative Research Agency, September 1991 (92.008)

amended to include:

1994	Legislature increases Lake and Peninsula Borough entitlement from 11,000 to 125,000 acres	Ch	29 55
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A SPECIAL REPORT

MUNICIPAL GENERAL GRANT  
LAND ENTITLEMENTS

A State-Municipal Partnership

DEPARTMENT OF NATURAL RESOURCES  
Division of Land and Water Management

January 1990

Prepared by Dennis P. Daigger

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## INTRODUCTION

Decades of neglect by the federal government, resource exploitation by corporations and individuals outside Alaska and a lack of control of their destiny instilled in the fifty-five drafters of the Alaska Constitution a unique vision of what would become America's 49th state. The observations and experiences of the residents of the territory who were self-reliant and independent would manifest themselves throughout the constitution. Nowhere are these concepts more evident than in Article X of the constitution where the relationship between state government and local government are unselfishly defined.

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

SECTION 3. The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

The delegates having been deprived of the right of self determination, thoughtfully remembered territorial governance and conferred autonomy and broad powers on municipalities of Alaska through the constitution. By offering incentives to encourage municipal incorporations, the State of Alaska furthers the goal of maximum local self-government contained in Article X.

Since 1962, one of these incentives has been receipt of state general grant land within the boundaries of the local government thereby providing a means of creating or expanding a tax base, a means to generate revenue through land sales and leases, a land base for community expansion and a land base for other public purposes.

In addition to these general grant land entitlements, municipalities can acquire otherwise unavailable state land under the public and charitable use statute (AS 38.05.810). Land acquired under this statute must be used for a public purpose that is available to the public at large. However, if the

municipality receiving the land has an outstanding municipal land grant entitlement, the acreage of the conveyance is subtracted from this balance.

Tide and submerged lands are the last category of state land made available to cities who were incorporated on or before the date of statehood. Under rigid guidelines established in the Alaska Land Act, cities could acquire tidelands adjacent their boundaries. This provision was codified AS 38.05.320.

## BACKGROUND: MUNICIPAL LAND GRANTS

### Legislative History

Alaska's first municipal land entitlement was created in 1962 when a new section was added to the Alaska Land Act. This section stated:

Any city of the first class may apply in the manner prescribed by the director, within five years from the effective date of this Act, for a conveyance to the city of all surplus state lands located within the present boundaries of the city. "Surplus state lands" means all land owned by the state which is not presently used or for which there is no anticipated use by the state for governmental purposes.

This act, codified AS 38.05.347, although containing scant procedural guidance, resulted in the conveyance of thousands of acres of state land to a small number of municipalities throughout the state. This law was repealed June 21, 1976.

In 1963 the state legislature enacted the "Mandatory Borough Act". This act was unrelated to the Alaska Land Act but, like AS 38.05.347, created opportunities for municipalities to acquire state land for their local use. The intent of this act (ch 52, SLA 1963) was "to provide maximum local self-government" and caused the creation of numerous boroughs statewide. These boroughs encompassed the populated areas of the state. Although boroughs could not opt out of organizing, some local options existed in the law, such as final location of the municipal boundaries. The act, additionally, provided incentives in the form of cash grants and grants of state land.

Unlike the 1962 act, the "Mandatory Borough Act" (codified AS 07.10.150) provided a formula for the amount of the state land grant entitlement.

This act provided:

(that) "an organized borough may select 10 per cent of the vacant, unappropriated, unreserved state lands located within its boundaries within five years after the date of

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availability of state lands in the borough."

The act also provided certain necessary procedural guidance for the selection, survey and conveyance of these entitlement lands.

Several changes to the law were eventually enacted. In 1970 Chapter 213, SLA 1970 removed the five year selection deadline, and extended general grant land entitlements to first and second class cities by adding AS 07.05.040. In 1972 AS 07.10 was renumbered to AS 29.18.

Fifteen years of disputes between municipalities and the state over interpretation of the law culminated in the first major amendment to AS 29.18 in 1978. Some of the more important disputes illustrate the range of problems faced by the program.

-Land selections by municipalities had no time frames for adjudication and conveyance. Municipalities felt that the state deliberately dragged its feet on selections that it wanted to retain and that after approving selections that the conveyances were unnecessarily delayed.

-Southeast boroughs believed that getting concurrence of the land trust boards for conveyance of university, mental health and school trust lands was an unduly cumbersome process.

-The North Slope Borough had selected resource management and industrial lands at Prudoe Bay which were rejected in the state's interests.

-When municipalities selected agricultural lands they received only the agricultural interest. These lands often were more valuable for subdivisions and other uses than as agricultural land and municipalities wanted more than just the agricultural interest.

-Municipal land selections occurred on an ad hoc basis, often before the state could evaluate resources and perform its mandated land planning functions.

-Contention by the North Slope Borough that they have an absolute right to select 10 percent of the state land within their boundaries, irrespective the land classification.

Features of the new law were:

1) Unified home rule municipalities and all boroughs were granted acreage specific entitlements;

2) "vacant, unappropriated, unreserved" (VUU) land was now statutorily defined based on a two part test: 1) the grant type

under which the state acquired the land from the federal government and 2) the state's land classification system;

3) General grant land entitlements were limited to general grant land that the state acquired under sections 6(c) and 6(b) of the Statehood Act;

4) Entitlements were fixed as of July 1, 1978, based on the state's VUU land base on that date;

5) Entitlements were extended to municipalities incorporated after July 1, 1978, and a method of computing these entitlements was established;

6) Entitlements became vested property rights and could be fulfilled at any time before two years after the state's right to select federal land under 6(a) or 6(b) of the Statehood Act expired;

7) Selections must be approved or disapproved within nine months of selection and further patent issuance must occur within three months of survey plat approval;

8) Municipalities with an entitlement of less than one and one-half acre per capita could select vacant school, university or mental health trust lands;

9) Deficiency payments were established for municipalities whose entitlement land bases were unsuitable for residential, commercial or industrial purposes;

10) Authority for land exchanges between municipalities and the state when in the public interest was established;

11) Municipalities in litigation with the state over general grant land entitlements had to elect to benefit under the new law or receive the fruits of the litigation, but not both; and;

12) A comprehensive and detailed definitions section was added.

For the first time, a detailed and clear law existed, specifying important policies and procedures, under which general grant land entitlements would be administered.

In 1979, AS 29.18 was amended so that entitlements could no longer be fulfilled by selections filed up to two years after the state's selection rights with the federal government expired, but now must be made prior to October 1, 1980.

In 1981, to ensure that all entitlements were fulfilled, amendments gave municipalities 90 days to re-select new land upon rejection of a previous selection. This was necessary because in law a selection deadline had been established.

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In 1985 university trust land was removed from the group of lands available to a municipality with a per capita entitlement of less than one and one-half acres. This resulted from successful litigation by the University Board of Regents against the state over management of its land trust corpus.

In 1985 AS 29.18.201 - 29.18.205 were repealed effective January 1, 1986. These sections were the major provisions of the general grant land entitlement law. They were, however, replaced with the same provisions that were renumbered AS 29.65.010 - 29.65.140.

In 1987 the most recent amendments to the law occurred. The major provisions of the new law are:

1) Expands general grant entitlements to capture all state VUU land within the municipal boundaries between September 16, 1970 and January 1, 1988;

2) Bases entitlements of cities and boroughs incorporated after July 1, 1978, on the maximum amount of VUU land within their boundaries between incorporation and two years thereafter;

3) Establishes upper limit of entitlements to newly incorporated municipalities not to exceed 20 acres per capita based on the population of the municipality on the date of incorporation;

4) Extends selection deadline of boroughs and unified home rule municipalities listed in AS 29.65.010 to October 1, 1990.

5) Invalidates all selections of school or mental health trust lands occurring after October 4, 1985 the date of the mental health land trust litigation decision;

6) Prohibits a municipality from trading entitlement land for federal subsurface rights or any interest in the Arctic National Wildlife Refuge;

7) Categorizes material and public recreation classified land as VUU;

8) Categorizes resource management classified land as VUU if the classification occurred on or after September 1, 1983;

9) Specifies that the new entitlement for the Northwest Arctic Borough is a partial entitlement. Additional entitlement for the Northwest Arctic Borough and municipalities incorporated after the Northwest Arctic Borough depends upon the governor's recommendation to the legislature, after completion of the Northwest Area Plan, for additional entitlement consistent with

his general grant land entitlement policy.

10) Reinstates the 89,850 acre entitlement to the North Slope Borough lost through litigation in 1978.

A brief discussion of Alaska's statehood land grant entitlement will help focus the parallel municipal general grant land entitlements. The Alaska Statehood Act granted land entitlements to the state under sections 6(a) and 6(b) totaling 103,350,000 acres to be selected from the federal public domain. In 1962, when the state enacted the first municipal entitlement law, less than eight million acres of the statehood entitlement had been received from the federal government. There were less than 40 municipalities in the state at that time. Up until the 1978 law, a municipality was entitled to select 10% of the VUU land within the municipality without a date final for fulfilling that entitlement. This appears to have been intended as an ongoing process so that as the state received more of its entitlement, the municipality could continue to select 10% of that which was VUU.

The 1978 law, for the first time established date certain time lines. The pool of land from which to compute the 10% of VUU entitlement was limited to land within the municipal boundaries between the first date of eligibility for each municipality (September 16, 1970, or date of incorporation which ever came later) and July 1, 1978. The deadline for selection was, however, set two years after expiration of the state's selection rights from the federal public domain. The state's selection deadline was 25 years from statehood (1984). The Alaska National Interest Lands Conservation Act (ANILCA) extended this by ten years to 1994.

In 1978 the state had received about 35 million acres of its entitlement. The 1978 city certifications resulted in an allocation of 7,727 acres to 19 qualifying cities and 861,608 acres to 11 unified home rule municipalities and boroughs. A total of 869,335 acres of state land were granted to municipalities under the 1978 law.

Entitlement acreages for unified home rule municipalities and boroughs contained in AS 29.18.201, as amended in 1978, did not always represent fulfillable entitlements. When the state legislature was considering provisions to be incorporated into the AS 29.18 amendments, they established acreage entitlements for each of the unified home rule municipalities and boroughs based on a complicated scheme that considered population, areal extent and availability of state land within the municipal boundaries. The Municipality of Anchorage and the Kodiak Island Borough had considerably less state VUU land within their boundaries than was needed to meet the statutory entitlement.

The Municipality of Anchorage received \$4,000,000 as deficiency payment under AS 29.18.208 for 4,000 acres of entitlement land and in 1985 entered into an agreement with the state to zero out

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a yet unfulfillable entitlement with 4,628 designated acres of state land within the municipal boundaries. Prior to the agreement, 20,671 acres of land had been approved or patented to the municipality. Under the settlement Anchorage can also receive up to 1,000 acres of National Forest Community Grant land at Girdwood if land is ever conveyed to the state.

The Kodiak Island Borough likewise entered into an agreement with the state to zero out its entitlement with 48,700 designated acres of state land within their boundaries. As part of the agreement the borough would return to the state 3,069 acres of the 13,960 acres of land that had been patented or approved for patent prior to the agreement. The borough would also receive up to 17,800 acres of land under selection by ANCSA corporations if the land was ever available to the state.

The amount of additional state land granted to cities by the 1987 amendments is 11,892.3 acres. The state had about 80 million acres of its entitlement in 1987. The major affect of the new law, however, is re-establishing a 1978, 89,850 acre entitlement to the North Slope Borough and increasing the 13,000 acre entitlement certified under the old statute to the new Northwest Arctic Borough to 133,920 acres. In round figures about 236,000 acres of state VUU land will be conveyed to two boroughs and nine cities under the 1987 law.

### VUU Land Definitions History

Between 1963 and 1978, municipal entitlement selections were limited to "vacant, unappropriated, unreserved land". It appears, by extension of application, that state administrators conceptually adopted the similar guidelines used by federal administrators when statehood land selections were being adjudicated. Neither statutory nor policy definitions existed for VUU land and as a result municipalities and the state disagreed about whether specific parcels of land were VUU.

In 1978, the amended law adopted specific definitions for VUU land.

Following were the limitations placed on this definition:

- 1) Land must be Statehood Act section 6(a) or 6(b) land that has been patented or tentatively approved to the state and excludes the mineral estate;
- 2) Land cannot have been set aside by statute for one or more particular uses or purposes;
- 3) Land must be unclassified or if classified is classified agricultural, grazing, commercial, industrial, private recreational, residential, utility or open-to-entry.

The definition of VUU land specifically excluded minerals citing section 6(i) of the Statehood Act. Section 6(i) was incorporated into the Alaska Land Act as AS 38.05.125.

Thus, "VUU" was defined clearing the way to settling many of the disputes between the state and municipalities. All of the classifications that are defined VUU are categories which the state was already allowed to dispose of by law. In 1983 the state's land classification regulations were changed so that commercial, industrial, open-to-entry, private recreation, residential and utility classifications were subsumed by a new 'settlement' classification. The effect was that unclassified land, settlement land, grazing land and the agricultural interest in agricultural land were available to municipalities for fulfillment of entitlement.

In 1987 three additional categories were added to the list of VUU classifications: 1) material; 2) public recreation; 3) resource management if classified as such on or after September 1, 1983.

#### 1978 Entitlement Status

On July 1, 1978, there were 139 cities incorporated under state law. Certifications of entitlement under ch 180, SLA 1978, resulted in 19 cities receiving entitlements totalling 7,727 acres.

In 1978 the legislature redesignated university and mental health trust land state general grant land (Chap 182, SLA 1978). Based on what they believed to be representations by DNR that these lands would now be, not only general grant land, but also VUU available for entitlement computation as well as available for fulfillment of entitlement. Three cities in Southeast Alaska certified as "zero entitlement" believed that the department erred in the certifications because redesignated mental health trust land as general land statewide was not included as part of the land base within their corporate boundaries for the certification process. Petersburg filed suit in State Superior Court (1JU-78-1109 civ) and Kupreanof and Wrangell administratively appealed their zero entitlement certifications. The state reached an agreement with Petersburg and granted 10% of the mental health lands within their boundaries to the city. This amounted to 461.27 acres of land. The conveyances were under the authority of AS38.05.315(a) [renumbered AS 38.05.810].

As resolution of the other two appeals, the department extended the terms of the Petersburg settlement. Kupreanof received 180.82 acres of mental health land and Wrangell received 310 acres of mental health land.

Although all land selections for municipalities with entitlements from the 1978 law are in place, somewhat less than half of the

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land has been patented to them. The state cannot convey land to a municipality until the federal government has patented the land to the state. However, all 1978 municipal selections have, with few exceptions, been approved or rejected. When the state approves a selection, the municipality assumes management responsibility as if it owned the land. By statute municipalities can create third party interests on approved selections prior to patent with the approval of the director. The director generally confers broad management authority to a municipality on an approved selection, unless there is an overriding public interest requiring continued involvement by the state.

1988 Entitlement Certification Results

Between the 1978 round of certifications and the 1987 amendments to AS 29.65, eight cities incorporated under state law. Only Thorne Bay had state general grant land within its boundaries that was VUU and in 1982 their entitlement was established at 612 acres. This was in error and was corrected to the proper figure of 675 acres in the 1988 certification.

Three other cities received land from the state during the period July 1, 1978, to January 1, 1988. Tenakee Springs had entered into an agreement in 1977 with Alaska Lumber and Pulp Company (AL&P) and the Department of Natural Resources. The purpose of the agreement was to "permit the proposed operations [AL&P timber contract with the USFS on Chichagof Island] to proceed in a climate of consensus and cooperation". The state's obligation in the agreement was:

"The state will convey to the City title to any selected lands conveyed to the State by the Bureau of Land Management, except that the State may retain title to those sites necessary for present or anticipated essential public purposes. The State will convey to the City all tidelands and submerged lands within or subjacent to the Sunny Cove dump, and will expeditiously consider the City's application for conveyance of other tidelands and submerged lands adjacent to any selected lands conveyed to the State by the Bureau of Land Management."

The state's part of the agreement was not carried out and in 1980 Tenakee Springs filed suit against the state in State Superior Court (1JU-80-1666). An out of court settlement resulted in a split of the state lands within the city boundaries, granting the city 2,958 acres and leaving in state ownership 1,027 acres.

Whittier sought and received a legislative grant of state land. Under chap 73, SLA 1984 Whittier received 600 acres of state general grant land within its boundaries.

Pelican sought and received a legislative grant of 8.863 acres of state land under Ch 53, SLA 1985.

The amendments to AS 29.65 in 1987 resulted in certifications of new or enhanced entitlements to nine cities of the 147 cities in existence on January 1, 1988. Kupreanof, Petersburg, Pelican, Tenakee Springs, Whittier and Wrangell each had state general grant land within their boundaries that were VUU. The previous agreements, settlements and legislation, however, resulted in the entitlements being certified at zero acres. The conveyances to Kupreanof, Petersburg and Wrangell were done under the authority of AS 38.05.810 and as provided in AS 29.65.100(c) if a municipality with an entitlement is conveyed land under .810 it may be charged against the entitlement. Wrangell administratively appealed this certification because the amount of land that they received in 1978 was less than 10% of the VUU land that was available for the 1988 certification. The director reconsidered the facts and agreed with the City of Wrangell that their entitlement should be the full 10 percent of the VUU land within the city boundaries.

## BACKGROUND: TIDELAND CONVEYANCES TO MUNICIPALITIES

### Legislative History

In addition to the general grant land entitlements, qualified cities within Alaska have been conveyed tide and submerged land. To understand the purpose of these conveyances of public trust land it is necessary to review federal mandates for management of tide and submerged land prior to Alaska's admission into the Union.

By act of Congress, on May 17, 1884, Alaska was established as a judicial district with a governor and district court system. The general law of Oregon was applied to the district under this act.

On May 14, 1898, Congress passed an act extending the homestead laws to the District of Alaska and providing for right of way for railroads within the district. The act declared that "all such rights to [tide lands and beds of any navigable waters] shall continue to be held by the United States in trust for the people of any state or states which may hereafter be erected out of said District [Alaska]."

The Organic Act, approved by Congress August 24, 1912, created the Territory of Alaska and granted the new territory legislative powers through an elected legislative assembly. The Organic Act further extended the Constitution of the United States and all laws not locally inapplicable, to the Territory of Alaska.

Thus territorial tidelands constituted a federal trust early in

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lease or sale. Additionally, permanent improvements were not authorized to be constructed upon tide and submerged land.

The importance of improved tidelands to the vitality of the territory's economy and the health of its people is readily apparent. It was a territory whose economy, mobility and recreation were intimately tied to the sea. Log transfer facilities, seafood processors, municipal docks, private boat ways and even residences were partially or wholly constructed on tidelands with no method for individuals or businesses to acquire proper authorization for use. The need for these activities was readily recognized by the federal managers. However, the mechanism for authorizing such use was non-existent.

In full recognition of these shortcomings, Congress enacted a law on September 7, 1957 (P.L. 85-303), that conveyed tidelands adjacent surveyed townsites to the territory. The conveyance was for tidelands and all improvements and natural resources between the line of mean high tide and the pierhead line. The pierhead line was defined as a "line parallel to the existing line of mean low tide at such distance offshore from the line of mean low tide that encompasses to the landward all stationary, manmade structures in existence as of February 1, 1957". Under this law acceptance by the Secretary of Interior of new townsite surveys effected conveyances of attendant tidelands to the territory.

The act authorized the territory to manage and dispose of any tract of tidelands acquired under the act for municipal, business, residential or other beneficial purposes. A tidelands occupant or the occupant's successor in interest had a preference right to acquire an improved tract if a disposal occurred. These improved tracts could be conveyed to the incorporated town or school district. However, if this occurred, the town or school district must accord any occupant a preference right in any disposals contemplated in the future.

The Army Corps of Engineers was given the authority to establish pierhead lines for all surveyed townsites to enable conveyances to the territory. This process was initiated soon after passage of the act. Alaska's statehood interrupted this process with the conveyance of all tide and submerged land under section 6(m) of the statehood act to the new state.

The Alaska Legislature incorporated specific language in the Alaska Land Act to recognize and implement the provisions of the September 7, 1957, federal law. The provisions were soon codified AS 38.05.320(b).

The Alaska Land Act (ch 169, SLA 1959) section 5(c) enabled the conveyances of tidelands to municipal corporations. Qualifications in the act were:

1) The corporation must have been incorporated on or before January 3, 1959;

2) Tidelands subject to conveyance lay between the mean high tide line and the pierhead line, the harbor line or in their absence, a line subject to the approval of the director;

3) The corporation had to prepare a plat of the area conveyed showing all structures and improvements thereon and each tract that was occupied or developed with the owner or claimant noted; and,

4) The corporation had to recognize preference rights for occupied and developed tracts.

The tidelands conveyances to municipal corporations were mandatory and gave the department few discretionary powers over the process.

An amendment to AS 38.05.320(b) occurred in 1964 (ch 81, SLA 1964) when "municipal corporation" was changed to "(h)ome rule cities and cities of the first class." These cities had to have been incorporated on or before April 1, 1964, in order to qualify.

Another amendment to AS 38.05, although unrelated to AS 38.05.320(b), did provide for another type of tidelands conveyance to municipalities. Chapter 108, SLA 1974 (codified AS 38.05.323) allowed home rule and general law municipalities to apply for tidelands between mean high tide and mean low tide adjacent public recreation area facilities if the facility was developed under the terms of P.L. 507 (70 Stat. 130) and it was conveyed from the state to the municipality.

Under AS 38.05.320(b) 25,224.3 acres of tidelands were conveyed to 28 cities from Barrow to Saxman. Apparently no tidelands have been conveyed under AS 38.05.323.

## GENERAL GRANT LAND ENTITLEMENT DISCUSSION

There are three categories of general grant land entitlements under AS 29.65:

1) A specified statutory entitlement (AS 29.65.010) for unified home rule municipalities and organized boroughs;

2) 10% of the maximum total acreage of vacant, unappropriated, unreserved (VUU) land within the boundaries between September 16, 1970 and January 1, 1988 for cities incorporated as of July 1, 1978 (AS 29.65.020); and

3) 10% of the maximum total acreage of VUU land within the boundaries between date of incorporation and two years after that

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date for cities incorporated after July 1, 1978 (AS 29.65.030).

The governor's general grant land entitlement policy required by Section 11, Chapter, 34 SLA 1987 only affects the Northwest Arctic Borough and other municipalities incorporated after formation of the Northwest Arctic Borough (incorporated June 2, 1986). Thus, only general grant land entitlements pursuant to AS 29.65.030 for municipalities incorporated on or after June 2, 1986 will be affected by this policy document.

Section 2 ch 34 SLA 1987 significantly amended AS 29.65.030 by adding a new upper entitlement limit based on municipal population on the date of incorporation. This limit was imposed to help dissuade formation of municipalities for the sole purpose of obtaining large general grant land entitlements from the state. Since all densely populated areas of the state are presently incorporated, newly incorporated areas will generally be rural in character. State land within these areas is often not well suited for development or other municipal purposes. Creating large entitlements to be fulfilled from the state's rural land base may not be in the state's interests.

The per capita limit was established at 20 acres based on the highest per capita entitlement to any municipality statewide created by the 1978 amendments to the municipal entitlement law. The Matanuska-Susitna Borough has an entitlement of 355,210 acres which is about 20 acres per capita based on the population of the borough in 1978.

From inception, the municipal entitlement law has undergone a gradual philosophical broadening of purpose. Where the early versions of the law were focused on making land available that was suitable for development for residential, commercial or industrial use, the most recent version of the law shifts to include public purpose land. This shift occurs through inclusion of public recreation classified land in the categories of land available to municipalities.

## PURPOSES FOR GENERAL GRANT LAND ENTITLEMENTS

The central theme of municipal entitlements today is to provide land to municipal corporations for the purposes of:

- 1) Siting public facilities/aiding community expansion;
- 2) Providing a means of revenue production through sales or lease which also expands the municipal tax base; and;
- 3) Providing local public recreation opportunities.

The provisions of Alaska Native Claims Settlement Act (ANCSA) defeated state's title to selected and tentatively approved land within the vicinity of ANCSA village corporations. This results in extremely limited or totally absent state land bases in or near ANCSA cities (population centers) for a new borough to realize the first two purposes. The provisions of ANCSA 14(c)(3) do however, compensate for this shortcoming by requiring that an ANCSA village corporation convey up to 1,280 acres of land to the municipal corporation. This provision includes title to the remaining surface estate of the improved land and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other foreseeable community needs.

The results of AS 29.65 and ANCSA must be viewed together. If the land available under these two laws is insufficient to fulfill municipal land entitlement purposes, and other state land unavailable under AS 29.65 will meet the needs, then the municipality may make a written request, including justification, to the Department of Natural Resources for the specific additional land which increases their entitlement.

## SUMMARY

The State of Alaska in furtherance of the goal of maximum local government committed in 1978 7,727 acres of state land to 19 cities and another 861,608 acres to 11 unified home rule municipalities and boroughs. With few exceptions land selections have been approved and the municipalities actively manage this land base of nearly 870,000 acres.

New incorporations after 1978 resulted in another 14,000 acres of entitlement to one city and one borough.

The 1987 amendments to AS 29.65 created new entitlements for two cities totalling over 1,200 acres, reestablished an 89,850 acre entitlement for a borough and expanded entitlements for seven cities and one borough for over 130,000 new acres.

Over 1,000,000 acres of state land have been committed under AS 29.65 to 41 municipalities statewide for local use. The state has patented nearly 430,000 acres of uplands to 48 municipalities since statehood and 25,000 acres of tidelands to 28 cities.

As the current trend toward more borough incorporations continues, general grant land entitlements promise to play a role in the viability of the new municipalities in a difficult economic environment.

MUNICIPAL ENTITLEMENT CERTIFICATION SUMMARY

<i>City</i>	<i>1978 Entitlement</i>	<i>Other Entitlement</i>	<i>1988 Entitlement</i>	<i>New Acres Under Ch34,SLA 1987</i>
<i>Anderson</i>	0.0	0.0	1,182.0	1,182.0
<i>Bethel</i>	40.0	0.0	0.0	
<i>Cordova</i>	235.0	0.0	0.0	
<i>Delta Junction</i>	400.0	0.0	481.8	81.8
<i>Dillingham</i>	1.0	0.0	0.0	
<i>Fairbanks</i>	15.0	0.0	0.0	
<i>Homer</i>	16.0	0.0	0.0	
<i>Hoonah</i>	15.0	0.0	0.0	
<i>Houston</i>	405.0	0.0	0.0	
<i>Kenai</i>	307.0	0.0	0.0	
<i>Ketchikan</i>	0.5	0.0	4.0	3.5
<i>Kodiak</i>	32.0	0.0	0.0	
<i>Kupreanof</i>	0.0	180.8	0.0	
<i>North Pole</i>	0.5	0.0	0.0	
<i>Ouzinkie</i>	240.0	0.0	0.0	
<i>Pelican</i>	0.0	8.9	0.0	
<i>Petersburg</i>	0.0	461.3	0.0	
<i>Port Alexander</i>	0.0	0.0	53.0	53.0
<i>Port Lions</i>	35.0	0.0	0.0	
<i>Seward</i>	562.0	0.0	565.0	3.0
<i>Skagway</i>	500.0	0.0	7,977.0	7,477.0
<i>Soldotna</i>	14.0	0.0	0.0	
<i>Tenakee Springs</i>	0.0	2,958.0	0.0	
<i>Thorne Bay</i>	0.0	612.0	675.0	63.0
<i>Valdez</i>	4,805.0	0.0	7,593.0	2,788.0
<i>Whittier</i>	0.0	600.0	0.0	
<i>Wrangell</i>	0.0	310.0	551.0	241.0
<i>Yakutat</i>	104.0	0.0	0.0	
<b>TOTALS</b>	<b>7,727.0</b>	<b>5,131.0</b>	<b>19,081.8</b>	<b>11,892.3</b>

TABLE 1

CONVEYANCE SUMMARY: UNIFIED HOME RULE MUNICIPALITIES AND BOROUGHS

CONVEYANCES BY AUTHORITY

City or Borough	Incorp	.347	AS 07	AS 29	.810	.320	Legislative	Other
<i>Aleutians East Borough</i>	Oct-37							
<i>Bristol Bay Borough</i>	Oct-52			2,872.7				
<i>City &amp; Borough of Juneau</i>	Jul-70			3,822.9	11.1	852.9		
<i>City &amp; Borough of Sitka</i>	Dec-71	1.8		1,290.3	8,084.6	194.5		0.8
<i>Fairbanks North Star Borough</i>	Jan-54			83,984.9	44.9			
<i>Haines Borough</i>	Jul-58			1,082.3				
<i>Kenai Peninsula Borough</i>	Jan-54			79,208.0	131.9			117.0
<i>Ketchikan Gateway Borough</i>	Sep-53			4,033.3				
<i>Kodiak Island Borough</i>	May-53			11,854.0	14.3			
<i>Lake &amp; Peninsula Borough</i>	Apr-89							
<i>Matanuska-Susitna Borough</i>	Jan-54		40.3	201,823.4	400.3			79.3
<i>Municipality of Anchorage</i>	Sep-75	331.1		12,883.7	5,897.1	1,328.5		1,258.4
<i>North Slope Borough</i>	Jul-72							
<i>Northwest Arctic Borough</i>	Jun-88							
<b>TOTALS</b>		<b>392.9</b>	<b>40.3</b>	<b>402,133.6</b>	<b>12,614.1</b>	<b>2,375.9</b>	<b>0.0</b>	<b>1,453.3</b>

TABLE 2

CONVEYANCE SUMMARY: CITIES

CONVEYANCES BY AUTHORITY

City or Borough	Incorp	.347	AS 07	AS 29	.810	.320	Legislative	Other
Aniak	May-72				24.6			
Barrow	Jan-59					870.0		
Eathel	Jan-57	82.1		5.0	317.0			42.4
Cordova	Jan-09			0.5		321.7		
Craig	Jan-22				18.2	73.0		
Delta Junction	Dec-50			340.3	40.0			
Dillingham	Jan-63				10.7			
Fairbanks	Jan-03			0.5	96.1			
Fort Yukon	Feb-59							0.3
Haines	Jan-10			20.0		109.1		
Homer	Jan-64					6,831.1		292.8
Hoonah	Jun-48	105.5				201.4		
Houston	Jan-58			418.8				
Hydaburg	Oct-27					175.0		
Kake	Nov-52					218.3		1.4
Kasaan	Feb-75				0.4			
Kenai	May-50	3,594.7		355.3	175.5	2,752.1		1.9
Ketchikan	Jan-00				1.2	169.7		
King Cove	Jan-47					178.1		
Kiwook	Jan-29					272.5		
Kodiak	Jan-40	281.0		1.2	15.4	219.0		
Kotzebue	Mar-73					392.8		
Kupreanof	Aug-75			180.8				
McGrath	Jun-75				13.5			7.7
Nonana	Jan-21							35.0
Nome	Jan-01					5,717.0		42.1
North Pole	Jan-53				19.7			
Palmer	Jan-51				3.5			
Pelican	Jan-43				4.9	60.1	8.9	
Petersburg	Jan-10			231.1	314.7	449.5		12.4
Sand Point	Oct-66				2.3			
Saxman	Sep-29					53.6		
Seldovia	May-45				21.6	118.0		
Seward	Jan-12			493.1	49.1	1,677.3		
Shungnak	Mar-76				0.6			
Stagway	Jan-00			122.1		193.5		
Soldotna	Jan-67			111.9	391.5			60.3
Tenakee Springs	Oct-71					30.2		204.8
Thome Bay	Aug-82			249.2				
Unalaska	Jan-42							9.3
Valdez	Jan-01			4,420.2		1,368.6		34.5
Wasilla	Jan-74				129.8			
Wrangell	Jan-03			18.5	788.7	148.8		
Yakutat	Jan-48			123.6	31.2	248.3		
<b>TOTALS</b>		<b>4,063.3</b>	<b>0.0</b>	<b>7,097.1</b>	<b>1,970.3</b>	<b>22,848.4</b>	<b>8.9</b>	<b>744.9</b>

GRANT TOTALS (ANCHORAGE) FY 95

STATS TAKEN FROM DEPARTMENT OF HEALTH & SOCIAL SERVICES  
DISCRETIONARY GRANTS REPORT FOR FY 95

ANCHORAGE RECEIVED HUMAN SERVICES BLOCK GRANT IN FY 95 IN THE  
AMOUNT OF \$ 1,348,400 (GF)

ANCHORAGE ORGANIZATIONS RECEIVING DHSS DISCRETIONARY GRANTS IN FY 95  
AND HUMAN SERVICES BLOCK GRANTS -- DHSS GRANTS TOTAL \$ 5,157,401

\$	1,219,101	GF
	50,000	GF/FED
	691,851	GF/MHT/IA
	2,213,164	GF/MHT/FED
	176,475	MHT/FED
	806,810	FED

MUNICIPALITY OF ANCHORAGE RECEIVED DHSS DISCRETIONARY GRANTS IN FY 95  
TOTALING \$ 2,784,733

\$	301,475	GF
	483,653	GF/MHT
	1,126,112	GF/FED
	873,493	FED

ANCHORAGE SCHOOL DISTRICT RECEIVING DHSS DISCRETIONARY GRANT IN FY 95  
IN THE AMOUNT OF \$ 153,720 (GF/MH/FED)

SPECIAL EDUCATION SERVICES RECEIVING DHSS DISCRETIONARY GRANTS  
IN FY 95 TOTALING \$ 477,284 (\$ 278,377 GF/MH) AND  
(\$ 198,907 GF/MH/FED)

OTHER ANCHORAGE ORGANIZATIONS RECEIVING DHSS DISCRETIONARY GRANTS  
IN FY 95 TOTALING \$ 27,756,517

\$	4,511,785	GF
	655,754	GF/MHT
	1,146,600	GF/FED
	18,057,011	GF/MHT/IA
	2,409,157	GF/MHT/FED
	976,210	FED

TOTAL ANCHORAGE GRANTS FROM DHSS \$ 36,329,655

TOTAL ANCHORAGE GRANTS HUMAN SERVICES BLOCK  
GRANT AND DISCRETIONARY DHSS \$ 37,678,055

KENAI ORGANIZATIONS RECEIVING DHSS GRANTS  
TOTALING \$ 5,212,483 (ALL FUND SOURCES)