

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10598 SENATE JUDICIARY

SJR

25

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SJR 25
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: OOG
 Title Constitutional amendment relating BRU Elections
to education Component Elections
 Sponsor Senator Ward
 Requester Senate Judiciary Component No. 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual	1.5					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	1.5	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
1002 Federal Receipts						
1003 GF Match						
1004 GF	1.5					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
TOTAL	1.5	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. If this measure requires the printing of an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by: Gall Fenumlal, Election Administrative Supervisor Phone 465-3935
 Division: Division of Elections Date/Time 3/14/02 3:55 PM
 Approved by: Lieutenant Governor Fran Ulmer Date 03/14/2002
 Agency: Office of the Lieutenant Governor



SENATOR JERRY WARD

ALASKA STATE LEGISLATURE

MEMORANDUM

TO: Senator Robin Taylor, chair
Senate Judiciary Committee

FROM: Senator Jerry Ward *JW*

DATE: February 19, 2002

SUBJECT: SJR 25 Request for Hearing

I respectfully request a hearing for SJR 25, "Proposing an amendment to the Constitution of the State of Alaska relating to education." SJR 25 is a companion bill to SB 188. I have enclosed a copy of the bill and fiscal note and an updated CS.

Thank you for your consideration of this request. If you or your staff should have any questions, please contact me at 465-4940.

SJR

32

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SJR 32
 (S) Publish Date: 5/1/02

Revision Date/Time (Note if correction): _____ Dept. Affected: OOG
 Title Constitutional amendment relating BRU Elections
to marine and rail transportation fund Component Elections
 Sponsor Senator Ward
 Requester Senate Transportation Component No. 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual	1.5					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	1.5	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
1002 Federal Receipts						
1003 GF Match						
1004 GF	1.5					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	1.5	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 200' budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. If this measure requires the printing of an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by: Gail Fenuniai, Election Administrative Supervisor Phone 465-3935
 Division: Division of Elections Date/Time 2/21/02 4:55 PM
 Approved by: Lieutenant Governor Fran Ulmer Date 02/21/2002
 Agency: Office of the Lieutenant Governor

SJR

33

FISCAL NOTE

**STATE OF ALASKA
2002 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: SJR 33
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: OOG
 Title Constitutional amendment relating BRU Elections
to limiting state income, sales and use taxes Component Elections
 Sponsor Senator Austerman
 Requester Senate Judiciary Component No. 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual	1.5					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	1.5	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1.5					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	1.5	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. If this measure requires the printing of an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by: Gall Fenuniai, Election Administrative Supervisor
 Division: Division of Elections
 Approved by: Lieutenant Governor Fran Ulmer
 Agency: Office of the Lieutenant Governor

Phone 465-3935
 Date/Time 3/14/02 2:07 PM
 Date 03/14/2002



SENATOR ALAN AUSTERMAN

Alaska State Legislature

Interim: 112 Mill Lay Road, Kodiak, Alaska 99615 (907) 486-8872 • Session: State Capitol, Juneau, Alaska 99801 (907) 465-2487
senator_alan_austerman@legis.state.ak.us

Sponsor Statement—SJR 33

“Proposing an amendment to the Constitution of the State of Alaska relating to limiting the rate of state income and sales and use tax”

I have introduced a constitutional amendment to limit the amount of any new sales or income tax to no more than five percent, to meet the concern of implementing new taxes with no thought of restraining the growth of said taxes.

Alaskans need to feel secure that any new tax proposals will not grow unreasonably. My proposed constitutional amendment meets this concern. The idea of a statewide tax cap is similar to the approach taken by the Municipality of Anchorage in limiting the amount of property taxes that can be collected each year. This charter amendment has effectively constrained the municipal spending and protected municipal property owners. The municipal tax cap also maintains the relationship between economic growth and the ability of the municipality to pay for the demand for schools, roads, and police that accompanies economic development.

Some in the legislature have proposed a constitutional spending cap which would arbitrarily set a two or four percent limit on the growth of state services from year to year. While this approach has some appeal, it does nothing to meet the real concern about the growth of taxes. Under a spending cap, there is no limit to the amount of an income or sales tax. A cap on spending might mean that we have deteriorating schools but still pay high taxes. More importantly, it is impossible to sit here in 2002 and predict accurately the exact amount of schools, roads, or police we will need thirty or forty years into the future.

DISTRICT C

Kodiak Archipelago • Southeast Islands

SJR

37

Alaska State Legislature

Session:
State Capitol
Juneau, AK 99801
Phone: (907) 465-2327
Fax: (907) 465-5241



Interim:
119 N. Cushman
Fairbanks, AK 99701
Phone: (907) 456-8161
Fax: (907) 456-8163

Senator Pete Kelly
District P

SJR 37 Sponsor Statement

Proposing an amendment to the Constitution of the State of Alaska relating to officers and employees of the executive branch.

The State of Alaska is facing a billion dollar deficit and unfortunately the constitutional budget reserve fund cannot fill the gap. Revenue officials project it will be drained by July 2004 if the proposed fiscal year 2003 budget is funded. This budget includes an increase of 858 full-time state positions from the current fiscal year with a price tag of \$115 million.

In the face of such an enormous budget deficit, state spending must be reduced. The most logical first step you take when you have a fiscal problem is a hiring freeze. It will be impossible for the state to sustain such an increase in state employees. A hiring freeze will reduce the number of state positions through attrition, a much better solution than forced layoffs a year down the road.

The passage of SJR 37 will put this resolution to a vote of the people and if approved, will amend the Constitution of the State of Alaska.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SJR 37
 (S) Publish Date: 2/27/02

Revision Date/Time (Note if correction): _____ Dept. Affected: COG
 Title Constitutional amendment BRU Elections
officers/employees of the executive branch Component Elections
 Sponsor Senator Kelly
 Requester Senate State Affairs Component No. 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual	1.5					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	1.5	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
1002 Federal Receipts						
1003 GF Match						
1004 GF	1.5					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	1.5	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

POSITIONS	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. If this measure requires the printing of an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by: Gail Fenunial, Election Administrative Supervisor
 Division: Division of Elections
 Approved by: Lieutenant Governor Fran Ulmer
 Agency: Office of the Lieutenant Governor

Phone: 465-3935
 Date/Time: 2/22/02 12:28 PM
 Date: 02/22/2002

SJR

38

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SJR 38
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: OOG
 Title Constitutional amendment BRU Elections
Information regarding proposed expenditures Component Elections
 Sponsor Senator Kelly
 Requester Senate State Affairs Component No. 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual	1.5					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	1.5	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1.5					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	1.5	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. If this measure requires the printing of an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by: Gall Fenomial, Election Administrative Supervisor Phone 465-3935
 Division: Division of Elections Date/Time 2/22/02 12:30 PM
 Approved by: Lieutenant Governor Fran Ulmer Date 02/22/2002
 Agency: Office of the Lieutenant Governor

Alaska State Legislature

Session:
State Capitol
Juneau, AK 99801
Phone: (907) 465-2327
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Interim:
119 N. Cushman
Fairbanks, AK 99701
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Senator Pete Kelly
District P

SJR 38 Sponsor Statement

Proposing amendments to the Constitution of the State of Alaska to information regarding proposed expenditures.

In the face of a billion dollar deficit, it is imperative that responsible budget decisions be made. Limited discretionary revenues and ever expanding demands for state spending have forced the need for prioritization.

SJR 38 will require the Administration to submit subsequent budgets with each department's activities ranked in order of value. Though it is the Legislature's responsibility to appropriate funds, the departments are better equipped to evaluate and prioritize their own activities and production. Constructive communication between the executive and legislative branches is necessary in order to facilitate the most responsible cutbacks in spending.

The passage of SJR 38 will put this resolution to a vote of the people and if approved, will amend the Constitution of the State of Alaska.

HB

4

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

BILL NO. CSHB 4 (FIN) am

Revision Date/Time (Note if correction) Amended 5/01/2001 Dept. Affected _____
 Title Omibus DWI Bill BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative Rokeberg
 Requester Senate Judiciary Committee Component No. 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	75.5	81.6	89.2	95.3	102.8	102.8
Travel						
Contractual	16.6	24.8	35.1	43.4	53.8	53.8
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	92.1	106.4	124.3	138.7	156.6	156.6

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	92.1	106.4	124.3	138.7	156.6	156.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	92.1	106.4	124.3	138.7	156.6	156.6

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time	2	2	2	2	2	2
Part-time						
Temporary	2	2	2	2	2	2

ANALYSIS: (Attach a separate page if necessary)

Two provisions in CSHB 4 (FIN) am will have an impact on the court system. Section 28 amends AS 28.35.030(a) so that a person commits the crime of driving while intoxicated if that person has a BAC of .08 or higher. National studies suggest that other states that have made this reduction have seen a 10% increase in the number of cases brought before the court. This would mean an additional 500 misdemeanor filings a year and an additional 28 felony filings a year. This note reflects five months of district court judge and clerk time for the additional misdemeanors and the superior court judge and clerk time and jury costs for three three-day jury trials for the felony cases.

Sections 33 and 47 impose a five-year phase-in of a new 10-year look-back for felony DWI offenses. The Department of Law estimates that the phase-in will result in 45 new felony filings in year one, 90 in year two, 135 in year three, 180 in year four, and 225 in year five. This fiscal note is based on those estimates and on a 10% felony trial rate.

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750
 Division: Alaska Court System Date/Time 5/01/2001 2:30 p.m.
 Approved by: Stephanie Cole, Administrative Director Date _____
 Agency: Alaska Court System

For distribution information, call the Governor's Legislative Office

Alaska Court System

Fiscal Note Calculations for CSHB 4 (FIN) AM

5/1/01

	FY02	FY03	FY04	FY05	FY06
<u>Superior Court Lookback Provision:</u>					
50 Jurors 1.0 Days for Selection	1,250	1,250	1,250	1,250	1,250
14 Jurors for 1.5 Days of Court	525	525	525	525	525
12 Jurors for .5 Days of Deliberation	150	150	150	150	150
Deliberation Meal \$11/12 jurors + bailiff	143	143	143	143	143
Total per Superior Court Trial	2,068	2,068	2,068	2,068	2,068
Proposed # Superior Court Trials	5	9	14	18	23
Est. Jury Cost of Superior Court Trials	10,340	18,612	28,952	37,224	47,564
Superior Court Judge (Pro Terns)	5,760	10,368	16,128	20,736	26,496
In-Court Clerk (NPP)	1,831	3,296	5,127	6,592	8,424
Est. Personal Services	7,591	13,664	21,255	27,328	34,920
Subtotal Lookback Provision	17,931	32,276	50,207	64,552	82,484
<u>Superior Court .08 Provision:</u>					
50 Jurors 1.0 Days for Selection	1,250	1,250	1,250	1,250	1,250
14 Jurors for 1.5 Days of Court	525	525	525	525	525
12 Jurors for .5 Days of Deliberation	150	150	150	150	150
Deliberation Meal \$11/12 jurors + bailiff	143	143	143	143	143
Total per Superior Court Trial	2,068	2,068	2,068	2,068	2,068
Proposed # Superior Court Trials	3	3	3	3	3
Est. Jury Cost of Superior Court Trials	6,204	6,204	6,204	6,204	6,204
District Court Judge (5 months PFT)	50,419	50,419	50,419	50,419	50,419
In-Court Clerk (5 months PFT)	17,499	17,499	17,499	17,499	17,499
	67,918	67,918	67,918	67,918	67,918
Subtotal .08 Provision	74,122	74,122	74,122	74,122	74,122
HB132 Personal Services Costs	75,509	81,582	89,173	95,246	102,837
HB132 Contractual Services Costs	16,544	24,816	35,156	43,428	53,768
Total Estimated Costs	92,053	106,398	124,329	138,674	156,605

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services
Department of Education & Early Development
State of Alaska

Alaska Court System

Fiscal Note Calculations for CSHB 4 (FIN) AM

5/1/01

	FY02	FY03	FY04	FY05	FY06
<u>Superior Court Lookback Provision:</u>					
50 Jurors 1.0 Days for Selection	1,250	1,250	1,250	1,250	1,250
14 Jurors for 1.5 Days of Court	525	525	525	525	525
12 Jurors for .5 Days of Deliberation	150	150	150	150	150
Deliberation Meal \$11/12 jurors + bailiff	143	143	143	143	143
Total per Superior Court Trial	2,068	2,068	2,068	2,068	2,068
Proposed # Superior Court Trials	5	9	14	18	23
Est. Jury Cost of Superior Court Trials	10,340	18,612	28,952	37,224	47,564
Superior Court Judge (Pro Tems)	5,760	10,368	16,128	20,736	26,496
In-Court Clerk (NPP)	1,831	3,296	5,127	6,592	8,424
Est. Personal Services	7,591	13,664	21,255	27,328	34,920
Subtotal Lookback Provision	17,931	32,276	50,207	64,552	82,484
<u>Superior Court .08 Provision:</u>					
50 Jurors 1.0 Days for Selection	1,250	1,250	1,250	1,250	1,250
14 Jurors for 1.5 Days of Court	525	525	525	525	525
12 Jurors for .5 Days of Deliberation	150	150	150	150	150
Deliberation Meal \$11/12 jurors + bailiff	143	143	143	143	143
Total per Superior Court Trial	2,068	2,068	2,068	2,068	2,068
Proposed # Superior Court Trials	3	3	3	3	3
Est. Jury Cost of Superior Court Trials	6,204	6,204	6,204	6,204	6,204
District Court Judge (5 months PFT)	50,419	50,419	50,419	50,419	50,419
In-Court Clerk (5 months PFT)	17,499	17,499	17,499	17,499	17,499
	67,918	67,918	67,918	67,918	67,918
Subtotal .08 Provision	74,122	74,122	74,122	74,122	74,122
HB132 Personal Services Costs	75,509	81,582	89,173	95,246	102,837
HB132 Contractual Services Costs	16,544	24,816	35,156	43,428	53,768
Total Estimated Costs	92,053	106,398	124,329	138,674	156,605

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

BILL NO. CSHB 4 (FIN) am

Revision Date/Time (Note if correction) 4/30/01 Dept. Affected _____
 Title Omnibus DWI Bill BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative Rokeberg
 Requester Senate Judiciary Committee Component No. 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	81.7	87.8	95.4	101.5	109.0	109.0
Travel						
Contractual	16.6	24.8	35.1	43.4	53.8	53.8
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	98.3	112.6	130.5	144.9	162.8	162.8

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	98.3	112.6	130.5	144.9	162.8	162.8
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	98.3	112.6	130.5	144.9	162.8	162.8

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time	2	2	2	2	2	2
Part-time						
Temporary	2	2	2	2	2	2

ANALYSIS: *(Attach a separate page if necessary)*
 Two provisions in CSHB 4 (FIN) am will have an impact on the court system. Section 28 amends AS 28.35.030(a) so that a person commits the crime of driving while intoxicated if that person has a BAC of .08 or higher. National studies suggest that other states that have made this reduction have seen a 10% increase in the number of cases brought before the court. This would mean an additional 500 misdemeanor filings a year and an additional 28 felony filings a year. This note reflects five months of district court judge and clerk time for the additional misdemeanors and the superior court judge and clerk time and jury costs for three three-day jury trials for the felony cases.

 Sections 33 and 47 impose a five-year phase-in of a new 10-year look-back for felony DWI offenses. The Department of Law estimates that the phase-in will result in 45 new felony filings in year one, 90 in year two, 135 in year three, 180 in year four, and 225 in year five. This fiscal note is based on those estimates and on a 10% felony trial rate.

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750
 Division: Alaska Court System Date/Time 5/01/2001 9:30 a.m
 Approved by: Stephanie Cole, Administrative Director Date _____
 Agency: Alaska Court System

For distribution information, call the Governor's Legislative Office

Alaska Court System
 Fiscal Note Calculations for CSHB 4 (FIN) AM
 5/1/01

	FY02	FY03	FY04	FY05	FY06
<u>Superior Court Lookback Provision:</u>					
50 Jurors 1.0 Days for Selection	1,250	1,250	1,250	1,250	1,250
14 Jurors for 1.5 Days of Court	525	525	525	525	525
12 Jurors for .5 Days of Deliberation	150	150	150	150	150
Deliberation Meal \$11/12 jurors + bailiff	143	143	143	143	143
Total per Superior Court Trial	2,068	2,068	2,068	2,068	2,068
Proposed # Superior Court Trials	5	9	14	18	23
Est. Jury Cost of Superior Court Trials	10,340	18,612	28,952	37,224	47,564
Superior Court Judge (Pro Terns)	5,760	10,368	16,128	20,736	26,496
In-Court Clerk (NPP)	1,831	3,296	5,127	6,592	8,424
Est. Personal Services	7,591	13,664	21,255	27,328	34,920
Subtotal Lookback Provision	17,931	32,276	50,207	64,552	82,484
<u>Superior Court .08 Provision:</u>					
50 Jurors 1.0 Days for Selection	1,250	1,250	1,250	1,250	1,250
14 Jurors for 1.5 Days of Court	525	525	525	525	525
12 Jurors for .5 Days of Deliberation	150	150	150	150	150
Deliberation Meal \$11/12 jurors + bailiff	143	143	143	143	143
Total per Superior Court Trial	2,068	2,068	2,068	2,068	2,068
Proposed # Superior Court Trials	3	3	3	3	3
Est. Jury Cost of Superior Court Trials	6,204	6,204	6,204	6,204	6,204
District Court Judge (5 months PFT)	50,419	50,419	50,419	50,419	50,419
In-Court Clerk (5 months PFT)	17,499	17,499	17,499	17,499	17,499
	67,918	67,918	67,918	67,918	67,918
Subtotal .08 Provision	74,122	74,122	74,122	74,122	74,122
HB132 Personal Services Costs	81,713	87,786	95,377	101,450	109,041
HB132 Contractual Services Costs	16,544	24,816	35,156	43,428	53,768
Total Estimated Costs	98,257	112,602	130,533	144,878	162,809

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 5
Bill Version: CSHB 4(TRA)
(H) Publish Date: 2/28/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
Title: An Act relating to offenses involving operating a motor vehicle BRU: Alcohol & Drug Abuse Svcs
Sponsor: Rep Rokeberg Component: Alcohol Safety Action Program
Requester: House (TRA) Component Number: 305

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	60.0	60.0	60.0	60.0	60.0	60.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	52.4	52.4	52.4	52.4	52.4	52.4
Miscellaneous						
TOTAL OPERATING	112.4	112.4	112.4	112.4	112.4	112.4

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	112.4	112.4	112.4	112.4	112.4	112.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	112.4	112.4	112.4	112.4	112.4	112.4

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Section 26 lowers the blood alcohol content from .10 to .08. It is estimated that this will result in a 10% increase in number of DUI cases resulting in convictions and mandatory referral to Alcohol Safety Action Programs (ASAP) and subsequently for treatment. Of these additional cases DHSS estimates that 100% would be referred to an ASAP. The costs to handle these additional cases is \$112.4. We estimate that 65-70% of these cases will be handled by the ASAP office in Anchorage, which is operated by employees of the Division of Alcoholism and Drug Abuse.

Prepared by: Ernest Turner, Director
Division: Alcoholism and Drug Abuse
Approved by: Elmer A. Lindstrom, Special Assistant
Agency: Department of Health & Social Services

Phone 465-2071
Date/Time 2/26/01 4:30 PM
Date 3/1/01 8:40 AM

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 6
 Bill Version: CSHB 4 (TRA)
 (H) Publish Date: 2/28/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
 Title: An Act relating to offenses involving operating BRU: Alcohol & Drug Abuse Svcs
a motor vehicle Component: Alcohol/Drug Abuse Grants
 Sponsor: Rep Rokeberg
 Requester: House (TRA) Component Number: 1239

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	582.2	582.2	582.2	582.2	582.2	582.2
Miscellaneous						
TOTAL OPERATING	582.2	582.2	582.2	582.2	582.2	582.2

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	582.2	582.2	582.2	582.2	582.2	582.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	582.2	582.2	582.2	582.2	582.2	582.2

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Section 26 lowers the blood alcohol content from .10 to .08. It is estimated that this will result in a 10% increase in number of DUI cases resulting in convictions and mandatory referral to Alcohol Safety Action Programs and subsequently for treatment. Of these additional cases DHSS estimates that 75% would be treated in a public program. Due to existing wait capacity and waitlist an additional \$582.2 is required to fund the capacity required to provide the mandated treatment required.

Prepared by: Ernest Turner, Director Phone 465-2071
 Division: Alcoholism and Drug Abuse Date/Time 2/26/01 4:30 PM
 Approved by: Elmer A. Lindstrom, Special Assistant Date 3/1/01 8:45 AM
 Agency: Department of Health & Social Services

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FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 11
 Bill Version: CSHB 4 (JUD)
 (H) Publish Date: 4/5/01

Revision Date/Time (Note if correction): March 6, 2001 Dept. Affected: Health & Social Services
 Title: Relating to operating motor vehicles under the BRU: Juvenile Justice
influence Component: Johnson Youth Facility
 Sponsor: Representative Rokeberg
 Requester: House (TRA) Component Number: 267

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Section 33 of the bill was amended to delete a provision which would have required an additional six month period of incarceration for persons convicted of driving under the influence. With this provision deleted from the H-TRA committee substitute, there would be a zero fiscal impact on DJJ through CSHB4(TRA).

Prepared by: George Buhite, Director Phone 465-2212
 Division: Juvenile Justice Date/Time 3/6/01 4:33 PM
 Approved by: Elmer A. Lindstrom, Special Assistant Date 3/6/01 4:33 PM
 Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 11
 Bill Version: CSHB 4 (JUD)
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 Title: Relating to operating motor vehicles under the BRU: Juvenile Justice
influence Component: Johnson Youth Facility
 Sponsor: Representative Rokeberg
 Requester: House (TRA) Component Number: 267

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Section 33 of the bill was amended to delete a provision which would have required an additional six month period of incarceration for persons convicted of driving under the influence. With this provision deleted from the H-TRA committee substitute, there would be a zero fiscal impact on DJJ through CSHB4(TRA).

Prepared by: George Buhite, Director Phone 465-2212
 Division: Juvenile Justice Date/Time 3/6/01 4:33 PM
 Approved by: Elmer A. Lindstrom, Special Assistant Date 3/6/01 4:33 PM
 Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

ALASKA STATE LEGISLATURE

House of Representatives

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SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT &
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SPONSOR STATEMENT

CSHB 4 (FIN) am

Omnibus Drunk Driving Legislation

Alaska has one of the toughest drunk driving laws in the United States, but many of our state's habitual drunk drivers are not getting the message. CSHB 4 (FIN) am creates the toughest set of driving under the influence ("DUI") laws in the country.

Poor judgment and chemical dependency are the primary causes of habitual drinking and driving. These people *kill, injure, and maim* Alaskans causing untold grief, pain, suffering, and economic loss. Estimates show that the average 1998 alcohol-related fatality in Alaska cost \$5.1 million (\$1.7 million in monetary costs and \$3.4 million in quality of life losses) while the average 1998 injured survivor experienced approximated \$126,000 in costs (\$52,000 in monetary costs and \$74,000 in quality of life losses). These figures are from the Public Services Research Institute and were produced under a National Highway Traffic Safety Administration Partners in Progress Cooperative Agreement and are figures for Alaska.

Over the past year, Alaska has witnessed a rash of tragic deaths and injuries. A public outcry resulted in the establishment of the Municipality of Anchorage's DUI Task Force. Many recommendations of this Task Force are embodied in CSHB 4 (FIN) am.

CSHB 4 (FIN) am increases fines and jail time; lowers the blood alcohol content limit from .10 to .08; mandates treatment for prisoners; deletes the five-year lookback provision while phasing in a ten-year lookback; provides for discretionary immobilization or forfeiture of the vehicle on the second offense and forfeiture on third and subsequent offenses; requires seizure of license plates; and increases fees, fines and cost caps in various areas of the law to enhance revenue to offset associated costs.

CSHB 4 (FIN) am contains both the "stick" (punitive revision of law) in the House Majority's alcohol package and the "carrot" (flexibility for the judicial system to in giving out sentences and fines). It also contains several enhancements for the treatment of offenders. Enactment of this legislation will send a strong and clear message: **DO NOT DRINK AND DRIVE.**

The fiscal impacts are significant. However, if this bill saves one life, or saves one Alaskan from injury -- isn't it worth the investment?

Your support of this important legislation would be appreciated.

ED 5:04/29/J1

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

JUDICIARY COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT &
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SECTIONAL ANALYSIS

CSHB 4 (FIN) am

**An Act relating to motor vehicles and to operating a motor vehicle, aircraft, or watercraft;
and providing for an effective date.**

Prepared by Representative Norman Rokeberg

- Section 1:** Finding and intent section.
- Section 2:** Changes references from driving while "intoxicated" to driving while "under the influence of an alcoholic beverage, inhalant or controlled substance."
- Section 3:** Changes references from driving while "intoxicated" to driving while "under the influence of an alcoholic beverage, inhalant or controlled substance"
- Section 4:** Adds new subsection setting forth that the presumptive sentence for manslaughter as a result of driving while under the influence of an alcoholic beverage, inhalant or controlled substance is seven years.
- Section 5:** Changes references from driving while "intoxicated" to driving "while under the influence of an alcoholic beverage, inhalant or controlled substance"
- Section 6:** Requires the department of administration to refuse to register a vehicle if the applicant fails to register the vehicle using the applicant's first, middle, and last name or a business name.
- Section 7:** Adds new subsection concerning seizure of registration plates resulting from chemical sobriety tests and refusals to submit to tests. Such seizure tracks with driver's license suspension or revocation. Also contains provisions for co-owner to obtain registration plates for vehicles. Protects leased, rented, or borrowed vehicles from license plate seizure.

- Section 8:** Changes references from driving while "intoxicated" to driving while "under the influence of an alcoholic beverage, inhalant or controlled substance"
- Section 9:** Changes references from driving while "intoxicated" to driving while "under the influence of an alcoholic beverage, inhalant or controlled substance."
- Section 10:** Changes references from driving while "intoxicated" to driving while "under the influence of an alcoholic beverage, inhalant or controlled substance."
- Section 11:** Adds references to motor vehicle plate seizure to notice provisions.
- Section 12:** Adds references to motor vehicle plate seizure to request for review of department's action provisions.
- Section 13:** Adds reference to motor vehicle registration plate provisions to temporary permit provisions.
- Section 14:** Changes references from driving while "intoxicated" to driving while "under the influence of an alcoholic beverage, inhalant or controlled substance." Repeals the phrase "reasonable grounds" and replaces it with "probable cause" for purposes of the commercial motor vehicle implied consent law.
- Section 15:** Changes references from driving while "intoxicated" to driving while "under the influence of an alcoholic beverage, inhalant or controlled substance."
- Section 16:** Amends minimum periods of license revocation to reflect references to new provisions in AS 28.35.030(n)(3) and 28.35.032(p)(3).
- Section 17:** Requires that the court shall furnish the Division of Motor Vehicles with information on a driving conviction within five working days.
- Section 18:** Technical amendment relating to the authority of the court to grant limited driver's license privileges following a conviction for DUI
- Section 19:** Requires a person who loses their driver's license for DUI or refusal to take a breath test to meet the alcoholism screening, evaluation, referral, and program requirements under AS 28.35.030(h) imposed under AS 28.15.181(a)(5) or (8) in order to have license reissued.
- Section 20:** Doubles driver's license reinstatement fees for those convicted of DUI or refusal.
- Section 21:** Amends the current statutes concerning persons who knowingly permit a motor vehicle to be driven by a person not validly licensed so that persons in fear of perpetrator of domestic violence may not be charged under this statute.

- Section 22:** Changes references from driving while "intoxicated" to driving while "under the influence of an alcoholic beverage, inhalant or controlled substance."
- Section 23:** Repeals the phrase "reasonable grounds" and replaces it with "probable cause" for purposes of the commercial motor vehicle implied consent law. Also changes references to "driving while intoxicated" to while "under the influence of an alcoholic beverage, inhalant or controlled substance."
- Section 24:** Repeals the phrase "reasonable grounds" and replaces it with "probable cause" for the purposes of the commercial motor vehicle implied consent law.
- Section 25:** In commercial motor vehicle section, changes "intoxicated" to "under the influence of an alcoholic beverage". Changes references from "intoxicating liquor" to "alcoholic beverage".
- Section 26:** Changes "intoxicating liquor" to "alcoholic beverage".
- Section 27:** Changes references from "intoxicated" to while "under the influence of an alcoholic beverage, inhalant or controlled substance".
- Section 28:** Changes references to driving while "intoxicated" to driving while "under the influence of an alcoholic beverage, inhalant or controlled substance." Adds "an alcoholic beverage" and "inhalant" to list of items that constitutes crime of driving while "under the influence of an alcoholic beverage, inhalant or controlled substance". Reduces the legal limit for being intoxicated from 0.10 to 0.08 percent of alcohol in a person's blood.
- Section 29:** Changes references to driving while "intoxicated" to driving while "under the influence of an alcoholic beverage, inhalant or controlled substance." Changes the penalties (sentence and fine) for misdemeanor DUI. Adds watercraft to list of items that may be forfeited. On second offense provides discretionary vehicle forfeiture OR immobilization. On third and subsequent, provides discretionary vehicle forfeiture.
- Section 30:** Changes law to establish that treatment providers must provide the judge, prosecutor, defendant, and an agency involved in the defendant's treatment with information and reports concerning the defendant's past and present assessment, treatment, and progress. Such information may only be used in connection with court proceedings involving the defendant's treatment and is otherwise confidential.
- Section 31:** Establishes limit imposed on cost of treatment required to be paid by a person convicted of DUI. Specifies that, as much as possible, treatment shall occur while incarcerated. Establishes that the cost of treatment must include at least \$150 for cost of alcohol safety action program if available. Permits

state to seek reimbursement for treatment costs from permanent fund dividend. Establishes that subsection does not apply to costs of treatment incurred by a person as a result of treatment not required under this subsection.

- Section 32:** Increases the limit imposed on the cost of imprisonment required to be paid by a person convicted of DUI
- Section 33:** Felony DUI section. Eliminates 5-year lookback and phases in a 10-year look back period and establishes that a person is guilty of a class C felony if convicted a third time since January 1, 1996, and within 10 years preceding the date of the offense. Increases the penalties for a conviction under this section, including jail time, fine, loss of driver's license, and forfeiture of the vehicle, watercraft or aircraft used in the offense. Revokes vehicle registration for all vehicles owned by the person convicted. Permits a co-owner to register the vehicle in that person's name.
- Section 34:** Adds definition for "inhalant". Changes references to driving while "intoxicated" to driving while "under the influence of an alcoholic beverage, inhalant or controlled substance."
- Section 35:** Adds provisions relating to restoration of a driver's license following a D.U.I conviction and relating to failure to satisfy alcoholism treatment requirements. Establishes procedure for surrender of registration plate for any vehicle registered or co-registered in convicted person's name. Establishes that court may suspend: (1) a portion of mandatory minimum sentence if persons successfully completes a therapeutic court program; and (2) up to 50% of the minimum fines. Designates the Director of the Division of Motor Vehicles or designee as a person eligible to request and receive criminal justice information.
- Section 36:** Makes technical amendments relating to implied consent law. Changes references to driving while "intoxicated" to driving while "under the influence of an alcoholic beverage, inhalant or controlled substance." Repeals the phrase "reasonable grounds" and replaces it with "probable cause" for the purposes of the implied consent law.
- Section 37:** Repeals the phrase "reasonable grounds" and replaces it with "probable cause" for the purposes of administering a breath test under the implied consent law.
- Section 38:** Repeals the phrase "reasonable grounds" and replaces it with "probable cause" for purposes of administering a breath or blood test under the implied consent law when there is a motor vehicle accident that causes death or serious physical injury.

- Section 39:** Adds new section providing that the implied consent statute was not intended to prevent the police search warrants.
- Section 40:** Changes references to driving while "intoxicated" to driving while "under the influence of an alcoholic beverage, inhalant or controlled substance."
- Section 41:** Changes references to driving while "intoxicated" to driving while "under the influence of an alcoholic beverage, inhalant or controlled substance."
- Section 42:** Changes refusal section to mirror DUI section on fines and penalties for misdemeanors. Provides for discretionary forfeiture or immobilization for second offense. Provides for discretionary forfeiture for third offense.
- Section 43:** Changes refusal section to mirror DUI section on treatment. Changes law to establish that treatment providers must provide the judge, prosecutor, defendant, and an agency involved in the defendant's treatment with information and reports concerning the defendant's past and present assessment, treatment, and progress. Such information may only be used in connection with court proceedings involving the defendant's treatment and is otherwise confidential.
- Section 44:** Changes refusal section to mirror DUI section. Changes driving while "intoxicated" to driving while "under the influence of an alcoholic beverage, inhalant, or controlled substance".
- Section 45:** Changes refusal section on treatment language to mirror DUI section. Establishes limit imposed on cost of treatment required to be paid by a person convicted of DUI. Specifies that, as much as possible, treatment shall occur while incarcerated. Establishes that the cost of treatment must include at least \$150 for cost of alcohol safety action program if available. Permits state to seek reimbursement for treatment costs from permanent fund dividend. Establishes that subsection does not apply to costs of treatment incurred by a person as a result of treatment not required under this subsection.
- Section 46:** Changes refusal section on imprisonment costs to mirror DUI section. Increases the limit imposed on the cost of imprisonment required to be paid by a person convicted of refusal.
- Section 47:** Changes refusal section on felony charges to mirror DUI section. Phases in a 10-year lookback period and establishes that a person is guilty of a class C felony if convicted a third time since January 1, 1996, and within 10 years preceding the date of the offense. Increases the penalties for a conviction under this section, including jail time, fine, loss of driver's license, and forfeiture of the vehicle, watercraft or aircraft used in the offense.

Revokes vehicle registration for all vehicles owned by the person convicted. Permits a co-owner to register the vehicle in that person's name.

- Section 48:** Changes refusal section on driver's license revocation to mirror DUI section. Adds provisions relating to restoration of a driver's license following a DUI conviction and relating to failure to satisfy alcoholism treatment requirements. Establishes procedure for surrender of registration plate for any vehicle registered or co-registered in convicted person's name. Establishes that court may suspend: (1) a portion of mandatory minimum sentence if persons successfully completes a therapeutic court program; and (2) up to 50% of the minimum fines.
- Section 49:** Changes references to driving while "intoxicated" to driving while "under the influence of an alcoholic beverage or controlled substance." Also changes certain presumptions applicable to civil or criminal action involving a person alleged to have driven while under the influence of an alcoholic beverage or controlled substance.
- Section 50:** Requires the police to inform a person undergoing a chemical test for intoxication of their right to have an independent chemical test and requires the department to make reasonable and good-faith efforts to assist the person to obtain an independent test.
- Section 51:** Changes reference to driving while "intoxicated" to driving while "under the influence of an alcoholic beverage, inhalant or controlled substance."
- Section 52:** Requires the court to order forfeiture of motor vehicle, aircraft, or watercraft used in committing a DUI, or refusal offense if this is a third conviction. Changes reference to driving while "intoxicated" to driving while "under the influence of an alcoholic beverage, inhalant or controlled substance."
- Section 53:** Sets forth some examples of how the Department of Public Safety may dispose of a forfeited motor vehicle, watercraft or aircraft under the forfeiture provisions.
- Section 54:** Permits municipal ordinances concerning impoundment and forfeiture to include a fee for administrative costs.
- Section 55:** Amends definition of "alcohol safety action program".
- Section 56:** Changes driving while "intoxicated" to driving while "under the influence of an alcoholic beverage, inhalant, or controlled substance".
- Section 57:** Permits the Department of Health and Social Services to develop, implement, and designate an alcohol safety action program.

Section 58: Adds standards for alcohol safety action programs to current statute.

Section 59: Adds requirements concerning approval of and inspection of alcohol safety action programs.

Section 60: Applicability section.

Section 51: Effective date is July 1, 2001.

ED 5:04/29/01

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS

JUDICIARY COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT &
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CSHB 4 (FIN) am HIGHLIGHTS

- ◆ Separates repeat offender drunk drivers from vehicles
- ◆ Lowers BAC to .08
The federal law mandates that we lower our BAC.
If the .08 law is passed and in effect prior to July 15, 2001, Alaska will be eligible to receive approximately \$848,000 in incentive payments for states with .08 BAC.
If we do not lower our BAC to .08 and have it in effect by 1 October 2003, we will actually lose \$3,580,967 in the first year up to \$14,323,867 in the last year.
If we adopt .08 prior to Federal Fiscal Year 2007, we would regain any funds lost.
- ◆ Eliminate 5-year look back and phases in a 10-year look back
Currently a third DUI offense in five years is a felony. After the five-year window, charges then go back to misdemeanors.
This bill phases in a ten-year window.
- ◆ Raises fines and sentences (see attached table)
- ◆ Raises reimbursement cap for incarceration costs from \$1,000 to \$2,000
- ◆ Establishes reimbursement cap for treatment costs reimbursed to state: \$10,000
- ◆ Raises reinstatement fees for driver's licensing due to DUI and/or refusal to take chemical test
- ◆ Lowers impairment from .05 to .04
- ◆ Provides for permanent driver's license revocation for worst offenders
- ◆ After ten years, these worst offenders may apply for reinstatement if meet certain conditions
- ◆ Discretionary vehicle forfeiture or immobilization on 2nd misdemeanor. Offender pays for immobilization costs.
- ◆ Discretionary vehicle forfeiture on 3rd misdemeanor and all felonies
- ◆ Increases presumptive sentence for first felony manslaughter caused by DUI from 5 years to 7 years
- ◆ License plates of offenders will be confiscated along with driver's license and revocation will run concurrent with driver's license revocation or suspension. Co-owners, lienholders, and owner of "borrowed" vehicles are protected and may regain registration plates. Temporary "plate" issued along with temporary driver's license. Current provisions on driver's license review and appeal are offered for license plate confiscation.
- ◆ Changes DWI to DUI

**COMPARISON
CURRENT FINES AND SENTENCES TO THOSE PROPOSED UNDER CSHB 4 (FIN) am
Prepared by Representative Norman Rokeberg
April 29, 2001**

Description	Current Minimum Fine/Sentence	Proposed Minimum Fine/Sentence	Comment
1 st time misdemeanor DUI or Refusal	\$250/72 consecutive hours	\$1500/72 consecutive hours	Section 29 (DUI) Section 42 (Refusal)
2 nd time misdemeanor DUI	\$500/20 days	\$3,000/30 days or 20 days plus 10 days community service at court's discretion	Section 29 (DUI) Section 42 (Refusal)
3 rd time misdemeanor DUI	\$1,000/60 days	\$4,000/60 days	Section 29 (DUI) Section 42 (Refusal)
4 th time misdemeanor DUI	\$2,000/120 days	\$5,000/120 days	Section 29 (DUI) Section 42 (Refusal)
5 th time misdemeanor DUI	\$3,000/240 days	\$6,000/\$240 days	Section 29 (DUI) Section 42 (Refusal)
6 th + time misdemeanor DUI	\$4,000/360 days	\$7,000/360 days	Section 29 (DUI) Section 42 (Refusal)
Driver's license	Court shall revoke	Court shall revoke	No change
Forfeiture	Court May	Court may forfeit or immobile on 2 nd offense; may forfeit third or subsequent	Adds watercraft to items that may be forfeited.

Description	Current Minimum Fine/Sentence	Proposed Minimum Fine/Sentence	Comment
Other costs - applicable to misdemeanor & felony, DUI and refusal	Imprisonment up to \$1,000 Driver's license reinstatement \$100 if one DUI or refusal conviction or \$250 if more than once within 10 years	Treatment up to \$10,000 ASAP fee, \$150 Imprisonment up to \$2,000 Reinstatement fees doubled	Also must consider impact on insurance
1 st time Class C felony	\$5,000/120 days	\$10,000/180 days	Section 33 (DUI), Section 47 (Refusal)
2 nd time Class C felony	\$5,000/240 days	\$10,000/360 days	Section 33 (DUI), Section 47 (Refusal)
3 rd or subsequent time Class C felony	\$5,000/360 days	\$10,000/440 days	Section 33(DUI), Section 47 (Refusal)
License revocation	Shall revoke with time limits	Permanent Revocation but ability to reapply after 10 years	Section 33, Section 35 for reinstatement
Vehicle forfeiture	May order	May forfeit	Section 33 (DUI), Section 47 (refusal)
Vehicle registration		Revoked for all vehicles owned or co-owned	Section 33 (DUI), Section 47 (refusal)
Imprisonment - misdemeanor & felony		Portion may be suspended if successfully completes therapeutic court	Section 35
Fines - misdemeanor & felony		Up to 50% may be suspended	Section 35

Reader's Digest Version of CSHB 4 (FIN) am
 Prepared by Representative Norman Rokeberg
 April 29, 2001

TOPIC	SECTION(S) FOUND	COMMENTS
New name: change "DWI" to "DUI" and include inhalants	2, 3, 4, 5, 8, 9, 10, 14, 15, 22, 23, 27, 28, 34, 36, 40, 41, 49, 51, 52, 56	Changes "driving while intoxicated" to "driving under the influence of an alcoholic beverage, inhalant, or controlled substance"
First felony manslaughter DUI	4	Increase presumptive sentence from five to seven years.
Vehicle Registration Plate Seizure	7, 11, 12, 13	Procedure same as current procedure for driver's license: Officer seizes plates at time of seizure of driver's license; issues temporary distinctively colored "plates" (similar to what is now issued for newly registered car permits but in a different distinct color). Person has right of administrative review. Provides owner or co-owner who is not subject of charge to register vehicle.
"Reasonable Cause" changed to "Probable Cause"	14, 23, 24, 37, 38,	Conform to court decision in Alaska Supreme Court <u>Leslie v. State</u> , 711 P.2d 575 (Alaska App. 1986)
Treatment of offenders	31 (DUI), 45 (refusal)	To occur as much as possible when incarcerated.

TOPIC	SECTION(S) FOUND	COMMENTS
Treatment costs - reimbursement	31 (DUI), 45 (refusal)	Up to \$10,000 reimbursed to state that must include \$150 ASAP fee. Reimbursement from PFD to be sought. Subsection does not apply to costs incurred by treatment not required under this subsection.
Treatment records (verifying past treatment)	30 (DUI), 43 (refusal)	Within constraints provided by federal law or regulation, treatment providers are to provide judge, prosecutor, defendant, and treatment agency involved with defendant's treatment with information and reports concerning defendants past and present assessment, treatment, and progress. Information is confidential. This is so that adequate information is available for future treatment considerations.
Imprisonment costs recouped	32 (DUI), 45 (refusal)	Increases reimbursement from \$1,000 to \$2,000.
Increased drivers license reinstatement fees	20	Current is \$100 fee if, within 10 years, previously convicted once; new fee is \$200. Current is \$250 fee, if within 10 years, previously convicted two or more times; new fee is \$500.
Domestic Violence Victims	21	Adds protection for dv victims to current statutes concerning persons who knowingly allow another person not validly licensed to operate a motor vehicle.

TOPIC	SECTION(S) FOUND	COMMENTS
Misdemeanor DUI - increased fines and sentences.	29, 35 for suspensions and/or reductions	See attached comparison table
Vehicle forfeiture DUI - misdemeanor	29 (DUI), 52 (refusal)	Second offense - discretionary forfeiture or impoundment; third or subsequent offense - discretionary forfeiture.
Increased look back provisions	33 (DUI), 47 (refusal)	Currently, a third offense within five years becomes a felony. This deletes the five-year lookback and phases in a ten- year time period so that a third offense within ten years will be a felony.
Felony DUI - increased fines and sentences	33, 35 for suspensions and/or reductions	See attached comparison table
Vehicle forfeiture DUI - felony	33 (DUI) , 52 (DUI and refusal)	All felony offenses - discretionary
License revocation DUI - felony	33	Permanent (see also Section 35 for procedure to request reinstatement under certain conditions after ten years)
Vehicle registration - Felony DUI	33	Revoked
Inhalant defined	34	
License reinstatement procedure after permanent revocation for felony DUI	35	
Refusal sections which are changed to mirror DUI sections	Misdemeanor - 42; treatment - 43, 45; imprisonment costs - 46; felony - 47; driver's license revocation - 48	Mirrors provisions above for misdemeanor and/or felony DUI including fines, sentences, treatment, imprisonment costs, etc.

TOPIC	SECTION(S) FOUND	COMMENTS
.08 Blood Alcohol Content ("BAC")	49	Lowers BAC from .10 to .08; lowers other assumptions from .05 to .04, and from .05 to less than .10 to .04 to less than .08
Right to independent test	50	Person administering test is to inform person being tested of right to independent test. If person being tested requests independent test, reasonable efforts shall be made to assist person being tested in receiving independent test. Clarifies current law.
State disposal of forfeited motor vehicle, aircraft or watercraft	53	By way of example, state may: sell at auction, transfer to state or municipal law enforcement agency; declare surplus and transfer to Department of Administration; destroy.
Municipal ability to charge administrative fee for impoundment and forfeiture	54	Specifically sets forth in statute ability of municipality to charge administrative fee for costs incurred. Suggested by some local governmental representatives.
ASAP	56, 57, 58	Defines Alcohol Safety Action Program and sets forth ability of H&SS to develop standards, review, and monitor programs
Search Warrants	39	Adds a new section providing that the implied consent statute was not intended to prevent police search warrants. This makes it clear that the legislature has adopted the view expressed by Justice Compton in his dissenting opinion in <i>Pena v. State</i> , 684 P. 2d 684, 868 (Alaska 1984). Justice Compton said: "There simply is nothing in the [implied consent] statutes to indicate that the

		legislature contemplated restricting searches pursuant to warrant, which derive from the statutory authority of the court, rather than the power of an officer to search an individual at the time of arrest."
Applicability	60	Section 6 (using full name when registering vehicle) applies to registrations occurring on or after effective date; act applies to offenses committed on or after effective date, except that references to previous convictions including convictions occurring before, on or after effective date.
Effective Date	61	July 1, 2001

HB

13

Alaska State Legislature

DURING SESSION
STATE CAPITOL, ROOM 501
JUNEAU, AK 99801-1182
(907) 465-4843 (800) 892-4843
FAX: (907) 465-3871



DURING INTERIM
716 W. FOURTH AVE.
ANCHORAGE, AK 99501-2133
(907) 269-0181
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WEB SITE
<http://www.akrepublicans.org/Bunde.htm>

REPRESENTATIVE CON BUNDE District 18

E-MAIL
Representative_Con_Bunde@legis.state.ak.us

CHAIR: HOUSE SPECIAL COMMITTEE ON EDUCATION
VICE-CHAIR: HOUSE FINANCE COMMITTEE

SPONSOR STATEMENT

SCSCSSSHB 13 (CRA)

" An Act relating to municipal service areas and providing for voter approval of the formation, alteration, or abolishment of certain service areas."

Alaska's Constitution provides for maximum local self-government (Art. X sec. 1) and for the creation, alteration, or abolishment of service areas subject to the provisions of law (Art. X sec. 5).

AS 29.35.450 codifies these Constitutional provisions and establishes the mechanism by which service areas are created, altered, and abolished.

Alaska has approximately 200 service areas; in these areas the local residents use private contractors for necessary services and assess themselves to pay for a desired level of service.

SCSCSSSHB 133 (CRA) amends, AS 29.35.450 to support local control by clearly identifying whom should vote on the abolishment and alteration of a service area under three scenarios:

1. **Abolishment of a service area.**
Subject to approval by the majority of the voters residing in the service area.
2. **Abolishment and replacement of a service area.**
Must be approved separately by a majority of voters inside an existing service area and by a majority of the voters residing in the proposed service area **BUT OUTSIDE** the existing service area.
3. **Alteration of service area or combining it with another service area.**
Must be approved, separately, by a majority of the voters who vote on the question and who reside in each of the service areas or in a proposed service area affected by the proposal.

This proposed legislation would settle a long time debate about who is entitled to vote during the creation, alteration or abolishment of a service area. This legislation has support throughout service areas in Alaska and I urge the favorable consideration of this committee.

Alaska State Legislature

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REPRESENTATIVE CON BUNDE

District 18

CHAIR: HOUSE SPECIAL COMMITTEE ON EDUCATION
VICE-CHAIR: HOUSE FINANCE COMMITTEE

Sectional Analysis SCSCSSHB 13 (CRA)

“An Act relating to municipal service areas and providing for voter approval of the formation, alteration, or abolishment of certain service areas.”

Sec. 1. This adds AS 29.35.450 to the list of statutes that apply as limitations on the power to home rule municipalities. The result of this is to require home rule municipalities to adhere to AS 29.10.450, which now applies only to general law municipalities.

Sec. 2. This addresses service areas in unified municipalities and contains a cross-reference to subsection (c), added in this draft. There are three unified municipalities in the state: Anchorage, Juneau, and Sitka.

Sec. 3. This adds subsection (c) to AS 29.10.450 which requires, before a service area is expanded or altered, a separate vote to be held in the area of the existing service area and in the area proposed to be combined or altered. A separate vote is also required when a service area is altered or combined with another service area. Before the service area change may occur it must be approved in each of the areas that votes separately on the question. This section does not apply to a proposed change to a service area that provides fire protection services that would result in increasing the number of parcels of land in the service area or successor service area if the increase is no more than six percent.

Sec. 4. Adds a new subsection to AS 29.35.470, which is not a home rule limitation. This allows borough assemblies to set up differential tax zones in service areas, so that different rates of taxes may be levied in different portions of a service area. Under existing law, only cities set up differential tax zones.



Municipality of Anchorage

George P. Wuerch, Mayor



Chugiak-Birchwood-Eagle River Rural Road Service Area

Board of Supervisors

11901 Business Boulevard, Suite 107
Eagle River, Alaska 99577

FEB 06 REC'D

January 30, 2001

Representative Con Bunde
State Capitol, Rm. 501
Juneau, AK 99801

Re: Support for House Bill 13

Dear Representative Bunde:

At the January 22, 2001 of the Chugiak-Birchwood-Eagle River Rural Road Service Area Board of Supervisors, the Board unanimously passed a motion in support of House Bill 13. It is the opinion of the Board that this Bill will help strengthen service areas such as ours and ensure that the voting public has adequate say in the future of their service areas.

Sincerely,

Chris Ingmanson, Chair
Chugiak-Birchwood-Eagle River Rural Road
Service Area Board of Supervisors

Cc: Area Legislators
Assembly Member Anna Fairclough
Assembly Member Dan Kendall

February 2, 2001

Dear Chairman Rokeberg:

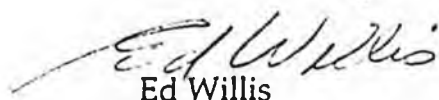
I wish to offer my support for HB 13, legislation that would help ensure the continuation of local service areas. As a member of the Greater Anchorage Area Borough Assembly (1966-1974), and a participant in the unification battles, I am familiar with the reason local service areas are provided for in the Anchorage Charter.

After the voters rejected two attempts at unification, service areas were provided for in the Charter that was eventually approved by the voters of Anchorage. The guarantee of local service areas was a necessary concession to residents outside the old city limits. Anyone who was involved in the process at the time could undoubtedly affirm that the charter would have been rejected a third time absent the provision for local service areas. Without the guarantee of local service areas, my community, South Anchorage, Spenard and other areas outside of the city would have voted to defeat the proposed charter in 1975. I believe that in one of the first votes in the early 1970's, fewer than a hundred votes were cast from the precincts in Chugiak-Eagle River in favor of unification. Opposition was simply that strong!

I have a local government background, and am generally against intrusions in local authority. I believe, however, that this legislation is different in that it seeks to protect local control, specifically volunteer-run local service areas. And in the case of Anchorage, you would be reinforcing a compact that was made when the charter was approved in 1975.

I appreciate the opportunity to express my views on an issue that is very important to my community. I wish you well in your deliberations.

Sincerely,



Ed Willis

February 1, 2001

2278 Outside Blvd
North Pole, Alaska 99705-6307
907 488-3143

Rep. Con Bunde
Alaska State House of Representatives
Juneau, AK

Dear Rep. Bunde,

Thank you for the information on HB 13. As a service commissioner of Brookside Service Area, I fully support passage of this Bill. As a new commissioner, (Since June of 2000), I was under the impression that this bill was passed in last years Legislative session. Little did I realize that Governor Knowles vetoed this bill after the Legislature adjourned.

I agree that requiring the new service area and the existing service area to vote by majority to form a larger or combined service area is necessary. I feel very uncomfortable with the Fairbanks North Star Borough determining taxation levels in the event of a new combined service area. Keeping control within the service areas to determine how our funds are spent should be a made by the residents of the service area, not the Borough.

Once again, thank you for pushing HB 13 once again. You have my support and confidence in getting this important piece of Legislation passed, and keeping the people of Brookside Service Area free to provide a voice in our government.

Sincerely,

James A. Young
Commissioner
Brookside Service Area, FNSB

2001 Officers

Pres. Deborah Luper 694-7700
V. Pres. Charles Horsman 694-6502
Sec. Jim Yeargan 694-2571
Treas. Brian Fay 694-3293



2001 Directors

Carl Waters 696-8886
Dave Sellie 694-3283
Floyd Gori 694-6088

**EAGLE RIVER COMMUNITY COUNCIL
P.O. BOX 773952
EAGLE RIVER, ALASKA 99577**

14 February, 2001

Dear Representative Bunde,

Eagle River Community held its last meeting on February 8, 2001. At this meeting, HB 13 and SB 75, was reviewed and discussed by the council directors and members present. As a result, Eagle River Community Council passed a resolution to support the goals and intention to protect the autonomy of service areas including (but not limited to) road service areas, parks and recreation service areas, and fire protection service areas as set forth in HB 13 & SB 75.

Thank you for your efforts in sponsoring this bill. We are confident that you will be successful in passing this bill with enough votes to override any potential veto by the governor.

Respectfully,

A handwritten signature in black ink, appearing to be 'CH Horsman', written over a horizontal line.

Charles Horsman
Vice-President, Eagle River Community Council

cc: Representative Dyson
Representative Kohring
Representative Halcro
Representative Fate
Representative Coghill

P.O. Box 81109
Fairbanks, AK 99708-1109
(907) 479-4394

January 19, 2001

Rep. Con Bunde
Alaska State House of Representatives
Juneau, AK

Dear Rep. Bunde,

I have been on the Viewpointe Service Area Commission since 1981, and chairman since 1983. Also, since 1982, I have been employed driving a heating oil delivery truck throughout many of the service areas and the neighborhoods not in service areas around the Fairbanks North Star Borough. Road improvements brought about by service areas greatly enhance safe driving and make living outside the city of Fairbanks much more enjoyable than prior to their existence. Usually service area roads are in as good or better condition than the roads in downtown Fairbanks, especially during winters with heavy snow.

I strongly support HB13 that you have filed for the 2001 session of the Alaska State Legislature. The changes in Alaska State Law provided by this bill will alleviate some serious problems experienced when new neighborhoods join existing service areas. After reading the bill it looks very similar, if not identical, to a bill filed by you last year (2000), HB 133. I wrote a letter in support of that bill also. I hope the Governor will see fit to sign the bill this year.

Presently the Fairbanks North Star Borough does not want to add to the high number of existing service areas. New neighborhoods that want to better maintain or improve their roads by using the Borough as a vehicle to collect taxes for these improvements are forced to join existing service areas. The process we have now is very unfair and undemocratic, since only the residents of the area that is seeking to join an existing service area are allowed to vote on the issue. The residents of the existing service area are given no voice in the process. In the past this process has resulted in well run and financially sound service areas being forced to absorb another neighborhood sometimes not contiguous and always with roads that are in poor condition, needing many dollars to upgrade to meet Borough standards. In all these cases, tax money from the existing service areas has gone to the new areas for road improvements because there cannot be two levels of road conditions within a single service area. Sometimes property taxes had to be raised in the older part of the service area along with the new part to cover the road improvement costs of the new part. The existing process naturally creates ill feelings and tension between the residents of the old and the new parts of the newly merged service area, often putting the commissioners, who are just trying to do their jobs, in the middle.

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services
Department of Education & Early Development
State of Alaska

P.O. Box 81109
Fairbanks, AK 99708-1109
(907) 479-4394

January 19, 2001

Rep. Con Bunde
Alaska State House of Representatives
Juneau, AK

Dear Rep. Bunde,

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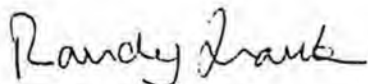
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America does have a history of wealth redistribution, especially in the last eight years, to make the country supposedly a better place, but the wealthy residents of our country have always been allowed a vote in the process. As it is now in the State of Alaska, the residents of the existing service area have no vote and could very likely see their tax dollars go to improving roads that they do not even drive on. The residents of existing service areas, who have been left out of the voting process, often angrily turned to the FNS Borough Assembly to stop the whole the process. When the existing service area residents were successful, the new neighborhood was left with no efficient way to collect funds to improve their roads and make them safer to drive on.

House Bill 13 provides a solution for this unjust situation. Not only does it allow both the residents of the new and existing parts of a combined service area to vote on the merger; it allows for differing levels of taxation within the newly formed service area. Two levels of taxation would allow the new part of the service area to temporarily have a higher tax assessment to defray the costs of improvements needed to upgrade the roads in the new part of the service area. This seems to me to be a fair and reasonable solution to what is now a very unfair and unreasonable process.

In 1999, Fairbanks North Star Borough Mayor Hank Hove introduced a plan that would set up a loan fund to allow newer parts of merging service areas to borrow from it to speed up their improvement schedule, if HB133 was passed and signed into law in 2000. Since we now have a new Mayor, Rhonda Boyles, and new leadership on the Assembly, I do not know if this loan fund will still be available. I thought it was a great idea, and will be urging the new Assembly and Mayor Boyles to bring this idea forward again if HB13 becomes law. Some of us commissioners met with Mayor Boyles about this service area problem before she was elected, and since Ms. Boyles is a former commissioner herself, she was very receptive to our suggestions for a solution.

Sincerely,



Randy Frank
Chairman
Viewpointe Service Area

Cc. Governor Tony Knowles
Sen. Gary Wilken
Sen. Pete Kelly
Sen. Gene Therriault
Rep. John Davies
Rep. Hugh Fate
Rep. Eldon Mulder
Rep. Lisa Murkowski
FNSB Mayor Rhonda Boyles

CLERK'S OFFICE

APPROVED

Date: 1-30-01

NOTICE OF RECONSIDERATION WAS
GIVEN BY MS. CLEMENTSON 1-31-01

Submitted by: Assemblymembers ABNEY, Tesche
Prepared by: Assembly Office
For reading: JANUARY 30, 2001

*Reconsideration
Filed 2-06-01*

ANCHORAGE, ALASKA
AR NO. 2001- 26

**A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY SUPPORTING HOUSE BILL
13, "AN ACT RELATING TO MUNICIPAL SERVICE AREAS AND PROVIDING FOR VOTER
APPROVAL OF THE FORMATION, ALTERATION, OR ABOLISHMENT OF CERTAIN SERVICE
AREAS".**

WHEREAS, Alaska's Constitution provides for maximum local self-government (Art. X, Sec. 1), and for the creation, alteration, or abolishment of service areas subject to the provisions of law (Art. X, Sec. 5); and AS 29.35.450 codifies these Constitutional provisions and establishes the mechanism by which service areas are created, altered, and abolished; and

WHEREAS, Alaska has over 200 service areas - in these areas the local residents use private contractors for necessary services and assess themselves to pay for a desired level of service; and

WHEREAS, House Bill 13, sponsored by State Representative Bunde, amends AS 29.35.450 by:

- Clearly identifying who should vote under the following scenarios:

Abolishment of a service area - subject to approval by the majority of the voters residing in the service area.

Abolishment and replacement of a service area - must be approved separately by a majority of voters residing in an existing service area and by a majority of the voters residing in the proposed service area, but outside the existing service area.

Alteration of a service area or combining it with another service area - must be approved separately by a majority of the voters who vote on the question and reside in each of the service areas or in the proposed service area affected by the proposal.

This legislation will settle a long-time debate about who is entitled to vote during the creation, alteration or abolishment of a service area.

- Allowing for differential tax zones within a service area, thus allowing smaller areas to combine with larger service areas and to assess themselves at different levels within the combined area - achieving economies of scale and getting the level of service they need.

This legislation will result in fewer service areas and it will decrease the burden on municipal and borough governments.

BILL HISTORY

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Page 2

NOW, THEREFORE, the Anchorage Municipal Assembly resolves:

Section 1: That the Assembly supports House Bill 13.

Section 2: That, upon passage and approval, a copy of this resolution be forwarded to the State Legislature.

PASSED AND APPROVED by the Anchorage Municipal Assembly this 30 day of January, 2001.

Fay Van Der Vliet
Chair

ATTEST:

Lizbeth Ferguson
Municipal Clerk

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 25, 2001

SUBJECT: Municipal service areas; Art. X, sec. 5 of the State Constitution (SSHB 13)

TO: Representative Con Bunde
Attn: Patti Swenson

FROM: Tamara Brandt Cook
Director TBC

SSHB 13 provides for voter approval of formation of or certain changes to municipal service areas. You ask whether the requirement of voter approval with respect to service areas runs afoul of Art. X, sec. 5 of the state constitution. The provision of concern is "Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter.

The extent of the constitutional power granted to the assembly and the degree that the power may be limited by law or charter under this provision has not been squarely addressed by the Supreme Court. However, a recent case suggests that the power of the assembly may be limited by a charter provision imposing a requirement of voter approval. Area G Home and Landowners Organization, Inc. (HALO) v. Anchorage, 927 P.2d 728 (Alaska 1996) U.S. cert. denied 137 L.Ed 2 821, 117 S.C. 1694). That case involved the application of a charter provision requiring voter approval of certain changes to service areas. The court held that the charter provision permitting expansion of a service area upon approval of a majority of those voting within the area affected permitted the municipality to expand its police service area by abolishing its old service area and creating a new service area that included a region that had previously voted against expansion, without giving residents of that included region a separate vote on the expansion. In reaching its decision the court considered both the charter and Art. X, sec. 5. While the application of a voter approval requirement in the charter was the focus of the case, the court never suggested that the requirement of voter approval itself was prohibited under Art. X, sec. 5.

Recall the language of Art. X, sec. 5 making the power of an assembly over service areas "subject to the provisions of law or charter." If, as the court appears to have decided, a charter can impose a requirement of voter approval in these situations, then it appears under the language of the constitution that the law may also impose a such a requirement, as will be done if HB 13 is enacted. While the precise question was not decided, based

Representative Con Bunde
January 25, 2001
Page 2

on the reasoning in the HALO case, I do not think that a court would find HB 13 unconstitutional under Art. X, sec. 5.

TBC:glc
01-059.glc

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 26, 2001

SUBJECT: Constitutional prohibition against local or special legislation
(SSHB 13)

TO: Representative Con Bunde
Attn: Patti Swenson

FROM: Tamara Brandt Cook
Director *TBC*

You ask for an explanation of the constitutional prohibition against local and special legislation in connection with SSHB 13. Bill section 3 adds a new voting requirement that applies before certain changes may be made to service area boundaries if the service area provides road or fire protection services. Furthermore, the new voting requirement does not apply to a second class borough with a population that is under 60,000 although it applies to other boroughs. While bill section 3 is limited in application, the limitations are worded in general terms and do not have the effect of confining the new provision to only one or very few service areas or boroughs. Therefore, I do not think the bill would be held to violate the constitutional prohibition against local and special legislation contained in Art. II, sec. 19 of the state constitution. That section states in relevant part:

The legislature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination.

The test employed by the Alaska Supreme Court to determine whether an act violates the prohibition against local or special acts is substantially the same as that applied under nonsuspect class equal protection analysis. Upon examining the legislative goals and the means used to advance them, the court determines whether the legislation bears a fair and substantial relationship to a legitimate state purpose. State v. Lewis, 559 P.2d 630, 643 (Alaska 1977), cert. denied, 432 US 901, 53 L.Ed.2d 1073 (1977). To satisfy the "fair and substantial relationship" standard, the classification established by the legislation must be tailored to the purpose of the legislation. The classification must be neither overinclusive nor underinclusive. Isakson v. Rickey, 550 P.2d 350, 362 (Alaska 1976). If the "fair and substantial relationship" standard is met, the bill will not be invalidated because of incidental local or private advantages. Lewis, 559 P.2d at 643.

In Lewis, the court agreed that legislation of statewide significance need not have an effect in all parts of the state; legislation does not become "local" merely because it

Representative Con Bunde
January 26, 2001
Page 2

operates only on a limited number of geographical areas rather than on a statewide geographical basis. The Lewis case involved the Cook Inlet land exchange and the court accepted the premise that the land exchange, while only affecting land in Southcentral Alaska, required legislation to be accomplished and was of common interest to the whole state. The court relied heavily on the record developed by the legislature in support of the need for the land exchange and the decision to resolve serious issues surrounding Alaska Native land selections under the Alaska Native Claim Settlement Act through legislation authorizing the Cook Inlet land exchange.

In a case where a violation of sec. 19 was found, the court said that legislation establishing the Eagle River Borough was special and peculiar to the locality where the borough was established. Since there was nothing in the nature of the Eagle River-Chugiak area that justified a departure from the general law scheme for the establishment of boroughs, the statute violated sec. 19. Abrams v. State, 534 P.2d 91 (Alaska 1975).

Recently the court upheld an act modifying oil and gas leases on the Northstar field because "the Act's exclusive focus on the Northstar leases reflects their unique nature, and because the Act fairly and substantially relates to legitimate state purposes." Baxley v. State, 958 P.2d 422 at 431 (Alaska 1998)

TBC:lmb
01-029.lmb

LEGAL SERVICES

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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 26, 2001

SUBJECT: Differential Tax Zones (SSHB 13)

TO: Representative Con Bunde
Attn: Patti Swenson

FROM: Tamara Brandt Cook
Director *TBC*

Bill section 4 of SSHB 13 adds a new provision that states: "The assembly may by ordinance establish, alter, and abolish differential tax zones within a service area to provide and levy property taxes for a different level of services than that provided generally in the service area." You ask if differential tax zones are unconstitutional. While it is possible, that under certain facts, a particular differential tax zone may be problematical, I am aware of no constitutional problem that generally arises in connection with differential tax zones. (Op. Att'y Gen, December 8, 1986, pointing out in connection with a differential tax zone the requirement of a rational relationship between the benefits conferred and the additional costs imposed on the taxpayer)

The language in the bill is almost identical to a provision that has existed for many years: AS 29.45.580 allowing cities to establish differential tax zones. That provision became the subject of litigation when the City of Valdez imposed a tax on oil and gas property that was higher than the tax imposed on other property and claimed it could do so by treating the oil and gas property as a differential tax zone. The court concluded that Valdez could not impose higher taxes on oil and gas property, because another provision, AS 43.56.010(d), specifically prohibits a municipal tax rate on oil and gas property that is higher than that on other property. Because AS 43.56.010(d) is specific to oil and gas property whereas AS 29.45.580 is generally applicable to all property, the court decided that AS 43.56.010(d) controlled. While the precise issue of the constitutionality of differential tax zones was not addressed, the court took a close look at AS 29.45.580 and made no suggestion that the statute suffers from constitutional infirmity. (City of Valdez v. State, Dept. of Community and Regional Affairs, 793 P.2d 532 (Alaska 1990))

Assuming that a city may be authorized to establish differential tax zones without creating a constitutional problem, then it would seem that the legislature could permit a differential tax zone to be established in a service area as well. Note that the assembly has explicit constitutional authority to impose a tax in a service area and that the tax revenue must be used "to finance the special services." (Art. X, sec. 5, Constitution of

BILL HISTORY

Representative Con Bunde

January 26, 2001

Page 2

the State of Alaska) Any tax levied in a differential tax zone would, I believe, be subject to this provision and have to be used for the special services in that tax zone.

TBC:lmb

01-027.lmb

LEGAL SERVICES

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MEMORANDUM

January 31, 2001

SUBJECT: Legislative limitations on home rule powers (SSHB 13)

TO: Representative Con Bunde
Attn: Patti Swenson

FROM: Tamara Brandt Cook
Director *TBC*

You have supplied me with a letter dated January 29, 2001 from the Department of Community and Economic Development suggesting that it is unconstitutional for the legislature, by statute, to explicitly limit home rule powers especially with respect to a matter of local rather than statewide concern. An attachment to the letter cites as support for this position Lien v. City of Ketchikan, 383 P.2d 721 (Alaska 1963).

It appears that the department's reliance on the Lien case is misplaced. The court in that case simply held that a statute involving lease procedures that preexisted statehood and was adopted before home rule municipalities were established did not apply to home rule municipalities. The court in a later case, Jefferson v. State, 527 P.2d 37 (Alaska, 1974), carefully considered the relationship between statute and home rule powers in the context of Art. X, sec. 11 of the state constitution. The court concluded that our constitution explicitly rejects the test of statewide versus local concern in determining the scope of municipal power. Instead the question is to be resolved based upon whether a particular power or procedure has been prohibited to municipalities by statute. The statutory prohibition must be "either by express terms or by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law." (Id, at page 43; see also Simpson v. Municipality of Anchorage, 635 P.2d 1197 (Alaska Ct. App. 1981) Obviously, SSHB 13 contains an express limitation on home rule municipalities. A copy of the Lien case and relevant portion of the Jefferson case is attached.

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BILL HISTORY

8. Constitutional Law ⇐69

Supreme court would not give abstract opinion on whether city's lease of hospital to religious order would be valid should it appear that its effect would be to give preference to church, where order had not commenced operation of hospital. Const. art. 1, § 4.

David J. Pree, Anchorage, for appellants.

E. E. Bailey, Stump & Bailey, Ketchikan, for City of Ketchikan.

R. L. Jernberg, Gore & Jernberg, Ketchikan, and George J. Toulouse, Jr., Seattle, Wash., for Sisters of St. Joseph.

Before NESBETT, C. J., and DIMOND and AREND, JJ.

DIMOND, Justice.

The City of Ketchikan has provided for the construction of a hospital with a combination of federal, state and local funds.¹ After approval by the voters at a special election, the city executed an agreement to lease the hospital to the Sisters of St. Joseph of Newark, a charitable, non-profit corporation, for a period of 10 years at a rental of \$1.00 a year. Under the terms of the lease the Sisters are to operate and maintain the hospital at their own expense. In this action to cancel the lease the plaintiff-appellant, Lien, assailed the lease arrangement as being invalid on various grounds. The superior court held against plaintiff and dismissed his complaint, and he has appealed.

Public Purpose

Plaintiff contends that when a hospital constructed with public funds is leased to a non-profit corporation managed by a sectarian religious order, there is a violation

of the public purpose section of the state constitution which provides:

"No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose."²

[1,2] The moneys used to construct the Ketchikan hospital were spent for a public purpose, since a community hospital serves the general welfare. That purpose does not become non-public when the hospital is turned over to a charitable, non-profit corporation for operation, rather than being operated by the city itself. The public purpose remains unchanged. This is apparent from those provisions of the lease which obligate the Sisters to not deny admission or care of patients on account of race, color or creed, and which require the Sisters to establish fair and equitable rates and charges "sufficient only to pay the cost of operation." And it is of no consequence that the members of this charitable corporation may belong to a sectarian religious order. The test of whether a public purpose is being served does not depend on the religious or non-religious nature of the agency that will operate the leased property, but upon the character of the use to which the property will be put. The use as a public hospital will not be changed by the lease to the Sisters. There is no violation of article IX, section 6 of the state constitution.

Authority to Lease

A statute authorizes municipalities to sell, lease or otherwise dispose of real estate and other property "when in the judgment of the city council it is no longer required for municipal purposes."³ Relying upon this statute, plaintiff contends that since no finding was made that the hospital

1. The federal funds are made available by the Hospital Survey and Construction Act, commonly called the Hill-Burton Act. Act of August 13, 1946, ch. 958, 60 Stat. 1041 [42 U.S.C.A. § 291 (1957)]. The state funds are in the nature of matching funds with the federal and are available to local governments on a par-

ticipating basis. AS 18.20.140-18.20.220; S.L.A.1930, ch. 182, § 2. The local funds were obtained through the sale of the City's general obligation bonds in an amount not to exceed \$1,200,000.

2. Alaska Const. art. IX, § 6.

3. AS 20.10.132(a).

property was not required for municipal purposes, and that any such finding if made would not be justified by the facts, that the city had no authority to lease the property.

[3, 4] The statute relied upon by plaintiff has no application to this case. It was enacted prior to statehood when all cities derived their governmental powers from the legislature. Cities are now authorized by the state constitution to adopt home rule charters⁴, and the City of Ketchikan had adopted a charter and was a home rule city prior to the time the lease was made. By constitutional provision cities have "the powers and functions conferred by law or charter."⁵ The meaning of this provision is that where a home rule city is concerned the charter, and not a legislative act, is looked to in order to determine whether a particular power has been conferred upon the city. It would be incongruous to recognize the constitutional provision stating that a home rule city "may exercise all legislative powers not prohibited by law or by charter"⁶, and then to say that the power of a home rule city is measured by a legislative act. We hold that AS 29.10.132(a), which authorizes municipalities to lease property, is not relevant where the powers of a home rule city are being considered. This statute is not the source of the city's power to lease its hospital to the Sisters. Therefore, the portion of that statute which requires a finding that property to be leased is not required for municipal purposes is not a limitation on the power of the City of Ketchikan to lease its hospital.

[5] Plaintiff contends that the lease is without effect because of the city's failure to comply with certain provisions of the charter relating to the establishment of a public utility and a granting of a franchise to furnish a public utility service. This contention must be rejected for the reason that the language of the charter dealing

with utilities does not suggest that the term "public utility" was meant to include a hospital, and plaintiff has failed to show that this was contemplated by the framers of the charter.

Delegation of Power

The lease provides that "The Lessee shall have the responsibility for establishing the necessary rules, regulations and by-laws for the internal operation of the hospital and nothing in this lease may be construed as delegating this power to the Lessor." Plaintiff argues that this provision constitutes an invalid delegation of the city's power and duty to determine all matters of policy, in contravention of section 2-4 of the city charter which states:

"Except as otherwise provided in this charter, all powers of the city, including the determination of all matters of policy, shall be vested in the council."

[6] We find no violation of this section of the charter. The city had the power to lease the hospital; it was under no obligation to operate it as a governmental institution, administered and staffed by municipal employees. It would be impracticable for the city to attempt to provide rules and regulations for the internal functioning of an institution which has been turned over to another for management and operation. The city has established policy in the lease by including provisions which adequately recognize and protect the public interest. The Sisters are obliged to operate and maintain the hospital and equipment at their own expense, and in such a manner that there will be compliance with minimum hospital standards prescribed by the state, and eligibility for accreditation by the Joint Commission on Accreditation of Hospitals. Provision must be made for the care of Indian patients as prescribed by federal law, and a reasonable volume of charity care must be provided to conform to the requirements of the federal Hill-Burton Act. No person

4. Alaska Const. art. X, § 9.

5. Alaska Const. art. X, § 7.

6. Alaska Const. art. X, § 11.

may be denied admission to the hospital on account of race, creed or color. The Sisters must establish fair and equitable rates and charges sufficient only to pay the costs of operation, and they must establish and maintain an adequate accounting system and provide the city with an annual audit of hospital accounts made by a certified public accountant.

The foregoing lease provisions demonstrate that the city has fulfilled, rather than abdicated, its duty of determining policy matters. There has been no invalid delegation of municipal power.

Freedom of Religion

Asserting that the Sisters are a sectarian order of the Catholic faith, plaintiff contends that the effect of the lease is to give a preference to the Catholic church. This, plaintiff argues, violates article I, section 4 of the state constitution which forbids the making of a law respecting the establishment of religion or prohibiting the free exercise thereof.⁷

[7] The Sisters are a non-profit corporation, organized for charitable purposes.⁸ There is nothing in the articles of incorporation indicating that the corporation's objective is to further religious beliefs or dogmas of the Catholic church. The hospital was constructed and the lease made in order to provide for the care of the sick, without regard to race, color or creed, and thus accomplish a valid public purpose. There is nothing in this arrangement from which it can be inferred that a tax-established, public institution is to be utilized to aid a religious group to

spread its faith or to interfere with the religious beliefs of others.⁹ The city's action was not designed, nor does it have the effect by its nature, of promoting or giving a preferred position to whatever religious beliefs the individual members of the corporation might have. The fact that specific sectarian beliefs may be entertained by those persons does not bar the city from achieving its valid secular goal of caring for the sick.¹⁰

Plaintiff asserts that when the hospital has been completed and turned over to the Sisters in accordance with the lease¹¹, that the Sisters, as a matter of fact, will engage in the practice of teaching patients religion, and will operate the hospital under a sectarian code of ethics so as to give one sect preference over another and so as to interfere with the free exercise of plaintiff's own religious beliefs.

[8] If it should appear as an objective fact, after the Sisters commence operation of the hospital, that the operative effect of the lease arrangement is to violate the constitutional provision regarding the establishment of religion and religious freedom, then that will be time enough for the judiciary to intervene. Out of a proper regard for the right of the city to administer its affairs and serve the public need as it deems fit, this court will refuse to strike down the city's arrangement in the absence of a factual situation where judicial intervention becomes a practical necessity. At this time plaintiff is unable to show that he has sustained or is immediately in danger of sustaining some

7. Alaska Const. art. I, § 4 reads: "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof."

8. The articles of incorporation of the Sisters of St. Joseph of Newark provide in art. III: "The objects and purposes of this incorporation shall be to establish and maintain hospitals, orphanages, homes for young women, homes for the aged, the blind, or the infirm and with the further object and purpose of engaging generally in any such kindred

charities as those concerned in this corporation may from time to time find necessary or convenient."

9. But cf. *Illinois ex rel. McCollum v. Board of Education*, 333 U.S. 203, 210, 68 S.Ct. 461, 464, 92 L.Ed. 649, 658 (1948).

10. See *McGowan v. Maryland*, 366 U.S. 420, 445, 81 S.Ct. 1101, 1115, 6 L.Ed.2d 393, 410 (1961).

11. At the time the superior court rendered its decision the hospital was still under construction.

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bent upon the court to pass upon the con-
stitutional question. What plaintiff asks
us to do is to give an abstract opinion on
what is in essence a hypothetical case, and
that we shall not do.¹² Suffice it to say
we find no violation of article I, section 4 of
the constitution on the face of the city's

arrangement to lease its hospital to the
Sisters.

The remaining specifications of error
raised by plaintiff in his brief do not
warrant discussion—either because they
have been disposed of by the points covered
in this opinion, or because they are lacking
in substance.

The judgment is affirmed.

12. See *Poe v. Ullman*, 377 U.S. 497, 81 S.Ct. 1752, 6 L.Ed.2d 989 (1961).

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ough assembly. The statute had four sections. The first section dictated only the number of seats on the assembly; the remaining sections stated how those seats were to be apportioned among the voters. If those apportionment standards were unconstitutional,¹³ they could have been declared void without affecting the first section, since the first section was clearly separable from the latter sections. The test for separability of a statute (where one part of it is invalid) is whether the remaining parts are so independent and complete that it may be presumed that the legislature would have enacted the valid parts without regard to the invalid part.¹⁴ In this case the test is satisfied; we presume that the legislature undertook to establish the number of assemblymen for each class of borough and would have done so whether or not any particular apportionment formula be provided.

[10] Moreover, even were these provisions—the structure of the assembly and the apportionment of assembly seats—completely inseparable, we do not conclude that the lack of a valid legislative body would prevent the valid incorporation of the municipality. This conclusion is bolstered by noting that Alaska's newly-enacted Municipal Government Code¹⁵ has completely separated the statutes relating to the incorpo-

ration procedure¹⁶ from those relating to the borough's legislative body.¹⁷ We agree with the legislature that the incorporation of a municipality is a process both conceptually and functionally distinct from that of establishing a legislative body for that corporation.

We are satisfied that there was a valid statute under which the Borough could and did incorporate. Since Jefferson made no claim concerning the other three elements necessary to establish *de facto* municipal existence, the superior court properly ruled that the Borough was a valid entity as against a collateral attack.¹⁸

THE CITY'S CHARTER

Jefferson argues also that the sewer transfer was and is invalid, because the City's home rule charter prohibits the sale or disposition of the City's utility assets unless three-fifths of the City's voters approve the disposition.¹⁹ No election was held.²⁰

The Borough contends that the City's charter is over-ridden by state law in this area.²¹ In particular, the Borough relies on former²² AS 7.15.310, which provides in part:

"No city of any class, whether home rule or not, within an organized borough,

13. Judge Stewart ruled that this representational scheme was unconstitutional in *City of Juneau v. Borough First Judicial District Cause No. 65-317* (1968), 6 Alaska L.J. 197-9 (1968).

14. See 2 J. Sutherland, *Statutory Construction* § 2404 (3rd ed. F. Horack 1943).

15. Chapter 118, S.L.A.1972 repealed and replaced the statutes under which the Borough was incorporated.

16. Chapter 18, of Title 29, entitled "Incorporation."

17. Chapter 23, Art. 1 of Title 29, entitled "Borough Assembly."

18. Our disposition of this issue makes it unnecessary to rule on the Borough's contention that Jefferson's complaint was never properly amended to include this attack on the Borough's existence.

527 P.2d—3½
Alaska Rep. 525-530 P.2d—12

19. The City of Anchorage has adopted a home rule charter which provides in § 13.4:

"The counsel may sell, lease or otherwise dispose of a municipal utility or of property and interest in property used or useful in the operation of a utility only after a proposition to do so is approved by three-fifths of the electors of the city voting on the proposition."

20. The Borough makes no claim that the areawide sewer election of 1966 satisfied the city charter requirement.

21. The City joins the Borough in making this contention.

22. This controversy must be decided with reference to the former statutes, see n. 5, *supra*, governing transfer of powers because Ch. 118, S.L.A.1972 had a savings clause:

"A right or liability of a home rule or general law city or borough existing on September 10, 1972 is not affected by the enactment of this Act."

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may exercise any areawide power provided in this section . . . once that power is being exercised by an organized borough."²³

This court has dealt with conflicts between state law and a municipal home rule charter or ordinance in several cases.²⁴ The starting point for an analysis of this issue must be found in the Alaska constitution, Art. X, § 11:

"A home rule borough or city may exercise all legislative powers not prohibited by law or charter."

The authors of this provision hoped that its simple language and sweeping grant of power would enable home rule municipalities to meet a multitude of legislative needs without depending on specific grants of power from a state legislature.²⁵ They were aware of the difficulties encountered in other jurisdictions where delegations of power to local government units were conferred in terms, such as "matters of local

concern" or "of local affairs," which were intended to create an exclusive sphere of municipal action free from any intrusion by the state legislature.²⁶ Attempts by the courts in those jurisdictions to resolve conflicts between local enactments under such limited delegations of authority and state statutes relating generally to the same subject have often led to confusion and inconsistencies.²⁷ Then too, some commentators have suggested that constitutional or statutory home rule provisions had been rendered ineffective in other states because of restrictive court decisions.²⁸ With this all before them the constitutional delegates undertook to give Alaska home rule municipalities a wide range of powers to meet the differing needs of the varied and scattered communities of this state. It was hoped that the constitutional delegation of authority to local government units under the terms of Art. X, § 11 would lead the courts of this jurisdiction to take a new and independent approach when con-

23. Among the powers "provided in this section" are those transferred from city to borough pursuant to AS 7.15.350, which provides in part:

"Second class boroughs acquire additional areawide powers in the same manner provided by §§ 710-800 of this chapter . . . except that the vote on the question is areawide."

24. It has been claimed our approach has not always been entirely consistent. See Sharp, Home Rule in Alaska: A Clash Between the Constitution and the Court, 3 U.S.L.A.—Alaska L.R. 1 (1973).

25. Art. X, section 1, the introductory section on home rule in the Alaska constitution reads: "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 jurisdiction. A liberal construction shall be given to the powers of local government units."

26. See Sharp, *supra*, note 24 at 3. Most courts fail to distinguish between the types of home rule provisions. The provisions of other jurisdictions described in the text are sometimes designated as "shield" or "protection" provisions and usually require a court's determination of whether an exercise of municipal power is statewide or local in nature, when such exercise of power con-

flicts with a state statute. Alaska's home rule provision is a "grant" or "sword" of legislative power given to the municipality to be exercised as long as it is not prohibited by law. Art. X, § 11.

This difference between "shield" and "sword" provisions was implicitly recognized in *Rubey v. City of Fairbanks*, 456 P.2d 470, 475 (Alaska 1969) where the court declined to follow California's pre-emption-by-state-occupation-of-the-field doctrine because of the difference between California's and Alaska's home rule provisions. California's provision is a combination "shield" and "sword", while Alaska's is solely a "sword". See Duvall, Delineation of the Powers of the Alaska Home Rule City: The Need for a Beginning, 8 Alaska L.J. 232, 233-35 (Oct. 1970); Sato & Van Alstyne, State and Local Government Law 216-218 (1970).

27. Alaska Legislative Council and Local Affairs Agency, Final Report on Borough Government, 36 (1961).

28. See Fordham & Asher, Home Rule Powers in Theory and Practice, 9 Ohio St.L.J. 18 (1948); Richland, Courts Nullify Home Rule, 44 Nat'l Mun.Rev. 565-70 (1955); Sato, "Municipal Affairs" in California, 60 Cal. L.Rev. 1055 (1972). But see also Sandnow, The Limits of Municipal Powers Under Home Rule; A Role for the Courts, 48 Minn.L.R. 643 (1963-64).

licts inevitably arose between the municipalities and the state.²⁹ The foundation for this new approach has been laid in the past decisions of this court which have favored the exercise of legislative powers by local government units.³⁰

[11] However, to say that home rule powers are intended to be broadly applied in Alaska is not to say that they are intended to be pre-eminent. The constitution's authors did not intend to create "city states with mini-legislature."³¹ They wrote into Art. X, § 11 the limitation of municipal authority "not prohibited by law or charter." The test we derive from Alaska's constitutional provisions is one of prohibition, rather than traditional tests such as statewide versus local concern.³² A municipal ordinance is not necessarily invalid in Alaska because it is inconsistent or in conflict with a state statute. The question rests on whether the exercise of

authority has been prohibited to municipalities. The prohibition must be either by express terms or by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law.³³

[12] In this case we find the prohibition to be express. The statutes established a procedure by which certain city powers could be transferred to a second class borough and precluded a city from exercising a power once that power was being exercised areawide.³⁴

This then presents a clear case in which statutory authority overrides a provision in a home rule charter. Our conclusion is consistent with the new municipal code, which retains in large measure the relevant statutory provisions we have found controlling in this case.³⁵

29. See Sharp, Home Rule in Alaska, *supra*, note 25, at 22-27.

30. See Lien v. City of Ketchikan, 383 P.2d 721-723 (Alaska 1963); City of Juneau v. Hixson, 373 P.2d 743 (Alaska 1962); Rubey v. City of Fairbanks, 456 P.2d 470-475 (Alaska 1969).

31. Duvall, Delineation of the Powers of the Alaska Home Rule City: The Need for a Beginning, 8 Alaska L.J. 232, 240 (Oct. 1970).

32. See Sharp, *supra* note 25, at 30-31; Duvall, *supra* note 27 at 235, 237-239. In Rubey v. City of Fairbanks, 456 P.2d 470, 475 (Alaska 1969) this court recognized a prohibition test for conflict resolution between state and local legislation:

"Article X, section 11 of the Alaska constitution provides that a home rule city, such as Fairbanks, may exercise all legislative powers not prohibited by law or by charter." There is no legislative enactment in Alaska that expressly prohibits a home rule city from making assignment a criminal offense. We do not find such prohibition from the fact that the Alaska legislature has extensively covered the field of sexual offenses. We believe there would have to be some additional factor from which the intent of the legislature to prohibit local regulation in this area could be reasonably inferred. We are not aware of any such factor in this case."

33. We reaffirm our rejection of the doctrine of state pre-emption by "occupying the field." We will not read into a scheme of statutory provisions any intention to prohibit the exercise of home rule authority in that area of the law. If the legislature wishes to "pre-empt" an entire field, they must so state. See Rubey v. City of Fairbanks, 456 P.2d 470 (Alaska 1969).

We note that the legislature has done this in its new Title 29, Municipal Code. AS 29-13.100 provides in part:

"Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise than as provided."

34. Formerly AS 7.15.350; AS 7.15.310. The statutes further provided that such boroughs (of which the Anchorage borough is one) shall acquire city powers in the manner provided in AS 7.15.710-7.15.800, except that the vote on the question is areawide.

AS 7.15.710-7.15.800 provided for the filing of a petition by the borough with the Local Affairs Agency (now the Dept. of Community and Regional Affairs), review of the approved (as to form) petition by the Local Boundary Commission, a hearing on the petition held by the Local Boundary Commission, and finally an election on the proposal.

35. AS 29.33.010(b) (exercise of areawide borough powers); AS 29.33.290(c) (acquisi-

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Minn.L.R.

Our decision in the case at bar is in accord with this court's opinions relating to cases of conflict between local ordinances and state enactments. In *Lien v. City of Ketchikan*,³⁶ we held that the home rule provisions of the state constitution validated a lease of a hospital to a charitable non-profit corporation despite non-compliance with a state statute governing leases by municipalities. The statute was held inapplicable and not a limitation upon the city's home rule authority, the source of which is found in Article X, section 7 of Alaska's constitution.

In *Chugach Electric Association v. The City of Anchorage*³⁷ the issue was whether the City of Anchorage could block the electric association from providing electrical service to a customer within the association's service area. The Alaska Public Service Commission had previously granted the association a certificate of convenience and necessity to provide electrical service within certain areas of the city. The City refused to issue to the Association a building permit on the grounds that the City's own electrical utility could better serve the customer. We resolved the conflict by application of a rule requiring the local enactment to yield where it directly or indirectly impeded implementation of statutes which sought to further a specific statewide policy. This court discerned in the statute a strong policy in favor of treating regulation of public utility service areas as a matter of statewide concern. The situation was one in which locally created variations from state regulation could have affected public utilities beyond the local area. In these circumstances we found a legislative intent that regulated utilities were to be within the exclusive jurisdiction of the Public Service Commission to the extent that such jurisdiction was conferred

tion of additional areawide powers). These are enumerated as specific prohibitions to municipalities in AS 29.13.100. See note 34 *supra*.

36. 383 P.2d 721 (Alaska 1963).

37. 476 P.2d 115 (Alaska 1970).

upon the Commission. Accordingly, municipalities were prohibited from regulating the same utilities to the extent of the Commission's proper jurisdiction.

In *Macauley v. Hildebrand*³⁸ a state statute permitted borough assemblies to centralize by ordinance their school district accounting systems with other borough operations with school board consent. An ordinance of the City and Borough of Juneau required the Juneau School District to centralize the district's accounting system without the school board's consent. Although the statutory prohibition in *Macauley* was direct, this court offered another reason for striking down the questioned ordinance. The statute involved in *Macauley* was an express delegation by the state legislature to municipal corporations of a constitutionally mandated legislative power.³⁹ We reasoned that the language of the state constitution mandating maintenance of a school system by the state vested the legislature with pervasive control over public education. Thus, home rule municipalities were precluded from exercising power over education unless, and to the extent, delegated by the state legislature; and the local ordinance was therefore overridden by the statute.

Affirmed.

CONNOR, J., concurs separately.

CONNOR, Justice (concurring separately).

I agree with the majority opinion, but wish to add some observations about judicial method in resolving conflicts between state statutes and municipal ordinances. More particularly I wish to discuss the "local activities rule", and the place it has in the process of determining the validity of ordinances of a home rule municipality.

38. 491 P.2d 120 (Alaska 1971).

39. Alaska Const., Art. VII, § 1:

The legislature shall by general law establish and maintain a system of public schools open to all children of the State.

There is no question that we must adhere to the policy expressed in the constitution which requires that we give a broad reading to the powers of home rule cities and boroughs. That in itself poses no difficulty. This general policy, however, will not solve the real problem, which lies in the inherent potentiality of conflict between statutory law enacted by the legislature and local ordinances.

One possible solution is to hold that only where the legislature has expressly declared its intention to prohibit the exercise of municipal powers should we declare municipal ordinances void. Such an approach would have the advantage of simplicity. Unfortunately, such a mechanical jurisprudential technique is so simple that it would not serve the needs of the public. In extreme cases it probably would not survive constitutional attack.¹

The state legislature has expressly prohibited the exercise of total local power in such areas as taxation, AS 29.73.040, AS 29.53.350, AS 29.53.400; utilities regulation, AS 29.48.040-29.48.100; security for bonds, AS 29.58.180(b); municipal elections, AS 29.28.010, AS 29.28.020(b)-29.28.030; and other matters of general state concern. *See*, AS 29.13.100. It is naive, however, to expect that these prohibitions contemplate each and every matter in which the legislature would properly wish to restrict local power. A home rule concept which relies only on express prohibition to define the scope of local power presupposes a degree of legislative foresight and draftsmanship ability which is completely unrealistic. *See* Duvall, *Delineation of the Powers of the Alaska Home Rule City: The Need for a Beginning*, 8 Alaska Law Journal 232, 239 (1970).

For example, the Uniform Commercial Code, AS 45.05.002 et seq., and the Insur-

ance Code, AS 21.03.010 et seq., enacted by the legislature, no doubt were meant to operate upon a statewide basis, though nothing in those codes expressly prohibits municipal legislation in the field of commercial law or insurance law. Yet to say that a home rule city could alter the operation of such comprehensive statutory systems would be intolerable. Transactions whose reliability is vital to a functioning economy would become unsettled, to the detriment of the business community and the citizenry of the state. A conflict between the city and the state could not be ignored in this type of situation, despite the absence of an express prohibition.

In such instances the courts must resolve the conflict. There is no escape from our duty to adjudicate legal claims which arise from two constitutional provisions of equal dignity, *i. e.*, the grants of power to both the legislature and to home rule cities.

The question, then, is not the propriety of judicial action or abstention. Rather, the problem is what methods should be employed by courts when presented with those conflicts between municipal ordinances and state statutes which will inevitably occur. As with many questions of public law, the answer is to be found through an analysis and weighing of the various social and governmental interests which bear upon such a conflict.

One test we have used in determining whether the ordinance or the statute must yield, is the "local activities rule." This test, as applied in *Chugach Electric Association v. City of Anchorage*, 476 P.2d 115 (Alaska 1970), and *Macauley v. Hildebrand*, 491 P.2d 120 (Alaska 1971), should not be regarded, as it has been by one commentator,² as the rule the framers of the constitution rejected in establishing a broad home rule policy. Rather, it should

than the statutory period of limitation applicable to claimants against private persons, the ordinances were in these cases held unconstitutional as denying to tort claimants the equal protection of the laws.

2. *See*, Sharp, *Home Rule in Alaska: A Clash Between the Constitution and the Court*, 3 UCLA Alaska Law Review 1, 53 (1973).

1. Examples are *Turner v. Staggs*, 510 P.2d 879 (Nev.1973), and *Reich v. State Highway Department*, 386 Mich. 617, 104 N.W.2d 700 (1972). These cases concern municipal ordinances barring suit by tort claimants unless notice is given within a certain period of time following the injury. Because the time periods provided by ordinance were shorter

be recognized as a realistic tool by which to interpret this policy. The "local activities rule" requires the court to focus upon whether the particular subject under consideration is of such statewide concern that the exercise of municipal power is inconsistent with the effectuation of statewide policy, as expressed by statute. Some matters are obviously of statewide concern, some less so. Some matters are so traditionally and readily classified as matters of local government that there will be no difficulty in finding that they are within municipal competence. Here, too, the municipal code adopted by the legislature is of great help in delineating the areas of permissible local action.

Inevitably, there will be cases which fall within a gray area. As to those the courts must attempt to balance competing interests, bearing in mind the constitutionally stated policy of permitting maximum home rule and yet preventing the chaotic state of affairs which would result if each home rule municipality were allowed to legislate as though it were a feudal city-state. When dealing with cases in the gray area, the courts must strike a balance as best they can, after careful consideration of the competing interests and public policies which bear upon the outcome. Thus in *Chugach Electric Association*, *supra*, 476

P.2d at 123, we spoke of balancing "the needs of the entire state against the desirable autonomy which only home rule can provide." The ultimate question, of course, is whether, from an examination of the statutes, a prohibition against home rule powers can be discerned, either expressly or by implication. Fortunately, if the judicial decision in such cases is unacceptable, relief may still be sought from the legislature, which can, if it chooses, alter the determination. A judicial decision of such a question is not, therefore, the end of the controversy.

Those who advocate that the conflict between statutes and ordinances should be resolved by simply holding in favor of home rule in all instances where the legislature has not stated an express prohibition are seeking an illusionary, unworkable solution to a problem which is quite complex and which is, like many things in modern life, not susceptible to decision by mere slogans or mechanical formulae. "The price of certainty is too high when it involves a failure to face the real policy questions involved."³

I favor the "local activities rule" applied in *Macauley* and *Chugach*, for the rule is, in my opinion, a useful one in resolving the conflict between statute and ordinance.

3. Calif. Governor's Comm'n on the Law of Preemption, Report and Recommendations, 6 (1967), cited in *Duvall*, *supra*, at 244.

HB

16

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSSHB 16(CRA)
(H) Publish Date: 2/7/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title "An Act relating to cities incorporated under BRU Civil Division
state law that are home rule communities. . ." Component Governmental Affairs
Sponsor Representative Dyson
Requester House Community & Regional Affairs Component No. 2207

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	2.5	2.5	2.5	2.5	2.5	2.5
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.4	0.4	0.4	0.4	0.4	0.4
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	2.9	2.9	2.9	2.9	2.9	2.9

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	2.9	2.9	2.9	2.9	2.9	2.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	2.9	2.9	2.9	2.9	2.9	2.9

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SSHB 16 allows an existing second class city or unincorporated area to form a "home rule community" government structure. This new classification would permit the city or area to choose a narrower scope of governing powers than current law requires.

The Department of Law will provide legal assistance in developing the new model charters for home rule communities during FY02, and provide advice to the Local Boundary Commission as charter petitions are received in the following years. We anticipate approximately 30 hours of attorney time per year will be required for these more routine functions. Any litigation arising from the new charter process would require additional time. Because we have no way of predicting how much, if any, new litigation there might be, these costs are not included in this fiscal note.

Based on the department's FY02 hourly attorney rate, which includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses, the cost of SSHB 16 would be \$2,927.10 (30 hours x \$97.57/hour).

Prepared by: Joan M. Kasson Phone 465-5370
Division Attorney General's Office Date/Time 2/5/01 10:37 AM
Approved by: Kathryn Daughhetee for Bruce M. Botelho, Attorney General Date 2/5/01
Agency Department of Law

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REPRESENTATIVE FRED DYSON

CSSSHB 16 (CRA) Sponsor Statement

"An Act relating to villages; and providing for an effective date.

Updated: February 9, 2001

Contact: Representative Fred Dyson's office at (907) 465-2199

House Bill 16 allows an existing Second Class City, or unincorporated area, to form a "Home Rule Community" government structure under state law. The city or area would be allowed, through the charter system, to flexibly define its scope of governing powers and services to meet specific area needs.

For instance, a community charter may be drafted to provide for police or fire protection services while leaving transportation issues in the state purview. Under the provision of their charter, a local government may assume any of a wide range of powers, from alcohol and animal control to airport and public works management.

Currently, all home rule governments are required to meet strict financial auditing requirements, provide land-use, zoning and platting services and constitute their own school district. House Bill 16 removes these requirements* allowing smaller communities to share in the strength and flexibility of the charter system while avoiding some the thickest mazes of red tape. The goal: greater self-determination and a more locally relevant government structure.

A new charter-base Home Rule Community may be the best option for unincorporated areas that would not be viable under the second class city model. Existing second class cities that are strained by general law requirements may find relief in a more narrowly crafted charter that allows them to forego services beyond their capability, while accepting responsibility for local needs that can be met with local resources.

CSSSHB 16 requires a conforming bill to be passed before becoming law. The conforming bill directs Legislative Legal Services to prepare a technical clean-up bill that adjusts language referring to municipalities *outside of this act* to treat Home Rule Communities like Second Class Cities. This conforming bill is set up to be the "trigger" to enact HB 16.

Please feel free to contact my office with questions or concerns.

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*Financial statements are required in lieu of a full audit. Land use, zoning and platting may be done, but are not required. A home rule community would not constitute a school district.

- E-mail -
Representative_Fred_Dyson
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Sectional for CSSSHB 16

22-LS0210\J

Updated: February 16, 2001

Section 1 and 22: Includes "home rule community" in the definition of "municipality".

Section 2: Defines "city" to mean a home rule community, home rule city, or general law city incorporated under the laws of the State of Alaska.

Section 3: Allows reclassification of a home rule community to a home rule city.

Section 4: Allows "charter approval" and "reclassification" to be considered together if a home rule community petitions to reclassify to a home rule city.

Section 5: Allows the standards for incorporation of a second class city to also apply to a home rule community.

Section 6: Allows for home rule communities to be considered in proposals for Municipal incorporation. Paragraph (13) allows for a home rule community to propose a charter.

Section 7: Allows a first class city or a second class city to adopt a charter and become a home rule city and a second class city to adopt a charter and become a home rule community.

Section 8: In an incorporation, merger, or consolidation election a municipality may adopt a charter and become a home rule community or a home rule borough.

Section 9: Includes "home rule communities" and "home rule" boroughs in the description of what petitioners must include to propose organization.

Section 10 and 21: Allows for local preference for name selection for the council and/or the mayor.

Section 11: Requires the department to prepare a model charter for a home rule community.

Section 12 and 14: Allows a home rule community a choice of either an audit or a annual income and expenditure statement.

Section 13: Equates home rule communities with second class city in the description of powers of eminent domain.

Section 15 and 17: Allows the power to provide for planning and platting as a charter option.

Section 16: Equates home rule communities with second class cities in prohibiting establishment of a public school system.

Section 18 and 19: Equates home rule communities with second class cities in option to tax and the related requirements.

Section 20: Includes home rule communities in definition of city.

Section 23: Adds the definition of a home rule city to exclude a home rule community.

Section 24: Requires and describes a CONFORMING BILL to be passed before HB 16 becomes law.

Section 25 and 26: Sets the effective date to 1 _____ ' the conforming bill.

SOUTHEAST CONFERENCE

Working for strong economies, healthy communities, and a quality environment in Southeast Alaska

February 21, 2001

Representative Fred Dyson
Alaska State Legislature
Room 104
State Capitol Bldg.
Juneau, AK 99801-1182

RE: Support for HB 16

Dear Representative Dyson:

The Southeast Conference Board offered support for HB 255 last year, related to "Home Rule Communities" and we continue to support that effort in HB 16, before the legislature this year. Thanks for your efforts last session, and we are hopeful you are successful in moving it through the House and Senate this year.

Many communities in the Southeast Alaska Region would benefit from the ability to offer services scaled to their local needs. This legislation provides the means for smaller communities to offer a limited range of services, without the prohibitive overhead associated with larger community organizations. We think the legislation has the potential to measurably improve the quality of life in the smaller communities, allowed to organize and provide services within their means.

The Southeast Conference appreciates your work on this important legislation, and we remain hopeful it can be signed into law this year.

Sincerely,



Loren Gerhard
Executive Director