



SELECTED OFFICIALS: ANNUAL SALARIES — Continued

ing, \$102,918; Revenue, \$132,350; Solid waste management, \$81,598; State police, \$132,350; Transportation, \$132,350; Welfare, \$132,350 Insurance, \$74,514; Licensing, \$58,828; Parks & recreation, \$65,369; Personnel, \$91,745; Post audit, \$58,828; Public library development, \$105,529; Purchasing, \$95,188; Revenue, \$105,529; Solid waste management, \$81,404; Tourism, \$65,369; Welfare, \$74,514 Utah: Minimum figure in range: top of range follows: Administration, \$102,600; Agriculture, \$87,500; Banking, \$87,500; Budget, \$102,600; Civil rights, \$80,433; Commerce, \$87,500.; Community affairs, \$94,300; Consumer affairs, \$76,190; Corrections, \$102,600; Elections administration, \$41,433; Emergency management, \$94,723; Employment services, \$111,800; Energy, \$64,750; Environmental protection, \$102,600; Finance, \$102,670; Fish & wildlife, \$94,723; General services, \$97,260; Health, \$111,800; Higher education, \$160,000; Highways, \$111,800; Historic preservation, \$80,433; Information systems, \$105,500; Insurance, \$87,500; Labor, \$87,500; Licensing, \$82,640; Mental health & retardation, \$94,723; Natural resources, \$102,600; Parks & recreation, \$94,723; Personnel, \$102,600; Planning, \$102,600; Pre-audit, \$102,670; Public library development, \$80,433; Public utility regulation, \$94,300; Purchasing, \$97,260; Revenue, \$94,300; Social services, \$111,800; Solid waste management, \$124,155; State police, \$94,723; Transportation, \$111,800; Welfare, \$111,800 Northern Mariana Islands: \$49,266 top of range applies to the following positions: Treasurer, Banking, Comptroller, Corrections, Employment Services, Fish and Wildlife, Highways, Insurance, Mental Health and Retardation, Parks and Recreation, Purchasing, Social/Human Services, Transportation.

(c) The present Secretary of Commerce forgoes regular salary and receives \$1 in compensation.

(d) Responsibilities shared between Commissioner, Mental Health, \$140,272 and Commissioner, Retardation, \$116,272.

(e) Responsibilities shared between Secretary of State, \$124,900 and Bureau Director, \$102,143.

(f) Responsibilities shared between Director, Division of Substance Abuse and Mental Health, Department of Health and Social Services, \$121,800; and Director, Division of Developmental Disabilities Service, same department, \$98,300.

(g) Function split between two cabinet positions: Secretary, Dept. of Health and Social Services: \$113,400 (if incumbent holds a medical license, amount is increased by \$12,000) and Secretary, Dept. of Svcs. for Children, Youth and their Families, \$106,000: if a Board-certified physician, a supplement of \$3,000 is added.

(h) Salaries represent those reflected for the position in section 10a of FY2004 Budget Act effective 7/21/2003.

(i) Responsibilities shared between, Director of Mental Health, Department of Children and Family Services, \$83,890; and Director, Substance Abuse, same department, \$77,738.

(j) Department of Fish and Wildlife, \$113,522.

(k) Responsibilities shared between State Auditor, Office of the Auditor, \$85,302; and Division Head, Division of Audit, Department of Accounting & General Services, vacant, salary unavailable.

(l) Responsibilities shared between Director of Fisheries, Department of Natural Resources, \$96,424 and Director of Wildlife, Dept. of Natural Resources, \$92,424.

(m) Responsibilities shared between Co-Directors, Election Commission, \$50,500.

(n) Responsibilities shared between Executive Director, Health Professions Bureau, \$54,274; and Executive Director, Professional Licensing Agency, \$61,915.

(o) Responsibilities shared between Lieutenant Governor, \$111,523; Director, Business Development Division, same department, \$86,275; and President, Kansas Inc., salary unavailable.

(p) Responsibilities shared between Secretary of State, \$76,389 and Deputy Secretary of State, \$62,301.

(q) Responsibilities shared between Assistant Secretary of State, \$74,600 and Senior Counsel for Elections, \$68,600.

(r) Responsibilities shared between Central Account Service Manager, Division of Accounts & Reports, Department of Administration, \$70,428; and

Team Leader, Audit Services, same division and department, \$57,948.

(s) In Maine, New Hampshire, New Jersey, Tennessee and West Virginia, the presidents (or speakers) of the Senate are next in line of succession to the governorship. In Tennessee, the speaker of the Senate bears the statutory title of lieutenant governor.

(t) Responsibilities shared between Director, Mental Hygiene Administration, \$85,594-\$115,014; and Director, Developmental Disabilities Administration, Department of Health and Mental Hygiene, \$85,594 - \$115,014.

(u) Responsibilities shared between Commissioner, Department of Mental Retardation, \$182,831; and Commissioner, Department of Mental Health, Executive Office of Human Services, \$110,496; and Commissioner Gerald Morrissey, \$114,258.

(v) State Treasurer Position was abolished in January 2003. Functions now served by The Department of Finance, Commissioner.

(w) Responsibilities shared between Director, Dept. of Natural Resources, \$124,848 and Chief, Fish, \$102,142 and Chief, Wildlife, \$91,045.

(x) Responsibilities shared between Director, Dept. of Community Health, \$130,050 and Chief Deputy Director, Mental Health and Substance Abuse Services, \$114,000.

(y) Responsibilities shared between Administrator, Department of Conservation, \$77,508; Administration, Division of Protection, same department, \$86,976.

(z) Responsibilities shared between State Tax Commissioner, Department of Revenue, \$90,526; Administrator, Budget Division, Department of Administrative Services, \$100,697; and Auditor of Public Accounts, \$60,000.

(aa) Responsibilities shared between Director, Game & Parks Commission, \$91,428; Administrator, Wildlife Division, same commission, \$82,023; and Assistant Director, Fish & Wildlife, same commission, \$70,874.

(bb) Responsibilities shared between Commissioner, State Education Department, \$170,165; Secretary of State, Department of State, \$120,800.

(cc) Responsibilities shared between Commissioners, Corporation Commission, varying salary levels for four commissioners, \$72,000; \$84,000; \$87,875; and \$87,875.

(dd) Responsibilities shared between Director for Mental Retardation, \$138,396 and Director of Mental Health, \$140,000.

(ee) Annual salary for duties as presiding officer of the Senate.

(ff) Responsibilities shared between Secretary of State, \$117,546; and Division Director, \$86,811.

(gg) Responsibilities shared between Secretary, Department of Education and the Arts, \$75,000; and Superintendent, Department of Education, \$146,000.

(hh) Responsibilities for St. Thomas, \$60,000; St. Croix, \$65,000; St. John, \$60,000.

(ii) Responsibilities shared between Commissioner of Mental Health, \$136,000 and Commissioner of Mental Retardation, \$136,000.

(jj) Governor Romney and Lieutenant Governor Healey waive their salaries.

(kk) Responsibilities shared between Director of Fiscal Management, \$84,000 and Director of Management and Budget, \$86,000.

(ll) Responsibilities shared between Secretary of State, \$47,060 and State Elections Director, \$51,816.

(mm) Responsibilities shared between Kevin Johnston, \$135,903 and Robert Jaekle, \$135,903.

(nn) Responsibilities shared between Administrator, \$71,683 and director, \$83,932.

(oo) Responsibilities shared between Secretary of State, \$80,000; Deputy Secretary of State for Elections, \$78,319 and Chief Deputy Secretary of State, \$86,153.

(pp) Responsibilities shared between Director, Division of Purchasing, Dept. of the Treasury, \$115,000, and Director, Division of Property and Management, Dept. of the Treasury, \$103,000.

(qq) Responsibilities shared between Director, Division of Mental Health Services, Dept. of Human Services, \$110,365 and Director, Division of Developmental Disabilities, Dept. of Human Services, \$120,000.

GOVERNORS

Table 4.3
THE GOVERNORS: COMPENSATION

State or other jurisdiction	Salary	Governor's office staff (a)	Access to state transportation			Travel allowance	Official residence
			Automobile	Airplane	Helicopter		
Alabama	\$96,361	22	*	*	*	(b)	*
Alaska	85,766	70	*	*	...	(k)	*
Arizona	95,000	39	*	*	*	(b)	...
Arkansas	75,296	55	*	*	*	*	*
California	175,000	86	*	...	...	(c)	(d)
Colorado	90,000	39	*	*	...	(e)	*
Connecticut	150,000	30	*	*	*	(e)	*
Delaware	114,000	32	*	...	...	...	*
Florida	120,171	310	*	*	...	(b)	*
Georgia	127,303	77	*	*	*	(e)	*
Hawaii	94,780	67	*	*	*	*	*
Idaho	98,500	24	*	*	...	(e)	...
Illinois	150,691	130	*	*	*	(b)	*
Indiana	95,000	34	*	*	*	\$10,500 (b)	*
Iowa	107,482	19	*	*	...	(b)	*
Kansas	98,331	24	*	*	...	*	*
Kentucky	103,011	40	*	*	*	(b)	*
Louisiana	94,532	143	*	*	*	(b)	*
Maine	70,000	19	*	*	*	(b)	*
Maryland	135,000	82	*	*	*	(e)	*
Massachusetts	135,000 (j)	70	*	...	*	(b) (e)	...
Michigan	177,000	56	*	*	...	(e)	*
Minnesota	120,311	45	*	*	*	(e)	*
Mississippi	122,160	33	*	*	*	(e)	*
Missouri	120,087	39	*	*	...	(c)	*
Montana	93,089	18	*	*	*	(b)	*
Nebraska	85,000	9	*	*	...	(b)	*
Nevada	117,000	(g)	*	*	...	(c)	*
New Hampshire	\$6,060	23	*	...	...	(e)	★ (f)
New Jersey	157,000	156	*	...	*	\$61,000	*
New Mexico	110,000	27	*	*	*	\$79,200 (c)	*
New York	179,000	180	*	*	*	(b)	*
North Carolina	118,430	76	*	*	*	\$11,500	*
North Dakota	85,506	17	*	*	...	(b)	*
Ohio	126,485	60	*	*	*	(f)	*
Oklahoma	110,298	34	*	*	...	(b)	*
Oregon	93,600	29	*	...	...	(c)	*
Pennsylvania	144,416	90	*	*	...	(b)	*
Rhode Island	105,194	49	*	...	...	N.A.	...
South Carolina	106,078	22	*	*	...	(b)	*
South Dakota	95,385	22.5	*	*	...	(b)	*
Tennessee	85,000	76	*	*	*	(e)	*
Texas	115,345	266	*	*	*	(b)	*
Utah	100,600	17.5	*	*	*	\$58,900	*
Vermont	127,456	14	*	...	...	*	...
Virginia	124,855	34	*	*	*	(b)	*
Washington	139,087	36	*	*	...	(e)	*
West Virginia	90,000	56	*	*	*	(h)	*
Wisconsin	122,406	39.75	*	*	...	(e)	*
Wyoming	130,000	8	*	*	...	(b)	*
American Samoa	50,000	23	*	...	...	\$105,000 (c)	*
Guam	90,000	42	*	...	...	\$218/day	*
No. Mariana Islands	70,000	16	*	...	...	(e) (i)	*
Puerto Rico	70,000	352	*	...	...	...	*
U.S. Virgin Islands	80,000	86	*	...	...	(b)	*

See footnotes at end of table.

Partially Exempt Salary Schedule (PX)
(monthly amounts listed)

	Current	7/1/05 (under HB 98)	7/1/06 (under HB 98)
28 E	7,600	8,091	8,253
28 M	9,112	9,702	9,896
30 E	8,142	8,668	8,841
30 M	9,765	10,396	10,604

Journal Text for SB34 in the 22nd Legislature

Full Journal

01-12-2001

Senate Journal

0069

SB 34

SENATE BILL NO. 34 BY THE SENATE RULES COMMITTEE
BY REQUEST OF THE GOVERNOR, entitled:

"An Act relating to the monthly salary for heads of
principal executive departments; and providing for an
effective date."

was read the first time and referred to the State Affairs and Finance
Committees.

The following fiscal information was published today:

Fiscal Note, No. 1, zero, Office of the Governor

Krocker
Governor's transmittal letter dated January 12:

Dear President Halford:

Present and past administrations have been fortunate to find capable men and women willing to leave far more lucrative jobs to serve the public in demanding positions as heads of principal state departments. In fact, over the years many candidates have declined offers and commissioners have left after a short tenure because they could earn so much more in other public and private jobs. While public service can be personally fulfilling, the state cannot expect to continue to attract and retain talented people unless there is a fair salary commensurate with the responsibilities of the job.

01-12-2001

Senate Journal

0070

I am transmitting to you a bill that would permit some flexibility in setting the salary of a principal department head. Under existing law enacted over 20 years ago, commissioner salaries are set at Range 28, Step E with no opportunity for step or range increases regardless of how long the person remains in the job. This bill allows setting a commissioner's salary at a higher step and range -- no more than Range 30, Step F -- to recognize special skill or experience. This approach is identical to the method under existing law for setting the salary of deputy department heads.

The current salary of commissioners is not in line with positions of similar authority and responsibility in the private sector or even larger municipalities within the state. Ironically, deputies and other managers often make more than their commissioners because they are permitted salary increases over time. Salaries of the directors of the state's quasi-independent agencies such as Alaska Housing Finance Corporation, Alaska Industrial Development and Export Authority, and the Alaska Permanent Fund Corporation, which compete most closely with the private sector, substantially exceed those of commissioners. Despite lower costs of living, the salaries of department heads in many other states, including those on the West Coast, exceed those of Alaska commissioners. While this proposal would permit only a modest salary increase for department heads, the flexibility afforded could help attract candidates from the private sector and could encourage

qualified appointees to remain in service to the public. Recognizing that there is never a good time to raise salaries for our public officials, this action is long overdue.

I urge your favorable action this session.

Sincerely,
/s/
Tony Knowles
Governor

Bill Root:

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Testimony before the House Rules Committee
April 20, 2005

C. S. Christensen II'
Deputy Administrative Director
Alaska Court System

HB 98 "An Act relating to the compensation of certain public officials, officers, and employees not covered by collective bargaining agreements; and providing for an effective date."

I would like to thank Governor Murkowski for including the employees of the Alaska Court System in this legislation.

First, a little background. We have about 733 permanent employees. 62 are judges appointed by the governor, 39 are magistrates, and most of the rest are clerical employees. We absorb less than 2% of the operating budget; that makes us smaller than a number of individual departments in the executive branch. While we are small, more private citizens come through our doors every day than any other entity, other than perhaps the university. Unfortunately, many of those people are angry or scared, they are going through the most traumatic experience of their lives, and they don't understand how the system works. These are the people that our employees work with every day. These people were involved in over 150,000 new cases filed last year. Court employees work hard under very stressful conditions. However, I have often heard from employees that they are proud of the work they do, they believe that what they do matters, and most of them do it for a low salary. 70% of our employees are compensated at Range 15 or below. Low salaries result in a high turnover rate (approximately 50% before 5 years, and as much as 100% in some rural courts where we compete with higher salaries or benefits offered by the local Native corporations or boroughs), and a large percentage of court system clerical employees have second jobs.

The legislature has historically given non-judicial court employees a cost-of-living adjustment (COLA) equal to the COLA it has approved for union employees in the executive branch. The last time it failed to do so was in 1993. Shortly thereafter, non-supervisory court employees voted to join the IBEW.

In 1996, the legislature gave both union and non-union court employees a COLA that restored parity with the salaries that had been approved for union employees in the executive branch. The unionized court employees subsequently voted to decertify the IBEW as soon as the first collective bargaining agreement expired. Workers organize for different reasons. For court employees, the main driver seemed to be equity in compensation rather than changes in working conditions.

With respect to our judges, salaries were ranked first in the nation in 1982. Today, however, the National Center for State Courts states that the salary of a superior court judge in Alaska ranks 49th once adjusted for cost-of-living. Normally when we talk about states that are 49th in something, we're referring to Mississippi or Arkansas; not in this case. The average annual increase in salaries for general jurisdiction judges in other states during the period from 1997-2003 was 3.4%. In Alaska, it averaged only 1.2%, about half the rate of inflation (2.3%).

Unlike other state employees, judges do not get annual longevity increases; the salary of a new judge is identical to the salary of a judge with 15 years of experience. Thus, there is no longevity increase to help compensate for a failure to provide adequate cost of living adjustments. In addition, the geographic differential received by rural judges is generally much less than that received by other state employees. In Barrow, for example, a union employee gets 43%; a non-union employee gets 31.5%; and the local judge gets only 17%. Moreover, the geographic differential is limited to the first \$40,000 of salary, unlike other state employees who have it calculated on their entire salaries. Because of the lack of longevity increases and the limited geographic differential, there are actually long-time prosecutors in rural Alaska who make substantially more than the local superior court judge.

HB 98 would give the non-judicial employees of the Alaska Court System a salary adjustment in FY 06 that would place their salary schedule approximately on par with the salary schedule approved by the legislature last session for members of the APEA. Even if they get this, court employees will still have lost substantial ground to inflation over the last decade. Judges will get a salary increase equal to the percentage salary increase that HB 98 proposes for a Range 28E in the executive branch. This will vault Alaska's judges from 49th place to 47th place.

This bill sends a message that the legislature does value court employees as much as it values union employees in the executive branch, and that it does not take their hard work for granted. Thank you for your consideration.

Cost-of-Living Adjustments for Judicial and Non-Judicial Employees of the Alaska Court System.

- AS 22.20.037(c) requires the administrative director of the court system to conduct an annual salary survey to "ensure that employees of the Alaska court system receive salaries consistent with those paid to employees in the classified and partially exempt state service."
- The legislature has historically given judicial branch employees a cost-of-living adjustment (COLA) equal to the COLA it has approved for union employees in the Executive Branch. The last time it failed to do so was in 1993. Shortly thereafter, non-supervisory court employees voted to join the IBEW.
- In 1996, the legislature gave both union and non-union court system employees a COLA that restored parity with the salaries that had been approved for union employees in the Executive Branch. Court system employees subsequently voted to decertify the IBEW when the first collective bargaining agreement expired.
- Approximately 70% of all persons employed by the court system are paid at Range 15 or below. More than half are Range 6 through Range 12. Low salaries result in a high turnover rate (approximately 50% before 5 years), and a large percentage of court system employees have second jobs.
- According to a recent report prepared by the National Center for State Courts, the salary of superior court judges in Alaska ranks 49th when adjusted for cost-of-living. The average annual increase in salaries for general jurisdiction judges in other states during the period from 1997 – 2003 was 3.4%. In Alaska, it averaged only 1.2%, well under the rate of inflation.
- Unlike non-judicial court employees, judges do not get annual longevity increases; the salary of a new judge is identical to the salary of a judge with 15 years of experience. Thus, there is no longevity increase to help compensate for unfunded COLA's. In addition, the geographic differential received by rural judges is generally much less than that received by other non-union state employees (17% vs. 31.5% in Barrow, for example), and is limited to the first \$40,000 of salary, unlike other state employees.
- HB 98, introduced by Governor Murkowski, would give the magistrates and the non-judicial employees of the Alaska Court System a salary adjustment in FY 06 that would place their salary schedules approximately on par with the salary schedule for members of the APEA. These salary adjustments would range from approximately 2.75% for committing magistrates and non-judicial employees at the upper end of the salary schedule, to approximately 3.6% for those at the lower end of the salary schedule. Magistrates other than the committing magistrates would receive an adjustment of 3.4%. Judges would receive an adjustment of 6.5%, equal to the adjustment given by HB 98 to a Range 28E in the executive branch. Total cost of these adjustments would be approximately \$1.6 million. The bill grants all judicial and non-judicial employees an additional 2% COLA in FY 07, equal to the negotiated union COLA's for FY 07. Total cost of this adjustment would be approximately \$860,000.

**STATE OF MONTANA
2004 ELECTED STATE OFFICIALS SALARY SURVEY
SALARIES OF MONTANA ELECTED OFFICIALS EFFECTIVE JULY 1, 2005 - JUNE 30, 2007**

ELECTED OFFICIALS	Salaries June 2004					New MT Salaries 7/1/2005 *	Difference Between Current and New Salaries	
	MONT	IDAHO	NO DAK	SO DAK	WYOMING		Dollars	Percent Inc.
GOVERNOR	\$93,089	\$98,500	\$85,506	\$100,215	\$105,000	\$96,462	\$3,373	3.6%
LT GOV	\$66,724	NCP***	\$66,380	NCP***	NCP	\$66,724	\$0	0.0%
ATTY GENERAL	\$82,549	\$91,500	\$74,668	\$85,094	\$95,000	\$85,762	\$3,213	3.9%
SECY OF STATE	\$72,085	\$82,500	\$68,018	\$68,092	\$92,000	\$76,539	\$4,454	6.2%
SUPT OF PUBL INST	\$80,425	\$82,500	\$77,436	\$115,000	\$92,000	\$89,472	\$9,048	11.2%
STATE AUDITOR	\$72,285	\$82,500	\$68,018	\$68,092	\$92,000	\$76,579	\$4,294	5.9%
PSC - CHAIR	\$75,141	\$81,120	\$69,874	\$79,411	\$85,800	\$78,269	\$3,128	4.2%
PSC - MEMBER	\$74,185	\$81,120	\$69,874	\$79,411	\$82,500	\$77,418	\$3,233	4.4%
SUPREME CT CHIEF JUSTICE	\$98,999	\$103,625	\$102,021	\$104,684	\$105,000	\$102,466	\$5,467	5.6%
SUPREME CT JUSTICE **	\$95,493	\$102,125	\$101,120	\$102,684	\$105,000	\$100,884	\$5,391	5.6%
CLERK, SUPREME COURT	\$69,620	\$94,190	\$70,224	\$56,728	\$65,474	\$71,247	\$1,627	2.3%
DISTRICT JUDGE	\$88,164	\$95,718	\$90,672	\$95,911	\$100,000	\$94,093	\$5,929	6.7%

*Montana salaries calculated pursuant statutory formula - average of officials with similar titles in contiguous states and current MT salary.

NCP = No Comparable Position

**Only Montana has an elected Supreme Court Clerk

***Now a 1/2 time position

LT Gov salary is lower because another state went to a part-time position. Now the avg is based on only one other state.

Clerk of the Court is lower due to a reporting error on the last survey by North Dakota. They reported the Court Administrator in the last survey.

Data compiled by State Personnel Division through a survey of contiguous states, June, 2004.

Published by State Personnel Division, State of Montana, August 2004. Revised September 2004 using new information from

Wyoming re: Clerk, Supreme Court

Janet Seitz

From: michael tibbles [michael_tibbles@admin.state.ak.us]
Sent: Friday, April 22, 2005 8:27 AM
To: Kevin Jardell; Janet Seitz
Subject: Re: [Fwd: Salaries]

The salary as shown in AKPAY (the state's payroll system) are:

Governor \$85,776
Lt. Gov \$80,040

Mike

Kevin Jardell wrote:

Subject: Salaries
From: Janet Seitz <Janet_Seitz@legis.state.ak.us>
Date: Thu, 21 Apr 2005 15:56:40 -0800
To: kevin_jardell@gov.state.ak.us
To: kevin_jardell@gov.state.ak.us

Please confirm for us the current salary of Gov. Murkowski and Lt. Gov. Leman.
My rough figures wind up at \$85,799 for the Gov and \$80,043 for the Lt. Gov. but then math is not by basic suit and there are always personnel ways of doing things that I don't know about.

Janet Seitz
House Rules Committee Staff
State Capitol, Room 214
Juneau, AK 99801-1182
Voice: (907) 465-3764
FAX: (907) 465-2040

The Knowles administration introduced legislation in 2001 that proposed raising commissioner's salaries to between Range 28(E) and Range 30(F).

Currently statutes set the salary at 28 "step E". Removal of the "Step E" would allow the flexibility to place a commissioner anywhere on the Range 28 scale. This would provide a modest increase and eliminate the problem of deputies making more than commissioners.

<u>Range</u>	<u>Now</u>	<u>7/1/05</u>	<u>7/01/06</u>
28E	91,200	97,092	99,036
28M	109,344	116,424	118,752
30F	101,136	107,676	109,824

STATE	GOV SALARY	LT. GOV'S SALARY	DEPT. HEADS	COMMENTS
Alaska	\$85,766	\$80,040	\$91,200	
Arizona*	\$95,000	\$70,000	\$70,000-149,000	
California*	\$175,000	\$131,250	\$108,753 - \$152,060	
Colorado*	\$90,000	\$68,500	\$68,500- \$121,200	
Hawaii	\$94,780 (due to change 12/4/2006)	\$90,041 (due to change 12/4/2006)	\$85,302- \$159,600	
Idaho	\$101,500 (until Jan 2007)	\$26,750 (until Jan 2007)	\$82,500- \$130,000	
Montana*	\$93,089	\$66,724	\$72,085-144,500	
Nevada	\$117,000 (until 1/1/2007; then \$141,000)	\$50,000 (until 1/1/2007 then \$60,000)	\$80,000 to \$110,000 until 1/1/2007; then \$97,000 to \$133,000	
New Mexico*	\$110,000	\$85,000	\$71,799- \$120,001	
Oregon	\$93,600 plus \$1000 a month for expenses so \$105,600	\$72,000 plus \$250 per month for expenses so \$75,000	\$72,000 plus \$250 per month for expenses so \$75,000	
Utah*	\$100,600	\$72,705	\$68,612- \$138,361	
Washington	\$145,132	\$75,856	\$101,702- \$103,785	
Wyoming*	\$130,000	\$110,000 Sec. Of State no Lt. Gov	\$54,745- \$130,000	

Average
W/out AK \$113,142

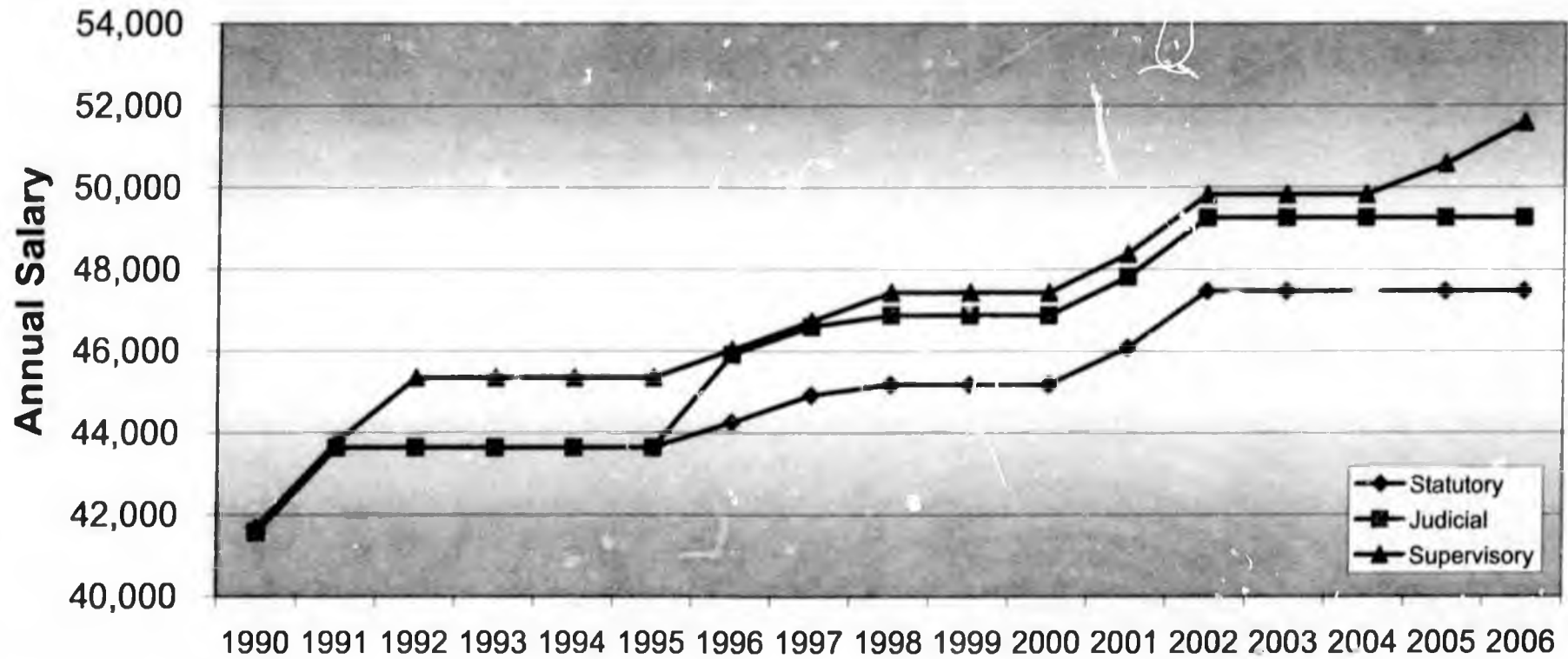
NOTE: Any new salary for the Gov. and Lt. Gov. would start with the new term of office in December 2006 per current law.

*CSG Book of States 2004 (latest version; 2005 version not due out until May. All other information from statutes of state involved.

Comparison of Statutory, Judicial and Supervisory Salary Schedules

Year	Statutory	Judicial	Supervisory
1990	41,568	41,568	41,688
1991	43,644	43,644	43,776
1992	43,644	43,644	45,348
1993	43,644	43,644	45,348
1994	43,644	43,644	45,348
1995	43,644	43,644	45,348
1996	44,256	45,912	46,032
1997	44,912	46,596	46,728
1998	45,180	46,872	47,424
1999	45,180	46,872	47,424
2000	45,180	46,872	47,424
2001	46,080	47,808	48,372
2002	47,460	49,248	49,824
2003	47,460	49,248	49,824
2004	47,460	49,248	49,824
2005	47,460	49,248	50,568
2006	47,460	49,248	51,576

Annual salary based on Range 18C with no geographic differential
Comparable to Attorney I, Accountant III and Revenue Auditor III



Source: AKPAY

x:Projects/Historical Wage Negotiations/BU vs Noncovered Wage Increases since 1990-Leg-050126

Prepared by C. Preecs, Human Resource Specialist, Division of Personnel

Historical Negotiated Wage Increase Summary

% CPI Change	Year	CPI-U	Wage Increases for Noncovered (XE & PX)	Wage Increases for XJ	Negotiated Wage Incr GGU 2&3	Negotiated Wage Incr GGU 1	Negotiated Wage Incr SU	Negotiated Wage Incr LTC	Negotiated Wage Incr CEA	Negotiated Wage Incr PSEA	Negotiated Wage Incr TEAME	Negotiated Wage Incr AVTECTA	Negotiated Wage Incr CSEA
6.2%	1990	118.6	3.30	3.30	3.30	4.25	3.3,4.08	3.3,4.6	3.30	3.30	1.70		
4.6%	1991	124	5.00	5.00	5.00	5.00	5.00	4.5,3.2	5.00	5.00	5.00		
3.4%	1992	128.2			3.60	3.60	3.60	3.60	3.60	3.60	3.60		
3.1%	1993	132.2											
2.1%	1994	135			0.00	-					1.60		
2.9%	1995	138.9			0.00	-			2.50		2.00		1.40
2.7%	1996	142.7	1.40	5.20	1.40	1.40	1.40	1.40	0.00	1.50	2.00		
1.5%	1997	144.8	1.50	1.50	0.75	0.75	0.75	0.75	1.50	1.50		0.75	
1.5%	1998	146.9	0.60	0.60	0.75	0.75	0.75	0.75	0.00	1.50			
1.0%	1999	148.4			0.00	-							
1.7%	2000	150.9	1200 Lump	1200 Lump	1200 Lump	1200 Lump	1200 Lump	1200 Lump	1200 Lump	1200 Lump	1200 Lump	1200 Lump	1200 Lump
3%	2001	155.2	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00
2%	2002	158.2	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00
3%	2003	162.5											
3%	2004	166.7											
	2005				1.50	1.50	1.50	2.00	2.00	3.00	1.00	?	
	2006				2.00	2.00	2.00	2.00	2.00	3.00	2.00	?	

Annual Salary at Range 16C by Designated Salary Schedule

Salary Schedules	Annual Salary 16 C	Annual Salary 16C (effective 2006)
Supervisory	43,296	44,820
Confidential	42,888	44,616
Judicial	42,744	42,744
General Govt	42,468	43,968
Post Secondary	41,376	41,376
Statutory	41,184	41,184

This list of Salary Schedules does not include, Labor, Trades and Crafts, Troopers, Airport Safety Officers and Marine units or Teachers who have a different salary range scales that do not include range 16.

Comparison of Statutory and Supervisory Salary Schedules after bargained increases

Range 23 in Supervisory Salary Schedule effective 2006

Step A	Step B	Step C	Step D	Step E	Step F
67212	69720	71916	74508	76980	79824

Range 26 in Statutory Salary Schedule if no changes occur

Step A	Step B	Step C	Step D	Step E	Step F
73752	76248	78828	81744	84816	87852

Historical Negotiated Wage Increase Summary

% CPI Change	Year	CPI-U	Wage Increases for Noncovered (XE & PX)	Wage Increases for XJ	Negotiated Wage Incr GGL'	Negotiated Wage Incr SU	Negotiated Wage Incr LTC	Negotiated Wage Incr CEA	Negotiated Wage Incr PSEA	Negotiated Wage Incr ACOA	Negotiated Wage Incr IBU	Negotiated Wage Incr MM&P	Negotiated Wage Incr MEBA	Negotiated Wage Incr TEAME	Negotiated Wage Incr AVTECTA	Negotiated Wage Incr ACSEA
0%	1984	103.25					\$900.00		3		-	-	-	-	-	-
2%	1985	105.76			5.00	3.50	5.00	5.00	5.00		2.0*	2.00	2.00*	*		
2%	1986	107.83			0.00		0.00	0.00	0.00		**	-	**	*	1.90	
0%	1987	108.24			*	*	*	*	0.00		**	-	**	*	0.40	
0%	1988	108.6			0.00		0.00	0.00	0.00		2.10	-	0.00		0.40	
3%	1989	111.7			0.00		675.00	0.00	0.00		-	-	0.00			
6%	1990	118.6	3.30	3.30	3.3**	3.3**	3.3*	3.30	3.30		3.30	3.30	3.30	1.70	6.20	
5%	1991	124	5.00	5.00	5.00	5.00***	4.5,3.2	5.00	5.00		5.00	5.60	5.51***	5.00	4.60	
3%	1992	128.2			3.60	3.60	3.60	3.60	3.60		3.60	3.60	3.60	3.60	3.40	
3%	1993	132.2									-	-	0.00			
2%	1994	135			0.00						-	-	3.10	1.60		
3%	1995	138.9			0.00			2.50			**	-	0.00	2.00		1.40
3%	1996	142.7	1.40	5.20	1.40	1.40	1.40	0.00	1.50		1.40	1.40	0.00	3.00		
2%	1997	144.8	1.50	1.50	0.75	0.75****	0.75	1.50	1.50			0.75	0.75		0.75	
2%	1998	146.9	0.60	0.60	0.75	0.75****	0.75	0.00	1.50		0.60	0.75	0.75			
1%	1999	148.4			0.00						-	-	0.50			
2%	2000	150.9	\$1200 Lump	\$1200 Lump	\$1200 Lump	\$1200 Lump	\$1200 Lump	\$1200 Lump	\$1200 Lump*	\$1200 Lump	\$1200 Lump****	\$1200 Lump	\$1200 Lump	\$1200 Lump**	\$1200 Lump	\$1200 Lump
3%	2001	155.2	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.0*****	2.00	2.00	2.00	2.00	2.00
2%	2002	158.2	3.00	3.00	2.00, 3.00***	3.00*****	3.00	3.00	3.00	3.00	3.0*****	3.00	3.00	3.00	3.00	3.00
3%	2003	162.5														
3%	2004	166.7								2.00	7.00	7.00	7.00			
	2005				1.50	1.50	2.00	2.00	3.00	2.00	6.00	6.00	6.00	1.00	still negotiating	
	2006				2.00	2.00	2.00	2.00	3.00		6.00	6.00	6.00	2.00	still negotiating	

GGU

*wage increase of 3.8% disapproved by Legislature

**4.25% to Class 1

***the additional 3% was effective 12/1/2002

SU

*wage increase of 3.8% disapproved by Legislature

**4.08% to Class 1

***Class 1 salaries adjusted to match Class 2/3

****1.5% to OT Ineligible

*****effective 8/1/2002 for steps A-K, effective 12/1/2002 steps L-N

LTC

*wage increase of 3.8% disapproved by Legislature

**4.6% to Class 1

CEA

*wage increase of 3.8% disapproved by Legislature

PSEA

*deposited in employee directed Health Plan Trust & used to increase geo diff

ACOA

had been GGU Strike Class 1, then APEA-COBU

IBU

*additional \$500 signing bonus

** wage increase disapproved by the Legislature (2.1%-1986, 2%-1987, 3.5%-1995)

***additional \$950 signing bonus

****Junior Engineers and Oilers received \$1372

*****Additional 3% to Junior Engineers and Oilers

*****Increase does not include Junior Engineers and Oilers

***** additional 3% to Fairweather workers as of 2/14/2005

MEBA

*add \$400 supplemental compensation

**wage increase disapproved by the Legislature (2.1%-1986, 1.3%-1987)

***COLD increase was added to base wage

MMP

* wage increase of 2% disapproved by Legislature

TEAME

*Did not bargain under PERA

**\$797 went to employee health insurance contribution

NOTE 2004 through 2006 to be approved by the legislature

HB

103

*Recs to call
of chair*

24-LS0403F

Bullock

4/19/05

*4/21/05
Coghlin
moved*

CS FOR HOUSE BILL NO. 103()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

*Refer
Berkowitz objected
with draw*

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES KELLY, Elkins, McGuire, Foster

*Berkowitz moved to
kill
Rokelberg object*

A BILL

FOR AN ACT ENTITLED

1 "An Act requiring an actionable claim against the state to be tried without a jury unless
2 a jury trial is requested by the state."

*Y
EB BK
JH
JC
VK
WR*

2-4

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

4 * Section 1. AS 09.50.250 is amended by adding a new subsection to read:

5 (b) Unless the state requests a jury trial, an actionable claim against the state

6 under (a) of this section shall be tried by a court without a jury.

*4/21/05
Coghlin
pass out w/ind
recs
Rokelberg obj
withdrew
Harris obj
withdrew
Berkowitz*

subtle difference

*Y
JH
JC
BK
EB
VK
WR*

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 103
 (H) Publish Date: 3/4/05

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title: Claims Against the State BRU: Alaska Court System
 Sponsor: Representative Kelly Component: Trial Courts
 Requester: _____ Component No.: 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual	(16.0)	(16.0)	(16.0)	(16.0)	(16.0)	(16.0)
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	(16.0)	(16.0)	(16.0)	(16.0)	(16.0)	(16.0)

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	(16.0)	(16.0)	(16.0)	(16.0)	(16.0)	(16.0)
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	(16.0)	(16.0)	(16.0)	(16.0)	(16.0)	(16.0)

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

House Bill 103 would require that claims against the state be tried by a court without a jury. Court records and information from the Department of Law show that over the past five years there have been an average of roughly four jury trials a year where the state was a defendant. Court records also show that the average jury trial costs the court \$4,000 in jury fees, travel, meals and lodging. This fiscal note reflects the average yearly jury costs that would be saved by passage of this bill.

Prepared by: Douglas Wooliver, Administrative Attorney
 Division: Alaska Court System
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director
 Agency: Alaska Court System

Phone 463-4750
 Date/Time 3/2/05 3:56 PM
 Date 3/2/2005

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 103
(H) Publish Date: 3/4/05

Revision Date/Time (Note if correction): _____ Dept Affected: LAW
Title: "An Act requiring an actionable claim against
the state to be tried without a jury." RDU: CIVIL
Sponsor: Representative Kelly Component: Torts & Workers' Compensation,
Labor & State Affairs
Requester: House State Affairs Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	(*****)	(*****)	(*****)	(*****)	(*****)	(*****)
Travel	(*****)	(*****)	(*****)	(*****)	(*****)	(*****)
Contractual	(*****)	(*****)	(*****)	(*****)	(*****)	(*****)
Supplies	(*****)	(*****)	(*****)	(*****)	(*****)	(*****)
Equipment	(*****)	(*****)	(*****)	(*****)	(*****)	(*****)
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	(*****)	(*****)	(*****)	(*****)	(*****)	(*****)

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

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--Do not abbreviate)						
TOTAL	(*****)	(*****)	(*****)	(*****)	(*****)	(*****)

Estimate of any current year (FY2005) cost: 00

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill adds a new subsection under AS 09 50.250 requiring that actionable claims against the state falling under this statute be tried by a court without a jury.

Caveat: Although the state conducts approximately 5 to 10 jury trials per year, the number of actual jury trials only reveals part of the picture. Statistically, the greatest group of civil cases for damages (not just cases filed against the state) are worked extensively through motion and pretrial practice, and then settled after much of the motion and pretrial work has been completed (greater than 92% is the figure often quoted for cases settled, rather than tried). It is anticipated that HB 103 would effect not only the number of cases that are actually tried, but also result in savings in a much greater group of cases during the pretrial phase of litigation.

Prepared by: Kathryn Daughhete, Director
Division: Administrative Services Division
Approved by: K. Daughhete for Scott Nordstrand, Attorney General
Agency: Department of Law

Phone: 465-3673
Date/Time: 3/2/05 4:30 PM
Date: 3/2/2005

FISCAL NOTE #2

**STATE OF ALASKA
2005 LEGISLATIVE SESSION**

BILL NO. HB 103

ANALYSIS CONTINUATION

Indeterminate savings to the state should result because of the following factors:

1. Cases may resolve without trial because there is more predictability of anticipated results with a court trial;
2. If the case is a court trial rather than a jury trial, the length of jury trials should be shortened by an average of two days because there would be no jury selection, no jury instructions, and some witnesses or evidence may not need to be produced at trial;
3. If the case is tried by the court rather than a jury there would be less pretrial preparation time and expense. For example, the parties will not need to draft instructions, draft jury voir dire or jury questionnaires, and they may not generate evidentiary motions.
4. In cases where summary judgment is currently precluded because there are genuine issues of material fact, the judge could do abbreviated, summary trials limited to the contested issues of fact that are relevant to the summary judgment motion.
5. It is also anticipated that some number of cases that are currently settled may be tried by a court because of the greater predictability in a court trial.

Alaska State Legislature

House of Representatives



Official Business

COMMITTEE ON RULES
Representative Norman Rokeberg, Chairman

State Capitol, Rm. 214
Juneau, Ak 99801-1182
(907) 465-3764

HB 103

**Please add the attached to your Rules file on this
legislation.**

**This information was requested by the Rules
Committee yesterday and delivered to our office today
by the Department of Law**

April 22, 2005

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

FRANK H. MURKOWSKI, GOVERNOR

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907)269-5190
FAX: (907)258-0760

April 1, 2005

The Honorable Lesil McGuire
Alaska State Legislature
State Capitol, Room 118
Juneau, Alaska 99801-1182

The Honorable Les Gara
Alaska State Legislature
State Capitol, Room 418
Juneau, Alaska 99801-1182

Re: HB 103, An Act requiring an actionable claim against the state
to be tried without a jury.

Dear Representative McGuire and Representative Gara:

During the March 16, 2005, hearing in the House Judiciary Committee on HB 103, committee members and the chair requested that the Department provide information on the amount of dollars paid out on claims brought pursuant to AS 09.50.250.

The below information was assembled from two sources: the Division of Risk Management and from Judgment Bills passed during the last several sessions, as well as figures for FY 2005 to date. The Judgment Bill figures contain only those amounts paid to plaintiffs for claims brought pursuant to AS 09.50.250. The figures from Risk Management include personal injury (excluding workers compensation category and property loss) and include case costs, such as court reporters, experts, etc. but not assistant attorney general defense time.

FY 2000 = \$ 5,792,511.00 (Risk Management)
FY 2001 = \$11,921,452.00 (Risk Management)
FY 2002 = \$ 9,166,624.00 (Risk Management)

The Judgment Bill totals for these 3 fiscal years are not included above; the majority of settlements or judgments were Risk Management matters, which were directly funded by that Division.

FY 2003 = \$ 7,730,493.82 (Derived from the Judgment Bill for
claims brought pursuant to AS 09.50.250)
\$10,735,143.00 (Risk Management)
\$18,465,636.82 Total AS 09.50.250 FY 2003

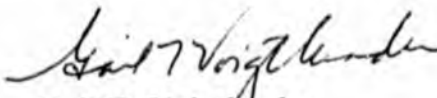
FY 2004 = \$1,119,534.55 (Judgment Bill)
\$4,514,535.00 (Risk Management)
\$5,634,069.55 Total AS 09.50.250 FY 2004

FY 2005 = \$1,604,975.46 (As of 3/18/05 included in this year's Judgment Bill)
\$4,660,366.62 (Risk Management as of 3/30/05)
\$6,265,342.08 Total AS 09.50.250 to date FY 2005

Please feel free to contact me if you have any further questions.

Sincerely,

DAVID W. MÁRQUEZ
ATTORNEY GENERAL

By: 
Gail T. Voigtlander
Assistant Attorney General

DWM:GTV:pr

cc: David W. Marquez
Deborah Behr
Kevin Jardell
Brad Thompson, Director, Division of Risk Management

Alaska State Legislature

Juneau

State Capitol Bldg., Rm. 434
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Fairbanks

119 N Cushman, Ste 213
Fairbanks, AK 99701
Phone (907) 452-6084
Fax (907) 452-6096

Representative Mike Kelly *House District 7*

HB 103

"An Act requiring an actionable claim against the state to be tried with a jury."

HB 103 makes a small but important change to the manner in which claims against the state will be adjudicated. The doctrine of "sovereign immunity", originally taken from English common law, is a familiar one within our legal system. The doctrine precludes the institution of a suit against the sovereign [government] without its consent. This concept is intrinsic to our legal system.

We see this doctrine manifest itself in the 11th Amendment to the United States Constitution, and by extension this power is granted to the states through the 10th Amendment. More importantly, the Alaska State Constitution addresses the issue of sovereign immunity in Article 2, sec. 21 when it expressly grants the legislature sole authority to determine the manner in which suits against the state will be tried. Without that addition, the language in Article 1, sec. 16 which specifically refers to "common law" would presuppose that sovereign immunity is absolute in Alaska.

Although HB 103 does change from the current standard of a trial by jury in a claim against the state, it returns to the standard that was in place from statehood until 1975. Our legal research revealed that Sen. John Butrovich (R-Fairbanks) sponsored SB 80, which changed to the current standard of a jury trial. Our research has further revealed that during the same period in 1975, the University of Alaska was in the midst of a lawsuit in which it had petitioned the court for a trial by jury and was denied. Although we have not been able to make the explicit connection, it seems that SB 80 was a legislative response to the controversy arising from that case.

Since that time, there have been a number of cases that have resulted in exorbitant jury awards against the state that may have been more reasonable had the court, rather than a jury tried them. Frequently, these awards are reversed on appeal, thus doubling the court time required for resolution. While responsible government requires the state make whole any person or entity that it harms in the course of its business, responsible government also dictates that we prevent such abuses and minimize exposure to the state. HB 103 accomplishes both ends with a simple and direct statutory change.

We further anticipate that the Alaska Court System will realize an additional benefit of less court time being consumed and thus a reduction in court operating expenses that will also allow our already overburdened courts the opportunity to address other cases with greater ease and expediency.

It is for these reasons that we appreciate your consideration and encourage you to support HB 103.

Alaska State Legislature

Juneau

State Capitol Bldg., Rm. 434
Juneau, AK 99801-1182
Phone (907) 465-4976
Fax (907) 465-3883
Toll Free 866-465-4976



Fairbanks

119 N Cushman, Ste 213
Fairbanks, AK 99701
Phone (907) 452-6084
Fax (907) 452-6096

Representative Mike Kelly

House District 7

SAMPLE JURY AWARDS

(Prepared by the Attorney General's Office)

Garry Johnson v. DOC: prisoner at Ketchikan Correctional Center fell down a set of stairs when another inmate opened a door on the landing where plaintiff had been standing. As a result of the jury verdict, judgment was entered against the State in the amount of \$2,356,293. The case was tried in Anchorage. The judgment was reversed on appeal, and the case was later settled. The case is reported at 2 P.3d 56 (Alaska 2000).

Kiokun v. State: claim of negligent failure to launch a search and rescue operation in a timely manner. Bethel jury verdict in the amount of \$7.8 million (fault allocated 51% to the State, 49% to the Olruns). The judgment was reversed on appeal. The case is reported at 74 P.3d 209 (Alaska 2003).

Greg Bacon v. State (Alaska Marine Highway System): claim by injured ferry worker. Juneau jury awarded \$350,000. of which approximately 1/2 of the verdict was for future pain and suffering. Plaintiff was back to work when the case went to trial.

Lance Miller v. State: claim by private pilot with seven months experience who lost control of his airplane attempting to land in windy winter conditions at a rural airport. Claim was that the accident was caused by the condition of the windsock. Bethel jury found no comparative negligence by Plaintiff, rendering verdict against the state in the amount of \$1,300,000. (Post trial motions pending) 4BE-01-445 Civ.

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

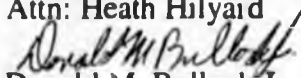
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 20, 2005

SUBJECT: The repeal of AS 09.50.290 in 1975
(Work Order No. 24-LS0403VA)

TO: Representative Mike Kelly
Attn: Heath Hilyard

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

At your request, I researched what little information is available regarding the repeal of AS 09.50.290 in 1975. AS 09.50.290 required that claims against the state be tried by a judge without a jury. I found no reference to *University of Alaska v. National Aircraft Leasing, Ltd.*¹ in the journals, the bill file, or committee minutes. As you know from the previous memorandum, *National Aircraft Leasing* approved the trying of a claim against the state before a judge without a jury under AS 09.50.290.

The bill repealing AS 09.50.290, SB 80, was sponsored by Senators Butrovich, Ziegler, and Meland and introduced on January 28, 1975.² The bill was enacted as introduced, without an amendment being offered in either house.

The Senate Judiciary Committee considered the bill on February 4, 1975. The minutes reported that the bill was favored by the office of the attorney general, but offered no further enlightenment.

The bill file for the House Judiciary Committee includes a letter from Howard Staley, an attorney with Merdes, Schaible, Staley & DeLisio.³ Mr. Staley opined in favor of the repeal of AS 09.50.290 as follows:

The present law [AS 09.50.290] requiring a trial to a judge is usually explained as giving the state the "protection" from the possible passion and prejudice of a jury. From the standpoint of an attorney who has

¹ 536 P.2d 121, 128 (Alaska 1975).

² 1975 Senate Journal 70.

³ Letter from Howard Staley, Merdes, Schaible, Staley, & DeLisio, Inc., to Terry Gardner, House Judiciary Committee (March 25, 1975).

frequently represented the state and its insurance carriers, I know that this does not stand up in practice. The state is often treated far more harshly by a judge than it would be by a jury. I am enclosing an example of this in the form of an Alaska Supreme Court Opinion in *State v. L'Anson*, issued by the Alaska Supreme Court on November 29, 1974. . . . The case was tried to a judge and an advisory jury, since the statute has been interpreted as allowing the judge to empanel an advisory jury. It should be noted that when an advisory jury is empanelled the expense to the state is just the same as if the trial was to a judge and an advisory jury was not used. The advisory jury found in the state's favor, but the judge decided, as he is entitled to do under the law, to disregard the verdict of the advisory jury and entered a verdict against the state.

I don't believe that there is any valid reason to believe that jurors would favor the state because of having an interest as taxpayers in the outcome of litigation against the state. There are jury trials in actions brought against Alaska cities where the taxpayer's interest is far more direct than in an action against the state and there has certainly been no indication that jurors tend to be lenient with Alaskan cities because the jurors are taxpayers.

If the amendment allowing the state and litigants against it the right to a jury trial is passed, there will undoubtedly be individual cases in which the state is either hurt or helped by having the claims against it tried to a jury, but that is not the issue. I believe the issue is whether or not the state as well as litigants against the state have a right to a jury trial in litigation of this sort. I don't think there is any valid reason for giving the state any more or any less privilege than any other litigant in this regard.

The bill passed in the Senate by a vote of 19 - 0 with one senator excused;⁴ the House approved the bill by a vote of 36 - 0 with four representatives excused.⁵

In conclusion, while the bill history contains expressions of support for repealing AS 09.50.290, I could not find statements in support for keeping the statute in place. The litigation involving the university and National Aircraft Leasing was not mentioned in the files I reviewed.

If I may be of further assistance, please advise.

DMB:jad
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⁴ 1975 Senate Journal 158.

⁵ 1975 House Journal 1512.

reviewable by the courts. In the end, the senate rules committee, which heard the evidence, did not find sufficient cause for the full senate and house to proceed with the matter.

Section 21. Suits Against The State

The legislature shall establish procedures for suits against the State.

The long-standing common law doctrine of sovereign immunity prevents the government from being sued. However, the federal government and most state governments have waived through statute their immunity from suit in certain types of cases. A few state constitutions still prohibit all suits against the state, but even here various exceptions and evasions have been devised so that justice may be served. This section of Alaska's constitution, which commands the legislature to establish procedures for suits against the state, has only a few counterparts elsewhere; typically, state constitutions that address sovereign immunity make the matter of its waiver permissive.

The Alaska legislature has complied with this constitutional directive in AS 09.50.250, which authorizes a person or corporation to bring a contract, quasi-contract, or tort claim against the state. This law is based on the federal tort claims act. Like its federal counterpart, the state statute contains certain exceptions to the waiver of immunity from suit, one of which is for the exercise of policy-making discretion by state officials. The supreme court has often rejected the use of this defense by the state, however, ruling that once a policy decision has been made to do something (e.g. maintain a road in winter), it must be done with reasonable care (see for example, *Carlson v. State*, 598 P.2d 969, 1979).

The state's limited waiver of sovereign immunity does not extend to suits against the state in federal court. It does not mean that money judgments against the state are paid automatically. These may require a legislative appropriation (AS 09.50.270).

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such rental acceleration clauses.⁸ While this court has not decided the question, we decline to do so here where the enforceability issue was not raised below.⁹

Affirmed.



UNIVERSITY OF ALASKA, Petitioner,

v.

NATIONAL AIRCRAFT LEASING, LTD.,
and Alaska International Air, Inc., for
themselves and for insurers at Lloyds of
London and certain other insurance under-
writers, Respondents.

No. 2365.

Supreme Court of Alaska at Fairbanks.

May 30, 1975.

Action was brought against University of Alaska for damage to aircraft in attempting to land on experimental floating ice strip maintained by the university. The Superior Court, Fourth Judicial District, Victor D. Carlson, J., denied university's request for jury trial and university petitioned for review. The Supreme Court, Dimond, J. pro tem, held that despite the degree of constitutional as well as statutory autonomy the university possesses and despite university's unique corporate

character and its power to sue and be sued in its own name, university falls within ambit of language of statute governing suits against the state, and trial by jury is not allowed in actions against the university; and that distinction between proprietary and governmental functions will not be made in suits involving the state or its agencies.

Order affirmed.

Erwin, Boochever and Burke, JJ., did not participate.

1. Appeal and Error ⇐70(6)

Interlocutory order striking University of Alaska's demand for jury trial in action for damages against university would be reviewed to avoid possibility that postponing review until time for normal appeal could result in the necessity of a new trial. AS 09.50.250-09.50.300, 09.50.290; Rules of Civil Procedure, rule 38(b); Rules of Appellate Procedure, rule 23(e).

2. Jury ⇐18

States ⇐191(2)

Despite degree of constitutional as well as statutory autonomy possessed by the University of Alaska, university is an integral part of the state educational system mandated by the constitution and neither the corporate status of the university nor its power to sue and be sued in its own name militate against conclusion that university falls within ambit of statute governing suits against the state, including

8. Among the cases enforcing rental acceleration clauses are the following: *Maddox v. Hobbie*, 228 Ala. 80, 152 So. 222 (1934); *Jimmy Hall's Morningside, Inc. v. Blackburn & Peck Enterprises, Inc.*, 235 So.2d 344 (Fla.App.1970); *Erickson v. O'Leary*, 127 Kan. 12, 273 P. 414 (1929); *Shepard Realty Co. v. United States Stores Co.*, 193 La. 211, 190 So. 383 (1939); *Pierce v. Hoffstot*, 211 Pa.Super 380, 236 A.2d 828 (1967).

On the other hand, courts in New York and California have refused to enforce acceleration clauses. See, e. g., *Ricker v. Rombough*, 120 Cal.App.2d Supp. 912, 261 P.2d 328 (1953); *884 W. End Ave. Corp. v. Pearlman*, 201 App.Div. 12, 183 N.Y.S. 670 (1922). For additional cases from other ju-

risdictions see Annot., 58 A.L.R. 300 (1929); Annot., 128 A.L.R. 750 (1940).

9. *University of Alaska v. Simpson Bldg. Supply Co.*, 530 P.2d 1317, 1324 (Alaska 1975); *Padgett v. Theus*, 484 P.2d 697, 700 (Alaska 1971); *Lumbermen's Mut. Cas. Co. v. Continental Cas. Co.*, 387 P.2d 104, 109 (Alaska 1963). We note that the trial court gave the lessee the right of use of the premises for the balance of the term, and as noted in this opinion at page 118, lessee had the right to use the premises during the entire term of the lease. Otherwise, we might have waived the rule in order to consider the rent acceleration clause as well as possible duty of the lessor to mitigate damages.

provisions that trial by jury is not allowed in actions against the state. Const. art. 7, § 1 et seq.; AS 09.50.250-09.50.300, 14.40-040.

3. Jury ⇐18

Fact that University of Alaska is not a department of the executive branch allocated among the principal departments did not place university beyond purview of statute providing that actions against the state shall be tried by the court without a jury inasmuch as university enjoyed in some relative respects a status which was coequal rather than subordinate to that of the executive or legislative arms of government. Const. art. 3, § 22; AS 09.50-290, 44.15.010.

4. States ⇐193

Distinction between proprietary and governmental functions will not be made in suits against the state or its agencies under statute authorizing such suits on contract, quasi-contract or tort claim. AS 09.50-250-09.50.300.

Howard P. Staley, of Merdes, Schaible, Staley & DeLisio, Inc., Fairbanks, for petitioner.

William B. Rozell, of Faulkner, Banfield, Doogan, Gross & Holmes, Juneau, for respondents.

OPINION

Before RABINOWITZ, C. J., CONNOR, J., and DIMOND, Justice Pro Tem.

DIMOND, Justice Pro Tem.

Within certain limitations, one is authorized by statute to sue the State of Alaska

1. AS 09.50.250-300.
2. AS 09.50.290 provides:
Actions against the state under §§ 250-300 of this chapter shall be tried by the court without a jury.
3. Civil Rule 38(b) provides:
(b) *Demand.* Any party may demand a trial by jury of any issue triable of right by

on a contract, quasi-contract or tort claim.² One of these limitations is that the action must be tried by the court; under AS 09-50.290 a trial by jury is not allowed in actions against the state.³

It is this statutory condition upon the state's waiver of sovereign immunity which gave rise to this petition for review. The petitioner, University of Alaska, has been sued for damages by the respondents, National Aircraft Leasing, Ltd., and Alaska International Air, Inc. The suit arose when an aircraft being operated by Alaska International Air, Inc., was damaged in attempting to land on an experimental floating ice air strip maintained by the University. The University demanded a trial by jury under Civil Rule 38(b).³ Applying AS 09.50.290, however, the trial judge refused to grant a jury trial on the grounds that the University and the state are the same for purposes of AS 09.50.250-300 which set forth the conditions under which suits against the state may be maintained. The court's reasoning was that the protections afforded the state by AS 09-50.250-300 apply to all entities that are similarly situated, e. g., possessing publicly owned assets and dependent upon the taxpayers for support. The petitioner asserts that the trial court erred in this ruling.

[1] This matter is before us, not on appeal from a final judgment, but on petition for review from an interlocutory order. In the exercise of our discretion we have granted review at this stage of the proceedings in order to avoid the possibility that postponing review of this question until the time for a normal appeal could result in the necessity of a new trial. The unnecessary delay and expense attendant upon such a possibility can be avoided by

a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand shall be made in a separate written document signed by the party making the demand or by his attorney.

deciding the question now.⁴ Moreover, the issue here presented is of sufficient importance to "justify deviation from the normal appellate procedure by way of appeal and to require the immediate attention of this court"⁵

All governmental authority in Alaska originates in the people of this state and is founded upon their will only.⁶ The people formulated the basic government of our state by ratifying the Alaska Constitution which was drafted by delegates elected by the people to represent them at a constitutional convention. It is the Alaska Constitution, therefore, that forms the basis for the fundamental government of this state.

Article VII of the constitution frames the mandate whereby the health, education and welfare of the people are provided for. Section 1 of article VII directs the legislature to establish and maintain by general law a system of public schools open to all children of the state, and allows the legislature to provide for other public educational institutions. Section 2 of article VII, the import and construction of which is crucial to the resolution of this case, provides:

The University of Alaska is hereby established as the state university and constituted a body corporate. It shall have title to all real and personal property now or hereafter set aside for or conveyed to it. Its property shall be administered and disposed of according to law.

The question before us is whether the University of Alaska constitutes in func-

tion and character such an arm or instrumentality of the state as to bring it within the scope of those statutes which govern the conditional waiver of sovereign immunity in this state. If it is, then the ruling of the trial court on the applicability of AS 09.50.290 to this action must be affirmed.

By constitutional provision, the University as a corporate entity holds title to all property which is conveyed or set aside to it. The disposition and administration of such property, however, is made expressly subject to a degree of legislative control. The board of regents is empowered by the constitution to "govern" the university. Nevertheless it is obliged to formulate policy as well as appoint its chief executive "in accordance with law." The regents, moreover, hold office by virtue of the approval of both the governor and both houses of the legislature.⁷

Through legislative enactments, the University enjoys a considerable degree of statutory independence. Not only does the board of regents have the constitutional authority to appoint the president of the University, formulate policy, and act as the governing body for the institution, but the legislature has specifically empowered it to fix the president's compensation and the compensation of all teachers, professors, instructors and other officers; to confer such appropriate degrees as it may determine; to have care, control and management of all the real and personal property and all money of the University; and to

4. Appellate Rule 23(e) provides in part that an aggrieved party may petition this Court for review of nonappealable orders

[w]here postponement of review until normal appeal may be taken from a final judgment . . . will result in injustice because of impairment of a legal right, or because of unnecessary delay, expense, hardship or other related factors.

5. Appellate Rule 24(a)(1). See, e. g., Peter v. State, 531 P.2d 1263 (Alaska 1975).

6. Alaska Const. art. I, § 2 provides:

All political power is inherent in the people. All government originates with the

people, is founded upon their will only, and is instituted solely for the good of the people as a whole.

7. Alaska Const. art. VII, § 3 provides:

The University of Alaska shall be governed by a board of regents. The regents shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The board shall, in accordance with law, formulate policy and appoint the president of the university. He shall be the executive officer of the board.

receive, manage and invest money or property obtained from sources other than the state legislature or by way of federal appropriation.⁸ In addition, the legislature has provided that title and control or possession of land and personal property, other than monies, which are devised, bequeathed or given to the University, shall be taken by the University in its corporate capacity acting through the regents or an authorized agent, and shall be entered in the perpetual inventory of the University.⁹ The board of regents is also authorized to execute leases for mining, agriculture, or other purposes to the lands granted by Congress to the University for the benefit of an agricultural college and school of mines.¹⁰ In addition, the board of regents may select the lands granted to Alaska by the Act of Congress approved January 21, 1929, and may sell or lease such lands.¹¹

But the University is also subject to some executive and legislative control. As mentioned, the constitution provides that the regents of the University shall be appointed by the governor, subject to confirmation by the legislature.¹² Furthermore, as has been pointed out, the formulation of university policy as well as the administration and disposition of University property are made subject to legislative enactment. At the beginning of each regular session of the legislature the board of regents is required to make a written report to the legislature showing the condition of University property, all receipts and expenditures, and the educational and other work performed.¹³ In addition, the board must make an annual report to the governor which shall include a statement of all trust funds the University possesses.¹⁴

All monetary gifts, bequests or endowments received for the University expansion

program or other uses must be turned over to the Department of Revenue where they are placed in a separate fund.¹⁵ This fund, denominated as a trust fund, shall also include all monies derived by the University from the sale or lease of lands granted by act of Congress. These funds shall be invested by the Department of Revenue in interest-bearing securities as approved by the governor.¹⁶ The proceeds from the sale or lease of lands granted to Alaska for University purposes by acts of Congress shall be deposited in the state treasury by the board of regents.¹⁷ The governor is the person authorized to make all certificates required by law or by regulations of the federal Departments of Agriculture or Interior to entitle the state to grants of money for the benefit of state colleges of agricultural and mechanical arts authorized under acts of Congress.¹⁸

Finally, there is the matter of financing the operations of the University from state funds. In 1974 the total funding of the University of Alaska was over 41 million dollars. Approximately 65 per cent of that amount, 26½ million dollars, was appropriated by the legislature from the state's general fund.¹⁹

[2] Despite the degree of constitutional as well as statutory autonomy the University clearly possesses, we are of the opinion that it must be considered to be an integral part of the state educational system mandated by the constitution. In its constitutional status it stands as the single governmental entity which was specifically created by the people to meet the statewide need for a public institution of higher education. In this light, the University must be regarded as uniquely an instrumentality of the state itself. Unlike other public educational institutions created to meet the

8. AS 14.40.170; AS 14.40.250.

9. AS 14.40.280.

10. AS 14.40.350.

11. AS 14.40.360.

12. Note 7 *supra*.

13. AS 14.40.190.

14. AS 14.40.370.

15. AS 14.40.280.

16. AS 14.40.400.

17. AS 14.40.360.

18. AS 14.40.450.

19. § 17, ch. 147, SLA 1974.

needs of local areas, it exists constitutionally to act for the benefit of the state and the public generally.

We reach this conclusion not only from article VII of the constitution, which we construe to be the expression of the will of the people of this state that there shall be an institution of higher learning within the scope of the constitutional mandate providing for public education, but also from the degree of control over the affairs of the University which is exercised by the executive and legislative branches of our government, and from the financial dependence the University has upon the state.

It is true that the constitution has established the University as a body corporate.²⁰ The fact that the University has had conferred upon it the status of a juristic person is not dispositive, however, of our ruling in this case. There are several reasons why this structural approach may have been taken.²¹ It may have been created as a corporation so as to simplify its transactions with the federal government in accepting grants of lands, and to facilitate its dealings with other persons in leasing and selling the lands it acquires or in conducting general business activities. Also, this corporate status may have been chosen in order to shield the individual members of the board of regents from personal liability in actions which might lead to a judgment for money damages against the University.

Whatever the framers' intentions, we have in the past recognized that corporate status alone is not determinative of the question of whether or not an entity performing public or governmental functions is an agent or instrumentality of the state.

In *Alaska State Housing Authority v. Dixon*, 496 P.2d 649, 651 (Alaska 1972), we concluded that ASHA was a "state agency" within the intendment of the Administrative Procedure Act even though it was created as a "public corporate authority." In *Dixon* we also construed the holding in *Bridges v. Alaska Housing Authority*, 349 P.2d 149 (Alaska 1959), to the effect that the Alaska Housing Authority was not the state for purposes of eminent domain proceedings, to mean only that the agency was not "identical" with the state.²²

The same general conclusion was reached in *DeArmond v. Alaska State Development Corp.*, 376 P.2d 717 (Alaska 1962). There we held that the act creating ASDC as an "instrumentality of the state within the Department of Commerce" was constitutional even though it also provided that the agency was a corporation with a "legal existence independent of and separate from the state." We concluded that this latter provision was nothing more than "a declaration of the legal relationship that most corporations have with respect to their creators."²³ Such corporate status did not have the effect of removing ASDC from the Department of Commerce.²⁴

Although these decisions are not wholly dispositive of the question before us,²⁵ they are indicative of the fact that this Court has not been disposed to treat independent corporate status as sufficient to require the conclusion that a given entity is not in fact part of the State of Alaska. We recognize that the guideposts for such an inquiry are to be found more in political and functional realities than in organizational formal-

reasoning of *DeArmond* was followed in concluding that ASMA was not by virtue of its independent corporate nature an agency not within the Department of Commerce.

25. We are aware of the crucial fact that each of these cases dealt with a corporate entity which had been specifically declared in its organic act to be "within" a given executive department of the state. That is not the case here.

20. Alaska Const. art. VII, § 2.

21. Unfortunately the records from our constitutional convention offer no help in disclosing the thinking of the drafters on this matter.

22. 496 P.2d at 651 n. 4.

23. 376 P.2d at 724.

24. See also *Walker v. Alaska State Mortgage Ass'n*, 416 P.2d 245 (Alaska 1966), where the

ties. This approach is in harmony with that of leading authorities in the area.²⁶

Other courts have reached various conclusions as to the status and standing of their state universities with respect to the issue of sovereign immunity; there is a marked split of authority on the question.²⁷ There is, nevertheless, sound authority for the proposition that even where created as a corporate entity, a state university, because of its relation to the state, is a mere agent or instrumentality of the state to carry out its public purpose.²⁸ Moreover, there are two jurisdictions whose decisions on this question are particularly persuasive since they have considered the unique status of universities created as constitutional corporations.

In *People, for Use of Regents of University of Michigan v. Brooks*, 224 Mich. 45, 194 N.W. 602 (1922), the Supreme Court of Michigan observed that the regents of the University of Michigan had been created as a "constitutional corporation." The court concluded that for the purposes of a statute authorizing proceedings by "the state" to condemn private property for public use, this constitutional corporation, although a separate entity independent from the state as to the management and control of the University, was nevertheless "a department of the state government, created by the Constitution to perform state functions . . ."²⁹

In a later case, the Court of Appeals of Michigan, in *Branum v. State*, 5 Mich. App. 134, 145 N.W.2d 860 (1966), considered the status of the University of Michigan's board of regents with respect to that state's statutory waiver of governmental immunity. It was concluded that the statute was applicable to the board even though, as a constitutional corporation, it was not subject to legislative control as to many university affairs. In so doing, the court specifically held that

[i]n spite of its independence, the Board of Regents remains a part of the government of the state . . . The University of Michigan is an independent branch of the government of the state of Michigan, but it is not an island. Within the confines of [its exclusive constitutional powers] it is supreme. Without these confines, however, there is no reason to allow the Regents to use their independence to thwart the clearly established public policy of the people of Michigan [waiving governmental immunity to tort actions].³⁰

A United States district court, considering the unique constitutional status of the board with respect to its immunity from suit under maritime law, concluded that the University of Michigan's board of regents was "a unique constitutional corporation . . . similar to a department of the

26. See, e. g., 1 K. Davis, *Administrative Law* § 1.01, at 1 (1958) (where the author recognizes that administrative agencies may be designated by many names, including that of "corporation"), as quoted in Dixon, 496 P. 2d at 651.

27. See generally Annot., 33 A.L.R.3d 703, § 4[d] (1970); Annot., 86 A.L.R.2d 489, § 7 (1962); Annot., 160 A.L.R. 7, § 4 (1946); 15 Am.Jur.2d *Colleges and Universities* §§ 7, 15, 35 (1964); 72 Am.Jur.2d *States, Territories and Dependencies* §§ 104-106 (1974); 14 C.J.S. *Colleges and Universities* §§ 2, 18 (1939).

28. See, e. g., *Wolf v. Ohio State University Hospital*, 170 Ohio St. 49, 162 N.E.2d 475

(1959) (recognizing that the state university and its hospital are "instrumentalities of the state" which may not be sued until the legislature enacts statutes determining "the manner in which such suits may be brought against the state."); *University of Maryland v. Maas*, 173 Md. 564, 197 A. 123 (1938); *State v. Miser*, 50 Ariz. 244, 72 P.2d 408, 412 (1937) (deciding that the fact that the University of Arizona is incorporated "does not make it any of the less an arm, branch or agency of the state for educational purposes").

29. 194 N.W. at 608.

30. 145 N.W.2d at 862.

state" which consequently enjoyed the immunity of the state from such suits.³¹

The character of the University of Minnesota's board of regents, also created as a "constitutional corporation," has been viewed by the supreme court of that state in this same general light. In *State ex rel. University of Minnesota v. Chase*, 175 Minn. 259, 220 N.W. 951 (1928), it was decided that while the legislature could not subject the board to executive control in matters reserved by the state constitution to the board alone, the board was nevertheless

an agency of government to accomplish a state purpose, just as a municipal corporation, however independent it may be under its charter, is an agency of [local] government for the accomplishment of local purposes.³²

More recently, a United States district court observed in *Reid v. University of Minnesota*, 107 F.Supp. 439, 442 (N.D. Ohio 1952), that

[t]he "Regents of the University of Minnesota" is a constitutional corporation created to carry out State purposes and the acts of the Regents are, therefore, the acts of the State of Minnesota.

We conclude from the foregoing that the corporate status of the University of Alas-

ka under the Alaska Constitution does not militate against our conclusion that the University falls within the ambit of the language of AS 09.50.250-.300 which governs suits against the State of Alaska. Furthermore, this Court's actions in the recent case of *University of Alaska v. Chauvin*, 521 P.2d 1234 (Alaska 1974), do not, as is urged by petitioner, require a contrary ruling.³³

Petitioner also argues that the University is not subject to AS 09.50.250-.300 since the legislature has chosen to confer upon it the statutory power to "sue and be sued" in its own name.³⁴ This fact is not dispositive of the issue at hand. As a constitutional corporation, owing its existence not to the legislature but to a charter from the ultimate sovereign, the will of the people of this state, this basic corporate power would inhere in the University regardless of the legislature's declaration.³⁵

In short, it is our conclusion that neither the University's unique corporate character nor its power to sue and be sued in its own name detracts in any degree from what we consider most significant and controlling in this case: that the University, in performing its constitutional functions, acts for the benefit of the state and of the public generally in the process of government; and that it was created to pursue the govern-

31. *Huckins v. Board of Regents of University of Michigan*, 283 F.Supp. 622, 624 (E.D. Mich.1967).

32. 220 N.W. at 953.

33. In *Chauvin*, where we ultimately concluded that under the fourteenth amendment to the Constitution of the United States a tenured employee of the University was entitled to a hearing before termination of his employment, this Court denied the University's motion for a stay of execution pending appeal under Rule 62(e) of the Alaska Rules of Civil Procedure. Rule 62(e) provides that no supersedeas bond is required when a stay of execution is granted pending an appeal by the state or its officers or agencies. In denying its motion, we did not specifically rule on the question of the University's status as an agency of the state for purposes of Rule 62. Moreover, we do not feel constrained in this case to decide wheth-

er the applicability of AS 09.50.290 to the University is dispositive of the University's standing with respect to Rule 62.

34. AS 14.40.040 provides:

General powers of the university. There is created and established a corporation to be called the University of Alaska. It may in that name

(1) sue and be sued;
(2) receive and hold real and personal property;
(3) contract and be contracted with;
(4) adopt, use and alter a corporate seal;
(5) do and have done all matters necessary for the purpose of any function set forth in this chapter.

35. Such a power, for example, is recognized to be a normal incident and attribute of corporate status per se. See, e. g., *H. Henn, Law of Corporations* § 79, at 109 (1970).

mental task of providing education in accordance with an express mandate of the constitution, the fundamental and basic government of this state.

Article III, section 22 of the Alaska Constitution requires that all executive and administrative offices, departments, and agencies of the state government shall be allocated by law among and within not more than twenty principal departments. Petitioner contends that the University is not subject to AS 09.50.290 since it is not a department of the executive branch allocated among the 17 principal departments now identified under AS 44.15.010.³⁶

[3] The answer to this contention is that the University could not be so allocated. In the light of our foregoing consideration of the unique character of the University as a constitutional corporation, we are persuaded that it is an instrumentality of the sovereign which enjoys in some limited respects a status which is co-equal rather than subordinate to that of the executive or the legislative arms of government.³⁷ We therefore conclude that it is not necessarily subject to such allocation under AS 44.15.010.

[4] Lastly, petitioner argues that in maintaining an experimental air strip on

floe ice, the University was acting in a "proprietary," rather than "governmental" capacity, and that therefore, consistent with the common law principle in such cases, the privileges incident to sovereignty should not be recognized in this case.

We are aware of the historic force of this distinction and acknowledge that it would appear to be honored in many jurisdictions.³⁸ We note, however, that some states have recognized that the distinction between proprietary and governmental functions has little if any relevance in actions involving the question of the immunity or liability of the state, as opposed to its political subdivisions, in connection with the activities of public schools or institutions of higher learning.³⁹ We observe that the proprietary-governmental distinction was abandoned by this court with respect to municipal tort liability in the case of *City of Fairbanks v. Schaible*.⁴⁰ We take this opportunity to extend that ruling to suits involving the state or its agencies under AS 09.50.250-300.

We reach the conclusion that the University of Alaska is an integral part of the state government and an instrumentality of the state in performing its educational function. This being so, AS 09.50.290, which provides that a suit against the state

36. AS 44.15.010 provides:

Offices and departments. There are in the state government the following principal offices and departments:

- (1) Office of the Governor
- (2) Department of Administration
- (3) Department of Law
- (4) Department of Revenue
- (5) Department of Education
- (6) Department of Health and Social Services
- (7) Department of Labor
- (8) Department of Commerce
- (9) Department of Military Affairs
- (10) Department of Natural Resources
- (11) Department of Fish and Game
- (12) Department of Public Safety
- (13) Department of Public Works
- (14) Department of Economic Development
- (15) Department of Highways

(16) Department of Environmental Conservation

(17) Department of Community and Regional Affairs

37. See *State ex rel. Sholes v. University of Minnesota*, 54 N.W.2d 122, 125-28 (Minn. 1952).

38. See Annot., 33 A.L.R.3d 708, §§ 7 et seq. (1970).

39. See *McCoy v. Board of Regents*, 196 Kan. 506, 413 P.2d 73 (1966); *Holsworth v. State*, 298 N.W. 163 (1941).

40. 375 P.2d 201, 208 (Alaska 1962). It is significant that our decision in *Schaible* was predicated upon a statutory waiver of governmental immunity which, in all respects material to this case, is the functional equivalent of AS 09.50.250.

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shall be tried by the court without a jury, is applicable in this case.

The order striking petitioner's demand for a jury trial is affirmed.

ERWIN, BOOCHEVER and BURKE, JJ., not participating.



EMPLOYERS COMMERCIAL UNION COMPANY, a Foreign Corporation and Aspetis Construction Company, Appellants,
v.

Peter LIBOR and Alaska Workmen's Compensation Board, Appellees.

No. 2119.

Supreme Court of Alaska.

June 6, 1975.

Review was sought with regard to award made to claimant by Workmen's Compensation Board. The Superior Court, Third Judicial District, Anchorage, Eben H. Lewis, J., affirmed Board's decision, and appeal was taken. The Supreme Court, Connor, J., held that substantial evidence, apart from statutory presumption that a claim for compensation is within Workmen's Compensation Act, supported Board's finding that claimant's herniated disc was caused by work-related injury and that Board, in making award to claimant, could additionally rely on statutory presumption.

Affirmed.

1. Workmen's Compensation §1532

Substantial evidence, apart from statutory presumption that a claim for compensation is within Workmen's Compensation Act, supported Workmen's Compensation Board's finding that claimant's herniated disc was caused by work-related injury occurring when he was struck in small of

back by accidentally dislodged rock as he was bent over in a ditch. AS 23.30.120(1).

2. Workmen's Compensation §1357

Workmen's Compensation Board, in making award to claimant, could additionally rely on statutory presumption that a claim is within Workmen's Compensation Act where such presumption was not overcome by substantial evidence to contrary. AS 23.30.120(1).

Sanford M. Gibbs, of Hagans, Smith & Brown, Anchorage, for appellants.

Suzanne C. Pestinger and William K. Jermain of Birch, Jermain, Horton & Bitterner, Anchorage, for appellee Libor.

OPINION

Before RABINOWITZ, C. J., and CONNOR, ERWIN, BOOCHEVER and FITZGERALD, JJ.

CONNOR, Justice.

This is an appeal from the judgment of the superior court reviewing a decision of the Alaska Workmen's Compensation Board.

About May 24, 1969, Peter Libor, while employed by the Aspetis Construction Company, was struck in the small of his back by a rock which had been accidentally dislodged. At the time, appellee was in a bent over position standing in a ditch. The rock, which fell from above, was approximately eight inches across and weighed between four and five pounds. The injury was diagnosed as a fracture of the transverse process of the right side of vertebrae L2 and L3. Libor was absent from work for about two weeks. He then returned to work until February 25, 1971, at which time, because of increased pain in his low back, he went to see Dr. Tryon Wieland in Anchorage.

Dr. Wieland prescribed exercise and physical therapy. When that procedure afforded little relief, Libor consulted Dr. George A. Lyon, who diagnosed Libor's

HB

121

*4/20/05
Coghill move from comm
w/nd recs & fr
no objection*

24-LS0396S
Cook
4/18/05

*4/20/05
Coghill moved
as working
document
no objection*

CS FOR HOUSE BILL NO. 121()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to consolidating or abolishing certain road service areas in certain**
2 **second class boroughs; and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1. AS 29.35.450(c) is amended to read:**

5 (c) If voters reside within a service area that provides road, fire protection, or
6 parks and recreation services, abolishment of the service area is subject to approval by
7 the majority of the voters residing in the service area who vote on the question. A
8 service area that provides road, fire protection, or parks and recreation services in
9 which voters reside may not be abolished and replaced by a larger service area unless
10 that proposal is approved, separately, by a majority of the voters who vote on the
11 question residing in the existing service area and by a majority of the voters who vote
12 on the question residing in the area proposed to be included within the new service
13 area but outside of the existing service area. A service area that provides road, fire
14 protection, or parks and recreation services in which voters reside may not be altered

1 or combined with another service area unless that proposal is approved, separately, by
2 a majority of the voters who vote on the question and who reside in each of the service
3 areas or in the area outside of service areas that is affected by the proposal. This
4 subsection does not apply to a proposed change to a service area that provides fire
5 protection services that would result in increasing the number of parcels of land in the
6 service area or successor service area if the increase is not [NO] more than six percent
7 and would add not [NO] more than 1,000 residents. This subsection does not apply
8 in a second class borough to abolishment of a road service area or consolidation
9 of two or more road service areas if

10 (1) taxes have not been levied in the service area for road
11 maintenance or construction during the last 12 months and there is no balance in
12 any account available to pay for these road services for the service area;

13 (2) during the last 12 months, the service area board has not met
14 with a quorum present and in accordance with law; or

15 (3) there are no road maintenance contracts in effect for the
16 service area or the existing road maintenance contracts fail to provide for
17 minimum road standards required by law that are necessary to protect the
18 borough from civil liability.

19 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature

House of Representatives




State Capitol, Rm. 214
Juneau, Ak 99801-1182
(907) 465-3764

Official Business

COMMITTEE ON RULES
Representative Norman Rokeberg, Chairman

MEMORANDUM

TO: Those Interested in House Bill 121

FROM: Janet Seitz
House Rules Committee Staff 

DATE: April 18, 2005

RE: HB 121

Following is the amended language [taken from the Fairbanks North Star Borough suggestion].

Some time today or tomorrow, I should have an actual blank CS with this language in it but wanted to get this to you for your review.

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE [REDACTED]

TO: CSHB 121(), Draft Version "L"

1 Page 2, lines 10 - 15:

2 Delete all material and insert:

3 "(1) taxes have not been levied in the service area for road
4 maintenance or construction during the last 12 months and there is no balance in
5 any account available to pay for these road services for the service area;

6 (2) during the last 12 months, the service area board has not met
7 with a quorum present and in accordance with law; or

8 (3) there are no road maintenance contracts in effect for the
9 service area or the existing road maintenance contracts fail to provide for
10 minimum road standards required by law that are necessary to protect the
11 borough from civil liability."

**REPRESENTATIVE BILL THOMAS****ALASKA STATE LEGISLATURE DISTRICT 5**e-mail: Representative.Bill.Thomas@legis.state.ak.us webpage: www.akrebublicans.org/thomas/

State Capitol

Juneau AK. 99601-1182

907-465-3732

888-461-3732

FAX 907-465-2652

FAX COVER SHEET

DATE: 4-11-05

TO: Janet Scitz

FROM: Kaci Schroeder

RE: HB 121

PAGES TO FOLLOW: 2

I have just been informed by Tam Cook that our CS will not be ready until tomorrow. Apparently they are backed up and since the meeting isn't until Wednesday, we are getting pushed back. Sorry, as a committee aide, I know how frustrating last minute stuff can be.

Anyway, here is a legal opinion that was drafted up for SB 114 (the companion bill to HB 121) addressing the special legislation issue. The committee may find this useful.

#1

4/13/15 Loghuit
Conceptual Amendment
Kertula, Hanis

FNSB Borough Attorney: Rene Broker
Proposed Amendments (bold type) to 2nd Rules CS Draft to HB121 - Road
Service Areas

only?
This subsection does not apply in a second class borough to abolishment of a road service area or consolidation of two or more road service areas if

(1) **[THE] taxes have not been levied in the service area for [THE] road maintenance or construction services during the last 12 months and there is no balance in any account for the service area available to pay for these road services;**

(2) **the service area board has not legally met for the last 12 months; or**

(3) **there are no road maintenance contracts in effect for the service area or existing road maintenance contracts do not meet legally required minimum road standards necessary to protect the borough from civil liability.**

FNSB Background/comments:

(1) The linkage to no fund balance is fine as some service areas (not ours) may be blessed enough to survive on their future fund balances but a delayed trigger for three years is problematic. Last year all of our service areas without levies used the last of their fund balance. Are we trying to say that the Borough taxpayers should pick up their liability/costs of a service area for the next three years? If that is the case then they need to revise state law to allow this future three year funding.

(2) Unfortunately service areas continue to meet even though they do not legally have a quorum (they are citizen volunteers who are just trying to do their best). For example most of the service areas with only one commissioner have continued to have meetings even though legally they need at least two to have a quorum. Thus, just saying they had a meeting makes that issue unnecessarily murky. Also, the borough has been forced to temporarily appoint borough employees in order to enable service areas to lawfully conduct their business. This is an expensive stop gap use of resources that we had hoped this legislation would eliminate.

(3) Service areas could have a contract for once a year snow removal and meet this last criteria. In the meantime their roads could be unsafe, impassable at certain times of the year, and continue to be a significant problem for the Borough. At a minimum the Borough ought to be able to say to our service areas that you at least have to maintain your roads to minimum standards if you want to be a service area. Otherwise, your quasi-efforts are creating a public menace/threat. It is more dangerous to give people some illusion that their roads are being maintained than not to do it at all. In other words, the existence of one small maintenance contract does not eliminate the liability concerns and instead might very well make them worse.

24-LS0396L

Cook

4/11/05

*4/13/05
Goyette W. Krumm
davis
no objection*

CS FOR HOUSE BILL NO. 121()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

A BILL

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7 the majority of the voters residing in the service area who vote on the question. A
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9 which voters reside may not be abolished and replaced by a larger service area unless
10 that proposal is approved, separately, by a majority of the voters who vote on the
11 question residing in the existing service area and by a majority of the voters who vote
12 on the question residing in the area proposed to be included within the new service
13 area but outside of the existing service area. A service area that provides road, fire
14 protection, or parks and recreation services in which voters reside may not be altered

L

1 or combined with another service area unless that proposal is approved, separately, by
2 a majority of the voters who vote on the question and who reside in each of the service
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6 service area or successor service area if the increase is not [NO] more than six percent
7 and would add not [NO] more than 1,000 residents. This subsection does not apply
8 in a second class borough to abolishment of a road service area or consolidation
9 of two or more road service areas if

10 (1) the taxes have not been levied in the service area for the road
11 services during the last 12 months and there is no balance in any account for the
12 service area;

13 (2) the service area board has not met for the last 12 months; or

14 (3) there are no road maintenance contracts in effect for the
15 service area.

16 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

Janet Seitz

From: Sally Saddler [sally_saddler@commerce.state.ak.us]
Sent: Tuesday, April 12, 2005 5:33 PM
To: Kaci Schroeder
Cc: Darwin R Peterson; Athena J Logan; Dan R Bockhorst; Marjorie L Vandor; Janet Seitz
Subject: HB121 2nd Class Boroughs in House Rules

Hi Kaci--thanks for sending over the proposed amendments to SCHB121(RLS). We have reviewed the language and the proposed amendments do nothing to relieve our concern about giving a general law (second class) borough greater flexibility than a home rule borough. The proposed amendments would diminish -- but according to Margie Vandor's prior opinion, not eliminate -- concerns over local and special legislation. We don't plan on being at the hearing unless you request our presence.

Sally Saddler
Department of Commerce, Community & Economic Development PO Box 110800 Juneau, AK
99811.0800
Phone: 907.465.2503
Fax: 907.465.5442
Email: sally_saddler@commerce.state.ak.us

LEGAL SERVICES

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

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Mail Stop 3101

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

MEMORANDUM

March 31, 2005

SUBJECT: Rules Committee action on bills

TO: Representative Norman Rokeberg, Chair, House Rules Committee
Attn: Janet Seitz

FROM: Tamara Brandt Cook
Director *TBC*

On March 17 the Rules Committee reported out a Rules Committee Substitute for HB 121. The bill was returned to the Rules Committee for calendaring on that same day. The Rules Committee is now interested in considering a 2nd CS to replace the original CS it adopted. I originally recommended that the Rules Chair request referral of the bill to it as a standing committee rather than for calendaring because the terms of the referral back to the Rules Committee seem limited to the calendaring role of that committee. I understand that Suzi Lowell, Chief Clerk, has advised that all referrals to the Rules Committee are made "for calendaring," but that it is the practice of the House to accept reports from the Rules Committee even when the referral is apparently for the limited purpose of calendaring.

Given that history and past practice, the Rules Committee may act as a standing committee with respect to HB 121 and report out a different Committee Substitute without further floor action, despite the fact that the Committee has possession of the bill "for calendaring." Of course, the Rules Committee will have to abide by the notice requirements of Uniform Rule 23(a) - (d) when it takes HB 121 up if it is going to consider proposed substantive changes to the bill.

TBC:jad
05-175.jad

Alaska State Legislature

House of Representatives



State Capitol, Rm. 214
Juneau, Ak 99801-1182
(907) 465-3764

Official Business

COMMITTEE ON RULES Representative Norman Rokeberg, Chairman

MEMORANDUM

TO: Tam Cook
Legislative Legal
FAX: 2029

FROM: Janet Seitz *Janet*
House Rules

DATE: March 30, 2005

RE: HB 121

After we talked, I talked with Suzi Lowell, our Chief Clerk. She pointed out that all bills referred to House Rules Committee carry the tag "for placement on the calendar."

Due to that, will you please provide a written memorandum covering HB 121 and describe what needs to be done so that the House Rules Committee can consider the bill again in a committee meeting. Your verbal advice to me was that since the House Rules Committee had already heard the bill once, reported the bill back with a Committee Substitute, that Rep. Rokeberg needed to make a motion to have the Speaker re refer the bill back to Rules for further committee action.

The concern is that given that every bill carries the language that it is being referred to the Rules Committee "for placement on the calendar" would be this necessary in all instances where the committee wants to hear the legislation or is it just necessary because the committee has already heard and reported the bill back to the full body?

Your written advice would be appreciated. We will be sharing it with the Clerk's Office.

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 121(RLS)

1 Page 1, line 1, following "abolishing certain":

2 Insert "road"

3

4 Page 2, line 8, following "of a":

5 Insert "road"

6

7 Page 2, line 9, following "more":

8 Insert "road"

9

10 Page 2, lines 10 - 13:

11 Delete "(1) borough's population in 2005 was less than 65,000 or more than
12 75,000; and

13 (2)"

14

15 Page 2, line 17:

16 Delete ":"

17 Insert "; and

18 (1) taxes have not been levied in the service area for the road
19 services during the last three years and there is no balance in any account for the
20 service area:

21 (2) the service area board has not met for at least two years; or

22 (3) there are no road maintenance contracts in effect for the
23 service area."

ALASKA STATE HOUSE OF REPRESENTATIVES

**Contact:**

Interim Address:

3340 Badger Road
North Pole, AK 99705
(907)-488-5725
Fax# (907)-488-4271

Session

(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

MEMORANDUM

Date: March 17, 2005
To: Tam Cook, Legal Counsel
From: Rynnieva Moss, Legislative Aide *R. Moss*
Re: HB 121

I have been trying to figure out a way to make HB 121 a clean bill with no constitutional challenges. One way would be to apply the dissolving language to all boroughs, even though First Class Boroughs can currently deal with service areas by ordinance. The other element would be that the borough could dissolve a service area that has not levy a mill rate for road maintenance for a time period of two years. That would allow the borough to give notice of a clear performance requirement and give the borough a clear cause for dissolving the service area.

I think Representative Stoltze could support the bill. If this sounds logical, could you draft a blank amendment?

Thanks.

Adopted 4-2

24-LS03961Y.5
Cook
3/14/05

AMENDMENT

#1

Kohring moved

OFFERED IN THE HOUSE

TO: CSHB 121(CRA)

*EB W
BK W*

*UK - Y
JH - Y
JC - Y
NR - Y*

1 Page 2, line 9:

2 Delete all material.

3 Insert "or more service areas if the

4 (1) borough's population in 2005 was less than 65,000 or more
5 than 75,000; and

6 (2) ~~assembly first determines~~ that the abolishment or"

*Am #2 Berkowitz
Delete:
Insert: the borough by ordinance ~~determines~~
no objection
adopted*

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 121(CRA)
 (H) Publish Date: 2/24/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title: Service Areas in RDU: Comm Assist & Ec Dev (405)
Second Class Boroughs Component: Community Advocacy
 Sponsor: Community & Regional Affairs
 Requester: House Community & Regional Affairs Component No.: 2703

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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						
-----------------------------	--	--	--	--	--	--

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--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation excludes second class boroughs from the provisions of AS 29.35.450 (c) if the borough assembly determines that the abolishment or consolidation of the services area(s) is necessary because of one of several conditions. This legislation has no fiscal impact on the operations of the division.

Prepared by: Athena Logan, Local Government Specialist
 Division: Community Advocacy
 Approved by: Edgar Blatchford, Commissioner
 Agency: Commerce, Community & Economic Development

Phone 907.269.4540
 Date/Time 2/14/05 4:48 PM
 Date 2/14/2005

Alaska State Legislature

Rep. Gabrielle LeDoux
Rep. Pete Kott
Rep. Mark Neuman
Rep. Sharon Cissna
Rep. Woodie Salmon



State Capitol, Room 124
Juneau, AK 99801-1182
Co-Chairs
Rep Kurt Olson
(907) 465-2693 FAX 465-3835
Rep. Bill Thomas
(907) 465-3732 FAX 465-2652

COMMUNITY & REGIONAL AFFAIRS COMMITTEE

Date: 3-07-05

To: Representative Rokeberg, Chair House Rules Committee

From: Representative Thomas, Co-Chair House Community and Regional Affairs
Representative Olson, Co-Chair House Community and Regional Affairs

Re: Sponsor statement for HB 121 an Act relating to consolidating or abolishing certain service areas in second class boroughs.

When the legislature established the state revenue sharing program residents of many subdivisions outside of the city limits that had no maintenance income for their area roads were able to rely solely on revenue sharing money. People formed local service area road commissions and collected revenue sharing money based on the mileage of their service area.

With the termination of the revenue sharing program, many service areas do not have funding for road maintenance and the road commissions are now nonfunctional. As time goes on, the roads that were built under the revenue sharing program are deteriorating. The boroughs are concerned about their liability for the roads even though they have no road powers. There are no funds to maintain the roads, therefore the roads receive no service resulting in safety hazards for all who use them. In addition, the boroughs cannot dissolve the service areas without a vote of the residents.

HB 121 is designed to enable the borough to consolidate or dissolve the service areas that are nonfunctional or are functioning below minimum standards. Consolidation or dissolution will come about by decision of the governing body of the borough after adhering to well defined procedures and a hearing process. Further, HB 121 protects those service areas that are taxing themselves adequately enough to maintain the safety of their own roads. I strongly urge your support of this important piece of legislation.

LEGAL SERVICES

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

Rynnevaldross

HB 121

(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

April 6, 2005

SUBJECT: Service areas in second class boroughs (SB 114)

TO: Senator Gary Stevens, Chair
Senate Community and Regional Affairs Committee
Attn: Melanie Lesh

FROM: Tamara Brandt Cook
Director

TOC

You have shared with me a memorandum dated March 9, 2005 from Marjorie Vandor, Assistant Attorney General, expressing concerns over the constitutionality of SB 112 and asked for my opinion. Although the bill could be attacked based on the two points made in the memorandum, it has a reasonably good chance of being upheld.

(1) Exempting only second class boroughs from the majority vote requirement of AS 29.35.450(c) and not home rule boroughs is contrary to the state constitution framers intent to grant home rule municipalities liberal powers. Ms. Vandor cites in support of this position Lien v. City of Ketchikan, 383 P.2d 721 (Alaska 1963). The court in that case simply held that a statute involving lease procedure 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 the 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, SB 114 contains an express limitation on home rule municipalities.

(2) Limiting the exemption to second class boroughs raises concerns as to local and special legislation. Article II, sec. 19 provides in 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 under Article II, section 19 is substantially the same as that applied to 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 (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 an Act of statewide significance need not have an effect in all parts of the state; legislation does not become "local" merely because it 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 application, while only affecting land in Southcentral Alaska, required legislation to be accomplished and was of statewide significance. 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 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 Act violated sec. 19. Abrams v. State, 534 P.2d 91 (Alaska 1975).

SB 112 does not apply in a purely local or special manner to only one borough or place in the state. Rather, it is of general applicability to all second class boroughs that now exist and, potentially, to second class boroughs that are formed in the future. Many statutes that deal with municipal powers make distinctions between boroughs based on classification. (See for example AS 29.35.160 - 29.35.350) Indeed, Art. X, sec. 3 specifically states: "The legislature shall classify boroughs and prescribe their powers and functions."

TBC:lmb

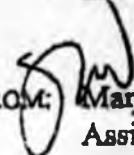
05-110.lmb

MEMORANDUM**State of Alaska**

Department of Law

TO: Sally Saddler
Legislative Liaison
Department of Commerce, Community
and Economic Development

DATE: March 9, 2005**OUR FILE:****TELEPHONE NO:** 465-3600

FROM:  Marjorie Vandor
Assistant Attorney General
Labor & State Affairs Section - Juneau
Department of Law

SUBJECT: Senate Bill 114

On behalf of Commissioner Blatchford, you have asked for our legal opinion as to certain constitutional concerns that have been raised by your department with respect to Senate Bill 114,¹ a bill relating to consolidating or abolishing certain service areas in second class boroughs. The bill amends AS 29.35.450(c), by inserting language that exempts second class boroughs from the requirement that a service area may be abolished or consolidated only if approved by majority vote. The exemption will apply if a second class borough assembly determines that abolishment or consolidation is necessary to protect the finances of the borough, to resolve financial or legal problems of a service area, or to ensure that adequate service is provided to the residents of a service area.

In brief, the concerns that have been raised by the department in earlier legislative committee hearings on a similar bill (HB 121) are:

1. by exempting only second class boroughs from the majority vote requirement of AS 29.35.450(c), and not extending it to home rule boroughs (in particular), is incongruous with article X, section 11 of the Alaska Constitution and contrary to the framers intent to grant home rule municipalities liberal powers; and
2. by limiting the exemption to second class boroughs in AS 29.35.450(c) as proposed in this bill raises concerns as to local and special legislation.

With respect to the first issue, the limitations as to how a borough can abolish or consolidate its service areas per AS 29.35.450(c), limitations imposed on home rule boroughs as well as general law boroughs through AS 29.35.450(d), is arguably contrary

¹ There is an identical bill that was introduced in the House, HB 121.

Sally Saddler

March 9, 2005

Page 2

to the constitutional grant of authority to home rule municipalities to have liberal control over matters purely of local concern. How service areas are established, governed, altered, abolished, and combined are local matters historically dealt with in home rule charters as part of the organic law of a particular home rule municipality. As stated by the Alaska Supreme Court in *Lien v. City of Katohikan*, 383 P.2d 271 (Alaska 1963) where a home rule municipality is concerned with a matter of purely local concern, the charter and not a legislative act is looked to in order to determine whether a particular power has been conferred upon the municipality. It would be incongruous to recognize the constitutional provision stating that a home rule [city] municipality "may exercise all legislative powers not prohibited by law or by charter" (Alaska Const. art. X, sec. 11), and then to say that the power of a home rule city is measured by a legislative act. *Id.* at 723.²

And, with respect to the amendment proposed in this bill, which further impinges on the constitutional authority of home rule boroughs by not providing them with at least as much discretion in altering or consolidating its services areas as being allowed to second class boroughs, could also be deemed by a court to be incongruous with article X, section 5 and the framers' intent to grant home rule boroughs liberal powers.

As to the issue of local and special legislation (i.e., exempting only second class boroughs from the majority vote requirements in certain situations), this limitation may violate the constitutional prohibition against special and local legislation under the Alaska Constitution. Such a specific classification of borough raises issues of whether this provision in the bill violates the prohibition in article II, section 19 of the Alaska Constitution against local and special acts. Article II, section 19 states, in pertinent 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.

There are 16 boroughs in the state. Borough make-up in the state is as follows: three (3) Unified Home Rule boroughs³, six (6) Home Rule boroughs⁴, and seven (7)

² In *Lien*, the issue concerned the leasing of city property. The charter provision allowing the lease of city property was ruled to be controlling over a statute that prohibited the lease because the court found the lease of city property was an issue of local, not statewide, concern. *Id.*

³ Municipality of Anchorage, City and Borough of Juneau, and City and Borough of Sitka.

Sally Saddler

March 9, 2005

Page 3

Second Class boroughs⁵. The ultimate question to be asked is whether the legislature's special treatment of one class of borough is "reasonably related to a matter of common interest to the whole state." *Abrams v. State*, 534 P.2d 91, 94 (Alaska 1975) citing *Boucher v. Engstrom*, 528 P.2d 456, 463 (Alaska 1974).⁶

In *State v. Lewis*, 559 P.2d 630 (Alaska 1977), *cert. denied*, 432 U.S. 901 (1977), the court found the statute authorizing a trade of land between the federal government, the state and a Native regional corporation did not violate article II, section 19 of the Alaska Constitution. The court found that the land trade was unique, was of statewide concern, and that the legislation was "as broad as the conditions to which it respond[ed]" could allow. *Lewis*, 559 P.2d at 644. Applying the *Lewis* standards to this bill, it is questionable that there is a rational basis to exempt one class of general law borough from the requirements of a majority vote, while continuing to impose it on other boroughs that may need the exemption for the identical reasons as allowed in this bill (i.e., finances of the borough, etc.). Thus, it is questionable whether providing the exemption to only one class of borough (i.e. second class) is "as broad as the conditions to which it [this bill] responded" could allow.

Finally, under *Lewis*, the legislature must show a rational basis, a good reason, to justify the special treatment.⁷ And, in the end, it will be the province of a court to determine if this proposed statute violates the prohibition against special and local legislation Alaska Const. art. II, sec. 19.

In summary, this bill raises complex policy and legal concerns.

MV/ba

⁴ Denali Borough, Haines Borough, Lake and Peninsula Borough, North Slope Borough, Northwest Arctic Borough, and City and Borough of Yakutat.

⁵ Aleutians East, Bristol Bay, Fairbanks North Star, Kenai Peninsula, Ketchikan Gateway, Kodiak Island, and Matanuska-Susitna.

⁶ In *Abrams*, the statute was found to violate article II, section 19 of the Alaska Constitution because it created a borough in a manner different from that for incorporating other boroughs and no evidence was presented indicating any valid reason for special incorporation procedures applicable only to the one proposed borough.

⁷ In 1978, the court articulated a unified equal protection analysis that utilizes a sliding scale to weigh the interests involved in any classification that avoids distinguishing between suspect and nonsuspect classifications. *State v. Erickson*, 574 P.2d 1 (Alaska 1978). We note that there has not been a case involving the local and special legislation prohibition since the unified equal protection test was adopted in *Erickson*.



DIVISION OF COMMUNITY ADVOCACY

Frank H. Murkowski, Governor

March 8, 2005

The Honorable Paul Seaton, Chair
House State Affairs Committee
Alaska State Capitol
Room 102
Juneau, AK 99801-1182

Dear Representative Seaton:

This is to follow up the House State Affairs Committee meeting of Saturday, March 5, 2005. During the Committee's review of CSHB 121(CRA), several references were made to testimony on the bill provided by Dan Bockhorst of this agency on March 1. A copy of that testimony is attached for your ease of reference.

During the hearing, statements were made that Mr. Bockhorst's analysis of HB 121 with regard to home-rule boroughs was in error and that home-rule boroughs already have the power through charter amendments to abolish service areas.

Upon further review, I believe that Mr. Bockhorst's testimony was accurate and reflected legitimate concerns regarding principles of local government.

If HB 121 takes effect, it will to make it easier for a select group of boroughs (second-class boroughs) to abolish and consolidate certain types of service areas. However, home rule boroughs would not have the same authority. We are basing our opinion on AS 29.35.450(d), which states that the service area provisions apply to a home rule or general law municipality, and AS 29.10.200(46) which lists the limitations on home rule powers. This list includes voter approval of alteration or abolishment of service areas as a limitation.

To my knowledge, it would be the first time that State law imposes greater restrictions on home-rule boroughs compared to some general-law boroughs.

The Honorable Paul Seaton
Page 2
March 8, 2005

While I believe that the testimony previously provided by Mr. Bockhorst, is accurate, we have asked the Department of Law to review our analysis of the matter and provide you with a statement to that effect or to clarify points on which we might have erred. I appreciate the opportunity to clarify concerns raised regarding information this agency has provided.

Sincerely,

DIVISION OF COMMUNITY ADVOCACY



Michael Black
Director

Enclosures: DCCED Testimony of March 1, 2005

cc:enc:

Representative Bill Thomas
Representative Carl Gatto
Representative Jim Elkins
Representative Bob Lynn
Representative Jay Ramras
Representative Berta Gardner
Representative Max Gruenberg
Marjorie Vandor, Assistant Attorney General
Department of Law

DIFFERENCES AMONG HOME RULE, FIRST CLASS, SECOND CLASS AND THIRD CLASS BOROUGHS

Prepared by Local Boundary Commission Staff, February 25, 1994

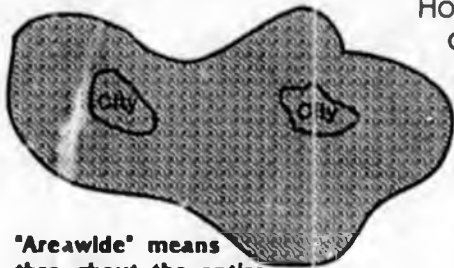
The difference in the powers available to and the duties required of home rule, first class and second class boroughs is minimal. Home rule boroughs, first class boroughs and second class boroughs all have broad capacity to take on various powers. Third class boroughs have limited capacity for areawide and non-areawide powers, but broad capacity for service area powers.

However, authority to exercise any power must be lawfully obtained. There is considerable distinction among the four classes of boroughs concerning the manner in which each may gain authority to exercise a particular power. These distinctions are summarized in the following chart. The chart is followed by a discussion of the topic.

POWER	AREAWIDE				NON-AREAWIDE				SERVICE AREA			
	Home Rule	First Class	Second Class	Third Class	Home Rule	First Class	Second Class	Third Class	Home Rule	First Class	Second Class	Third Class
Education
Taxation of Property
Taxation of Sales	+
Plan, Plat., Land Use Reg.	+	.	.	NA	.	.	.	.	NA	◆	×	◆
Transportation Systems	◆	×	×	NA	◆	×	×	×	NA	◆	×	◆
Water Pollution Control	◆	×	×	NA	◆	×	×	×	NA	◆	×	◆
Air Pollution Control	◆	×	×	NA	◆	×	×	×	NA	◆	×	◆
Regulation of Animals	◆	×	×	NA	◆	×	×	×	NA	◆	×	◆
License Day Care Facilities	◆	×	×	NA	◆	×	*	*	NA	◆	×	◆
Regulate Fireworks	◆	★	★	NA	◆	×	×	×	NA	◆	×	◆
Solid Waste	◆	★	★	NA	◆	×	×	×	NA	◆	×	◆
Housing Rehab	◆	★	★	NA	◆	×	×	×	NA	◆	×	◆
Economic Development	◆	★	★	NA	◆	×	×	×	NA	◆	×	◆
Roads & Trails	◆	★	★	NA	◆	×	×	×	NA	◆	×	◆
EMS Communications	◆	★	★	NA	◆	×	×	×	NA	◆	×	◆
Regulate Motor Vehicles	◆	★	★	NA	◆	×	×	×	NA	◆	×	◆
Development Projects	◆	★	★	NA	◆	×	×	×	NA	◆	×	◆
Hazardous Substance Control	◆	★	★	NA	◆	×	×	×	×	◆	×	◆
Other Powers Not Prohibited	◆	★	★	NA	◆	×	*	*	NA	◆	×	◆

- A mandatory power which must be exercised in the manner set out in statute.
- + A mandatory power, however, certain discretion is permitted regarding the manner in which the power is exercised.
- ◆ May be exercised in the manner set out in the home rule charter.
- ×
- * May be exercised upon non-areawide voter approval.
- ★ May be exercised upon approval of the voters areawide or by transfer of power from all cities within the borough.
- ☆ May be exercised upon approval of the voters areawide, or transfer from all cities and approval of the voters non-areawide.
- ◆ May be exercised upon approval of voters in service area or by all property owners in service area.
- NA Not available
- May be exercised upon approval of voters in service area, DNR for certain state lands.

MANDATORY AREAWIDE DUTIES



'Areawide' means throughout the entire borough -- inside and outside cities.

Home rule, first class and second class boroughs must exercise all of the powers noted in this section on an areawide basis.

Third class boroughs must exercise all of these powers on an areawide basis, except planning, platting and land use regulation.

- ◆ **Education.** All classes of borough must establish, maintain and operate a system of public schools on an areawide basis as provided in AS 14.14.060.
- ◆ **Assessment, Levy and Collection of Property Taxes.** All classes of borough must assess and collect property taxes that are levied within their boundaries (areawide, non-areawide, service area and city levies). State laws governing the assessment, levy and collection of property taxes apply equally to all classes of boroughs.
- ◆ **Levy and Collection of Sales and Use Taxes.** All classes of borough must collect sales and use taxes that are levied within their boundaries. Boroughs may levy sales and use taxes on an areawide, non-areawide and/or service area basis.

Not all of the State laws that govern the levy and collection of sales and use taxes apply to home rule boroughs (while they do apply to first, second and third class boroughs).

For example, State law requires that the adoption of a sales tax or an increase in the rate of a sales tax by a first, second or third class borough must be approved by a majority of the voters. That provision does not apply to a home rule borough.

Because the provision does not apply to a home rule borough, the borough's charter would dictate how the borough gains the authority to levy or increase the rate of levy of a sales tax. The charter could be written with terms identical to the law which applies to first and second class boroughs (i.e., a requirement for approval by a majority of the voters). Alternatively, the charter could impose an even greater standard (e.g., a requirement for approval by 2/3 of the voters). Conversely, the charter could allow the Assembly to set the sales tax rate without any requirement for voter approval.

- ◆ **Planning, platting and land use regulation.** Home rule, first class and second class boroughs must provide areawide planning, platting and land use regulation. Again, not all State laws governing such apply to home rule boroughs. First and second class boroughs must comply with all 20 sections in AS 29.40. However, home rule boroughs are compelled to follow only one full section of AS 29.40 and parts of another. For example, first and second class boroughs must adopt a comprehensive plan, however, a home rule borough has no such obligation unless required by charter or borough code. A third class borough is prohibited from exercising areawide planning, platting and land use regulation.

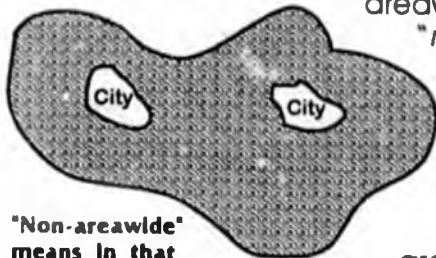
OPTIONAL AREAWIDE POWERS

A home rule borough acquires additional areawide powers in the manner set out in its charter. Such might allow the borough to assume some or all powers on an areawide basis by simply adopting an ordinance. Conversely, it could require voter approval for the assumption of some or all additional areawide powers.

A first class or second class borough may assume 5 specific areawide powers by simply adopting an ordinance. These relate to transportation systems, water pollution control, air pollution control, licensing of day care facilities and regulation of animals.

A first class borough may assume any other areawide power *"not otherwise prohibited by law"* by a majority vote at an areawide election or by having the power transferred from all cities in the borough.

A second class borough may assume any other areawide power *"not*



"Non-areawide" means in that part of the borough outside cities.

otherwise prohibited by law" by a majority

vote at an areawide election, or

power transferred

from all cities in the borough and a majority vote at a non-areawide election.

A third class borough is prohibited from exercising any other power on an areawide basis.

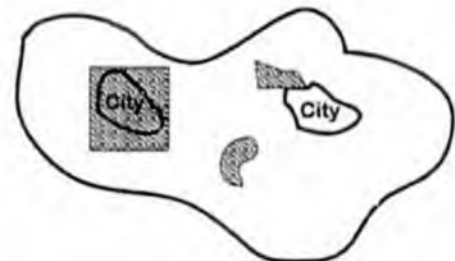
OPTIONAL NON-AREAWIDE POWERS

A home rule borough acquires additional non-areawide powers in the manner set out in its charter. Such might allow the borough to assume some or all powers on a non-areawide basis by simply adopting an ordinance. Alternatively, it could require voter approval for the assumption of some or all additional non-areawide powers.

A first class borough may assume any non-areawide power *"not otherwise prohibited by law"* by adopting an ordinance.

A second class borough may assume 13 specific non-areawide powers by adopting an ordinance. These relate to: transportation systems, regulation of fireworks, regulation of animals, solid waste collection and disposal, air pollution control, water pollution control, housing rehabilitation, economic development, local service roads and trails,

emergency services, communications, regulation of motor vehicles & operators, development projects, and hazardous substance control.



"Service areas" are parts of the borough receiving higher levels of services -- a service area may include a city.

A second class borough may assume any other non-areawide power *"not otherwise prohibited by law"* upon non-areawide voter approval.

A third class borough may by ordinance may exercise on an non-areawide basis the power necessary to clean-up or prevent a release of oil or

hazardous substance. A third class borough may not exercise other powers on a non-areawide basis.

SERVICE AREA POWERS

A borough may create a service area to provide services which are not provided on an areawide or non-areawide basis. A service area may also be used to provide a higher level of service than that provided on an areawide or non-areawide basis (e.g., education, or planning).

A home rule borough gains authority to exercise powers on a service area basis in the manner set out in its charter. Such might allow the borough to exercise some or all service area powers by adopting an ordinance. Conversely, it could require voter approval for the exercise of some or all powers on a service area basis.

A first class borough may, by ordinance, exercise any power on a service area basis that is granted to a first class city or which can be provided on a non-areawide basis by a first class

borough. Such gives first class boroughs authority to exercise "*any power not prohibited by law*" on a service area basis.

A second class borough may also exercise on a service area basis, "*any power not prohibited by law.*" However, it must first gain approval from a majority of the voters in the proposed service area or all of the property owners in the proposed service area.

A third class borough may also exercise "*any power not otherwise prohibited by law*" upon approval of the voters residing in the service area. A third class borough may also establish a service area upon concurrence of the Department of Natural Resources, for an area including only vacant, unappropriated and unreserved state land classified for disposal to individuals. By ordinance a third class borough may provide services in a service area necessary to develop state or municipal land as required by the planning, platting, and land use regulations of the borough. ■



Kodiak Island Borough

OFFICE of the MAYOR

710 Mill Bay Road

Kodiak, Alaska 99615

Phone (907) 486-9301 Fax (907) 486-9374

March 4, 2005

Senator Gary Stevens
State Capitol, Room 417
Juneau, AK 99801-1182

Dear Senator Stevens;

On behalf of the Kodiak Island Borough Assembly, I am writing this letter to express strong support for House Bill 121: An Act relating to Consolidating or abolishing certain service areas in second class boroughs; and providing for an effective date.

Over the past several years, the Fairbanks North Star Borough has been struggling to address some serious issues regarding their road service areas.

House Bill 121 is designed to enable the Fairbanks North Star Borough to consolidate or dissolve the service areas that are nonfunctional or are functioning below minimum standards.

Consolidation or dissolution would be enacted by the governing body of the borough only after following the proper procedures and providing for a hearing process. Also, House Bill 121 protects those service areas that are taxing property owners adequately to maintain the safety of their roads.

The Kodiak Island Borough Assembly strongly urges your support of this important piece of legislation.

Sincerely,

OFFICE OF THE BOROUGH MAYOR

A handwritten signature in black ink, appearing to read "Jerome M. Selby".

Jerome M. Selby
Borough Mayor

Cc: Representative Gabrielle LeDoux
Fairbanks North Star Borough
Mark Hickey, Borough Lobbyist



Fairbanks North Star Borough

Office of the Mayor

809 Pioneer Road

P.O. Box 71267

Fairbanks, Alaska 99707-1267

907/459-1300

Fax 907/459-1102

Email mayor@co.fairbanks.ak.us

February 4, 2005

Representative Bill Thomas, Co-Chair &
House Community and Regional Affairs
State Capital, Room 428
Juneau, AK 99801-1182

Representative Kurt Olson, Co-Chair
House Community and Regional Affairs
State Capital, Room 110
Juneau, AK 99801-1182

Dear Representative Thomas and Olson:

This letter is to express my strong support of House Bill 121. Over the last several years the Fairbanks North Star Borough has been struggling to address some serious issues concerning our road service areas.

As you may know, we have over 100 service areas that are currently attempting to deal with significant changing circumstances, largely financial, arising from the zeroing out of state funding. Currently, we have some of our service areas that have chosen not to tax themselves and provide no service to their residents. Others provide only very limited service and do not have the minimum number of voluntary commissioners. While the Borough bears the ultimate financial responsibility for these service areas, it currently lacks the ability to address these problems through either consolidation or dissolution.

In addition to the liability and financial concerns resulting from struggling service areas, their inability to provide even minimal services to Borough residents presents a real impediment to economic growth in the Borough.

Accordingly, as the Mayor of the Fairbanks North Star Borough I strongly support House Bill 121 as I believe that passage of this bill will enable the Borough to better manage service areas not only to ensure minimum services are provided to Borough residents but also to protect all Borough taxpayers from the consequences of financially strapped service areas.

Sincerely,

Jim Whitaker, Mayor

JW:csm/arb



Fairbanks North Star Borough

Assembly

809 Pioneer Road

P.O. Box 71267

Fairbanks, Alaska 99707-1267 907/459-1401

Fax 907/459-1224

Email: clerks@co.fairbanks.ak.us

www.co.fairbanks.ak.us

February 4, 2005

Representative Bill Thomas, Co-Chair
House Community and Regional Affairs
State Capital, Room 428
Juneau, AK. 99801-1182

Representative Kurt Olson, Co-Chair
House Community and Regional Affairs
State Capital, Room 110
Juneau, AK. 99801-1182

Dear Representative Thomas and Olson,

As Presiding Officer of the Fairbanks North Star Borough Assembly, I would like to submit this letter as support of House Bill 121, "An act relating to consolidating or abolishing certain service areas in second class boroughs."

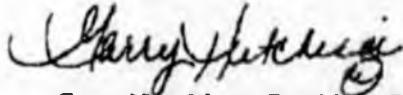
In 2001, amendments were made to AS 29.35.450 adding requirements for an election within service areas when there is a proposal to abolish, replace, or annex tax lots to that area. This was in addition to an election being held in the area that had petitioned for services causing two questions for each election and requiring both questions to pass.

The Alaska Constitution mandates that the local assembly have the authority to manage and make decisions regarding service areas. Service areas are a part of the borough and, according to the Alaska Supreme Court, are not a separate legal entity from the borough and can not sue or be sued. The borough, therefore, bears the ultimate financial responsibility for service areas.

A borough can not legally pass on service area costs to areawide borough taxpayers but some service areas no longer have sufficient funds to pay for the direct costs of providing services and a considerable number of service areas have experienced significant difficulties in maintaining even the minimum number of service area commissioners necessary to legally conduct service area business. Although, the borough bears the ultimate financial responsibility for services areas, the assembly does not have the power to address issues arising from these types of difficulties, particularly in service areas that do not provide any or only provide minimal services. House Bill 121 corrects these problems by allowing boroughs the power to better manage service areas and provide for services to its residents.

The Fairbanks North Star Borough fully supports House Bill 121 and believes its passage will provide for better services for its residents.

Sincerely,



Garry Hutchison, Presiding Officer
Fairbanks North Star Borough



217 Second Street, Suite 200 • Juneau, Alaska 99801

Tel (907) 586-1325 • Fax (907) 463-5480 • www.akml.org

February 14, 2005

Representatives Bill Thomas and Kurt Olson
House Community and Regional Affairs Committee
State Capitol
Juneau, AK 99811

Re: Support of HB 121 "relating to consolidating or abolishing certain service areas in second class boroughs. "

Dear Representatives Thomas and Olson,

The AML Local Government and Public Services Legislative subcommittee has reviewed this bill and strongly supports it. It is consistent with the AML Policy Statement adopted by the AML membership in November 2004.

This bill is also consistent with the Alaska Constitution. Article 10, Section 5, which states that service areas within a borough may be "established, altered, or abolished by the Assembly subject to the provisions of law or charter." This bill establishes standards for an Assembly to take necessary steps to protect the community as a whole or individuals areas. The standards require that the Assembly determine that the action to be taken is necessary to either:

- "Protect the finances of the borough,"
- "Resolve financial or legal problems of a service area," or
- "Ensure that adequate service is provided to the residents of a service area."

This is a key local control measure to help second class boroughs efficiently and fairly provide services.

Thank you for your consideration.

Sincerely,

Scott Brandt-Erichsen

Scott Brandt-Erichsen, Chair
Local Government and Public Services Committee